
MINUTE

**Special Shetland Charitable Trust
Council Chamber, Town Hall, Lerwick
Wednesday 7 December 2011 at 9.00am**

Present:

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

Apologies:

C H J Miller

In Attendance (Officers):

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

Also (by video conference):

S Mackintosh, Turcan Connell
K Pinkerton, Turcan Connell

Chairman:

W H Manson, Chairman of the Trust, presided.

Circular:

The circular calling the meeting was held as read.

Declarations of Interest:

There were no declarations of interest.

The Chairman welcomed Mr R Hunter, who had recently been appointed Lord Lieutenant, to his first meeting of the Trust.

77/11

**Future Governance Arrangements of Shetland Charitable Trust
– Letter from Office of the Scottish Charity Regulator (OSCR)**

The Trust considered a report by the General Manager (Appendix 1).

The Chairman advised that an amended version of the report had been circulated to Trustees. He outlined OSCR's position regarding Trustees' earlier decision to hold a referendum, and advised that the 14-day deadline to acknowledge receipt of the letter expired the following day. There were a further 14 days to come up with a detailed response. Depending on the outcome of today's meeting, it was intended that this discussion would take place at the meeting of 15 December.

He went on to say that OSCR had indicated that it would remove control of SCT from Trustees unless it received the assurances it sought. Whilst the Trust was distinct from other trusts, it was now subject to charities legislation and the Trust had been given advice that the status quo was not an option. He therefore moved that Trustees note the requirements from OSCR and agree the recommendations in the report.

Mrs L F Baisley seconded.

Mr S Mackintosh advised Trustees that OSCR was making it very clear that it felt Trustees had failed to act with care and diligence as set out in Section 66(1) of the Charities and Trustee Investment (Scotland) Act 2005 (the Act). If Trustees failed to give the undertakings it required, OSCR would take steps to implement required changes to the Constitution. OSCR had indicated that if matters could not be resolved to its satisfaction, it would go to the Court of Session without further discussion with Trustees. At that point, Trustees would effectively lose control of the process and would be working to either OSCR's or a court-related timetable. The Court could apply a number of wide-ranging sanctions such as applying for an interdict to prevent the Trust carrying out its business, appointing a judicial factor, suspending or removing Trustees, or restricting transactions of the Trust. He went on to say that his advice would be for Trustees to give OSCR the undertakings it required, bearing in mind that there was some flexibility relating to paragraph 3.1.3 of the report regarding measures to put forward and the timetable. Otherwise there was a real danger that the Trust could end up in court and lose control of any process.

Mr A J Cluness indicated his concern at the letter he had received from OSCR, and advised that he intended to express his concerns to the Scottish Government at a later stage. He went on to outline the development of the Trust, and his involvement with it, over the last 20-30 years. He said that he believed in the constitution of the Trust, and that the people of Shetland had a right to have a say in how it should be governed in future. He pointed out that the people of Shetland were aware that when electing a Councillor, they were also selecting a Trustee, and this system had worked well in the past. The Trust had been designed to operate in harmony with the Council, and had proved to be of great benefit to the community both in terms of provision of services and economic development. He went on to say that whilst he accepted OSCR's views in principle, he felt that the only appropriate method of ascertaining the future

governance of the Trust was by way of referendum. If it was not possible for the Trust to carry this out, it could be carried out by another body on the Trust's behalf.

He therefore went on to move that Trustees accept the recommendations in the report in principle, but say to OSCR that it believes a referendum is still the only way forward to get an appropriate response from the community that owns these funds.

Mr L Angus seconded.

During the discussion that followed, several Trustees indicated their concern at the tone of the letter that they had received from OSCR, and a trustee expressed concern that it had chosen to conduct its affairs in the local media.

Some Trustees commented that the proposed referendum was a consultative referendum, and questioned how there could be any suggestion of misconduct by consulting with the people of Shetland as to how they felt their Trust should be governed in future. It was commented that Trustees were legally bound to act in the interests of the Trust, and there was no suggestion that this was not the case. It was pointed out that only two complaints had been made against Trustees in the lifetime of OSCR, and both had been dismissed.

Mr S Mackintosh advised that the use of the term "misconduct" was unfortunate, and had been highlighted as a concern when the Act was going through the Scottish Parliament. However the Act did set out that any breach of duties by charity trustees in terms of s66 of the Act, for example a failure to act with reasonable care and diligence is automatically treated as misconduct.

(Mr A T J Cooper left the meeting)

Some Trustees said that they shared OSCR's frustration at the delay in making changes to the constitution of the Trust. Due to legal requirements, it was necessary to make changes to the constitution, and concern was expressed that the Trust had taken so long to make a decision. It was pointed out that there was much at stake, particularly in relation to the bodies funded by the Trust and the services they provide, if the Trust did not accede to OSCR's requirements.

The question was asked whether a governance model whereby there were 22 Councillors and eight further Trustees would be acceptable to OSCR, as this would assist with quorum and conflict of interest concerns.

Mr S Mackintosh said that this detail was something that Trustees would be considering at a future meeting. However whilst eight would probably be a credible number of independent Trustees, the total number of Trustees was very high and may prove to be unmanageable.

In response to a query regarding whether a referendum would be acceptable to OSCR if the option of the status quo was removed from the questions, Mr S Mackintosh confirmed that inclusion of the status quo could not be an option and that what OSCR had said is that it was against a referendum on the terms passed by the Trustees. However holding a referendum raised questions regarding whether Trustees were delegating their duties in a way in which they were not allowed. He did not feel that OSCR was against the public having a contribution to the discussion, and consultation could be built in to any reorganisation scheme that Trustees put forward to OSCR. It was unlikely that OSCR had a duty to, or would consider, holding a referendum on behalf of the Trust. However this should not prevent another body from holding a referendum on behalf of the Trust.

The Chairman confirmed, in response to a query from a Trustee, that Trustees had been issued with all correspondence between the Trust and its legal advisors. However he would instruct officers to check files to confirm this.

Some discussion took place regarding the Trust issuing an invitation to OSCR's Chief Executive to visit Shetland and meet with Trustees. It was felt that this would be beneficial to both parties as some Trustees felt that OSCR did not have a full understanding of the Trust and its operations, given that there was no direct comparison with other trusts in Scotland.

Mr C L Smith gave notice of further amendment.

Mrs E L Fullerton requested a roll-call vote, and a show of hands indicated that the majority of Trustees were in support of this.

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

Motion (Mr W H Manson)	Amendment (Mr A J Cluness)
Ms L F Baisley	Mr L Angus
Mr J Budge	Mr A J Cluness
Mrs E L Fullerton	Mr A T Doull
Mr J H Henry	Mr A G L Duncan
Mr R Hunter	Mrs F B Grains
Mr W H Manson	Mr R S Henderson
Ms V Nicolson	Mr A J Hughson
Mr F A Robertson	Mr R C Nickerson
Mr J G Simpson	Mr G Robinson
Mr C L Smith	Dr J W G Wills
10	10

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

Mr C L Smith moved, as an amendment, that the Trust acknowledge the receipt of the letter from OSCR dated 24 November 2011, and

invite the Chief Executive of OSCR to come to Shetland to meet with Trustees.

Dr J W G Wills seconded.

The Chairman confirmed that he would be willing to issue such an invitation to the Chief Executive of OSCR when acknowledging receipt of their letter.

After hearing Mr C L Smith clarify that his amendment related only to 3.1.1 of the report, and did not include points 3.1.2 and 3.1.3, Dr J W G Wills withdrew his seconding of the amendment and Mr A G L Duncan instead seconded.

Mr S Mackintosh advised Trustees that acknowledging receipt of the letter only, as per paragraph 3.1.1 of the report, was not what was being sought by OSCR. If OSCR did not get the undertaking it required, as referred to in paragraphs 3.1.2 and 3.1.3 of the report, it was likely that it would take further action.

After hearing the Chairman confirm that he would issue an invitation to the Chief Executive of OSCR to meet with Trustees in Shetland, Mr C L Smith withdrew his amendment with the consent of his seconder.

The meeting concluded at 10.10am.

CHAIRMAN