
MINUTES**Public**

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

Present:

A Duncan	R Henderson
B Hunter	T Macintyre
P Malcolmson	K Massey
D Ratter	J Smith
A Westlake	J Wills

Apologies:

M Bell	A Cooper
A Manson	I Napier

In Attendance (Officers):

A Black, Chief Executive - SCT
R Mainland, Executive Business Manager - SCT
E Mainland, Administration Manager – SCT
L Geddes, Committee Officer – SIC

Also:

P Riddell, Platform Shetland

Chair:

Mr Hunter, Chair of the Trust, presided.

Circular:

The circular calling the meeting was held as read.

Declarations of Interest

Mr Duncan declared an interest in Agenda Item 9 “Loans to Local Industry – Sums Due But Unpaid Over One Month Old as at 30 April 2016”, and advised that he would leave the room during the discussion. He also advised that with regard to Agenda Item 1 “Governance Review”, he was a director of Voluntary Action Shetland, but would be taking part in the discussion.

Mr Henderson declared an interest in Agenda Item 9 “Loans to Local Industry – Sums Due But Unpaid Over One Month Old as at 30 April 2016”, and advised that he would not be leaving the room.

Minutes

The Trust confirmed the minutes of the meeting held on 31 March 2016, on the motion of Dr Wills, seconded by Mr Smith.

Governance Review

The Trust considered a report (CT1605019) which sought approval of recommendations outlined in the “Report & Recommendations on a Review of Governance Arrangements for SCT” dated March 2016, prepared by the Institute of Directors (IOD) with the collaboration of the Trust’s lawyers.

The Chair advised that the Trust had received legal advice regarding interpretation of the Administrative Regulations, and the options before Trustees was to either accept the recommendations in the report, or to reject them and send the report back to officers for revision. He then handed over to Mr Massey, Chair of the Audit and Governance Advisory Committee, who had led the work that had been carried out on the Governance Review.

Mr Massey began by thanking trustees and stakeholders for their engagement throughout the process, and Trust staff and the Audit and Governance Advisory Committee for their support. He said that it was clear that trustees were very passionate about ensuring that the historical journey that the Trust had been on over the years was understood and recognised, and that no trustees had any issue with each other regarding whether they were elected or selected trustees.

He went on to say that, in the past, the governance of the Trust had been of concern to the Office of the Scottish Charities Regulator (OSCR) and reform had been inevitable. The reorganisation carried out in 2012 – whereby appointed trustees had been working in collaboration with Shetland Islands Council (SIC) appointed trustees – had worked well. There had been difficulties on a handful of occasions relating to conflicts of interest, and finding a solution to this issue had been foremost in mind. The recommendation to reduce the number of SIC appointed trustees had been made for two main reasons – to minimise the impact of constitutional conflict and to recognise the value of having stakeholder SIC appointed trustees on the Board. The number of SIC appointed trustees was a matter entirely for the SIC to determine and, if the recommendations were approved, authority would be delegated to the Chief Executive and himself, as Chair of the Audit and Governance Advisory Committee, to formally enter into a consultation process with the SIC.

He continued by saying that what had become evident in undertaking the review was how Trustees were united in seeking fairer and more comprehensive representation of the people of Shetland. However the recent discussion about how this should be done had become the focus of attention. It was important to follow the guidance offered by OSCR regarding how best to achieve the necessary skills and needs of the Trust in order to meet its charitable objectives. However the reality was that with such a wide-ranging Trust deed, institutional conflicts would remain a fact of life in such a small population. It was the intention to seek a better balance of diversity within the Trust Board going forward, and the Audit and Governance Advisory Committee was seeking to explore this and come back with further proposals.

He concluded by saying that it had not been possible to achieve unanimous support on all the recommendations in the report, but he felt that consensus upon which the majority were agreed had been achieved. The Trust had continued to develop following its 2012 reorganisation, and it was recognised that this review and further reform would continue to be part of the Trust's journey. OSCR guidance was that all charities should regularly review their governance arrangements, and therefore a further review in three years' time was sought. There had been some publicity surrounding the Governance Review, and it had been frustrating for some staff and trustees to find themselves involved in a media debate in which there had been a number of misunderstandings as a result of only hearing part of the discussion. Therefore he welcomed the opportunity to answer fully any further questions that trustees may have, and he went on to move that the recommendations in the report be approved.

Mr Ratter seconded.

Dr Wills advised that he supported all of the recommendations in the report, with the exception of the method of choosing trustees and the number of elected trustees. He had no criticism of the current appointed trustees, and they had made a valuable contribution to the Trust. However he had concerns regarding the longer-term future of the Trust if there was to be little or no democratic link to the inhabitants of Shetland, and what might happen if the Trust became an organisation which was self-selecting in perpetuity and where public involvement was reduced to consultation. He had always been a stalwart champion of the Trust and could be relied upon to defend the Trust's actions in public, and he hoped that trustees would listen to his arguments and vote solely on the merits of the case. He had been informed that he could not move an amendment to the recommendations.

He went on to say that he questioned the recommendation to have four SIC councillors on the Trust when it was apparent that the Leader of the SIC, and probably a majority of councillors, did not wish to have councillors on the Trust, or certainly no more than two because of the conflict of interest issues. Given that he could not move an amendment which would have solved this problem, it would therefore be sensible and prudent to vote for an amendment to send the report back to the Audit and Governance Advisory Committee for more work. This would be difficult to explain to the public as it would mean that further discussions were being held in private, when there were no sensitive matters or personal information that would justify this. However it would be better than continuing with a flawed and unworkable change to the governance of the Trust which would have to be amended, and would raise questions as to why it had not been possible to get it right in the first place. In addition, voting for the recommendations in the report would not solve the problem of the grouping of the Trust's accounts with the Council's by Audit Scotland. The Trust fund would still be partly controlled by councillors and Audit Scotland would continue to say this was the case as long as more than 25% of trustees were councillors, and four out of 15 trustees would be 27%. There would continue to be

a democratic deficit if there were to be no directly elected members in place of the three councillors who were to be removed, and the four who probably would not be appointed by the Council.

He continued by pointing out that the authors of the report had admitted that the Trust was unique and that the public had a legitimate interest in its future governance. If the report was agreed in its current form, there would be a democratic deficit if the public's representatives were excluded from membership, however they may be chosen. However the authors of the report did not apply the democratic standards taken for granted when choosing the boards of public companies - whose directors have to be approved by shareholders - or of mutual societies. Nor had consideration been given to the Stornoway Trust, which would have been an obvious place to make enquiries about elected trustees. The authors had not examined what might work or what it might cost, and this was disappointing. He had previously circulated a lengthy discussion paper on this important matter, and had spoken to one of the authors of the report for over an hour regarding the points he had raised. It would have been courteous to explore these arguments rather than dismissing them without discussion, and making ludicrous suggestions that trust elections could lead to fraud. If trustees voted to send the report back to the advisory committee, there would still be time to consult properly with the SIC and with the inhabitants of Shetland, before agreeing a form of governance that was actually a reform and would work. Then the proposed new governance arrangements could be sent to OSCR with unanimous backing, and with some confidence that they would be approved. To send proposals based on the recommendations in the report would be premature.

He concluded by saying that although he had been accused of putting his personal interest before the Trust, he had no personal interest and would actually be talking himself and his fellow councillor trustees out of a job by advocating that there should no longer be any SIC trustees. His manifesto, on re-election to the SIC, had stated he would be campaigning for a directly elected democratic majority on the Trust, and he had consistently tried to do so since being reappointed as an SIC trustee. He had been blocked from promoting the issue through the Trust's normal procedures and had been told that no amendment would be permitted at today's meeting, which seemed a bizarre procedure in a democratic assembly. He had also been advised that there would be no public consultation – either by the Trust or OSCR – and had been informed by the Chair that going public on the issue risked him being removed from the Trust. The decision taken at today's meeting would affect Shetland's inhabitants for years to come, and with consequences that it may not be possible to foresee. He therefore moved that the report be referred back to the Audit and Governance Advisory Committee, and Mr Duncan seconded.

Speaking in support of Dr Wills, Mr Duncan expressed his dissatisfaction at receiving a letter from the Chair advising that he could not discuss the issue in public and his serious concerns that it was not possible to put forward amendments to the recommendations in the report at the meeting. He was firmly of the view that appointment of all future trustees should be carried out by election, and not selection, so

that the people of Shetland had the opportunity to express their views, and that all discussion should take place in an open and transparent manner. Being prevented from expressing his view in public had resulted in him losing faith and trust in the Chair, and he was of the view that the Chair should resign with immediate effect.

Speaking in support of the recommendations in the report, Mr Ratter highlighted the Trust Deed and the duties and responsibilities of trustees, which had always been taken very seriously by trustees. Trustees worked to the rules and processes set out and defined in the Trust Deed and the Trustees Investment Act, and had consistently managed the Trust's fund over the years. This fund supported a number of very important organisations locally, and the Trust could not be compared to the Stornoway Trust which was a crofting estate with no responsibilities for managing funds or making disbursements. It was important that the Trust was not politicised, and it should be noted that the Trust would be reviewing its governance again in three years. If the people of Shetland had any issues with the proposals, they could make their views known to OSCR.

Mr Massey pointed out that following the Trust reorganisation in 2012 there was a majority of selected trustees, so this was the status quo position. The proposal to reduce the number of SIC trustees was recommended in order to reduce the potential for constitutional conflict whilst not losing the value that SIC trustees brought to the Trust. The report did not say that any gap in representation as a result of reduction in SIC trustees would be filled by selection. Instead it was proposed to consult with the SIC as to the numbers it wished to appoint, and come back to trustees with proposals as to how to achieve better representation.

Mr Malcolmson said it was important to recognise and understand that the Trust was accountable to OSCR and had to work with its processes. OSCR's good governance guidelines sought to ensure that the most appropriate skills were found to support the particular needs of organisations. There was an established process in place to ensure that potential trustees could explain how they met the criteria and were suitable and to ensure that they understood, and could meet, the aims and objectives of the Trust. This selection process had worked well and should continue. The process of governance was an ongoing process, and it was important that proposals were in place in order that discussions could take place with the SIC on the proposals.

Ms Westlake added that she was in support of the processes and guidelines that the Trust followed. Since being appointed to the Trust, she had only ever witnessed the willingness of trustees to make the Trust the best it could be for the people of Shetland.

Reverend Macintyre, who pointed out he was speaking as a relatively new Trustee, highlighted the induction process and sharp learning curve that he had had to go through, and the accountability of Trustees in managing the Trust's funds. The politicisation of the Trust was something that he would not like to see, and he was satisfied that a further stage of the review of governance would take place again in

three years' time. He was of the view that nominated people could equally well represent the people of Shetland and be interested in their future, and was happy to support the proposals in the report at this stage.

Mr Duncan pointed out that OSCR itself was an unelected and selected bureaucracy which had forced the Trust to change its governance arrangements, although it had operated very well for over 30 years.

In summing up, Dr Wills highlighted the legitimate public interest and the importance of having the sanction of the public, given that the Trust funds were public money that was there for the benefit of the people of Shetland. It had been argued that it was important that there was more comprehensive representation, and this could be achieved by electing trustees. Trustees already had a wide range of skill sets, and any others required were already bought in by the Trust. The election of trustees would not result in the politicisation of the Trust, because trustees would still be bound by Trust law, there were provisions to prevent canvassing, and there were more than adequate means for getting rid of trustees. To approve the recommendations in the report would mean that any prospect of the public regaining democratic representation was lost, and the SIC should have been asked for its view before this point as it could not be assumed that it would agree with the proposals.

Mr Massey then summed up, advising that the review had been carried out in accordance with advice given regarding the process to follow. The report clearly set out why it was being recommended that the SIC should appoint four trustees, although the Council may come back with a different view, and this would be put before trustees for consideration.

Dr Wills called for a roll call vote, and Trustees agreed.

Voting accordingly took place by roll call, and the result was as follows:

Motion (Mr Massey)	Amendment Dr Wills)
R Henderson	A Duncan
B Hunter	J Wills
T Macintyre	
P Malcolmson	
K Massey	
D Ratter	
J Smith	
A Westlake	
8	2

(Mr Smith left the meeting)

Decision:
The Trust:

- a) Accepted the recommendations set out in the Report and Recommendations on a Review of Governance Arrangements for SCT;
- b) Delegated authority 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; and
- c) Approved a further review of the governance of SCT within three years of implementation of this organisational scheme.

23/16

Amendment to Administrative Regulations

The Trust considered a report by the Chief Executive (CT1605020) which sought 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.

The Chief Executive explained that there had been a slight change of wording to the recommendations since the report had been prepared, namely that paragraph 2.9.2 should now read as follows:

"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; and
- (b) the concerns of two different organisations to which a Trustee is affiliated;

Further, in terms of Section 66(c) of the Charities Act, Trustees must:...."

This was noted by Trustees.

Mr Ratter moved that the recommendation in the report, as amended above, be approved. Mr Henderson seconded.

Decision:

The Trust approved the amendment to the Administrative Regulations attached as Appendix B to the report, and as per the above amendment.

24/16

Management Accounts – Twelve Months Ended 31 March 2016

The Trust noted a report by the Chief Executive (CT1605021) which presented the Trust's Management Accounts to the end of March 2016.

It was noted that fund manager fees in relation to Insight Investment were based on performance figures. The Council, under a Service Level Agreement for Investment Support, had been asked to investigate why the fees were much higher than had been anticipated, and its response would be reported back to Trustees.

In response to a query regarding rental income for the Sullom Voe site, the Chair advised that the rental income was dependent on throughput, and this was an agreement that had been negotiated many years ago by the Council. He undertook to ask the Council what arrangements were in place for auditing the throughput.

It was requested that a report be presented to the next meeting looking at how much revenue was potentially being lost as a result of the rental agreement that had been drawn up by the Council. The Chief Executive advised that a briefing paper on this matter could be prepared for the Investment Committee.

Decision:

The Trust noted the satisfactory financial performance to 31 March 2016, as shown in the Management Accounts.

25/16 **Fund Manager Transactions**

The Trust noted a report by the Chief Executive (CT1605022) which provided details of Fund Manager transactions during the 2015/16 financial year to 31 March 2016.

Decision:

The Trust noted the contents of the report.

26/16 **Small Grant Scheme – Approvals**

The Trust noted a report by the Chief Executive (CT1605023) which presented the recommended Small Grant Scheme approvals.

Decision:

The Trust noted the approvals listed in paragraphs 2.1 and 3.1 of the report.

27/16 **Capital Works Bridging Loan Scheme**

The Trust noted a report by the Chief Executive (CT1605024) which provided an update on the Capital Works Bridging Loan Scheme.

Trustees commented positively on the value of this scheme to local organisations.

In response to a query, the Chief Executive advised that there was an agreed budget in place, and if demand outstripped the budget available, this would be reported back to Trustees.

Decision:

The Trust noted the contents of the report.

28/16 **Payments to Trustees in the Year to 31 March 2016**

The Trust noted a report by the Chief Executive (CT1605025) which presented the payments made to Trustees in the year to 31 March 2016.

Decision:

The Trust noted the contents of the report.

29/16

Trustee Attendance at Meetings in the year to 31 March 2016

The Trust noted a report by the Chief Executive (CT1605026) which presented the Trustee attendance at Trust Meetings in the financial year to 31 March 2016.

It was noted that the reference to the 18 February and 31 March meetings should read “2016” rather than “2015”.

Decision:

The Trust noted the contents of the report.

In order to prevent the disclosure of exempt information, Mr Hunter moved, Dr Wills seconded, and the Trust resolved, in terms of the relevant Regulations, to exclude the public during consideration of the remaining items of business.

(The media left the meeting)

(Mr Duncan left the meeting)

30/16

Loans to Local Industry – Sums Due But Unpaid Over One Month Old as at 30 April 2016

The Trust noted a report by the Chief Executive.

Decision:

The Trust noted the report.

(Mr Duncan returned to the meeting)

31/16

Deeds Executed

The Trust noted a report by the Chief Executive.

Decision:

The Trust noted the contents of the list.

32/16

Update from Chairs of Advisory Committees

The Trust noted updates from the Chairs of the Audit and Governance Advisory Committee, Investment Advisory Committee, and the Chair of the General Purposes Advisory Committee.

Decision:

The Trust noted the updates.

33/16

Update from Subsidiary Companies

The Chair advised that Trustees had received reports in relation to SHEAP, Viking Energy and SLAP.

Decision:
The Trust noted the updates.

The meeting concluded at 11.30am.

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CHAIR