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Our Ref: EM/TA48

Date: 4 May 2016

Dear Sir/Madam

You are invited to the following:

**Shetland Charitable Trust
Room 12, Islesburgh Community Centre, Lerwick
Thursday 12 May 2016 at 10.00am**

Apologies for absence should be notified to Lynne Geddes on 01595 744592.

Yours faithfully

(signed) Dr Ann Black
Chief Executive

AGENDA

- (a) Hold circular calling the meeting as read.
- (b) Apologies for absence, if any.
- (c) Declarations of Interest - Trustees are asked to consider whether they have an interest to declare in relation to any item on the agenda for this meeting. Any Trustee making a declaration of interest should indicate whether it is a financial or non-financial interest and include some information on the nature of the interest. Advice may be sought from Officers prior to the meeting taking place.
- (d) Confirm minutes of meeting held on 31 March 2016 (enclosed).

For Decision

1. Governance Review. Report enclosed.
2. Amendment to Administrative Regulations. Report enclosed.

For Information

3. Management Accounts – Twelve Months Ended 31 March 2016. Report enclosed.
4. Fund Manager Transactions. Report enclosed.
5. Small Grant Schemes - Approvals. Report enclosed.
6. Capital Works Bridging Loan Scheme. Report enclosed.
7. Payments to Trustees in the Year to 31 March 2016. Report enclosed.
8. Trustee Attendance at Meetings in the year to 31 March 2016. Report enclosed.

The following items contain **CONFIDENTIAL** information

9. Loans to Local Industry – Sums Due But Unpaid Over One Month Old as at 30 April 2016. Report enclosed.
10. Deeds Executed. Report enclosed.
11. Update from Chairs of Advisory Committees.
12. Update from Subsidiary Companies.

REPORT

To: Shetland Charitable Trust

Date 12 May 2016

From: Chief Executive

Report: CT1605019

Governance Review

1. Introduction

- 1.1 Trustees are asked to approve the recommendations outlined in the 'Report & Recommendations on a Review of Governance Arrangements for SCT' dated March 2016, prepared by Institute of Directors (IOD) with the collaboration of the Trust's lawyers, attached as appendix A.

2. Background

- 2.1 In 2009, Trustees agreed to review the governance arrangements of SCT in light of the regulatory and legislative framework.
- 2.2 In May 2011, after considering legal advice from Senior Counsel, that the governance of the Trust should change with regard to the composition of the Trustee Board.
- 2.3 A reorganisation scheme was approved by OSCR in July 2012 and subsequently agreed by Trustees on 13 September 2012 (Report CT1209034).
- 2.4 This reorganisation was agreed on the condition that there was an independent review of the governance arrangements within three years of its implementation, with the review to be laid before Trustees for decision before 30 April 2017.

3. Present Position

- 3.1 In August 2015, the Audit and Governance Advisory Committee were presented the tender brief to Review the Governance of SCT.
- 3.2 On 3rd September 2015, four organisations were invited to tender and a tender brief was sent to them.
- 3.3 A sub-group made up of three of the Audit and Governance Advisory Committee was established to oversee the Governance Review process.
- 3.4 On 21st September 2015, the tenders were scored by the Audit and Governance Sub Group and the Chief Executive. On 22nd September 2015, IOD were awarded the tender to undertake the review.

- 3.5 Nigel Scott and David Wilkinson of IOD carried out interviews in Shetland and by teleconference with a large number of relevant persons, listed on page 20 of the appendix A, to seek views on the Governance of SCT.
- 3.6 IOD drafted the report and recommendations based on the findings.
- 3.7 On 16 February 2016, a Trustee workshop was run by IOD and the Trust's lawyers. This gave Trustees the opportunity to voice their opinions on the report.
- 3.8 At the Audit and Governance meeting on 7 April 2016, the final Report was presented to the committee.

4 Engagement with the Shetland Islands Council

4.1 The Trust acknowledges the value of the past role of the Council and its current role as the appointing body of 7 Trustees. Until the Trust takes a decision on the Review discussions with the Council could only take place at an informal level. To date those discussions comprise:-

4.1.1. Interviews by the IOD of all existing Councillor Trustees, one former Councillor, the Chief Executive of the Council and the solicitor for the Council.

4.1.2 On 16 February 2016, a meeting was held between the Trust, the Trust's lawyers and Senior Officers of the Council to engage them in the review process.

4.1.3 Following the workshop referred to in paragraph 3.7 of this Report the Report was re-drafted by Trust staff and Turcan Connell, incorporating views of Trustees and Council Officers.

4.1.4 The Report as re-drafted was then shared with the Council Officers.

5. Financial Implications

- 5.1 There are no new direct financial implications arising from this report.
- 5.2 A total of £14,823.64 has been paid to the IOD for carrying out the review, drafting the "Report & Recommendations on a Review of Governance Arrangements for SCT" and travelling to Shetland to present at the Trustee workshop.
- 5.3 Additional costs were encountered for the Trust's lawyer's time and travel costs to Shetland.
- 5.4 However it is acknowledged that there will be a cost associated with the implementation of the approved Reorganisation Scheme. A

budget of £5,000 has been set aside for 16/17 to cover the costs of being the process of recruiting new trustees.

6. Recommendations

6.1 The Audit and Governance Committee recommend that Trustees:

- a) accept the recommendations set out in the Report & Recommendations on a Review of Governance Arrangements for SCT, appendix A.
- b) delegate to the Chief Executive and the Audit and Governance Advisory Committee:-
 - i. the formal process of engagement with the Council; and
 - ii. the implementation of the recommendations of the Report including exploring opportunities to broaden diversity and representation.
- c) approve a further review of the governance of SCT within three years of implementation of this organisational scheme.

Reference:TA38
Date: 2 May 2016

Report Number CT1605019



Inspiring business
Scotland

CT1605019 Appendix A

REPORT & RECOMMENDATIONS
ON A
REVIEW OF GOVERNANCE ARRANGEMENTS
FOR
SHETLAND CHARITABLE TRUST
(SC027025)
March 2016

Consultants:
Nigel Scott
David Wilkinson

With the collaboration of Turcan Connell

Contents

1. INTRODUCTION.....	3
2. BACKGROUND.....	3
3. EXECUTIVE SUMMARY.....	4
4. METHODOLOGY.....	5
Stage 1: Project inception.....	5
Stage 2: Desk research.....	5
Stage 3: Follow up Interviews and discussions.....	5
Stage 4: Prepare and deliver draft review and recommendations.....	5
Stage 6: Seek the views of Shetland Islands Council on review and recommendations ..	6
5. FINDINGS AND RECOMMENDATIONS.....	6
5.1 Overview.....	6
5.2 Why change the current governance arrangements?.....	6
5.3 Structure.....	7
5.3.1 Number of Trustees.....	7
5.3.2 Councillor Representation.....	8
5.3.3 Selection or election of Trustees.....	11
5.3.4 Selection or election of the Chair.....	12
5.3.5 The use of an appointed body or otherwise to support selection/election of candidates for Trustee posts.....	13
5.3.6 Age profiles/ male/female split.....	14
5.3.7 Trustees from off island.....	15
5.4 Behaviours.....	16
5.4.1 Honorariums.....	16
5.4.2 Professional Development and Review.....	17
APPENDIX A - OUTLINE INTERVIEW SHEET.....	19
APPENDIX B - LIST OF INTERVIEW PARTICIPANTS.....	20
APPENDIX C - LIST OF CHARITABLE ALEOS.....	21
APPENDIX D WHAT IS AN ALEO?.....	23
APPENDIX E DEVELOPING BOARD DIVERSITY.....	24
APPENDIX F - TRUSTEE JONATHAN WILLS NOTES.....	25
APPENDIX G - AGENDA AND NOTES FROM GOVERNANCE WORKSHOP.....	34

1. INTRODUCTION

This report describes the methodology, findings and recommendations made by the Institute of Directors (IoD) in response to a tender from Shetland Charitable Trust (SCT) seeking a review of current Board structure and the appointment process to assess whether it has met, and can continue to meet, the governance requirements of current law and practice.

Specifically the IoD was instructed to *“take into account that the role of the SCT Board is critical in achieving the Trust’s overarching objective which is to enhance the quality of life of the people of Shetland. The Board must provide leadership by setting the strategic direction, acting as positive ambassadors, protecting the organisation’s reputation by making and be seen to be making robust decisions and ensuring that the SCT is flexible, responsive and effective.”*

2. BACKGROUND

Following a meeting between SCT and the Office of the Scottish Charity Regulator (“OSCR”) on 31st October 2008, OSCR concluded that, *“with the current structure and arrangements, it is difficult to evidence independence and compliance with the [Charities and Trustee Investment (Scotland) Act 2005].”*

As a result, in February 2009, Trustees established a Governance Review Group (“GRG”) to review the governance arrangements of SCT in light of the current regulatory and legislative framework. The findings of the GRG presented to the Trustees on 11th February 2010 were not accepted. OSCR continued to apply pressure for change and in 2010, SCT and Shetland Islands Council (“SIC”) jointly approached Senior Counsel, Roy L Martin QC for his opinion on the Constitution of Shetland Charitable Trust on whether:-

- 1 The constitution of SCT required to be changed to comply with current law and practice; and
- 2 If so, what changes did Senior Counsel consider would be necessary to meet the minimum requirements of achieving compliance with current law and practice.

Senior Counsel issued his Opinion on 25th March 2011 (“Senior Counsel’s Opinion”). The Trustees thereafter agreed in May 2011, after considering Senior Counsel’s Opinion, to change the governance of the Trust with regard to the composition of the Trustee Board, in particular, that the majority of the Trustees should be drawn from outwith the SIC. The GRG reported further recommendations in light of Senior Counsel’s Opinion at a Trustee Seminar thereafter.

A Reorganisation Scheme was submitted to OSCR and approved by letter of 3 July 2012. Trustees resolved to give effect to the Reorganisation Scheme at a meeting of the Trustees on 13 September 2012. The Chief Executive was instructed to initiate the process of recruiting the first appointed Trustees, and to consider the precise timing of the implementation of the new Trustee arrangements which, in terms of the revised Trust Deed had to be effected by 31 March 2013 failing which, default provisions would apply. The resolution to give effect to the Reorganisation Scheme was made on condition that there was an independent review of the governance arrangements within three years of its implementation, with the review to be laid before Trustees for decision before 30 April 2017.

It is evident that appropriate governance processes have been put in place and have worked well in the vast majority of instances. However, a combination of reduction in public spending and SCT decisions to protect the capital under investment for the longer term by reducing disbursements to a sum which does not eat into capital, have created inevitable tensions between SCT and SIC because of the potential conflict between the interests of SCT and SIC and the manner in which that conflict is managed. These transactions have been particularly challenging for Councillor Trustees.

SCT sought legal advice and the correct procedures were followed, but the Rural Care Model funding was a challenging area in terms of decision making and did attract significant local media attention. Despite these ongoing challenges, all the feedback recognises that SCT has made significant improvements to its governance and management in the past few years. There is a general view that the finances are being addressed and that decision making is more robust and objective.

3. EXECUTIVE SUMMARY

The recommendations laid out in this report are as follows:

1. That it would be beneficial to the reputation of SCT to make further adjustments to the current governance processes as a result of lessons learned since the 2012 changes.

This was broadly accepted by Trustees at their Governance Workshop.

2. Retain the Board at 15 in number allowing for the Chair and Vice Chair to continue to sit on the Advisory Committees, with the exception of the Chair who should not sit on the Audit and Governance Advisory Committee.

This was broadly accepted by Trustees at their Governance Workshop.

3. That the number of Councillor Trustees is reduced from 7 to 4, which would provide for at least one Councillor Trustee to be a member in each of the three Advisory Committees, if appropriate and ensure that the skills and experience Councillor Trustees bring is not lost to the Trust. In addition the quorum should be revised to more than one half of the number of Trustees in office with a provision that not less than one half of the quorum must be Appointed Trustees.

This was broadly accepted by Trustees at their Governance Workshop if the Trust's Administrative Regulations could be amended to allow Councillor Trustees to personally manage their potential conflicts of interest.

4. All Appointed Trustees should continue to be selected by a Selection Panel.

This was broadly accepted by Trustees at their Governance Workshop.

5. The Council be asked to appoint 4 Councillors for the SCT Board having regard to the skills set as may be identified by the Trust and notified to the Council at the time of appointment by the Council.

This was broadly accepted by Trustees at their Governance Workshop and it was agreed that the original report had incorrectly represented the selection/appointment process.

6. Continue to elect the Chair from the body of Trustees.

This was accepted by Trustees at their Governance Workshop.

7. The Trust contracts a competent and experienced person to Chair the Selection Panel. This person is to have good knowledge and experience in the use of assessable competencies.

This was accepted by Trustees at their Governance Workshop.

8. That SCT makes every effort to create a more gender and age diverse Board.

This was accepted by Trustees at their Governance Workshop.

9. That SCT adjusts the Trust Deed to enable recruitment of Trustees from off island. This will only be used in exceptional circumstances to ensure that the Board remains fit for purpose.

This was broadly accepted by Trustees at their Governance Workshop.

10. There should not be an honorarium payment to any posts on the Board at this time.

This was broadly accepted by Trustees at their Governance Workshop.

11. All Trustees are provided with professional development opportunities in their roles, given opportunities to create close working relationships, are subjected to an annual review of performance and take part in an annual all Board review of Board performance.

This was accepted by Trustees at their Governance Workshop.

4. METHODOLOGY

The methods used for this piece of work were:

Stage 1: Project inception

Stage 2: Desk research

Stage 3: Follow up Interviews and discussions

Stage 4: Prepare and deliver draft review and recommendations

Stage 5: Trustee Workshop to review recommendations

Stage 6: Consult with Shetland Islands Council on review and recommendations

Stage 7: Agree final review and recommendations

Stage 1: Project inception

At the outset a telephone meeting was held with the Chief Executive of SCT to gain detailed background into the outcome expectations of SCT, current challenges, regional difficulties, resource limitations, any specific issues to be aware of in drafting our review and recommendations. Arrangements were made for receipt of all relevant documents including: current Trust Deed, OSCR correspondence, processes and forms for appointment process and any other papers considered appropriate to assist the review.

Dates for interviews were arranged and co-ordination support with the SCT office. It was also agreed to conduct interviews with a number of external organisations which have interests in SCT to provide an external perspective of the governance progress, such as SIC and others.

Stage 2: Desk research

Taking the information provided at stage 1 we conducted desk top research to:

- Understand the Trust Deed and other documents provided
- Compare these with “best practice” documents from the IoD, OSCR, The Code Founding Group and Scottish Government
- Identify optimum Board size and composition for the SCT requirements
- Create a framework of questions for use in interviews

Stage 3: Follow up Interviews and discussions

Having collated key background information outstanding queries were clarified and a series of questions framed to guide the interview discussions. A copy of the questions outline is at Appendix A

A total of 34 people were interviewed face to face and over the telephone. The list of interviewees is at Appendix B.

A final discussion was held with the Chair of the Audit & Governance Advisory Committee and Chief Executive prior to commencing report writing.

Stage 4: Prepare and deliver draft review and recommendations

The draft review and recommendations were sent forward to ensure any factual inaccuracies were corrected. The draft was provided to the Chair of the Audit and Governance Advisory Committee (which commissioned the review) and the Chief Executive of SCT.

Stage 5: Trustee Workshop to review recommendations

The draft review and recommendations were discussed and debated at a Trustee Workshop held on 16 February 2016. The workshop was attended by 11 of the 14 Trustees as detailed in Appendix G. Feedback and acceptance of recommendations were sought to inform the final review and recommendations report.

Stage 6: Seek the views of Shetland Islands Council on review and recommendations

Shetland Charitable Trust met with SIC Officials to seek their views and amended the document where appropriate to reflect the discussions.

Stage 7: Agree final review and recommendations

The amended report was reviewed at the Audit and Governance Advisory Committee meeting on 7 April 2016. The Committee recommended the report be brought forward to the Trust meeting on 12 May 2016.

5. FINDINGS AND RECOMMENDATIONS

5.1 Overview

It must be recognised from the outset that the SCT is unique in the UK. To this end there are no direct comparisons that can be made with other Trusts. In view of the feedback from a couple of Councillor Trustees, and a number of external bodies who engage with SCT, it must also be remembered that, its objectives are:

“.....solely in the interests of the area administered by the local or other governmental authority for the time being of the Shetland Islands or of the inhabitants of the said area”¹

That said, it must be borne in mind that SCT is not a public body, and in law it is not accountable to the SIC or directly to the public. Trustees are accountable to OSCR as the body established under the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) to, amongst other things, “encourage, facilitate and monitor compliance by charities with the provisions of [the 2005 Act]”.² This includes the Trustees’ duty to act in a manner consistent with the purposes of the Trust Deed and in general all relevant law and practice that relates to charity and Trust activity in Scotland.³ As the funds are for the benefit of the Shetland community, the public do have an interest and the Trustees must always be mindful of this.

In reviewing and suggesting further changes to governance, as long as SCT is acting in a manner consistent with the terms of its Trust Deed and the law and practice, there is no one answer as to how governance should be applied. Rather it is a question of identifying appropriate governance measures at a point in time, with the expectation that they may change further in the future.

The range of purposes outlined in the Trust Deed as amended in 2012 indicates that there are likely to be many areas that both SIC and SCT will have interests in supporting. Therefore, whatever governance is applied to SCT, there is a need for SIC and SCT to maintain a close engagement and working relationship.

5.2 Why change the current governance arrangements?

It is clear that the current governance arrangements, from a legislative and procedural perspective, are robust. And it could be argued that there is no requirement to make any changes because of this. However, as described in the section on background, “*Even with this level of good governance there are local issues, a culture and behaviours which can cause challenges and affect the smooth running of the Trust.*” It is good practice to review and refine governance on a regular basis to strive for best practice. Furthermore there is general recognition of the need for more adjustment to governance – evident from the very decision to conduct a governance review, and the overwhelming expectation that there should be further change: voiced in interviews with Trustees and representatives of the external organisations which regularly interact with SCT.

¹ Registered Trust Deed for SCT 2012 page 3

² Section 1 (5) (c) of the 2005 Act

³ Section 66 of the 2005 Act

Pros	Cons
It is good practice to review governance periodically with a view to adopting better practice	Governance is already seen to be robust
There is a majority appetite for further change	Further change could be disruptive
More can be done to address local issues and behaviours	
Retaining the status quo is not an acceptable outcome for the significant majority of respondents	

It is our view that it would be detrimental to the reputation of SCT if no further adjustments were made to the current governance processes. As outlined below there are good reasons to consider making further changes to current governance. This was broadly accepted by Trustees at their Governance Workshop with one Trustee disagreeing with the proposal.

Recommendation: That it would be beneficial to the reputation of SCT to make further adjustments to the current governance processes as a result of lessons learned since the 2012 changes.

The findings and recommendations are laid out as follows:

- Structure
- Behaviours

5.3 Structure

5.3.1 Number of Trustees

The Board currently consists of 15 members – up to 8 selected from individuals principally resident in the Shetland Islands and up to 7 elected Councillors appointed by SIC. This number has been in place for three years since the 2012 changes. Prior to this the Trustees comprised 22 Councillors, the Lord Lieutenant and the head teacher of the Lerwick secondary school.

Based on the four largest grant giving trusts in the UK, 15 members for a trust Board could be viewed as a large number. The four largest grant giving trusts range in Trustee numbers from 6 – 15. The size of the funds under investment does not have any bearing on the number of trustees:

Trust	Trustees	Funds Under Investment*
Gannochy Trust	6 Trustees	£164M
Robertson Trust	8 Trustees	£300M
Esmee Fairbairn Trust	11 Trustees	£869M
The Tudor Trust	15 Trustees	£259M

*Extracted from most recent published accounts. Funds may have risen or fallen since.

More locally Trustee/Board numbers comprise:

Organisation	Trustee Numbers
Shetland Arts Development Agency	12
Shetland Recreational Trust	9
Shetland Amenity Trust	11
Lerwick Port Authority	9
Hjaltland Housing Association	15

Importantly, SCT has three Advisory Committees each with 5 Trustees. The committee structure allows for the effective scrutiny of Trust business to the appropriate degree and ensures a fair allocation of Trust business between all of the Trustees. At the same time there is a sufficient number to provide a good range of views on issues.

What are the pros and cons of keeping the Trustee numbers at 15?

Pros	Cons
Allows for the effective population of the committees	Because of the larger number sought, it can be more difficult to recruit a sufficient number of competent Trustees
Provides a good range of views on issues	Those who do apply are more often conflicted because of other commitments; this issue is not restricted to Councillor appointees. It is an issue which occurs across Shetland.
Ensures sufficient attendees to achieve a quorum	A higher number of Trustees can cause individuals to assume less need to turn up, reducing engagement and weakening joint collective ownership of decisions
“Safety in Numbers” when taking decisions that are unpopular with the community	It can be more difficult to come to a decision because of the variety of views
When a trust executive team is small in number a larger Trustee body can provide for Trustees to assist the executive more closely	Trustees can feel they do not have enough to do and proceed to micro manage the executive
Perceived numeric representation from across the community	

Whilst the majority of respondents believe the Trustee numbers should be reduced to between 10 and 12 the committee structure which provides the scrutiny required at Trustee level would suffer if the number were reduced.

Therefore, on balance, it is recommended that the Board remains at 15 in number to allow for the existing committee structure to remain in place. This was broadly accepted by Trustees at their Governance Workshop although two Trustees felt that a smaller number of Trustees would be more appropriate.

Recommendation

Retain the Board at 15 in number to allow for the existing committee structure to remain in place.

5.3.2 Councillor Representation

The following points should be taken into consideration under this issue:

- The amendments to the Trust Deed in 2012 provided that up to 7 of the 15 Trustees are appointed by SIC from elected members of SIC i.e. that, with a full complement of Trustees attending a meeting, the majority of Trustees are appointed.
- The quorum for a meeting of Trustees is 6 at least 3 of whom must be Appointed Trustees. This ensures that there is always some independence of the Trust from the Council.
- The value of Councillor Trustees to the Board must be recognised. They bring an understanding of public life to the Trust, are practiced in the process of decision making, public relations, meetings, papers, and balancing conflicting priorities.
- This Governance arrangement has worked well but there have been three situations since 2012 where Councillor Trustees found themselves to be conflicted. Councillor Trustees have had to step out of meetings both in SCT and SIC, making effective contribution frustratingly difficult.

- Good governance seeks to ensure that the most appropriate skills are found to support the particular needs of an organisation. This principle is reinforced in several publications by OSCR.⁴
- Councillor Trustees are appointed by SIC and currently SCT does not specify any particular skill set required of Councillor Trustees. Consideration may be required for any potential conflict between a Councillor Trustee’s electoral manifesto and good Governance. This could equally apply to Appointed Trustees in our small community, particularly so if Appointed Trustees were elected.
- It is inevitable that Trustees will find themselves conflicted at times. However, there is clear guidance on handling conflict of interest provided in the 2005 Act, SCT’s Administrative Regulations, OSCR’s “Guidance for Charity Trustees”, and The Standards Commission for Scotland “Councillor Code of Conduct”. Senior Counsel’s Opinion stated:
“...in a situation where the interests of the Trust and the interests of the Council may be said either to be in potential conflict, or where the provision of a facility or a service by one may be to the potential advantage of the other, the Trustees who are Councillors will have a conflict of interest which they require to act upon as Trustees in order to comply with the duty provided by section 66(1)(c)(ii) of the 2005 Act.....”. It is worth noting that whilst Senior Counsel’s Opinion was obtained with specific reference to Councillor Trustees, the law on conflicts of interest applies to any Trustee who owes a fiduciary duty to a body transacting with the Trust and not just Councillor Trustees.

Several Councillor Trustees suggested that they could be more use to SCT if they were not a Trustee, as communication over issues that conflicted with SIC could be expressed, and better accommodation sought when not bound by the conflict of interests constraints.

A number of Councillor Trustees expressed an opinion that it was necessary to have Councillors on the Board to ensure the accountability of SCT to the public, acknowledging the skills they bring to the Board and their understanding of public life. The Trustees should be mindful that they are accountable to the Trust Deed and relevant legislation and by extension the Shetland community as “the public”. That accountability to the public is continuous and arises out of their role as a Trustee.

SCT does not consider itself to be an Arms Length External Organisation (ALEO). We note however that OSCR and Audit Scotland have in the past considered that SCT is such. (OSCR as indicated in Appendix C and Audit Scotland as implied through their requirement to have SCT accounts included in the SIC accounts).

An outline explanation of an ALEO can be found at Appendix D.

Why reduce the number of Councillor Trustees?

Pros	Cons
To reinforce SCT’s status as a standalone independent Trust	To maintain a significant Council representation on the Board
To reduce the potential for institutional conflicts of interest and promote independent decision making	To provide comfort to the public that their views are being represented on the Board (through elected representatives) in sufficient number
To put beyond doubt that any question that SCT is an ALEO	To continue to nurture good partnership working with SIC.
To potentially open the Board to more diverse candidates	To retain the range of experience that Councillors can bring to the Board including an understanding of public life, practice in decision making, public relations, meetings, papers, and the balancing of conflicting priorities
To increase the number of appointed Trustee candidates	To maintain recruitment of sufficient Trustees in instances where recruitment of Appointed Trustees is difficult

⁴ OSCR Case Study – One Parent: One Plus Families

Senior Counsel's Opinion considered number of Councillor Trustees and quorum provisions for a trust with a total number of Trustees of 15. Paragraphs 82 – 84 state:-

“82.it is my opinion that with a total number of Trustees of fifteen, and a quorum of eight, no more than four Trustees should be members of the Council. This would allow a decision in which the councillor Trustees had declared an interest still to be made by a substantial body of the Trustees and beyond the minimum number required by the quorum. It would demonstrate the functional independence of the Trust from the Council, both in relation to individual decision-making and also in the interests of the community who should thereby be assured that it was the best interests of the Trust in serving the purposes of the Trust which were bringing about the decisions which were being made.

83.I have reached the conclusion taking into account the independence of the Trust from the Council, the need for the Trust to be accountable for the decisions which are made, and the desirability for such decisions to be seen as having been made free from the actual or perceived influence of the Council, that simply to have a bare minority of councillor Trustees would not by itself be sufficient to achieve these objectives.

84. A maximum of four councillor Trustees, when taken along with a quorum of eight, would mean that in no circumstances could the Trustees make a decision without the support of at least one of the non-councillor Trustees, even in a situation where the potential interests of the Council were not an issue. In my opinion, this would be an important factor in affirming and demonstrating the independence of the Trust from the Council in all circumstances and of the fact that its decisions were being made entirely in the interests of the Trust and not because of the particular interests of those Trustees who were members of the Council.”

Reducing the number of Councillor Trustees to 4 would retain the experience Councillor Trustees bring, provide the option for Councillor Trustee representation in the three Advisory Committees and demonstrate to the public, OSCR and Audit Scotland increased independence of SCT from SIC. In addition, it can only be seen as a positive step to increase the number of Trustees required to form a quorum to more than one-half of the number of Trustees from the current two-fifths.

It would also assist Councillors at Shetland Islands Council meetings when discussing SCT related business as fewer Councillors would potentially be conflicted. This reduction may alleviate the requirement from Audit Scotland for Shetland Islands Council to group their accounts with SCT.

At times, the Trust will not have a full complement of 15 Trustees, for example, following the retirement of a Trustee mid-term. There will inevitably be a period of time which will pass whilst the selection process is completed and a suitable Trustee is assumed. The quorum provisions ought to be flexible in order to allow for decisions to continue to be effectively made during such periods. It is therefore suggested that, in line with Senior Counsel's Opinion, that the quorum should be more than one half of the number of Trustees in office with a provision that not less than one half of the quorum must be Appointed Trustees. Therefore with a full complement of 15 Trustees, the quorum is 8 of whom at least 4 must be Appointed Trustees; with 14 Trustees in office, the quorum is 8 of whom at least 4 must be Appointed Trustees; with 13 Trustees in office, the quorum is 7 of whom at least 4 must be Appointed Trustees; with 12 Trustees in office, the quorum is 7 of whom at least 4 must be Appointed Trustees; with 11 Trustees in office, the quorum is 6 of whom at least 3 must be Appointed Trustees, and so on.

At the Trustee Governance Workshop, there was a wide discussion regarding the number of Councillor Trustees who should be members of the Board. It was widely recognised that the skills Councillor Trustees brought to the Trust is invaluable. However, many Trustees felt that a solution had to be found to amend the Trust's Administrative Regulations to allow Councillor Trustees to personally manage their potential conflicts of interest. Trustees broadly accepted the Recommendation subject to appropriate amendment to the Administrative Regulations.

Recommendation

That the number of Councillor Trustees is reduced from 7 to 4 assuming the Trust remains a total of 15 Trustees, this would provide for at least one Councillor Trustee to be a member in each of the three Advisory Committees if appropriate and ensure that the skills and experience Councillor Trustees bring is not lost to the Trust that the quorum is more than one half of the number of Trustees in office with a provision that not less than one half of the quorum must be Appointed Trustees.

Assuming acceptance of a Trustee body of 15 Trustees of which 4 are Councillors, the Council be asked to appoint 4 Councillors for the SCT Board having regard to the skills set identified by the Trust and notified to the Council at the time of appointment by the Council.

5.3.3 Selection or election of Trustees

It is of crucial importance that trusts seek the best skills and competencies for their needs when creating a Board of Trustees.

“To work in the best interests of the organisation and its beneficiaries, the Board needs to recruit individuals who:

- *together have a mixture of knowledge, skills and experience that is relevant to the organisation’s circumstances and needs*
- *have the requisite characteristics and skills to work as a committed, effective and supportive team, whilst retaining independence of thought and the maturity and ability to challenge constructively*
- *embody diversity in its widest sense, strengthening decision making by bringing a broad range of backgrounds and perspectives.”⁵*

The current procedure uses a selection process for the 8 Appointed Trustees, and the 7 Councillor Trustees are appointed by the Council. Whilst the Councillors are elected members, they have not been subject to any selection process but as described in the previous section, the appointment or selection of these Trustees will remain a matter for Shetland Islands Council.

A significant majority of those interviewed were of the opinion that a selection process for all candidate Trustees would create a rigorous approach that could focus on skills and competencies relevant to the specific requirements of SCT. Comment was made about the fact that the Council could nominate whoever they wished, and that this was not necessarily in the interests of good governance in SCT, but it was acknowledged that the nomination of Councillor Trustees was a matter for Shetland Islands Council

However, there were a small minority who were strongly against Trustees being subject to any form of selection process, suggesting they should all be elected by the public. It was also proposed by one Trustee that the Trust Board be made up from 8 publically elected Trustees and 7 by selection. In these instances there would be no Councillor Trustee representation.

Selection is commonplace for Trustees and Boards of organisations in Scotland which are of interest to the public. For example all of the following use a selection process to recruit Trustees:

- NHS Trusts
- Colleges
- Government Agencies
- Non-departmental public bodies

Only one major Trust in Scotland currently has an election process for Trustees. The pros and cons for selection and election are detailed below:

Selection – Pros	Selection - Cons
Creates conditions for finding the best candidates for the role	Resource intensive

⁵ From Principle 3, Good Governance, a code for the voluntary and community sector – The Code Steering Group 2010

Assists identification of specific skills required for the Trust	Open to perceptions of being conducted “behind closed doors”
Measures ability of candidates against relevant competencies	Outcome is dependent upon the competence of the process
Uses a fair and objective system	

Election – Pros	Election - Cons
Democratically – elected by the choice of the people	Open to election fraud in a number of guises
Open and accountable to the public	Being elected implies standing on particular issues that people vote for – issues which may impede making decisions in the interest of the Trust
	Election takes no account of finding the best/most appropriate skill set for a Board
	Election puts representation of the people ahead of ensuring the best possible Board skills set for delivering on the Trust Deed

The implementation of a selection process provides the Trust with assurance that the individuals with the most appropriate skills for the role are selected. It is recommended that this selection process for Appointed Trustees is continued.

Prior to the Trustee Workshop, a paper was presented by one of the Trustees on the merits of the election of some Trustees to the Board. Trustees considered this paper together with the recommendations above and were broadly in agreement with the recommendation to select all Appointed Trustees. Since the Workshop, the Trustee has updated the paper following feedback at the Workshop on 16 February 2016 and this is attached as Appendix F.

Recommendation for Trustees

All Appointed Trustees should continue to be selected.

5.3.4 Selection or election of the Chair

Being an effective Chair requires a further set of skills, additional to those sought in a Trustee.

Using a selection process in a similar manner to that applied for public appointments, correctly managed by an objective committee using assessable competencies (looking at Chair competencies as well as Trustee competencies), provides for a rigorous and transparent outcome, ensuring a person with appropriate Chairing skills is selected. This process sometimes, but not always, also uses an executive recruitment company to find and sift the initial responders and to support the organisation with the competence assessment process.

The public appointments process is designed to give Scottish Ministers assurance over who has been chosen for positions in organisations that they, the ministers, are ultimately responsible for.

But SCT is not a public body. Nor, despite the large sums under investment, does the role of Chair carry the same weight of responsibility as many of the posts for which the public appointments process was designed.

We did not find any evidence to indicate a common use of the Public Appointments system in the appointment of Trust Chairs.

The selection of a Chair can create difficulties, including:

- A sense of imposition upon the Board from Trustees
- Possible isolation and distancing of the Chair from Trustees
- A longer team building period for the Board

It has been the custom and practice in SCT for the Chair to be elected from the Trustees. It is understood from interview responses that this has not caused difficulty in the past. Assuming the selection process for Councillor Trustees outlined above is adopted then all Trustees will have been selected to the Board in the first instance, ensuring relevant skills and competencies for Trustees.

The key advantage of electing the Chair from Trustees appointed through a selection process is that the Chair is recognised as being first amongst his/her peers on the Board, rather than being imposed upon them. There is an implicit support for the Chair, a backing which gives the Chair a mandate to represent the views of the Board. A level of trust in the post holder from fellow Trustees is created.

Elected Chair – Pros	Elected Chair - Cons
Election from amongst peers creates a strong bond between the Chair and the Trustees	The best person for the job may not be elected
The Chair is recognised as being of the group	Candidates have the opportunity to rig the result
The Chair gains a mandate from the Trustees to represent the views of the Board	

Selected Chair – Pros	Selected Chair – Cons
Creates conditions for finding the best candidates for the role	Lack of trust from other Trustees
Assists identification of specific skills required for the Trust	A sense of imposition upon the Board from Trustees
Measures ability of candidates against relevant competencies	Possible isolation and distancing of the Chair from Trustees
Uses a fair and objective system	A longer team building period for the Board
	A more costly and time consuming process

There is no specific necessity, from a governance perspective, to switch to selecting the Chair independently. There is strength of feeling against selection of a Chair. It is suggested that, this time around, no change is made and the Chair should continue to be elected from the Trustees. However, it is suggested that adding a review of Chair competencies to the selection process for all Trustees would be a useful indicator of ability, and provide a flag for any Chair training requirements appropriate for the Trustee elected as Chair.

The recommendation was accepted by all Trustees at the Trustee Workshop.

Recommendation

Continue to elect the Chair from the body of Trustees.

5.3.5 The use of an appointed body or otherwise to support selection/election of candidates for Trustee posts

There are ever present underlying implications of cronyism in the selection for posts in Shetland. Ensuring that an appointment process demonstrates objectivity and can pass scrutiny is the best way to minimise this matter. Good governance seeks to find the most suitable person for a post. This is best achieved using an assessment of competencies, together with an externally appointed person or organisation to assure objectivity.

It is usual for appointments at this level to be selected by a panel composed of internal senior staff together with an external person. The external person varies in role from observer to assessment specialist and occasionally the Chair of the panel. Some organisations use the services of executive search recruiters.

The Trust Deed obliges the Selection Panel to, “*comprise an independent Chair appointed by the Trustees but who shall not be a Trustee of the Trust and two Trustees at least one of whom must be an Appointed [Independent] Trustee*”.

The process employed by SCT has taken two different forms recently with the 2012 appointments employing the services of an external expert, Dr Karen Carlton, and the more recent appointments using a local independent person, Mr Brian Isbister, as a member of the panel.

It is questionable as to whether an executive recruitment organisation is needed to find applicants from on-island. The knowledge on-island should be sufficient to ensure prospective applicants are aware of the opportunity to apply. If SCT should deem it necessary to seek Trustees from off-island (see below), then it might be appropriate to engage an executive recruitment organisation in these circumstances.

More important is the impartiality and objectivity of the appointments panel. In this regard the question really boils down to having an independent person, and what skills would be appropriate for this person to have. Assuming the adoption of an assessable competencies model for selection, then a person with good skills in assessing competence would be preferable.

If this person is appointed Chair of the appointment panel, there is even stronger evidence of a robust objective process being deployed.

The recommendation was accepted by all Trustees at the Trustee Workshop.

Recommendation

SCT continues to appoint a competent and experienced person to Chair the Selection Panel. This person is to have good knowledge and experience in the use of assessable competencies.

5.3.6 Age profiles/ male/female split

The *Charity Lessons to be Learned* section of the OSCR “One Plus: One Parent Families” Case Study states:-

Charity trustees must ensure they have, collectively, the right mix of skills and experience for the type and scale of the charity for which they are ultimately responsible

There is a significant body of research which considers equality and diversity on public and private Boards. Gender balance on Boards is becoming a hot topic. The First Minister in her speech to the Scottish Parliament on the 26th November 2014 said:

“I intend to launch early next year a partnership for change pledge, called “50:50 by 2020”. This will challenge all private, public and third sector bodies to achieve gender balance on their Boards by 2020. And it will do so by demonstrating that a fair gender balance isn’t just a matter of basic equality and social justice – it also leads to better decision making and stronger businesses.”

This is now being implemented and further information can be found at:

<http://onescotland.org/equality-themes/5050-by-2020/>

But this is not just about gender balance. There is also age to be taken into consideration. SCT attracts middle aged, often retired, often with previous Councillor service, white, male applicants. This is not unique in Shetland, or in many other parts of Scotland.

And we must remember the critical factor in finding Trustees – the need for appropriate skills and competencies to create a high performing and effective Board.

Feedback from all respondents indicated that a better gender and age distribution on the Board would be welcome. Female respondents were clear in stating that they would not wish to have a quota for female Trustees and that appointment should be on merit. (This strengthens the argument for applying selection to all candidates for appointment.)

There is a substantial body of evidence that demonstrates that gender diverse Boards have a positive effect on corporate performance.⁶

Whilst it may be currently challenging to get interest from other sectors of the community, it is incumbent upon SCT to make every effort to throw the recruitment net as wide as possible. Creating a more gender diverse Board will result in better governance and enhance Trust performance.

For information on how to encourage diversity on the Board see Appendix E - Developing Board diversity

It must be stressed that achieving a gender and age diverse Board is not only an issue for SCT. The majority of Boards in public, private and third sector organisations are faced with this challenge.

The recommendation was accepted by all Trustees at the Trustee Workshop but there was some discussion on how the Trust could make the role of the Trustee more appealing to a more diverse group of individuals.

Recommendation

That SCT makes every effort to create a more gender and age diverse Board balanced against the obligation to have the right mix of skills and experience required for SCT, utilising the methods detailed in Appendix E.

5.3.7 Trustees from off island in exceptional circumstances

As mentioned, the *Charity Lessons to be Learned* section of the OSCR “One Plus: One Parent Families” Case Study states:-

Charity trustees must ensure they have, collectively, the right mix of skills and experience for the type and scale of the charity for which they are ultimately responsible

There is a strong body of opinion from natives of Shetland that it is possible to find a suitable mix of experience and knowledge to create a competent Board from within the community in Shetland. Whilst that is undoubtedly the case, there may be extenuating circumstances where it is not possible to find individuals to fill the skills required. This might arise for example if no-one in fact applied to fill a post or if potential conflicts mean that the right individuals are unable or would rather not become Trustees.

There is also a view that bringing influences to the Board from off island for fresh thinking and different experiences might enhance Board thinking and behaviour.

⁶ Overcoming barriers to equality and diversity representation on public, private and third sector Boards in Scotland – Scottish Government Social Research 2014 – Employment Research Institute Edinburgh Napier University

From a governance perspective, as long as the Trustees have the necessary skills to fulfil their duties to the Trust effectively and in accordance with good governance, there is no reason why they should not all come from Shetland.

However, as explained above, the situation could occur when, selection having been completed, it is apparent that necessary skills and experience may not be forthcoming on island. We therefore suggest that the Trust allows itself, in exceptional circumstances, the scope to recruit Trustees from off Island if, in the opinion of the Selection Panel, in consultation with the Chief Executive, such recruitment is necessary to ensure that the Board remains fit for purpose.

The recommendation was broadly accepted by Trustees at the Trustee Workshop but they were keen to see this as the exception after all avenues for local recruitment had been exhausted.

Recommendation

That SCT adjusts the Trust Deed to enable recruitment of Trustees from off island, if in exceptional circumstances, in the opinion of the Selection Panel, in consultation with the Chief Executive, such recruitment is necessary to ensure that the Board remains fit for purpose

5.4 Behaviours

5.4.1 Honorariums

It has been suggested by a few respondents that the Chair, Vice Chair and the three Advisory Committee Chairs should receive some form of payment in recompense for their work. This is permitted within the legislation providing certain criteria are met prior to commencing payment.

The argument for providing some payment is to give recognition for the amount of time and effort that these roles demand, specifically in this organisation. There is some suggestion that a financial incentive might cause more people to put themselves forward for appointment. Others have been categorical that the amount should not be such that people can treat it as a working income and seek appointment to provide a lifestyle.

What do other organisations, which rely on the public to put themselves forward, do? Here is a cross section:

Organisation type	Honorarium or similar paid
Colleges of Further Education	No
NHS Endowment Trusts	No
Gannochy Trust	£50 per Trustee per year (from 1937 Trust Deed)
Tudor Trust	Director and 2 Trustees - from 15 Trustees (A large closed family trust)
Robertson Trust	No
Museum and Galleries Scotland	No
Creative Scotland	No
Independent Schools in Scotland	No
Royal Zoological Society of Scotland	No
John Muir Trust	No
Royal National Lifeboat Institution	No
National Trust for Scotland	Yes - £25k to Chair per annum
Scottish Wildlife Trust	No
Cattanach Trust	No
Life Changes Trust	No
Lloyds TSB Foundation for Scotland	No
The R S Macdonald Charitable Trust	No
The Russell Trust	No

The Weir Charitable Trust	No
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Those opposed to paying Trustees believe it fundamentally undermines the voluntary principle of Trusteeship, which is important to uphold public confidence and trust in SCT. Pat Armstrong, a Board member of OSCR, advises that it is very rare in Scotland to find Trusts which pay honorariums.

In our own research, the only independent charitable organisation of any significance we could find that pays an honorarium is the National Trust for Scotland. The Chair of NTS receives £25,000 per annum.

A poll of members by website ivo.org⁷ found 67% were opposed. Research commissioned by the Hodgson review⁸ found 61% of the public feels Trustees should be paid only expenses.

The “Shetland factor” cannot be dismissed. What might the public reaction be to certain Trustees being seen to pay themselves in the current climate, when the Trust is actively reducing the amount it is disbursing?

A further issue to consider is the fact that Councillor Trustees are paid for their time by the Council as Councillors through their annual Councillor salary. If a Councillor Trustee were to be elected to a post with an honorarium, the public may react badly to Councillors being able to collect further sums by being a Trustee. Appointed Trustees equally could feel that Councillor Trustees receive payment to serve on SCT as part of their duties, yet this is not available to them.

Pros	Cons
May attract better candidates	Sector norm is not to pay honorariums
Gives recognition for responsibility, and time involvement	Undermines the voluntary principle of Trusteeship
May assist in recruiting a more gender and age diverse Board	The public generally do not approve of honorariums
	Commencing payment in the current climate does not lead by example
	Possible public reaction to Councillor Trustees being able to receive further payment

On balance, considering the overwhelming trend of charities not to pay, the austerity measures in place, and the reduction in fund dispersal from SCT, it is our view that now is not the right time to suggest key positions on the Board should be paid an honorarium.

The recommendation was broadly accepted by Trustees at the Trustee Workshop, but two Trustees felt that it was essential to provide some sort of honorarium payment to assist in the recruitment of a gender and age diverse Board.

Recommendation

There should not be an honorarium payment to any posts on the Board at this time.

5.4.2 Professional Development and Review

The *Charity Lessons to be Learned* section of the OSCR “One Plus: One Parent Families” Case Study states:-

⁷ Ivo.org is a professional networking space. It hosts one of the largest global networks of volunteering leaders.

⁸ Lord Hodgson's review of the English Charities Act 2006; “Public perceptions of charity”, published by Ipsos MORI, May 2012

Charity trustees must take ownership of their own Board and should implement a programme for Board training, building and renewal that includes regular reviews of performance and skills mix

Principle 3 of the Good Governance Code for the Voluntary and Community sector states:

“An effective Board will provide good governance and leadership by working effectively both as individuals and as a team.

The Board will have a range of appropriate policies and procedures, knowledge, attitudes and behaviours to enable both individuals and the Board to work effectively. These will include:

- *providing all Board members with opportunities for training and development according to their needs*
- *periodically reviewing their performance both as individuals and as a team.*

And from the UK Corporate Governance Code:

B.4 Development

“All directors should regularly update and refresh their skills and knowledge”

Professional development covers a wide range of possibilities. Key is the understanding of the duties, responsibilities and liabilities of Trustees. The level of development activity should be in proportion to the amount of time a Trustee is expected to devote to the duties of the Board. In the case of SCT it is suggested that workshops, run with the help of an external facilitator, would be sufficient and appropriate.

Review is required at two levels – the performance of each individual Board member and the performance of the Board as a whole. Standard practice is for the Chair to review each of the Board members and for selected Board members to review the Chair.

Review of the performance of the Board is conducted by the Board as a group. This may also seek feedback from executive officials in the Trust and from selected external stakeholders. Group review is often assisted with the help of an independent facilitator.

Pros	Cons
Focus all Trustees on the role	Time consuming
Self and Board reflection on own performance	Could be uncomfortable for under performers
Review provides a focus on progress, learning and achievement	Requires dedication and determination to make it work
Ongoing training demonstrates quest for competence	If not done right is worse than no review at all
Training in the role can attract candidates	

The recommendation was accepted by all Trustees at the Trustee Workshop

Recommendation

All Trustees are provided with professional development opportunities in their roles, given opportunities to create close working relationships , are subjected to an annual review of performance and take part in an annual all Board review of Board performance.

APPENDIX A – OUTLINE INTERVIEW SHEET

Name:

Connection to SCT:

Views of current governance of SCT:

Comment on:

Ideal number of Trustees

Male/female split and gage profile

Councillor representation

Selection v election

Chair selection v election

Trustees coming from Off Island

Use of an “appointed body” to assist application process for Trustee positions

Other issues and points for us to consider:

APPENDIX B - LIST OF INTERVIEW PARTICIPANTS

NAME	ROLE
Malcolm Bell	Trustee and Convenor of SIC
Sarah Taylor	NHS Shetland – Director of Public Health
Betty Fullerton	Ex Trustee resigned Feb 2015
Keith Massey	Trustee, Chair audit and governance committee
Amanda Westlake	Trustee
Jonathon Wills	Trustee, Vice Chair
Todd Nugent	Noble Grossart investment advisers
Kenneth Pinkerton	Turcan Connell, Trust Solicitors
Karen Carlton	Independent Assessor of 2012 selection process
Catherine Hughson	Former Trustee, Chief Executive VAS
Ann Black	CEO
Bobby Hunter	Chair
Jeemie Smith	Trustee
Andrea Manson	Trustee
Ian Napier	Trustee
Peter Malcolmson	Trustee
Robert Henderson	Trustee
Drew Ratter	Trustee, Chair of investment committee
Mark Boden	Chief Executive SIC
Ian Kinniburgh	Ex Trustee, Non Exec Director SHEAP, Chair NHS Board, Chair Shetland Partnership Board
Brian Isbister	Chief Executive SFPO, Chair of most recent Trustee recruitment panel
Graeme Howell	General Manager SADA
Stephen Morgan	Executive Manager Adult Social Work SIC, Ex Trustee
Jan Riise	Solicitor, Shetland Islands Council
James Johnson	GM SRT
Bryan Leask	Chair SRT
Alan Blain	GM SAT
Paul Rutherford	Solicitor, Harper McLeod, Lerwick
Brian Gregson	Chair SAT
Andrew Cooper	Trustee
Jane Ryder	Former CEO OSCR
David Robb	CEO OSCR
Laura Anderson	Head of Enforcement OSCR
Martin Tyson	Head of Registration OSCR
Allison Duncan	Trustee

APPENDIX C – LIST OF CHARITABLE ALEOS

From: Arms Length External Organisations – OSCR 2015

Aberdeen Care And Repair Aberdeen City	Jobs and Business Glasgow Glasgow
Sport Aberdeen Ltd Aberdeen City	Culture and Sport Glasgow Glasgow
Aberdeen Sports Village Ltd Aberdeen City	Poolewe & District Swimming Pool Assoc Highland
Garthdee Sports and Alpine Park Aberdeen City	Caledonia Community Leisure Limited (known as Inverness Leisure) Highland
Aberdeen Performing Arts Aberdeen City	High Life Highland Highland
Aberdeenshire Care & Repair Group Aberdeenshire	Inverclyde Community Development Trust Inverclyde
Scotland's Lighthouse Museum Ltd Aberdeenshire	Riverside Inverclyde Inverclyde
Angus Community Care Charitable Trust (ACCCT) Angus	Inverclyde Leisure Inverclyde
Angus Care and Repair Angus	Moray Leisure Ltd Moray
Oban and Lorn Community	North Ayrshire CCTV Ltd North Ayrshire
Enterprise – Atlantis Leisure Argyll & Bute	Irvine Bay Regeneration Company North Ayrshire
Capital City Partnership City of Edinburgh	North Ayrshire Ventures Trust North Ayrshire
Festival City Theatres Trust City of Edinburgh	North Ayrshire Leisure Limited (known as KA Leisure) North Ayrshire
Edinburgh Leisure City of Edinburgh	Culture NL Limited North Lanarkshire
Leisure and Culture Dundee Dundee City	Town Centre Activities Ltd North Lanarkshire
Dovetail Enterprises (1993) Ltd Dundee City	North Lanarkshire Leisure Ltd North Lanarkshire
East Ayrshire Leisure Trust East Ayrshire	Pickaquooy Centre Trust Orkney Islands
Kilmarnock Leisure Centre Trust East Ayrshire	Horsecross Arts Ltd Perth and Kinross
East Dunbartonshire Leisure & Culture Trust Ltd East Dunbartonshire	Live Active Leisure Ltd Perth and Kinross
Brunton Theatre Trust East Lothian	Renfrewshire Leisure Trust Renfrewshire
Enjoy East Lothian Ltd East Lothian	Jedburgh Leisure Facilities Trust Scottish Borders
Falkirk Community Trust Ltd Falkirk	Borders Sport and Leisure Trust Scottish Borders
Fife Environment Trust Fife	Shetland Amenity Trust Shetland Islands
Fife Golf Trust Ltd Fife	Shetland Arts Development Agency Shetland Islands
	Shetland Islands
	Shetland Recreational Trust Shetland Islands
	Shetland Charitable Trust Shetland Islands
	South Carrick Community Leisure South Ayrshire
	Regen:FX Youth Trust Limited South Lanarkshire
	South Lanarkshire Leisure and Culture South Lanarkshire
	McLaren Community Leisure Centre Holdings Stirling
	Stirling District Tourism Ltd Stirling
	Raploch Urban Regeneration Company Stirling
	Active Stirling Ltd Stirling
	Clydebank Rebuilt West Dunbartonshire West Dunbartonshire
	Leisure Trust West Dunbartonshire
	West Lothian Leisure Ltd West Lothian

Fife Coast and Countryside Trust Ltd Fife	
Fife Cultural Trust Fife	
Fife Sports and Leisure Trust Ltd Fife	
Clyde Gateway URC Glasgow	
Community Safety Glasgow Glasgow	

APPENDIX D WHAT IS AN ALEO?

Extract from: Arm's-length external organisations (ALEOs): are you getting it right? Audit Scotland June 2011

“Arm's-length external organisations are companies, trusts and other bodies that are separate from the local authority but are subject to local authority control or influence. Control or influence can be through the Council having representation on the Board of the organisation, and/or through the Council being a main funder or shareholder of the organisation. ALEOs can take many forms including companies limited by guarantee or shares, community enterprises, such as industrial and provident societies, trusts and Scottish Charitable Incorporated Organisations. Examples of the services they deliver include leisure, transportation, property development, and more recently, care services. ALEOs are often set up as non-profit making organisations such as charities to promote public benefit in areas such as health, education, recreation and equal opportunities set up by local authorities to deliver Council services outwith usual Council structures.”

APPENDIX E DEVELOPING BOARD DIVERSITY

Whilst there is much written on the need to create better diversity on Boards, and on how more rounded discussion and better decision making is found in Boards that have greater diversity, there is scant literature to give clear advice on what to do to develop Board diversity, or case studies of successful achievement of diversity.

Current methods used to encourage diversity on Boards include:

- Regular training for current Board members, to instil diversity awareness and culture
- Advertising for posts which clearly encourages diversity of applicants
- Planned active identification of individuals who are of diverse characteristics (gender, religion, ethnicity, disability and sexual orientation) providing encouragement to apply and guidance in the application process. This may include inviting identified individuals to come and learn more about the organisation and the work of the Board.
- Reviewing the skills set sought from potential trustees with a view to accepting the need to give further training to applicants who can bring diversity but lack Board experience.
- Ensuring the offer of ongoing individual support is provided by more experienced Board members to new members who are selected for their diversity
- Explore opportunities to actively seek nominations from Key Stakeholder Groups across Shetland
- Delivering a clear message to the public that there is a wish to have a diverse Board

“The most important ingredient to the success of Board diversity, however, would most probably be the Board members’ changing their mindset to welcome a more heterogeneous Board, as well as to place greater trust in one another and work together more effectively.”⁹

⁹ Diversifying the Board – a step towards better governance, ACCA August 2015

APPENDIX F – TRUSTEE JONATHAN WILLS NOTES

Election or Selection?

A discussion paper by Jonathan Wills

A Proposal for a Shetland Charitable Trust of 15 trustees, with eight nominated by public election and seven by appointment.

This is my proposal to my fellow trustees, revised and edited after listening to colleagues' comments on and criticisms of my first draft:

There would be eight trusteeships to be filled by candidates nominated in public elections and seven appointed trustees, selected by the mechanism currently used.

The method of choosing the eight independent, elected trustees would be as follows:

1. Candidates for trusteeships would require to be nominated by at least five registered electors in the Shetland area;
2. The trust should publish a list of the personal qualities and abilities considered desirable in candidates for trusteeships, and supply the candidates with a clear description of trustees' duties and responsibilities, as well as a general account of what the trust is and does;
3. There would be a postal ballot of all registered Shetland electors, conducted by Electoral Reform Services Ltd or a similarly qualified organisation;
4. Those electors who have chosen not to be on the published register would be alerted by a public notice that they could register with the trust to vote in the election;
5. No canvassing or advertising would be permitted;
6. Candidates would each be allocated space in the official election circular, sent out with the ballot paper, for a photograph and 400 words describing the skills, experience and ideas they would bring to the trust;
7. The method of voting would be for the elector to endorse up to eight candidates by marking a cross against the candidates' names (or by another voting arrangement to be decided by the present trustees, in consultation with OSCR);
8. Upon publication of the results of the ballot, the trust would write to the eight candidates with the largest number of votes and invite them to become trustees for a four-year term;
9. If any candidate were nominated unopposed, he or she would be subject to the same vetting process as the appointed trustees before being invited to join the trust.
10. The new system would be phased in and elections then held at two yearly intervals, to allow for a regular turnover of trust membership but also to ensure some continuity of knowledge and experience.
11. In the event of there being insufficient candidates to fill any or all of the vacancies for elected nominees, the trust would use its existing powers to select new trustees *pro tem*, in addition to the seven appointed trustees.

A Unique Trust with a Public Character

That's the proposal and here are my reasons. Forgive me if this takes a while, but we do need to get it right this time, so I will discuss every aspect of the subject that has occurred to me.

In proposing that the Shetland Charitable Trust (SCT) reverts to having a majority of elected trustees, I intend no criticism of the current appointed trustees. They make a valuable contribution to trust business (particularly those who insist on asking awkward questions) and I have no wish to dispense with their services; on the contrary. But, for reasons of public policy, grounded in the history of the trust and the origins of its "oil money", I do contend that there should always be a majority of elected people on our board or, at the very least, the opportunity for the public to choose that majority.

This debate has been going on for a long time. I have been one of the trustees most eager to reform the governance arrangements of Shetland Charitable Trust and, since I rejoined the trust in March 2008, after a break of 13 years, I have consistently suggested and supported moves towards a permanent and workable solution to the problems of perceived and actual conflicts of interest, as well as ways to make the trust more effective and stay in compliance with trust law.

I see from my files that, on 8th May 2008, Trustee John Scott and I moved a resolution asking trustees to consider having "15 directly elected independent trustees, with no serving SIC councillor eligible for election as a trustee", among other options for the membership of a reformed trust board. We also asked the trust to "conduct a public consultation to ascertain the preferences of the people of Shetland". Eight years later, we have yet another report on how the trust might be changed to make it more fit for its various purposes.

The trust is indeed "unique", as the recent review of our governance points out, in that its assets, although legally the collective possession of the trustees, are to be employed for the benefit of the public, specified in the trust deed as "the inhabitants of the Shetland Islands". The trust fund is thus private money held in trust for public charitable purposes. It follows that, although it is not, legally speaking, public money, the public has a natural right to some say in the trust's affairs, if only to decide who should control the funds. We should therefore examine thoroughly all the possible ways in which that legitimate public interest might best be given practical expression.

The origins of the trust funds are the key to understanding this intrinsic public character and thus the desirability of some public accountability: SCT began with a gift of public money; it meets in public; its minutes and accounts are public; and it is probably the most transparent and best run trust of its kind in Britain.

The original source of trust revenue was in the form of annual, *ex gratia* payments from BP and partners to the council, made under a commercial agreement. In 1976 the council created a charitable trust (with the council as sole trustee) and in 1978 activated it, transferring these annual "disturbance" payments to the trust. The reason for this was to minimise liability for tax and to keep the money separate from local and national government accounts for the lifetime of the trust – initially for 21 years and since 1977 in perpetuity. That separation of trust money from other public money is crucial.

Not a Bad Record for a Bunch of Unsifted Amateurs?

Between 1979 and 2000 a total of about £81 million was transferred from the council to the trust. The trustees invested it to produce annual revenue and, despite successive global financial crises, its value still stands at over £200 million (I write this on a day when the stock markets are in pandemonium – yet again), even after giving away more than £287m to support charitable activities solely for the benefit of “the inhabitants of the Shetland Islands”. This is not bad going for a trust which, between 1978 and 2012, was stewarded by a majority of elected trustees who had not been screened to see if they possessed the (unspecified) “skill set” now said to be essential.

Although the council-controlled trust was undoubtedly too generous in its disbursements, and thus added to the problems caused by a declining stock market, it is important to note that, despite criticisms of the trust by various interested parties over the past 38 years, there has never been an instance of proven misconduct by an elected (or any other) trustee. Four complaints by members of the public were all dismissed after thorough, independent investigation by the Office of the Scottish Charity Regulator (OSCR) and / or HM Revenue & Customs.

After changes in trust law and increasing concerns about councillors’ perceived conflicts of interest when acting as trustees (and vice-versa), in 2012 membership of the trust was reduced from 24 to 15 trustees, of whom seven were to be serving councillors and the other eight to be selected after advertisement, application and appraisal. It was agreed that this unprecedented shift to a majority of unelected trustees would be reviewed after three years, which is why we are discussing our future governance now.

The Intentions of the Founders and the Wishes of the People

It was the clear assumption and intention of the SIC, when establishing and activating the original Shetland Islands Council Charitable Trust (SICCT) in 1976-78, and of SICCT, when amending the trust deed in 1997 and transferring its powers and property to the new SCT in 2003, that majority control of the trust should always remain in the hands of elected representatives of “the inhabitants of the Shetland Islands”. The idea that control should pass to a majority of unelected trustees runs entirely counter to the original aims and purposes of those far-sighted and public-spirited Shetland citizens who created the trust. It would have been unthinkable at any time between 1976 and 2008, when discussion of changes in the trust’s constitution began, following changes to charity law in 2006.

It is noteworthy that on three previous occasions when the trust deed was significantly amended, it was with the unanimous consent of the trustees; not so at the trust meeting of 15th December 2011, when only nine of the 22 councillor trustees eligible to vote agreed to remove the majority of elected trustees. Due to some trustees’ absence on other business, those nine had a simple majority over the six who opposed them. None of the nine is now a trustee. Indeed, Allison Duncan, Robert Henderson and I are the only survivors of that council now sitting on the trust. Control by democratically elected trustees was removed without the two-thirds majority that any reasonable person would expect when making such a major change to an organisation with such weighty responsibilities.

The December 2011 vote was undoubtedly influenced by four factors:

1. threats from OSCR that trustees would be held personally liable if they sought, at that late stage, to amend the proposed reorganisation (which most of them wanted to do) and if they did not follow the agreed timetable for making the changes;
2. trustees were misled by the widespread but mistaken belief that OSCR was opposed to election of trustees, when in fact it was neutral on this point and its representatives had said so in writing and on a public platform in Shetland;
3. there was an erroneous notion that direct election of nominees would be illegal;

4. in addition, the trustees were unaware, at the time they voted, that reducing the number of councillors on the trust to seven would not solve the grouping of accounts problem (see below).

In addition to being against the clearly understood intention of the trust's founders, the shift to an unelected majority was also contrary to the wishes of "the inhabitants of the Shetland Islands", if we are to judge from their responses to the trust's public consultation in 2011 and the results of the 2012 council election. In that poll the future of the trust was an issue. Not a single candidate (not even my old friend Drew Ratter) stood on a platform advocating the selection of charitable trustees, whereas those candidates who had publicly declared themselves in favour of retaining a majority of elected trustees generally attracted strong support (for example: Malcolm Bell, Allison Duncan, Robert Henderson, Gary Robinson and myself, among others). At a well-attended annual meeting of the Association of Shetland Community Councils that same year there was unanimous opposition to selection. And, because it has never been changed, it is still the official policy of the SIC that the trust should have an elected majority (although not necessarily one composed of councillors).

The number of written objections (68) received by OSCR in its own 2012 consultation on the future of the trust was unprecedentedly large,¹⁰ despite the fact that those of us who wished to retain democratic control deliberately did not mount a big campaign or circulate petitions, assuming (wrongly) that OSCR would accept the moderate and reasonable points put before it by objectors and would itself propose the retention of an elected majority.

There can be little doubt that "the inhabitants of the Shetland Islands" and their elected representatives wished the trust to remain under democratic control in 2012. When we consult the public on our new proposals, we shall see if that is still the case.

Why Have Any Councillors on the Trust?

Hardly anyone now argues that we should keep a majority of councillors on the trust. We mostly accept that the 2006 Scottish charity law makes that undesirable, and possibly improper. So I suggest we end the practice of the council appointing trustees. The trouble it causes is simply no longer worth the bother. But if an individual councillor ever wished to stand in a personal capacity for election as a trustee, then it would be for the public to decide on their suitability. It all depends on whether you trust the public's judgment. Some people clearly do not.

The suggestion that we reduce the number of councillor trustees to four looks like a sop to democracy. There's a reluctant admission that there ought to be public accountability but some critics cannot bring themselves to accept the idea of directly-elected trustees, let alone a majority of them. The proposed rump of four continuing councillor trustees might, perhaps, avoid the continuing problem of the council's auditors 'grouping' the trust's accounts with the council's (on the mistaken assumption that the seven councillor trustees currently act as an organised group and exercise 47% of the voting rights on the trust). However, the legal advice we received in 2011/12 was that the number of councillor trustees would need to be reduced to three (20% of 15), not four (26.7%), to avoid grouping.

The council's external auditors, Audit Scotland, still describe the trust as a subsidiary of the council. This statement was once true but has been false for several years now. In my opinion (not universally shared) it is potentially damaging to both organisations. But if councillors do not and should not control the trust (not least because the council may be seen as a beneficiary), then why have any councillors on it at all?

If not Councillor Trustees, Who?

With councillors were no longer to be on the trust, how could the resulting "democratic deficit" be redressed? The obvious answer is for the public to nominate trustee candidates by direct election. The democratic principle

¹⁰ As Mr Mathers of OSCR acknowledged in his letter of 3rd July 2012.

is central to the rules of good governance for companies, after all, where the shareholders (in theory, at least) democratically elect the directors. So why not for a unique trust like ours? Those who oppose it in this instance might care to explain why democratic sauce is good enough for the company goose but not for the trust gander.

By the way, I use the word “nominate” deliberately because, in the trustee elections that I propose, the public would be voting to elect *nominees* to the trust. Legally, it would still be open to the trust to reject an elected nominee (although there would have to be very good reasons to do so).

Some critics have objected that elections cannot be relied upon to produce suitable nominees for the trust and also that there are not enough appropriately qualified people in Shetland who would be willing to stand. The answer to that is fourfold:

1. the size of the voluntary sector in Shetland shows the range of talent, experience and commitment available;
2. if the electoral system is good enough to choose 22 councillors to act in the public interest, why should it be inadequate to choose eight trustees acting in the same interest?
3. if not enough candidates stood for election, the vacant trusteeships could be filled by selection until the next election date;
4. if candidates were unopposed, they could be vetted in the same way as appointed trustees before being invited to join the trust.

Critics of the democratic method for choosing trustees sometimes often suggest that voting might throw up “random” or “campaigning” candidates. The “random” classification is extremely revealing: what we’re being told is that although some of our fellow citizens might do as councillors in charge of an annual budget of over £110m, they wouldn’t be good enough to be trustees in charge of spending less than a tenth of that sum.

As for “campaigning” candidates, well, the record of single-issue candidates for Shetland Islands Council is instructive: they almost never get elected but if they do they rarely serve more than one term. All of the single-issue (i.e. anti-windfarm) candidates in the 2012 SIC election were defeated.

How to Choose Good Trustees and Get Rid of Dodgy Ones?

The concern about unsuitable trustees may be understandable but it is overstated, for the trust already has more than adequate means of censuring, suspending or expelling trustees who neglect their duties, who act as promoters or agents for beneficiaries, who betray confidential information, who attempt to put undue pressure on staff, who bring the trust into disrepute or who are persistently absent.

When we advertise for appointed trustees at present, we ask them to write a letter of application in which they explain why they would be suitable; we ask them to fill in a form to see if they meet our criteria; and we then interview them to see if they understand the aims and objects of the trust, the duties and responsibilities of trustees, and the personal qualities and experience we seek in a trustee, as set out in the explanatory material sent to all applicants. That process is established, it works well and it should continue, in my opinion.

If we advertise elections to nominate candidates for trusteeships, a very similar process would take place, only it would be the public who assess the suitability of the candidates. The public may actually be better qualified to do this than we are. They will probably have more and perhaps better information (island life being what it is) but, as I said earlier, the trust would still have the right to reject a nominee if he or she appears outrageously inappropriate or is clearly hostile to the aims and objects of the trust. And if any trustee is suitable in most respects but appears to lack certain skills, then training can be offered. The annual interview is another way of ensuring that trustees are and remain fit for purpose.

The “Undemocrats”, as we might call them, will no doubt argue, as they did in 2011-12, that the “governance” of the trust will become more “stable” if a majority of appointed trustees in turn appoints unelected appointees to

succeed them *ad infinitum*, which we might call an “appointocracy”. Well, there’s stability in any self-perpetuating, closed organisation, of course. What’s missing is popular consent.

Confusion over the Roles of Trustees, Officers and Advisers

Few would disagree that the trust needs to have “an appropriate composition of skills and attributes to manage and control a charity of the size and scale of SCT”. Curiously, no-one has actually said what those skills and attributes might be, or explained why elected trustees, as distinct from selected ones, would not possess them.

Those who insist on a mainly appointed trust with better and broader skills seem to be confusing the roles of trustees with those of our staff and professional advisers. The daily management of the trust is performed, not by trustees, but by professional managers, advised by expert lawyers and fund managers, all working within policies set by the trustees. Also, the trust does not actually carry out any charitable activities itself but instead funds specialist groups and charities who do.

The trustees’ chair and vice-chair take an active and informed interest in the business of the trust and meet the managers and advisers regularly, but they do not “manage” the trust. This is quite clearly laid out in the Aims of the Trust, updated in 2014:

“The fundamental principle underpinning the operation of the trust is that trustees have responsibility for the strategic framework of the trust, as set out through various strategies, plans and policies approved by them, and that they ensure the staff implement these strategies, policies and plans effectively.”¹¹

It is therefore not essential to have cohorts of retired bank managers, accountants, actuaries, hedge fund speculators, lawyers, company directors and management consultants sitting on the (unpaid) board in order for it to function. It is not at all clear how the Undemocrats’ proposed changes to the composition of the trust would make its day to day administration more effective, unless they are hinting that professionally qualified trustees ought to become involved in micro-management of operational matters, which I assume they are not.

It is certainly very useful if we have some trustees with specialist skills and experience, and we do in fact have a remarkably wide range of skills and experience on the existing board¹², but that does not alter the principle that the majority, whether “random” or not, should always be elected.

What Trustees Actually Do

The tasks of trustees, as set out in the information given to all applicants for membership of the trust, include the following:

- “setting the strategic aims, objectives and direction of the charity and monitoring performance;
- setting policy and monitoring implementation;
- ensuring that the necessary financial and human resources are in place to meet the trust’s objectives
- safeguarding the financial solvency of the trust
- enabling risks to be assessed and managed
- ensuring compliance with the law
- being a responsible employer

¹¹ See Appendix 2.

¹² Between the current trustees, all local residents, we bring to the board our knowledge and experience of, among other things: public administration; local government; social work; medicine; scientific research; marine and fisheries policy; business management; journalism; broadcasting; public relations; English literature; text editing; charitable fund-raising; tourism; hotels and catering; property management; agriculture; road haulage; marine and electrical engineering; financial auditing; naval architecture; seafaring; the police; and the church. That is quite some collective “skill set”.

- promoting the trust's role in the community
- ensuring trustees work effectively together as a trust
- providing leadership, upholding values, and being committed to the business of the trust."

It seems to me that the main qualities needed in trustees if they are to carry out these tasks effectively are as follows:

- An understanding of what the trust is and does
- Honesty and public spirit
- Common sense and critical intelligence
- An ability to work with others
- A record of volunteering for the community's benefit
- Detailed local knowledge
- And, as a bonus, skills and experience in a relevant profession

As I noted earlier, we have hundreds of such citizens who donate their time and skills to the very large number of voluntary organisations in Shetland. To suggest that we could not find eight people willing and able to stand as elected trustees is, to put it mildly, contemptuous of "the inhabitants of the Shetland Islands".

What if No-one Stood as a Candidate?

If the critics of democracy are right and not enough candidates would apply to become trustees, then the remedy is simple - the vacant seats could be filled by appointment, using the normal selection process, until the next election in four years' time. What's wrong with that? The public would still have a regular opportunity to choose the majority of trustees, even if they decided not to use it.

Reform is overdue. But the suggestion that we should greatly increase the majority of unelected trustees (from 53.2% to 73.3%) and leave a rump of four councillors on the trust would not be a reform: it would be perceived by "the inhabitants of the Shetland Islands" as a reversion to the early 19th century, when Shetland's self-appointed, self-perpetuating Great and Good decided amongst themselves how best to distribute the contents of The Poor's Box, not trusting ignorant, feckless peasants to elect their own trustees. This, in my opinion, would have a severely adverse effect on the trust's reputation and also on its efficiency.

I look forward to our forthcoming discussions on the future of the trust and, in due course, to our consultations with the public whose interests we serve.

Jonathan Wills
Bressay, Shetland.
11th March 2016.

Appendix 1

The Personal Qualities Desirable in a Trustee

- An understanding of what the trust is and does
- Honesty and public spirit
- Common sense and critical intelligence
- An ability to work with others
- A record of volunteering for the community's benefit
- Detailed local knowledge
- Skills and experience in a relevant profession

Appendix 2

Trustee Role Description, 2014

The aims of the Shetland Charitable Trust:

The Shetland Charitable Trust aims to:

- a) Improve the quality of life for the people of Shetland, especially in the areas of social care and welfare, the arts, culture, sport and recreation, and the environment, natural history and heritage;
- b) ensure that the most vulnerable in the community receive the highest possible standard of service and care;
- c) protect and enhance Shetland's environment, heritage, culture and traditions;
- d) support facilities and services and jobs located in rural areas, where these are beyond what would normally be expected to be provided as core public services;
- e) support pilot and developmental projects where they seek to meet a clearly identified service gap within the community

The roles of a trustee:

To act in the best interests of the trust and operate in a manner consistent with the charitable purposes of the trust.

To act with the appropriate standard of care and diligence and ensure that the trust complies with the provisions of the Charities and Trustee Investment (Scotland) Act 2005 and other relevant legislation and regulatory requirements.

The fundamental principle underpinning the operation of the trust is that trustees have responsibility for the strategic framework of the trust, as set out through various strategies, plans and policies approved by them, and that they ensure the staff implement these strategies, policies and plans effectively.

Trustees' responsibilities include:

- setting the strategic aims, objectives and direction of the charity and monitor performance;
- setting policy and monitor implementation;
- contributing to the planning process – financial, corporate and service delivery
- ensuring that the necessary financial and human resources are in place to meet the trust's objectives
- safeguarding the financial solvency of the trust
- enabling risks to be assessed and managed
- ensuring compliance with the law
- being a responsible employer
- promoting the trust's role in the community
- ensuring trustees work effectively together as a trust
- maintaining awareness of the external environment and the impact that might have on the trust
- drawing lessons from monitoring performance and act on them appropriately
- providing leadership, uphold values, and be committed to the business of the trust.

Alongside these roles and responsibilities each trustee shall:

- act honestly and in good faith and in the best interests of the trust and the beneficiaries thereof.
- attend regularly the meetings of the trust and any committee of which the trustee is a member.
- act in accordance with the trust deed.
- protect the trust's assets and be accountable for the solvency and continuing effectiveness of the charity and the preservation of its endowments.

- exercise overall control over the trust's financial affairs and ensure the completion of the relevant statutory reports, returns and accounts.
- not receive any financial or non-financial benefit that is not expressly authorised by the trust deed.
- perform their duties with the relevant standard of care required by the Charities and Trustee Investment (Scotland) Act 2005, namely that of a person who is managing the affairs of another person, which includes taking professional advice as and when required.

Conflicts of interest

Trustees have a duty to declare any actual or perceived conflicts of interest. This rule will normally preclude applicants for trusteeships who are themselves beneficiaries of the trust, or are senior employees or office-bearers of a beneficiary.

APPENDIX G – AGENDA AND NOTES FROM GOVERNANCE WORKSHOP

SHETLAND CHARITABLE TRUST

GOVERNANCE REVIEW WORKSHOP

Facilitated by the Institute of Directors

AGENDA

16th February 2016

14:00-16:00

INTRODUCTIONS SCT Governance and Administrative Committee Chair- IoD Project Consultant- Turcan Connell Trust Solicitors-	Keith Massey David Wilkinson Kenneth Pinkerton
OUTLINE OF THE AFTERNOON What we can agree on- Discussion groups over issues- Feedback Plenary Session- How to resolve outstanding issues-	David Wilkinson
What we can agree on-	Facilitated by David Wilkinson
Issues of disagreement- 3 Discussion Groups-	Group facilitators Ann Black David Wilkinson Kenneth Pinkerton
Plenary session feedback- Q&A-	Facilitator- David Wilkinson
How to resolve any outstanding issues?	Facilitator David Wilkinson
Communications to stakeholders-	Keith Massey
Next steps-	All
Closing remarks-	Keith Massey

MEETING REPORT:

ATTENDEES:-

Trustees

Malcolm Bell
Andrew Cooper
Allison Duncan
Robert Henderson
Tom McIntyre
Peter Malcolmson
Keith Massey
Ian Napier
Drew Ratter
Jeemie (James) Smith
Jonathan Wills

Ann Black- Shetland Charitable Trust
Kenneth Pinkerton- Turcan Connell
David Wilkinson- Institute of Directors
Raymond Mainland – Shetland Charitable Trust

Apologies

Bobby Hunter, Chair, Shetland Charitable Trust
Andrea Manson – Trustee
Amanda Westlake – Trustee
Nigel Scott – Institute of Directors

1. Meeting Process:-

Executive Summary

Through a matrix (page 31) that tables Trustee agreement or otherwise, recommendations numbers 3, 4, 5 and 9 were identified as needing further discussion. There were examined through three working groups and a subsequent Q&A.

The following actions and findings were agreed-

Recommendation	Actions
<p>No 3. That the number of Councillor Trustees is reduced from 7 to 4, which would provide for at least one Councillor Trustee to be a member in each of the three advisory committees, if appropriate. In addition the quorum should be revised to more than one half of the number of Trustees in office with a provision that not less than one half of the quorum must be Appointed Trustees.</p>	<ul style="list-style-type: none">• The need to create the situation where Councillor Trustees feel comfortable- partnership not conflict – Amend Administrative Regulations• Meet with the Council to further discuss recommendations
<p>No 4. All Appointed Trustees should continue to be selected.</p>	<ul style="list-style-type: none">• Selection process should continue
<p>No 5. The Council be asked to select 4 Councillors for the SCT Board having regard to the skills set as may be identified by the Trust and notified to the Council at the time of selection by the Council.</p>	<ul style="list-style-type: none">• Shetland Islands Council should appoint Councillor Trustees
<p>No 9. That SCT adjusts the Trust Deed to enable recruitment of Trustees from off island if, in the opinion of the Selection Panel, in consultation with the Chief Executive, such recruitment is necessary to ensure that the Board remains fit for purpose.</p>	<ul style="list-style-type: none">• Emphasise in report that off island Trustees would be very much the exception and only in the event of a material lack of skills coming forward on island.

2. Identifying- What we agree on-

After introductions, Keith Massey/David Wilkinson facilitated the Report recommendations, identifying where the majority agreed or disagreed –

Key recommendations:-

Identified by numbers in the matrix-

1. That it would be beneficial to the reputation of SCT to make further adjustments to the current governance processes as a result of lessons learned since the 2012 changes.
2. Retain the Board at 15 in number allowing for the Chair and Vice Chair to continue to sit on the Advisory committees, with the exception of the Chair who should not sit on the Audit and Governance Advisory Committee.
3. That the number of Councillor Trustees is reduced from 7 to 4, which would provide for at least one Councillor Trustee to be a member of each of the three Advisory Committees, if appropriate. In addition the quorum should be revised to more than one half of the number of Trustees in office with a provision that not less than one half of the quorum must be Appointed Trustees.
4. All Appointed Trustees should continue to be selected.
5. The Council be asked to select 4 Councillors for the SCT Board having regard to the skills set as may be identified by the Trust and notified to the Council at the time of selection by the Council.
6. Continue to elect the Chair from the body of Trustees.
7. The Trust contracts a competent and experienced person to Chair the Selection Panel. This person is to have good knowledge and experience in the use of assessable competencies.
8. That SCT makes every effort to create a more gender and age diverse Board.
9. That SCT adjusts the Trust Deed to enable recruitment of Trustees from off island if, in the opinion of the Selection Panel, in consultation with the Chief Executive, such recruitment is necessary to ensure that the Board remains fit for purpose.
10. There should not be an honorarium payment to any posts on the Board at this time.
11. All Trustees are provided with professional development opportunities in their roles, given opportunities to create close working relationships, are subjected to an annual review of performance and take part in an annual all Board review of Board performance.

Recommendations	Jeemie	Ian	Robert	Andrew	Jonathan	Malcolm	Allison	Peter	Keith	Drew	Tom	Total X
1. That it would be detrimental to the reputation of SCT if no further adjustments were made to the current governance processes										X		1
2. Retain the Board at 15 in number allowing for the Chair and Vice Chair to continue to sit on the Advisory committees, with the exception of the Chair who should not sit on the Audit and Governance Advisory Committee.	X					X						2
3. That the number of Councillor Trustees is reduced from 7 to 4, which would provide for at least one Councillor Trustee to be a member in each of the three advisory committees, if appropriate. In addition the quorum should be revised to more than one half of the number of Trustees in office with a provision that not less than one half of the quorum must be Appointed Trustees.			X	X	X	X	X			X	X	7
4. All Appointed Trustees should continue to be selected.			?	X	X		X					3
5. The Council be asked to select 4 Councillors for the SCT Board having regard to the skills set as may be identified by the Trust and notified to the Council at the time of selection by the Council.					X	X	X			X		4
6. Continue to elect the Chair from the body of Trustees										?		
7. The Trust contracts a competent and experienced person to Chair the Selection Panel. This person is to have good knowledge and experience in the use of assessable competencies.												
8. That SCT makes every effort to create a more gender and age diverse Board.		?										
9. That SCT adjusts the Trust Deed to enable recruitment of Trustees from off island if, in the opinion of the Selection Panel, in consultation with the Chief Executive, such recruitment is necessary to ensure that the Board remains fit for purpose		X	X	X	X		X					4
10. There should not be an honorarium payment to any posts on the Board at this time.						X				X		2
11. All Trustees are provided with professional development opportunities in their roles, given opportunities to create close working relationships, are subjected to an annual review of performance and take part in an annual all Board review of Board performance.												

Recommendations identified for discussion-

3. *That the number of Councillor Trustees is reduced from 7 to 4, which would provide for at least one Councillor Trustee to be a member in each of the three advisory committees, if appropriate. In addition the quorum should be revised to more than one half of the number of Trustees in office with a provision that not less than one half of the quorum must be Appointed Trustees.*

4. *All Appointed Trustees should continue to be selected.*

5. *The Council be asked to select 4 Councillors for the SCT Board having regard to the skills set as may be identified by the Trust and notified to the Council at the time of selection by the Council.*

9. *That SCT adjusts the Trust Deed to enable recruitment of Trustees from off island if, in the opinion of the Selection Panel, in consultation with the Chief Executive, such recruitment is necessary to ensure that the Board remains fit for purpose.*

1. Discussion groups:-

To address the challenges and findings for the above and to comment on:-

- a. What if any difficulties with the report?
- b. Where have we had issues since 2012?
- c. How do we resolve, take forward findings?

Three Groups-

Group A

Allison Duncan-Tom McIntyre- Ian Napier- Jonathan Wills

No- 3 - No council Trustees.

No 4- All Trustees should be appointed by the same route- (Practicalities).

No 5. – Superseded by No 3.

No 9- No off Island Trustees.

Added comments:-

- If it isn't broke, don't fix it.
- In the light of the May 2017 elections.

Group B

Andrew Cooper- Robert Henderson- Peter Malcolmson- Drew Ratter

No 3- No Council Trustees- (Issue of Admin. Regulations)

No 4-Appointed Trustees should be selected.

No 5- Council Trustees- Mindful of the required skill sets required.

No 9 – Off Island Trustees- only by exception- as a result 'real' inadequate local skill set.

Group B – Added comments:-

- Positive response to the new Governance.
- Remuneration – Not now.
- Freedom for better engagement with the Public.

Group C

Malcolm Bell- Keith Massey- Jeemie Smith

No.3- Same as B- No Council Trustees.

No 4- Appointed Trustees should be selected.

No- 5 –Council Trustees should be appointed.

No 9-Off island Trustees - only by exception.

Added comments:-

- No Council Trustees- Conflict of interests.
- Much has been achieved since 2012.
- Partnership with the Council.

Feedback – Q&A- comments-

1. Skill set-Need to formalise the current Trustee skills set, identifying gaps.
2. The importance of improved gender diversity.
3. The Shetland Charitable Trust is not an ALEO.

Follow up Actions-

1	The need to create the situation where Councillor Trustees feel comfortable- partnership not conflict – Amend Administrative Regulations
2	Meet with the Council to further discuss recommendations
3	Selection process should continue
4	Shetland Islands Council should appoint Councillor Trustees
5	Emphasise in report that off island Trustees would be very much the exception and only in the event of a material lack of skills coming forward on island.

David Wilkinson

23 February 2016

REPORT

To: Shetland Charitable Trust

Date 12 May 2016

From: Chief Executive

Report: CT1605020

Amendment to Administrative Regulations

1. Introduction

- 1.1 This report seeks to amend the Trust's Administrative Regulations to reflect the procedure to be adopted when there is a conflict of interest between the Trust and another body.

2. Background

- 2.1 At their meeting on 28 March 2013, Trustees agreed to adopt the Trust's new Administrative Regulations, reflecting the new Governance Arrangements of the Trust (CT1303005).
- 2.2 At their meeting on 26 June 2014, Trustees were asked to consider a report which presented a conflict of interest between the Trust and the Council in terms of Regulation 2.9 (CT1406025). It was felt that the Administrative Regulations required to be amended to record a process which should be followed when a similar conflict arises.
- 2.3 At their meeting on 11 September 2014, Trustees agreed an amendment to the Administrative Regulations to reflect the procedure to be adopted when there is a conflict of interest primarily between the Trust and the Council (CT1409031).

3. Present Position

- 3.1 A Governance Review Workshop was held for Trustees on 16 March 2016 to discuss the proposed changes to the Governance of the Shetland Charitable Trust.
- 3.2 A number of Trustees requested a review of regulation 2.9.4 because they believe that this regulation prevents Councillor Trustees from managing conflicts of interest on an individual basis. In particular, they consider that the authority given to the Chair and Chief Executive under this regulation undermined their ability to carry out their role as a Trustee effectively.
- 3.3 Furthermore, as the law relating to conflicts of interest apply to all Trustees it should be include all Trustees and not only Councillor Trustees.

3.4 The following paragraphs explain the reasons behind the main changes to the current Administrative Regulations.

3.4.1 Councillor Trustees are appointed as Trustees by the Council. As such, they fall squarely within the requirements of section 66(1)(c) of the Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act") which provides that:-

"in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee—

- (i) put the interests of the charity before those of the other person, or
- (ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question"

The proposed revisals to the Administrative Regulations make it clear that manner in which a trustee must act where a conflict exists set out in this section applies to all Trustees.

3.4.2 The proposed revisals to the Administrative Regulations clarify that trustees can take part in the decision making process where the circumstances are such that they cannot reasonably be regarded as likely to give rise to a conflict of interest. However, it is not possible to extend that to Councillor Trustees in circumstances arising between the Trust and the Council since to do so would be contrary to the provisions of the 2005 Act.

3.4.3 Failure to declare a conflict of interest and act accordingly is a breach of the duties of charity trustees in terms of section 66 of the 2005 Act. Section 66 (5) of the 2005 Act provides that:-

"All charity trustees must take such steps as are reasonably practicable for the purposes of ensuring—

- (a) that any breach of a duty under subsection (1) or (2) is corrected by the trustee concerned and not repeated, and
- (b) that any trustee who has been in serious or persistent breach of either or both of those duties is removed as a trustee."

The proposed revisals to the Administrative Regulations allow any Trustee to draw an undeclared interest to the attention of the Chair who will then declare the interest. The Trustee must then act as if he or she had made the declaration.

3.4.4 Regulation 2.9.4 relating to confidentiality and arrangements for the storage of documents and Minutes by the Chief Executive when circumstances arise capable of giving rise to a conflict of interest has been deleted in its entirety. This is in line with the recommendation that the primary responsibility for decisions relating to conflicts of interest rests with the Trustees. Trustees remain bound by the Regulation 4.4 relating to Confidentiality and the provisions of the Code of Conduct.

3.5 It is therefore proposed to change the Administrative Regulations as per Appendix A to Appendix B.

4. Financial Implications

4.1 There are no financial implications arising from this report.

5. Recommendations

5.1 Trustees are asked to approve the amendment to the Administrative Regulations attached as Appendix B.

Reference: TA1
Date: 2 May 2016

Report Number CT1605020

Current Section 2.9 of Shetland Charitable Trust Administrative Regulations adopted on 28 March 2013 and last amended on 11 September 2014.

2.9 Conflicts of Interest

2.9.1 Trustees have a duty to manage any conflicts of interest. Conflicts of interest may create problems, such as:

- (a) inhibit free discussion;
- (b) result in decisions or actions that are not in the interests of the Trust; and
- (c) risk giving the impression that the Trust has acted improperly.

2.9.2 In terms of Section 66 (c) of the Charities Act Trustees must:-

“in circumstances capable of giving rise to a conflict of interest between the Trust and any person responsible for the appointment of the Trustees:-

- (i) put the interests of the Trust before those of the other person; or
- (ii) where any other duty prevents the Trustee from doing so, disclose the conflicting interest to the Trust and refrain from participating in any deliberation or decision of the other Trustees with respect to the matter in question.”.

2.9.3 In terms of the general law, conflicts of interest also arise in circumstances where there is a conflict or the possibility of a conflict of interest between:-

- (a) the personal interests of a Trustee and those of the Trust; and
- (b) the concerns of two different organisations to which a Trustee is affiliated.

2.9.4 If, in the opinion of the Chair, or if the Chair is a Councillor Trustee, the Vice Chair, or if both the Chair and the Vice Chair are Councillor Trustees an Appointed Trustee chosen by the Appointed Trustees, in consultation with the Chief Executive, circumstances arise capable of giving rise to a conflict of interest between the Trust and the Council then:-

- 2.9.4.1 the Chief Executive will advise the Trustees that such circumstances have arisen and the nature of those circumstances;
- 2.9.4.2 the appointed Trustees shall be deemed to be a sub-group of the Trust for the purposes of Regulation 4.4.2;
- 2.9.4.3 the Chief Executive will advise the Trustees of the decision relating to the circumstances once taken by the Appointed Trustees;
- 2.9.4.4 the documents and any subsequent Minute relating to the circumstances shall be deemed to be confidential by the Chief Executive for the purposes of Regulation 4.4;

2.9.4.5 the Chief Executive shall make all and any such other arrangements as he/she deems fit to ensure that the matter is dealt with appropriately including but not restricted to any meeting relating to the circumstances and the taking and storage of documents and Minutes relating to the circumstances.

2.9.5 Generally, in deciding whether a conflict, or a potential conflict, of interests exists, Trustees should consider whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it would be likely to prejudice a Trustee's discussion or decision-making in his/her role as a Trustee.

Declarations of Interest

2.9.6 Accordingly, Trustees are asked to declare their interests, as follows:-

- (a) current employment and any previous employment in which they continue to have a financial interest;
- (b) appointments (voluntary or otherwise) eg trusteeships, directorships, local authority membership, tribunals, etc;
- (c) membership of any professional bodies, special interest groups or mutual support organisations;
- (d) ownership or lease of land and property;
- (e) ownership and interests in companies (with limits specified);
- (f) any tenancy of premises owned by the Trust;
- (g) gifts or hospitality offered by external bodies and whether this was declined or accepted in the last twelve months;
- (h) any use, or care for a user of, the Trust's services;
- (i) any contractual relationship with the Trust or its subsidiary.

Interests will be recorded on the Trust's Register of Interests, which will be maintained by the Chief Executive.

2.9.7 The information provided will be processed in accordance with data protection principles and data will be processed only to ensure that Trustees act in the best interests of the Trust. The information provided will not be used for any other reason.

Management of Conflicts of Interest at Trustees' Meetings

2.9.8 Trustees need to declare an interest, refrain from taking part in the deliberations and withdraw from the room in the following circumstances:

- (a) Trustees or a person with whom a Trustee is connected are about to enter into a transaction (for example a contract or a grant, etc) with the Trust.
- (b) the Trustee or a person with whom the Trustee is connected is a user of the Trust's Services.

2.9.9 Where the following persons are "connected" with the Trustee

- (a) Any person
 - (i) to whom the Trustee is married;

- (ii) who is a civil partner of the Trustee; or
 - (iii) with whom the Trustee is living as husband and wife or, where the Trustee and the other person are of the same sex, in equivalent relationship.
- (b) Any child, parent, grandchild, grandparent, brother or sister of the Trustee (and any spouse of any such person)
- (c) Any institution which is controlled (whether directly or through one or more nominees) by
 - (i) the Trustee;
 - (ii) any person with whom the Trustee is connected by virtue of paragraph (a), (b), (d) or (e) or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together.
- (d) A body corporate in which
 - (i) the Trustee has a substantial interest;
 - (ii) any person with whom the Trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii) when taken together have a substantial interest.
- (e) A Scottish partnership in which one or more of the partners is
 - (i) the Trustee or
 - (ii) a person with whom the Trustee is virtue of paragraph (a) or (b) connected.

2.9.10 For the purposes of the foregoing a person who is

- (a)
 - (i) another person's stepchild, or
 - (ii) brought up or treated by another person as if the person were a child of the other person,

is to be treated as that person's child;
- (b) able to secure that the affairs of an institution are conducted in accordance with the person's wishes is to be treated as being in control of the institution; and
- (c)
 - (i) interested in shares comprised in the equity share capital of a body corporate of a nominal value of more than one-fifth of that share capital; or
 - (ii) entitled (whether directly or through one or more nominees) to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of a body corporate, is to be treated as having substantial interests in the body corporate.

2.9.11 If a Trustee fails to declare an interest that is known to the Chair of the Trust, the Chair will declare that interest at the outset of the discussion.

2.9.12 The Office of the Scottish Charity Regulator ("OSCR"), established by the Charities Act, has published guidance for Trustees which deals with, amongst

other things, the general duties of Trustees and conflicts of interest. It is worth noting that this is OSCR's interpretation of the duties in terms of the Charities Act and does not itself have any binding effect on Trustees. It is however published guidance circulated by OSCR and ought to at least be considered when a decision is being made with regard to whether or not a conflict of interest exists. A flow chart follows, summarising how a Trustee ought to manage Conflicts of Interest.

Proposed Amendment to Section 2.9 of Shetland Charitable Trust Administrative Regulations adopted on 28 March 2013 and last amended on 11 September 2014.

2.9 Conflicts of Interest

2.9.1 Trustees have a duty to manage any conflicts of interest. Conflicts of interest may create problems, such as:

- (a) inhibit free discussion;
- (b) result in decisions or actions that are not in the interests of the Trust; and
- (c) risk giving the impression that the Trust has acted improperly.

2.9.2 In law, conflicts of interest may arise in circumstances where there is a conflict or the potential of a conflict of interest between:-

- (a) the personal interests of a Trustee and those of the Trust;
- (b) the concerns of two different organisations to which a Trustee is affiliated; and
- (c) in terms of Section 66 (c) of the Charities Act Trustees which provides that:-

“in circumstances capable of giving rise to a conflict of interest between the Trust and any person responsible for the appointment of the Trustees:-

- (i) put the interests of the Trust before those of the other person; or
- (ii) where any other duty prevents the Trustee from doing so, disclose the conflicting interest to the Trust and refrain from participating in any deliberation or decision of the other Trustees with respect to the matter in question.”.

2.9.3 Generally, in deciding whether a conflict, or a potential conflict, of interests exists, Trustees should consider whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it would be likely to prejudice a Trustee’s discussion or decision-making in his/her role as a Trustee.

Declarations of Interest

2.9.4 Accordingly, Trustees are asked to declare their interests, as follows:-

- (a) current employment and any previous employment in which they continue to have a financial interest;
- (b) appointments (voluntary or otherwise) eg trusteeships, directorships, local authority membership, tribunals, etc;
- (c) membership of any professional bodies, special interest groups or mutual support organisations;

- (d) ownership or lease of land and property;
- (e) ownership and interests in companies (with limits specified);
- (f) any tenancy of premises owned by the Trust;
- (g) gifts or hospitality offered by external bodies and whether this was declined or accepted in the last twelve months;
- (h) any use, or care for a user of, the Trust's services;
- (i) any contractual relationship with the Trust or its subsidiary.

Interests will be recorded on the Trust's Register of Interests, which will be maintained by the Chief Executive.

- 2.9.5 The information provided will be processed in accordance with data protection principles and data will be processed only to ensure that Trustees act in the best interests of the Trust. The information provided will not be used for any other reason.

Management of Conflicts of Interest at Trustees' Meetings

- 2.9.6 Subject to clause 2.9.7, a Trustee must declare an interest, refrain from taking part in the deliberations and withdraw from the room where circumstances arise capable of giving rise to a conflict of interest between the Trust and:

- (a) a Trustee or a person with whom a Trustee is connected;
- (b) a Trustee, or a person with whom the Trustee is connected, as a user of the Trust's Services;
- (c) an organisation to which a Trustee is affiliated, ie owes a fiduciary duty to; and
- (d) a person responsible for the appointment of a Trustee.

- 2.9.7 If a Trustee believes that the circumstances which have arisen cannot reasonably be regarded as likely to give rise to a conflict of interest then, having declared an interest, such Trustee may take part in the deliberations and decision-making process with the exception of circumstances arising between the Trust and a person responsible for the appointment of a Trustee as outlined in paragraph 2.9.6.

- 2.9.8 If a Trustee fails to declare an interest that is known to any other Trustee, then such other Trustee shall draw it to the attention of the Chair of the Trust and the Chair will declare that interest at the outset of the discussion and the Trustee who has failed to declare the interest must act accordingly in terms of clause 2.9.6.

- 2.9.9 With reference to Clause 2.9.6 the following persons are "connected" with the Trustee

- (a) Any person
 - (i) to whom the Trustee is married;
 - (ii) who is a civil partner of the Trustee; or
 - (iii) with whom the Trustee is living as husband and wife or, where the Trustee and the other person are of the same sex, in equivalent relationship.

- (b) Any child, parent, grandchild, grandparent, brother or sister of the Trustee (and any spouse of any such person)
- (c) Any institution which is controlled (whether directly or through one or more nominees) by
 - (i) the Trustee;
 - (ii) any person with whom the Trustee is connected by virtue of paragraph (a), (b), (d) or (e) or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together.
- (d) A body corporate in which
 - (i) the Trustee has a substantial interest;
 - (ii) any person with whom the Trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii) when taken together have a substantial interest.
- (e) A Scottish partnership in which one or more of the partners is
 - (i) the Trustee or
 - (ii) a person with whom the Trustee is virtue of paragraph (a) or (b) connected.

2.9.10 For the purposes of the foregoing a person who is

- (a)
 - (i) another person's stepchild, or
 - (ii) brought up or treated by another person as if the person were a child of the other person,
 is to be treated as that person's child;
- (b) able to secure that the affairs of an institution are conducted in accordance with the person's wishes is to be treated as being in control of the institution; and
- (c)
 - (i) interested in shares comprised in the equity share capital of a body corporate of a nominal value of more than one-fifth of that share capital; or
 - (ii) entitled (whether directly or through one or more nominees) to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of a body corporate, is to be treated as having substantial interests in the body corporate.

2.9.11 The Office of the Scottish Charity Regulator ("OSCR"), established by the Charities Act, has published guidance for Trustees which deals with, amongst other things, the general duties of Trustees and conflicts of interest. It is worth noting that this is OSCR's interpretation of the duties in terms of the Charities Act and does not itself have any binding effect on Trustees. It is however published guidance circulated by OSCR and ought to at least be considered when a decision is being made with regard to whether or not a conflict of interest exists. A flow chart follows, summarising how a Trustee ought to manage Conflicts of Interest.

REPORT

To: Shetland Charitable Trust

Date: 12 May 2016

From: Chief Executive

Report: CT1605021

Management Accounts – Twelve Months Ended 31 March 2016

1 Introduction

1.1 The purpose of this report is to present the Trust's Management Accounts to the end of March 2016, for noting. These Management Accounts deal with all income and expenditure of the Trust.

2 Management Accounts

2.1 Table 1 below shows the Summary Budget for the Charitable Trust for 2015/16 and the results in the twelve months to 31 March 2016.

Table 1: Summary Management Accounts 2015/16

Item	Current Budget £m	Spend to Mar 2016 £m
Income	8.1	4.9
Disbursements	(8.7)	(8.7)
Management and Administration	(0.7)	(0.6)
Fund Managers Fees	(0.4)	(0.5)
Loss on Investments	-	(4.6)
Total	(1.7)	(9.5)

2.2 A more detailed analysis of the figures above is set out in Appendix A.

2.3 The main item of expenditure which is over budget is professional fees. This is due to the cost of the investment strategy review which was not included in the 2015/16 budget set in February 2015.

2.4 In the first twelve months of the year due to uncertainties in the market the Trust made a loss on its investments of £4,554,853.

3 Financial Implications

3.1 No direct financial implications flow from this information report.

4 Recommendations

4.1 Trustees are asked to note the satisfactory financial performance to 31 March 2016, as shown in the Management Accounts in Appendix A.

Reference: DA5
Date: 2 May 2016

Report No: CT1605021



Shetland Charitable Trust

Management Accounts

12 Months Ended 31 March 2016

**Shetland Charitable Trust
Income and Expenditure
Period to 31 March 2016**

	<u>12 Month Actual £</u>	<u>Annual Budget £</u>	<u>Variance £</u>
<u>Income</u>			
Managed fund dividends	3,877,665	5,066,000	(1,188,335)
Agricultural loan interest	5,259	9,996	(4,737)
Local equity gift aid	6,799	2,084,794	(2,077,995)
Rental income	956,226	1,020,500	(64,274)
Bank interest	6,980	-	6,980
Miscellaneous income	45,125	-	45,125
	<u>4,898,054</u>	<u>8,181,290</u>	<u>(3,283,236)</u>
<u>Expenditure</u>			
Agricultural loan expenditure	(999)	-	(999)
Disbursements	(8,743,143)	(8,790,552)	47,409
Management and administration	(612,367)	(652,130)	39,763
Fund managers	(527,023)	(412,324)	(114,699)
	<u>(9,883,532)</u>	<u>(9,855,006)</u>	<u>(28,526)</u>
Gain/(Loss) on investments	(4,554,853)	-	(4,554,853)
Surplus/(Deficit)	<u>(9,540,331)</u>	<u>(1,673,716)</u>	<u>(7,866,615)</u>

Shetland Charitable Trust
Balance Sheet
Period to 31 March 2016

	Mar-16	
	£	£
Tangible fixed assets		5,953,020
Investments		<u>223,109,352</u>
		<u>229,062,372</u>
Trade debtors	28,122	
Prepayments and Accrued income	316,344	
Other debtors	65,860	
Bank	<u>3,527,389</u>	
	3,937,715	
Trade creditors	129,534	
Accruals and deferred income	176,940	
Amounts owed to subsidiary	236,212	
Other creditors	<u>11,663</u>	
	554,349	
Net current assets		<u>3,383,366</u>
		232,445,738
Pension liability		(1,625,000)
		<u>230,820,738</u>
Opening reserves		240,361,301
Surplus for period		<u>(9,540,331)</u>
Closing reserves		<u>230,820,970</u>

Shetland Charitable Trust
Rental Income
Period to 31 March 2016

	<u>12 Month Actual £</u>	<u>Annual Budget £</u>	<u>Variance £</u>
Sullom Voe Site	935,726	1,000,000	(64,274)
District heating	20,000	20,000	-
Shetland Golf Course	500	500	-
	<u>956,226</u>	<u>1,020,500</u>	<u>(64,274)</u>

Shetland Charitable Trust
Disbursements
Period to 31 March 2016

	12 Month Actual £	Annual Budget £	Variance £
Shetland Amenity Trust	1,052,728	1,052,728	-
Shetland Arts Development Agency	696,038	696,038	-
Shetland Recreational Trust	2,518,000	2,518,000	-
Other Charitable Organisations			
Disability Shetland Recreation Club	12,641	12,641	-
The Swan Trust	44,650	44,650	-
Shetland Churches Council Trust	54,004	54,004	-
Shetland Befriending Scheme	54,418	54,418	-
Citizens Advice Bureau	132,265	132,265	-
COPE Limited	154,967	154,967	-
Shetland Link Up	47,994	47,994	-
Voluntary Action Shetland	126,461	126,461	-
Festival Grants	30,000	30,000	-
Local Charitable Organisations	11,552	14,000	(2,448)
Royal Voluntary Service	46,985	46,985	-
Sub Total Charitable Organisations	4,982,703	4,985,151	(2,448)
Schemes			
Community Support Grants	52,175	54,241	(2,066)
Arts Grant Scheme	22,197	35,000	(12,803)
Senior Citizens Clubs	12,336	15,000	(2,664)
Support to Rural Care Model	2,407,500	2,407,500	-
Buses for Elderly and Disabled	49,980	49,980	-
Sub Total Schemes	2,544,188	2,561,721	(17,533)
Direct Schemes			
Planned Maintenance	1,243,680	1,243,680	-
Sub Total Direct Schemes	1,243,680	1,243,680	-
Surplus Grants Refunded	(27,428)	-	(27,428)
Total	8,743,143	8,790,552	(47,409)

* These budgets have been modified by subsequent decisions of the Trust

Shetland Charitable Trust
Management and Administration Expenditure
Period to 31 March 2016

	12 Month Actual £	Annual Budget £	Variance £
Basic Pay and Allowances	242,962	290,000	(47,038)
Professional Membership Fees	431	1,700	(1,269)
Staff recruitment	534	5,000	(4,466)
Travel and Subsistence	6,313	6,000	313
Training and Staff Development	2,305	3,010	(705)
Sub Total Staffing Costs	252,545	305,710	(53,165)
Operating Costs			
Insurance	10,493	11,000	(507)
Administration	1,828	5,900	(4,072)
Supplies and Services	6,258	7,000	(742)
Bank Charges	222	500	(278)
Professional Fees: Other	53,022	20,000	33,022
External Audit Fees	21,000	25,000	(4,000)
Financial advice - internal investments	38,532	50,000	(11,468)
Trustees Expenses	4,381	4,000	381
Meeting expenses	2,585	2,700	(115)
Legal Fees	47,365	50,000	(2,635)
Trustee Recruitment Costs	30	3,000	(2,970)
Sub Total Operating Costs	185,716	179,100	6,616
Property Costs			
Energy Costs	7,818	6,000	1,818
Water Rates	1,200	2,000	(800)
Maintenance - Garrison Theatre	8,437	30,000	(21,563)
Maintenance - 22-24 North Road	8,221	12,660	(4,439)
Cleaning	1,292	2,500	(1,208)
Sub Total Property Costs	26,967	53,160	(26,193)
Bad debt write off	31,885	45,125	(13,240)
Bought In Services			
Treasury	33,618	33,000	618
Payroll	1,386	2,860	(1,474)
Pension	(116)	3,000	(3,116)
Building Maintenance	49,000	49,000	-
Committee Services	12,000	12,000	-
Computer Services	4,080	7,000	(2,920)
HR Service	6,125	4,000	2,125
Messenger Service	1,000	1,000	-
Media Services	6,000	-	6,000
Insurance Admin	2,160	2,300	(140)
Sub Total Bought In Services	115,254	114,160	1,094
Total	612,367	652,130	(39,763)

Shetland Charitable Trust
Investment expenses
Period to 31 March 2016

	<u>12 Month Actual £</u>	<u>Annual Budget £</u>	<u>Variance £</u>
Managed Fund Misc	76,450	-	76,450
Fund Managers fees	-	30,000	(30,000)
Black Rock fees	127,255	128,000	(745)
WM Company fees	13,722	12,324	1,398
Northern Trust fees	40,000	40,000	-
Insight Investment fees	190,004	138,000	52,004
Schroders fees	79,592	64,000	15,592
	<u>527,023</u>	<u>412,324</u>	<u>114,699</u>

REPORT

To: Shetland Charitable Trust

12 May 2016

From: Chief Executive

Report: CT1605022

FUND MANAGER TRANSACTIONS

1. Introduction

1.1 Shetland Islands Council provides Treasury support to Shetland Charitable Trust under the terms of a Service Level Agreement (SLA).

2. Investment Decisions

2.1 Appendix A lists the investment decisions made by Insight Investment Management Limited during February and March 2016.

2.2 Appendix B lists the investment decisions made BlackRock by during February and March 2016.

2.3 No purchases or sales were made by Schroder Investment Management Limited during February and March 2016.

2.4 These appendices list purchases in order of transaction size and sales in order of the size of the gain or loss made on the transaction.

2.5 The Fund Managers make investment decisions based on the terms of Investment Management Agreements.

3. Movement on Charitable Trust Funds

3.1 The following table shows the movement in the Charitable Trust's funds during the 2015/16 financial year to 31st March 2016:

2015/16	£ million
Mkt Value at 1 Apr 2015	207.0
Market Movement	0.1
Injection/(Withdrawal)	(7.1)
Mkt Value at 31 Mar 2016	<u>200.0</u>

(These are unaudited figures and are for information only.)

4. Recommendation

4.1 The Trustees are asked to note this report.

APPENDIX A)

INSIGHT INVESTMENT MGMT REPORT - PURCHASES

NAME OF SECURITY	DATE	NUMBER OF UNITS	PURCHASE PRICE (£)
------------------	------	-----------------	--------------------

UNITED KINGDOM

INSIGHT LIQUIDITY ILF GBP LIQUIDITY 2	07/03/2016	85,000.00	85,000.00
INSIGHT LIQUIDITY ILF GBP LIQUIDITY 2	08/03/2016	25,000.00	25,000.00
INSIGHT LIQUIDITY ILF GBP LIQUIDITY 2	09/03/2016	20,000.00	20,000.00
INSIGHT LIQUIDITY ILF GBP LIQUIDITY 2	01/02/2016	686.43	686.45
INSIGHT LIQUIDITY ILF GBP LIQUIDITY 2	01/03/2016	373.92	373.95

TOTAL UNITED KINGDOM

131,060.40

OVERSEAS

NO OVERSEAS INVESTMENTS PURCHASED

TOTAL OVERSEAS

0.00

INSIGHT INVESTMENT MGMT REPORT - SALES

NAME OF SECURITY	DATE	NUMBER OF UNITS	PURCHASE PRICE (£)	PROFIT/ (LOSS) (£)
------------------	------	-----------------	--------------------	--------------------

UNITED KINGDOM

INSIGHT LIQUIDITY ILF GBP LIQUIDITY 2	03/02/2016	630,000.00	630,000.00	0.00
INSIGHT LIQUIDITY ILF GBP LIQUIDITY 2	17/03/2016	10,000.00	10,000.00	0.00
INSIGHT LIQUIDITY ILF GBP LIQUIDITY 2	19/02/2016	5,000.00	5,000.00	0.00

TOTAL UNITED KINGDOM

645,000.00 0.00

OVERSEAS

NO OVERSEAS INVESTMENTS SOLD

TOTAL OVERSEAS

0.00 0.00

BLACKROCK REPORT - PURCHASES

NAME OF SECURITY	DATE	NUMBER OF UNITS	PURCHASE PRICE (£)
UNITED KINGDOM			
BLACKROCK ADVS(UK) CHARITRAK UK EQTY IDXX INC	09/03/2016	12,105.28	11,400.75
TOTAL UNITED KINGDOM			<u>11,400.75</u>
OVERSEAS			
NO OVERSEAS INVESTMENTS PURCHASED			
TOTAL OVERSEAS			<u>0.00</u>

BLACKROCK REPORT - SALES

NAME OF SECURITY	DATE	NUMBER OF SHARES	SELLING PRICE (£)	PROFIT/ (LOSS) (£)
UNITED KINGDOM				
BLACKROCK ADVS(UK) CHARITRAK UK EQTY IDXX INC	21/03/2016	1,185,475.94	1,124,542.48	-58,472.48
TOTAL UNITED KINGDOM			<u>1,124,542.48</u>	<u>-58,472.48</u>
OVERSEAS				
BLACKROCK AM (IE) BGI NORTH AMERICAN IDXNAV	21/03/2016	53,111.23	831,223.33	461,745.89
BLACKROCK AM (IE) IDX SELECTION EURO EX UK AC	21/03/2016	40,187.58	682,615.37	208,351.72
BLACKROCK AM (IE) BGI PACIFIC RIM INDEX ACC	21/03/2016	12,541.96	361,618.82	151,073.26
TOTAL OVERSEAS			<u>1,875,457.52</u>	<u>821,170.87</u>

REPORT

To: Shetland Charitable Trust

Date: 12 May 2016

From: Chief Executive

Report No: CT1605023

Small Grant Schemes - Approvals

1. Background

- 1.1 On 17 December 2015 Trustees approved its disbursements for 2016-2017 (Minute Reference 91/15). A budget of £30,000 was approved for the Arts Grant Scheme and £15,000 for Senior Citizens Clubs.
- 1.2 It is a requirement that all approvals are reported to subsequent Trust Meetings.

2. Arts Grant Scheme - £3,433

- 2.1 The following Arts Grants were approved by the Director of Development Services, in consultation with Shetland Arts, in the period 1 April 2016 to 2 May 2016: -

Name of Individual/Organisation	Grant Approved (£)
Mr Christopher Laurenson (on behalf of Amy Laurenson)	431
Mrs Helen Tait (on behalf of Joanne Tait)	415
Mrs Gillian Murphy (on behalf of Claire Murphy)	146
Mrs Liz Polson (on behalf of Lara Polson)	732
Mrs Liz Polson (on behalf of Ryan Polson)	426
Shetland Folk Society	1,283

3. Senior Citizens Clubs - £2,100

- 3.1 The following Senior Citizens Club grants were approved by the Director of Community Health & Social Care, in the period 1 April 2016 to 2 May 2016: -

Name of Organisation	Grant Approved (£)
South Mainland Community Association – Senior Citizens	2,100

4. Recommendation

- 4.1 Trustees are asked to note the approvals listed in paragraph 2.1 and 3.1 above.

Ref: DA1
Date: 2 May 2016

Report No: CT1605023

REPORT

To: Shetland Charitable Trust

Date: 12 May 2016

From: Chief Executive

Report: CT1605024

Capital Works Bridging Loan Scheme

1. Introduction

- 1.1 This report updates Trustees on the Capital Works Bridging Loan Scheme.

2. Background

- 2.1 On 18 March 2010, Trustees agreed to provide short term bridging finance to community organisations undertaking capital projects. The interest free loans are used to alleviate cash flow problems when waiting for funding from EU, Scottish Government, SRDP, LEADER, ERDF and/or lottery grants to come through. (Min. Ref. CT15/10)
- 2.2 Funding for capital projects is only released once work has been completed and invoices paid. This creates an almost insurmountable cashflow burden for most organisations.
- 2.3 A total of £1 million was set as the maximum available at any one time.

3. Present Position

- 3.1 Appendix A lists each bridging loan made to date. 26 organisations have received a bridging loan and all 26 have now fully repaid their loans. In total £2,223,796 has been repaid.
- 3.2 Feedback on the scheme from organisations has been very positive.

4. Financial Implications

- 4.1 There are no new implications arising from this report. However, it should be noted that the provision of interest free loans means that the capital involved is not generating investment return.

5. Conclusion

- 5.1 Twenty six projects have been undertaken by community groups throughout Shetland. It is likely that these projects would not have taken place without the support of the Trust's scheme.

6. Recommendation

- 6.1 Trustees are recommended to note this report.

Reference: D19
Date: 2 May 2016

Report Number: CT1605024

Capital Works Bridging Loan Scheme

CT1605024 – Appendix A

Project	Bridging Loan £	Repaid £	Due to SCT £	Notes
Burravoe Pier	25,650	25,650		
Ollaberry Hall	110,000	110,000		
Bressay Sports Park	114,537	114,537		
Scalloway Museum	345,000	345,000		
Fair Isle Hall	62,000	62,000		
Sandsayre Pier	170,000	170,000		
Sandness Hall	100,000	100,000		
Northmavine Club	26,640	26,640		
Hillswick Hall	100,000	100,000		
Fetlar Electric Minibus	35,600	35,600		
Mareel	276,505	276,505		
Sumburgh Lighthouse	120,000	120,000		
Aith Public Hall	9,900	9,900		
Collafirth Marina	58,320	58,320		
South Nesting Public Hall	88,442	88,442		
Aithsvoe Marina	68,202	68,202		
Germatwatt Centre	10,000	10,000		
Shetland Skatepark Association	62,179	62,179		
Hoswick Visitor Centre	46,000	46,000		
Scalloway Boating Club	49,022	49,022		
Aithsvoe Marina- Loan 2	41,867	41,867		
Scalloway Museum- Loan 2	41,041	41,041		
Burravoe Public Hall	43,000	43,000		
Shetland Moving Image Archive (SMIA)	3,231	3,231		
Fetlar Developments Ltd - Loan 2	84,360	84,360		
Sumburgh Lighthouse – Loan 2	132,300	132,300		Repaid April 2016
TOTAL	2,223,796	2,223,796	0	

REPORT**To:** Shetland Charitable Trust

12 May 2016

From: Chief Executive

Report: CT1605025

Payments to Trustees in the year to 31 March 2016**1. Introduction**

1.1 This report is presented to show the payments which have been made to Trustees in the year to 31 March 2016.

2. Background

2.1 Trustees are entitled by law and in terms of their Trust Deed, to "reimburse the Trustees out of the Trust Fund for all expenses reasonably incurred by them in connection with the administration of the Trust".

2.2 At their meeting on 28 May 2009, Trustees requested that the payments made to Trustees are published (Min Ref CT/39/09).

3. Present Position

3.1 A spreadsheet is attached as Appendix 1, showing the expenses which have been paid to Trustees in the year to 31 March 2016, totalling £4295.93.

3.2 This is an overspend of £295.93, due to the Trust meeting more often than had been anticipated in the budget.

4. Financial Implications

4.1 A budget of £4,000 was set aside for payments to Trustees.

5. Recommendation

5.1 This report is for noting.

Reference: TA21/2
Date: 2 May 2016

Report Number CT1605025

Name	Position		Total 15/16
			£
Mr B Hunter	Chair		1447.35
Dr J Wills	Vice Chair		0
Mr M Bell			0
Dr A Cooper			0
Mr A Duncan			0
Mr R Henderson			991.68
Rev T Macintyre			0
Mr P Malcolmson			0
Ms A Manson			0
Mr K Massey			0
Dr I Napier			0
Mr D Ratter			1548.20
Mr J Smith			214.20
Ms A Westlake			0
Mr T Morton	Resigned		94.50
TOTAL			4295.93

REPORT

TO: Shetland Charitable Trust

12 May 2016

FROM: Chief Executive

Report: CT1605026

Trustee Attendance at meetings in the year to 31 March 2016

1. Introduction

- 1.1 This report is presented to show Trustee attendance at Trust Meetings in the financial year to 31 March 2016.

2. Background

- 2.1 The Schedule of Governance Arrangements referred to in the 2012 Deed of Trust dated 13th and 14th September 2012 states at paragraph 6(d) "Trustees shall be required to attend in person at least one-half of Trustee meetings in each financial year of the Trust and if they do not such failure to attend may be treated as grounds on which the remaining Trustees may remove such Trustee by a resolution passed by a 75% majority of those attending and voting thereon."

3. Present Position

- 3.1 A table is attached as Appendix 1, showing Trustee attendance at Trustee Meetings in the financial year to 31 March 2016.

4. Recommendation

- 4.1 This report is for noting.

Reference: EM//TA48
Date: 29 April 2016

Report Number CT1605026

Trustee Attendance at Trustee Meetings in the financial year to 31 March 2016

CT1605026 Appendix A

Name	28 May 2015	2 July 2015	10 Sept 2015	10 Sept 2015 AGM	12 Nov 2015	10 Dec 2015	17 Dec 2015 (Special Meeting)	18 Feb 2015	31 Mar 2015
J Smith	✓	MEETING NOT REQUIRED —————→	✓	✓	✓	✓	✓	✓	✓
I Napier	✓		✓	✓	✓	✓	✓	✓	✓
B Hunter	✓		✓	✓	✓	✓	✓	✓	✓
K Massey	✓		✓	✓	✓	✓	✓	✓	✓
M Bell	✓		✓	A	A	A	A	✓	✓
D Ratter	A		✓	✓	✓	✓	A	✓	✓
J Wills	A		✓	A	A	A	✓	✓	✓
A Manson	✓		✓	✓	✓	✓	A	✓	✓
R Henderson	✓		✓	✓	✓	✓	✓	✓	✓
A Duncan	A		✓	✓	✓	✓	✓	✓	✓
A Westlake	✓		✓	A	A	A	A	✓	✓
T Morton	A		✓	✓	✓	✓	✓	✓	✓
P Malcolmson	✓		✓	A	A	✓	✓	✓	✓
A Cooper	✓	✓	✓	✓	✓	✓	✓	✓	
T Macintyre		✓	✓	✓	A	✓	✓	✓	

✓ = In attendance

A = Apologies Received

