

RECORDED DELIVERY
Shetland Charitable Trust
22-24 North Road
Lerwick
Shetland
ZE1 0NQ

Our Ref: MI/INQ/08-1383

Your Ref:

27 April 2012

Dear Sirs

Shetland Charitable Trust (SC027025) Charities and Trustee Investment (Scotland) Act 2005

Section 28(3) direction to Shetland Charitable Trust (SC027025), not to undertake specified activities

The Office of the Scottish Charity Regulator (OSCR) is making inquiries into activities proposed to be taken by the above charity. Our inquiries are made under section 28(1) of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). While these inquiries are being made we have determined that it is in the public interest to take precautionary action to safeguard the assets of the charity.

Direction

OSCR directs the Shetland Charitable Trust (SCT) under section 28(3) of the 2005 Act not to make a binding decision (whether in a meeting of the trustees, by operation of regulation 9.5 of the Administrative Regulations of Shetland Charitable Trust, or otherwise) in relation to any investment in the Viking Energy project beyond the £3.42 million previously invested by Shetland Charitable Trust.

This direction is valid for the period from the date of delivery (by email) until 4 May 2012; it expires on 5 May 2012.



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Reasons

As a result of ongoing inquiries made under section 28 of the 2005 Act it has come to our attention that the current trustees propose to hold a meeting of the charity on Monday 30 April 2012 to consider a report that recommends substantial additional investment of £6.3 million in the Viking Energy project, in addition to the £3.42 million already invested in this project by Shetland Charitable Trust.

- The charity is currently subject to ongoing monitoring by OSCR as concerns regarding systemic conflicts of interest within the SCT are addressed
- The charity's structure is currently subject to an application for approval of a reorganisation scheme to help address these concerns
- Local elections are due to take place on 3 May 2012 and following the appointment of new *ex officio* trustees a new body of charity trustees will exist from 4 May 2012
- This particular project, and any investment in it by the charity, has been the subject of divided opinion not only between the current trustees but also in the community served by the charity. In this context, the trustees require to be particularly careful to make investment decisions with due care and diligence and with all the relevant independent advice that is appropriate – both legal and financial
- Previous attempts to reach a decision on this matter have failed due to meetings being inquorate and declared conflicts of interest have impacted on this
- At this stage the information available to us does not provide any good reason to believe that a decision on this investment is required prior to the elections and the associated change in the trustee body governing the Shetland Charitable Trust. By good reason we would mean a reason such as a contractual obligation to the other partners in the project which would require the trustees to take a decision within this timescale so as to fulfil their duty to act with due care and diligence.
- Further, the information available is not clear whether the trustees have taken legal advice regarding the implications of taking this decision at this stage in terms of Section 66 of the 2005 Act.

Section 66 of the 2005 Act places charity trustees under four general duties as follows:

- To act in the interests of the charity
- To seek, in good faith, to ensure that the charity operates in a manner consistent with its purposes
- To act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person
- To ensure that the charity complies with the provisions of the 2005 Act, and other relevant legislation



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OSCR has a regulatory interest in this matter because we consider that the proposed action may, if acted upon at the proposed time, be a breach of the general duties. Under section 66 of the 2005 Act any breach of the general duties is to be treated as misconduct in the administration of the charity. All charity trustees are responsible for taking reasonable steps to ensure that any breach of these duties is corrected by any charity trustee concerned.

In the absence of an obligation or other good reason to proceed, and in the absence of appropriate legal advice to the trustees, then proceeding to make a decision binding on the future trustees, so soon before a major change to the trustee body, when it is clear from earlier attempts to hold the meeting that this is a divisive issue, could be a breach of trustee duties amounting to misconduct.

OSCR considers it appropriate to make further inquiries into this matter. While our inquiries are ongoing we consider it in the public interest to direct the charity not to proceed with the proposed action.

This direction does not pre-empt the outcome of our inquiries. We aim to gain a full and balanced understanding of the circumstances in order to reach an accurate conclusion consistent with our regulatory principles.

Consequences

I draw your attention to section 28 (6) and (7) of the 2005 Act which provides that a person who, without reasonable excuse refuses or fails to comply with a direction under section 28 (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2500) or imprisonment for a period not exceeding 3 months, or to both.

Review

If you disagree with this decision, you have the right (under section 74 of the 2005 Act) to ask us to review it. To do so you must contact the Review Officer (Review.Officer@oscr.org.uk) at the address below within 21 days of the date of this letter. Your request for review must be in the form of a formal communication under section 100 (4) of the 2005 Act – that is, it must be made in writing and either:

- delivered in person
- sent by post in a prepaid registered letter or by the recorded delivery service,
- or sent by any electronic means (i.e. fax or email) which will cause it to be delivered on the same or next day.



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We will give notice to you of the result of the review by means of a formal communication within 21 days of the review being requested. My contact details can be found at the foot of this letter should you have any further queries.

Yours faithfully



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