
MINUTE

**Shetland Charitable Trust
Council Chamber, Town Hall, Lerwick
Thursday 15 December 2011 at 10.00am**

Present:

W H Manson	L Angus
L F Baisley	J Budge
A J Cluness	A T J Cooper
A T Doull	A G L Duncan
E L Fullerton	F B Grains
R S Henderson	J H Henry
R C Nickerson	V Nicolson
F A Robertson	G Robinson
J W G Wills	

Apologies:

A J Hughson	R Hunter
C H J Miller	J G Simpson
C L Smith	

In Attendance (Officers):

A Black, General Manager - SCT
J Goddard, Financial Controller – SCT
M Anderson, Principal Officer - SCT
L Geddes, Committee Officer - SIC

Also:

S Mackintosh, Turcan Connell

Chairman:

W H Manson, Chairman of the Trust, presided.

Circular:

The circular calling the meeting was held as read.

Declarations of Interest:

There were no declarations of interest.

The Chair advised that he had earlier circulated a message regarding a number of Trustees who were unable to attend today's meeting, but had requested that they be allowed to attend and vote remotely by telephone or video conferencing. As he believed it was in the best interests of the Trust to allow as many Trustees as possible to participate in today's meeting, he had asked Legal Advisors to consider this matter. The Legal Advisors had advised that this would require an

amendment to the Administrative Regulations stating that presence at the meeting for the dispatch of business may be either in person or by means of telephone or videophone. Any amendment to the Administrative Regulations would require the support of three-quarters of the Trustees present and voting at the meeting, and would be a permanent change whereby this facility would be made available to all Trustees at future meetings where technically possible.

Ms L F Baisley moved that the Trust agree to this amendment to the Administrative Regulations, and Mrs E L Fullerton seconded.

Mr G Robinson moved, as an amendment, that the Trust do not agree to such an amendment, and Dr J W G Wills seconded.

Trustees speaking in support of the motion referred to the excellent conferencing facilities used by many organisations that were available throughout Shetland, and highlighted how weather conditions sometimes caused travel disruptions that meant that Trustees in outlying areas were unable to get to meetings.

Trustees speaking in support of the amendment said that this matter had been brought to the attention of Trustees at short notice, and they did not feel that the implications of such a decision had been fully thought out. Concern was expressed that Trustees could choose to stay at home instead of attending meetings in person. It was felt that Trustees should make every effort to attend meetings, particularly as conferencing facilities were not always reliable. It was requested that a report on the implications of allowing participation at meetings in this way should instead be presented to Trustees as soon as possible, in order that all the implications could be considered.

Mr S Macintosh advised that if a new constitution for a charity were being created now, consideration would be given to inclusion of a regulation of this kind to allow this type of participation at meetings. If Trustees wished to allow those unable to be present today to actually participate in the meeting, this would be the method of achieving this participation.

Mr A G L Duncan requested a roll-call vote, and a show of hands indicated that the majority of Trustees were in support of this.

After summing up, voting took place by roll call and the result was as follows:

Motion (Mrs L F Baisley)	Amendment (Mr G Robinson)
Ms L F Baisley	Mr J Budge
Mrs E L Fullerton	Mr A J Cluness
Mr J H Henry	Mr A T J Cooper
Mr W H Manson	Mr A T Doull
Ms V Nicolson	Mr A G L Duncan
Mr F A Robertson	Mrs F B Grains
	Mr R S Henderson
	Mr R C Nickerson
	Mr G Robinson
	Dr J W G Wills
	Mr L Angus
6	11

Minutes:

Except as undernoted, the minutes of the meeting held on 10 November and the special meeting held on 7 December 2011 were confirmed on the motion of Mr W H Manson, seconded by Mr A T J Cooper.

7 December 2011: Future Governance Arrangements of Shetland Charitable Trust – Letter from Office of the Scottish Charity Regulator (OSCR)

Mr R C Nickerson pointed out that he had advised Mr S Mackintosh that the Trust had operated for many years with 28 Trustees.

78/11 Future Governance Arrangements of Shetland Charitable Trust

The Trust considered a report by the General Manager.

The Chair pointed out that an amended proposal by Dr J W G Wills had been circulated to Trustees, and that both his proposal and the proposal contained in the report met the requirements of OSCR.

Mr S Mackintosh reminded Trustees of the requirements set out by OSCR in their letter dated 24 November 2011, and went on to say that OSCR had emphasised the importance of getting the necessary mix of skilled and experienced Trustees in order to manage the Trust and meet the needs of the beneficiary population. OSCR had referred to the care and diligence necessary in order for the Trust to discharge its duties, and the importance of having the right mix of skills and experience. This formed a large part of OSCR's considerations so would have to be borne in mind. He went on to say that he felt that any decision to use an elections process would be seen by OSCR as an improvement on the current position, but there was a need for Trustees to consider if this would result in the best trustee body for the purposes of managing the Trust in future. He felt that a proper arms-length process for selection of Trustees would be more likely to result in the best trustee body.

In response to questions from Trustees, Mr S Mackintosh advised that Trustees had always had the power to bring in additional Trustees, but that there would be a limit on the absolute number of Trustees. Whilst he appreciated that there had been 28 Trustees in the past, it could get to a point where it would prove to be unmanageable. Modern practices placed more emphasis on the contributions of individual trustees. The appointment of an additional six trustees to the existing Trust would rely on Councillor Trustees making appointments, and there would be a question as to where their interests and duties lie. Whilst a suggested arrangement of appointing an additional six Trustees would deal with quorum issues, other issues would arise from this arrangement and it would be a way forward which OSCR would not be comfortable with. He went on to confirm that Trustees currently had the power to assume new Trustees and anyone else could be added to the number. The proposal put forward by the Review Group intended to build into the constitution a requirement that there were a majority of Trustees who were not Councillors. The proposed selection method to achieve this was by an arms-length process that would avoid the issue of 'cronism', and ensure that applications were invited to match the particular skills required. The proposed selection panel included an independent Chair

and two Trustees, one of whom would be a non-Councillor Trustee. This would move the selection process away from the existing body, as there could otherwise be a problem with the perception of independence. He confirmed that the current body of Trustees would be responsible for making the transition to any new system, and this would mean a majority of Councillor Trustees as things stand. However non-Councillor Trustees would be involved in the process in the future. He confirmed that if there was a direct election, Trustees would be elected directly to the Trust and existing Trustees would have no further say in the appointment. He also confirmed that there was no legal barrier to having a majority of directly elected Trustees.

In response to a query, the General Manager explained that the external firm would be involved up to and including the shortlisting stage. Thereafter the independent selection panel would conduct interviews and provide a recommended list of candidates to the Trustees for final approval. It was proposed that an independent Chair would be recruited from outwith Shetland to run the process, and that the remainder of the Panel would consist of at least one independent Trustee. However Trustees may wish to amend this. In response to a comment that there was an omission in the findings of the Review Group because they did not indicate the criteria for suitably qualified and able Trustees, the General Manager advised that a draft job description had been prepared and had previously been presented to Trustees.

A Trustee questioned if the Trust had adequate powers to censure or remove 'delinquent' Trustees - whether elected or selected - and if it would be necessary for a new constitution to include stronger powers.

Mr S Mackintosh said that he would require to check the Trust Deed, but he understood that the Trust did not have such powers. This should be one of the changes that should be added, as Section 66 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2006 Act) placed a duty on Trustees to take steps available to them to remove those in persistent breaches of duty.

A Trustee referred to the statement on page six of the appendix that election processes could produce "random" results and said that he did not concur with this statement. It was questioned if increased powers of removal would be an adequate safeguard in relation to the perceived risk of 'randomness'.

The General Manager explained that this was not intended to be a criticism of election processes, but there was a risk with a full election process that there could be a loss of continuity and experience. Mr S Mackintosh added that powers of removal related to trustees not meeting the required standard, whereas the 'randomness' issue related to ensuring that there was the right mix of skills on a board.

It was questioned why Trustees with professional experience were required, when the Trust already hired experts with expertise in various fields. Mr S Mackintosh explained that skills and experience were not intended to be a substitute for professional advice. However it was

helpful to have trustees with skills, experience and knowledge so that they could question and debate with professional advisors.

In response to a query regarding comparative costings of election processes and selection processes, the General Manager confirmed that the costs of an election were estimated at between £10,000 and £15,000. However there were no costings currently available regarding a selection process.

The question was asked if any consultation or dialogue had taken place with Shetland Islands Council regarding whether it would be willing to appoint Councillors to the new Trust, and the General Manager confirmed that such discussions had not taken place.

In referring to the recommendations in the report, Mr W H Manson explained that paragraph 5.1 related to the proposed components of a new constitution, and that paragraph 5.2 dealt with how these would be implemented. Mr W H Manson went on to move that recommendations 5.1.1(a)-(i) in the report be approved, and Mr F A Robertson seconded.

Dr J W G Wills moved, as an amendment, that the Trust agree recommendations 5.2.1, 5.2.2, and 5.2.4 in the report, and that the Trust resolve to:

1. Change the composition of the Trust so that there shall be:
 - a) eight Trustees directly elected by the registered voters of the Scottish Parliamentary Constituency of the Shetland Islands;
 - b) seven Trustees nominated by Shetland Islands Council;
 - c) and up to five Trustees co-opted by the above fifteen Trustees from time to time, to supply such additional skills, knowledge and experience as the Trust may require.
2. The terms of office of all Trustees shall not be more than five years between elections, nominations or co-options, with the exception mentioned in paragraph 4c below.
3. A Trustee shall not serve more than two consecutive terms of office but shall be eligible to serve again after a break of two years.
4. In order to ensure continuity of membership, the election of Trustees shall be staggered so that elected Trustees are voted on to the Trust as near as possible to the mid term of Shetland Islands Council's nominees. Therefore, the terms of office shall normally be as follows:
 - a) For Councillor Trustees, their term of office from one Council election to the next;
 - b) For directly elected Trustees, from mid-point to mid-point of the Councillor Trustee's term;

- c) For the first direct elections only, the elected Trustees shall serve two and a half years only. Thereafter, directly elected Trustees shall serve for five years.
5. The Chair of the Trust shall be one of the eight directly elected Trustees, and shall have a casting vote.
6. In notices of elections and on the ballot paper for the eight directly elected Trustees, the Trust shall print a description of the qualities, skills and experience considered desirable in a Trustee.
7. The quorum shall be six, including a minimum of three directly elected Trustees.
8. There shall be an annual general meeting, open to the public.
9. It shall be a requirement for Trustees to attend at least half of the Trust meetings.

Mr G Robinson seconded.

Mrs E L Fullerton and Mr R C Nickerson gave notice of further amendments.

Trustees speaking in support of the motion referred to the work that had been undertaken by the Governance Review Group, who had considered many options and sought advice on these options, as the legal advice received was that the status quo was no longer an option. It was pointed out that whilst smaller trusts usually had eight to ten trustees, they tended to administer smaller sums of money. It had been felt appropriate that for a trust with wider ranging powers that 15 trustees would be an appropriate number. The Trust had had the benefit of advice from both Roy Martin QC and its solicitors, and it was clear that OSCR would turn down an option with a majority of Councillor Trustees. The reasoning behind having appointed Trustees was that it would avoid a random result and ensure that the Trust had the appropriate mix of skills and experience required. It was felt that the proposals would be the best way of managing the funds for which the Trust was responsible, whilst satisfying the terms of the 2006 Act. It was clear, and had been confirmed by OSCR, that a level of expertise was required to manage funds of this size and that the appointments process would be transparent and arms length. The proposals would also ensure a level of continuity, and it was pointed out by a Trustee that elections could often be exclusive in terms of the small number of people who stand, the range of backgrounds that they come from, or the people actually voting. This could be illustrated by the low level of response to the consultations that the Trust had already carried out, and it was felt that selection would help ensure that the balance of skills required was achieved.

Trustees speaking in support of the amendment emphasised the importance of maintaining local democratic control and commented that the Trust had always had local public accountability. It was felt that the proposals in the report suggested that the public could not be trusted to

elect suitable people, so it could therefore also be challenged if Councillor Trustees were acceptable as they were elected by the public. It was pointed out that the amendment was a compromise between two extreme views, and that the non-Councillor Trustees should be directly elected with up to five additional Trustees being co-opted if required. It was proposed that the Chair of the Trust should always be a non-Councillor Trustee, and should have a casting vote. The perception of randomness or unsuitability of Trustees could be addressed by publishing a list of qualities considered desirable of a Trustee, and there would be sanctions to deal with Trustees who continually did not meet what was required of them. It was not necessary for the public to elect people with professional abilities as the Trust could hire advisors. It was felt that the proposals in the amendment would satisfy OSCR, and demonstrate to the people of Shetland that their Trust was under their democratic control. Otherwise, if the motion were approved, control of the Trust would be out of the hands of people's representatives.

Both the motion and amendment agreed that there should be an annual general meeting, open to the public, that Trustees should be expected to attend 50% of meetings, that the terms of office should be staggered to allow continuity and that the quorum should be six to include a minimum of three either directly elected or appointed Trustees. It was suggested that this requirement should be for attending in person, but that there should be allowance made in the new Administrative Regulations regarding the use of telephone or video conferencing, so that people who were unable to attend in person had a means of participating.

(Mr A G L Duncan left the meeting during the following discussion)

Other Trustees commented that whilst they accepted advice that changes had to be made to the status quo, they had difficulty with both proposals. Concern was expressed that any new composition of the Trust could result in a shift in the policy of the carefully structured support for the arts and leisure in Shetland, and could see the financial packages for supporting care in the community dismantled, and this would have a massive impact on the community. The significant advice that the Trust received from Council officers to help it operate was referred to, and it was questioned if this would continue should changes be made to the constitution. Comparisons were made with the Financial Services Regulator and its dealings regarding the Royal Bank of Scotland, where it had decided that nothing could be done regarding the loss of taxpayers' money, and it was suggested that it was a disproportionate response for the Trust to be threatened with court action due to the period of time its Trustees had taken to make a final decision on its future. A Trustee pointed out that the costs involved in holding a referendum to ascertain the views of the Shetland public would not have been excessive, and went on to highlight how the operation of the Trust, and the enormous benefits it had provided to the community of Shetland since the 1970s, could be destroyed by any decision to amend the constitution today. Some Trustees commented that they had difficulty accepting the conflict of interests issue that was behind the changes to the composition of the Trust, pointing out that the few complaints that had been made against Trustees had not been upheld.

In response to a query, the Chair confirmed that the Chief Executive of OSCR had been invited to visit Shetland to meet with Trustees, and he had agreed to come in January provided a suitable date could be found.

It was pointed out by a Trustee that there would be a requirement that people selected for the Trust would then be approved by the Trust. It was also pointed out that there were no guarantees of continuity, as the Trust would lose a number of senior Councillors who were retiring at the end of this term. There was also no guarantee that existing Councillors who may be re-elected would be appointed to the Trust.

Trustees expressed concern that both the motion and amendment would prevent a Councillor Trustee from holding the post of Chair or Chair and Vice Chair, and it was suggested that it should be left to any new Trust to choose its Chair.

The General Manager advised that OSCR had indicated a preference for an independent Chair, but it would be up to Trustees to put this proposal forward.

After hearing the concerns expressed, and that it was not a legal requirement to appoint a non-Councillor Trustee as Chair, the movers of the motion and the amendment, with the consent of their seconders, agreed to amend their motions and amendment, as below:

- Dr J W G Wills advised that he would remove paragraph five of his amendment.
- Mr W H Manson advised that paragraph 5.1.1(e) of his motion would be amended to read “the Chair and Vice Chair should be elected by the Trustees for one term, and may stand for a second term”.

Mr A T J Cooper and Mr G Robinson gave notice of further amendment.

After summing up, Trustees confirmed their earlier decision to vote by roll call for the remainder of the meeting. Voting accordingly took place by roll call and the result was as follows:

Motion (Mr W H Manson)	Amendment (Dr J W G Wills)	Abstention
Mr W H Manson	Mr G Robinson	Mr A J Cluness
Mr R C Nickerson	Dr J W G Wills	
Ms V Nicolson	Mr L Angus	
Mr F A Robertson	Mr A T Doull	
Ms L F Baisley	Mrs F B Grains	
Mr J Budge	Mr R S Henderson	
Mr A T J Cooper		
Mrs E L Fullerton		
Mr J H Henry		
9	6	1

Speaking in support of her amendment. Mrs E L Fullerton pointed out that it was an attempt to reach a compromise between the motion and the earlier amendment, so that there could be both elected and selected representatives on the Trust.

Mrs E L Fullerton accordingly moved, as an amendment, that the Trust agree that:

- Four Trustees are directly elected by the registered voters of the Scottish Parliamentary Constituency of the Shetland Islands
- Four Trustees are selected following recommendation of a selection panel for final approval by the Trustees
- Shetland Islands Council nominates seven trustees from their membership
- The selection panel consists of an independent chair and the two non-Councillor Trustees, if they are willing to carry out this task
- The terms of office of all Trustees shall not be more than five years between elections, nominations or co-options, with the exception that for the first direct elections only, the elected Trustees shall serve two and a half years only. Thereafter directly elected Trustees shall serve for five years
- The term of office of a Trustee should normally be from one Council election to the next for Councillor Trustees and, for the other Trustees, from mid-point to mid-point of the Councillor Trustee's term – for the first appointments, half should serve for 2½ years and have for 6½ years, both of which will count as one term. This will establish rotation and provide for some continuity so that at no point could the entire body of Trustees need to be replaced
- No Trustee should hold office for more than two terms without a break of at least two years
- A Trustee shall not serve more than two consecutive terms of office but shall be eligible to serve again after a break of two years
- In notices of elections and on the ballot paper for the four directly elected Trustees, the Trust shall print a description of the qualities, skills and experience considered desirable in a Trustee
- The quorum shall be six, with a minimum of three directly elected Trustees
- There should be an Annual General Meeting, published as such and open to the public
- There should be a requirement for Trustees to attend a minimum of 50% of meetings

- The selection of Trustees is carried out by a selection panel consisting of an independent chair with a proven track record in a relevant field, and the two non-Councillor Trustees
- The General Manager is authorised to engage a specialist firm to manage the selection process up to final interview stage
- The General Manager is authorised to approach a suitably qualified professional from outwith Shetland with a proven track record in a relevant field to chair the selection panel
- New Trustees should be in place as soon as possible
- The Chairman is authorised to agree such minor changes to the timetable with OSCR on behalf of Trustees subject to reporting thereon to the Trustees at the earliest practicable opportunity
- The Trust delegates to the General manager and Legal Adviser the compilation of a detailed draft amended to the Trust Deed, appropriately phrased so as to give precise, legally binding effect to the above proposals

Dr J W G Wills seconded.

The Chairman advised that the Trust would only have access to the edited electoral roll of the Shetland Islands Constituency in the event of elections taking place, and this meant that around 20% of the electorate would not be included. Therefore the Trust would have to advertise for those included on the edited electoral roll only to come forward to participate in an election.

After summing up, voting took place by roll call and the result was as follows:

Motion (Mr W H Manson)	Amendment (Mrs E L Fullerton)	Abstention
Mr W H Manson	Mr G Robinson	Mr L Angus
Mr R C Nickerson	Dr J W G Wills	Mr A J Cluness
Ms V Nicolson	Mr J Budge	
Mr F A Robertson	Mr A T Doull	
Ms L F Baisley	Mrs E L Fullerton	
Mr A T J Cooper	Mrs F B Grains	
Mr J H Henry	Mr R S Henderson	
7	7	2

The Chairman used his casting vote in favour of the motion.

Mr R C Nickerson pointed out that there was already a method in place to represent the community through elected Trustees, and that the law did not prevent a linked body from providing some or all trustees. He did not agree with OSCR's assessment that there was an inherent risk of conflict of interests, and pointed out that there were policies in place to deal with this although it had not happened on a regular basis. He

went on to say that it had not been demonstrated that 28-30 trustees was an unmanageable number. His proposal could address issues quite quickly without the need for elections or procedural consultations, and key agencies in Shetland could be asked to put forward nominations for additional Trustees. This would be a way of engaging with the main service providers and charities in the islands.

Mr R C Nickerson accordingly moved, as an amendment, that Trustees agree that:

- The number of Trustees should be as per the existing composition of 22 Trustees ex officio from Shetland Islands Council and the two independent Trustees, plus a further six Trustees.
- The appointed Trustees should be selected, following recommendation of a selection panel for final approval by the Trustees
- The quorum should be six, with a minimum of three appointed Trustees
- The Chair and Vice Chair should be appointed trustees elected by the Trustees for one term, and may stand for a second term
- The term of office of a Trustee should normally be for Councillor Trustees, the term of office from one Council election to the next and for appointed Trustees, from mid-point to mid-point of the Councillor Trustees' term – for the first appointments have should serve for 2½ years and half for 6½ years, both of which will count as one term. This will establish rotation and provide for some continuity so that at no point could the entire body of Trustees need to be replaced
- No Trustee and no appointed Trustee should hold office for more than two terms without a break of at least two years
- There should be an Annual General Meeting, published as such and open to the public
- There should be a requirement for Trustees to attend a minimum of 50% of meetings
- The General Manager should be authorised, in consultation with the Trust's Legal Advisers, the Chair and Vice Chair of the Trust, to submit to OSCR in advance of 22 December 2011 a timetable reflecting the changes decided by the Trustees and, if necessary, agree its terms with OSCR
- The Trust's legal advisers be instructed to prepare the necessary procedure in consultation with the General Manager and advise OSCR of the decision
- The selection referred to above be carried out by a selection panel consisting of an independent chair with a proven track record in a

relevant field, and two trustees selected by the Trustees. At least one of the Trustees should be a non-Councillor Trustee

- The General Manager be authorised to engage a specialist firm to manage the selection process up to final interview stage
- The General Manager be authorised to approach a suitably qualified professional from outwith Shetland with a proven track record in a relevant field, to chair the selection panel
- New Trustees should be in post as soon as possible
- The Chairman should be authorised to agree such minor changes to the timetable with OSCR on behalf of the Trustees subject to reporting thereon to the Trustees at the earliest practicable opportunity

Dr J W G Wills seconded.

Mr S Mackintosh advised that OSCR required the Trust to make changes to its constitution. If all that was being proposed was for the Trust to co-opt a further six Trustees, it would not be a change to the constitution unless it was planned to build this into the constitution.

Mr R C Nickerson advised that he was willing to change his motion, with the consent of his seconder, so that it would constitute a change to the Trust's constitution.

After summing up, voting took place by roll call and the result was as follows:

Motion (Mr W H Manson)	Amendment (Mr R C Nickerson)	Abstention
Mr W H Manson	Mr R C Nickerson	Mr G Robinson
Ms V Nicolson	Dr J W G Wills	Mr A J Cluness
Mr F A Robertson	Mr L Angus	
Ms L F Baisley	Mr A T Doull	
Mr J Budge	Mrs F B Grains	
Mr A T J Cooper	Mr R S Henderson	
Mrs E L Fullerton		
Mr J H Henry		
8	6	2

Mr A T J Cooper said that he believed that the Trust had served the community well, and that Trustees had always acted in the best interests of the Trust. Whilst he accepted that Trustees had to make a decision on the matter, he did have concerns that the motion would pass control of the Trust from the people's representatives. He felt that there was a need to consider whether the Council actually needed seven representatives on the Trust, citing Lerwick Port Authority as a successful body that ran with three Council representatives on its Board. Whilst he was willing to trial the new constitution throughout the cycle of the new Council that would be elected in 2012, he felt that there should

be a review of the constitution before the end of the period of office of that Council.

He accordingly moved, as an amendment, that the recommendations 5.1.1(a) to (i) in the report be approved, but with the inclusion of an additional recommendation at 5.1.1(j) that there shall be a review of the composition of the Trustee body prior to the 2017 Council elections.

Mr G Robinson seconded.

(Dr J W G Wills and Mr G Robinson left the meeting during the following discussion)

In response to concerns regarding whether it would be in order for the existing Trust body to place a condition such as this on a new body which should have a right to determine its own future, Mr S Mackintosh advised that such a requirement for a review could be written into a revised Trust Deed. If it were left as an item in the minutes of the meeting, it would not be a requirement to do so.

After some further discussion, and with the consent of his seconder, Mr W H Manson agreed to incorporate this requirement for a review to be written into a revised Trust Deed into his motion.

Mr W H Manson's motion that the recommendations in the report be approved, as amended at paragraph 5.1.1(e) and with the inclusion of 5.1.1(j) as above, was declared the finding of the meeting.

The meeting concluded at 12.25pm.

CHAIRMAN