
MINUTES**Public**

**Shetland Charitable Trust
Room 16, Islesburgh Community Centre, Lerwick
Thursday 13 September 2012 at 10.00am**

Present:

M Bell	P Campbell
G Cleaver	A Cooper
S Coutts	B Hunter
A Manson	V Nicolson
D Ratter	G Robinson
D Sandison	G Smith
T Smith	A Westlake
J Wills	A Wishart

Apologies:

M Burgess	A Duncan
R Henderson	F Robertson
M Stout	V Wishart

In Attendance (Officers):

A Black, Chief Executive - SCT
L Fraser, Accountant - SCT
J Goddard, Financial Controller – SCT
E Mainland, Office Administrator – SCT
L Geddes, Committee Officer – SIC

Also:

S Mackintosh, Legal Advisor, Turcan Connell
M Duncan, Grants Co-ordinator - SIC

Chair:

Mr D Ratter, Chair of the Trust, presided.

Circular:

The circular calling the meeting was held as read.

Declarations of Interest

Mr Cooper declared an interest in agenda items 2 and 8, and advised that he would be leaving the room during the discussion.

Mr Coutts declared an interest in agenda item 8, as a householder within the proximity of the windfarm, and advised he would be leaving the meeting during the discussion.

Mr Campbell declared an interest in agenda items 7 and 11, as a member of the Swan Trust.

(Mr Robinson attended the meeting)

Minutes:

The minutes of the meeting held on 28 June 2012 were confirmed.

33/12 **Future Governance of Shetland Charitable Trust**

The Trust considered a report by the Chief Executive (Report No: CT1209034), which presented Trustees with the recommendations necessary to give effect to the reorganisation scheme submitted to the Office of Scottish Charity Regulator (OSCR) on 27 January 2012 and approved on 3 July 2012.

The Chair advised Trustees that Simon Mackintosh had authored the report on scheme of governance, and he would present it to Trustees. Given the complexity and amount of information in the report, and the number of new Trustees, he proposed to leave sufficient time for questions prior to the debate. Following the debate, he proposed to move adoption of the recommendations from the chair and, should any Trustee choose, they could then move a direct negative to the motion. Should the negative succeed, he would then consult the meeting regarding amendments to any follow up motion that may arise. Dr Wills had given notice of such a motion, and he would be given the opportunity to present it and seek a seconder. After that, Shetland Charitable Trust (the Trust) would go back into questions and debate, before reaching a final decision.

With regard to the report, he went on to say that he had seldom seen anything coming up for decision that was as bedecked with myths and legends. He hoped that the report, and Mr Mackintosh's presentation of it, would clarify as much of this as possible and bring the Trust to a point of decision. Objectively, what was being presented today was a decision on a formality. The last Council and the last SCT, both of whom had consisted of more or less the same people, had got themselves jointly and severally into some disputes from 2007. Neither wished to be subject to intense scrutiny by their regulators for any longer than possible.

The Trust's response to this was to spend a long and diligent period working up a scheme of governance. This was then adopted, democratically and procedurally correctly, by Trustees. Trustees concluded that the new scheme of governance would be better than the extant one and would allow the Trust to operate efficiently and legally and, importantly, to transact with the Council. He reiterated that this had been debated and voted on by the Trust in an entirely correct and democratic manner though some, inevitably, did not like the result.

Having got to that point, the Trust had then sent the proposal to OSCR, the legitimate body that oversees charities in Scotland under the appropriate Scottish legislation. Again some Trustees, including himself, regarded OSCR as an example of the centralising impulse from Edinburgh. However the law was the law.

OSCR had examined the proposal carefully and decided that what the Trust had approved was better than the existing scheme. This in no way precluded a future Trust, or even the existing Trust, having another go at some point, if it seemed to be deficient, and OSCR, in their role as a regulator, approved it. OSCR now, and not unreasonably, expected the Trust, whose scheme it was and who sought consent for it, to approve it.

Mr Mackintosh advised that the report provided Trustees with a history of the engagement with OSCR, and the consequences of the different courses of action. It was important to remind Trustees what the engagement with OSCR had been so that Trustees were not starting from scratch, and were aware of the previous correspondence from OSCR stating what action they might be inclined to take. The principal recommendation was to approve the scheme approved by OSCR. He went on to highlight the role of OSCR, and said it was important to remember that it was acting in two distinct capacities. The first was its role as a charity regulator, as set out in the 2005 Act. In the context of that Act, there was a term 'misconduct', and this was not something that anyone would want applying to them as it implied a degree of culpability. He recalled that there had been some debate around the use of this term in the Act, but it had been included as applying to any failure to comply with any duty under the 2005 Act. The second function of OSCR was a quasi-judicial function. When the Trust was reorganising its scheme, it went to OSCR to approve the changes to its constitution. This was designed to avoid the need to go to court and was a cheaper way of bringing constitutions up to date. Many schemes go to OSCR, and this replaces court approval. The difficulty with this is that once a scheme had been sent to OSCR, it could not be changed, as OSCR had no flexibility to change a scheme that it had already approved.

He went on to say that the Governance Review Group had been established in 2008. In July 2010, OSCR had expressed serious concerns to the Trust. There had been discussions with the Governance Review Group and with Trustees in September 2010, and Trustees had sought the opinion of Senior Counsel, Roy Martin QC. His opinion had been received in March 2011. A workshop had been held with Trustees, followed by a meeting at which it had been accepted that governance would have to change. Engagement with OSCR had continued, and a special meeting of Trustees had been held in September last year to decide on future governance arrangements. Trustees had then decided instead to hold a referendum, and that decision gave OSCR considerable cause for concern because of the delay in implementing changes, and because it proposed to include matters that could not competently be adopted as Trust policy. That was when OSCR had written to say that these actions amounted to misconduct. Trustees were required to give an undertaking to avoid the action outlined in Appendix E. Following that, the meeting on 11 December had started the process of adopting the governance changes proposed by the Governance Review Group. OSCR had then indicated that it was satisfied with the direction that the Trust was travelling.

He advised that there was reference to correspondence between the Chair and Chief Executive of OSCR regarding the lack of ability to make amendments to the scheme approved by OSCR. The most recent position was set out in the letter of 24 August 2012, which emphasised collective responsibility and the need to take action urgently. He reminded Trustees of the undertakings of December 2011 - the only one outstanding being the need to ensure all necessary action to implement the approved timetable. There was nothing to stop Trustees adopting this change, with the longstop date of 31 March 2013 for adoption of the proposed constitution. Section 66 of the 2005 Act set out general duties as Trustees, and it was fair to say that OSCR had placed great weight on these throughout its engagement with the Trust. Further intervention from OSCR was a very real possibility if the scheme was not implemented, and it was important that Trustees were aware of that. There were both positives and negatives of taking action along the lines recommended to Trustees, and it was fundamental that Trustees acted in the interests of the charity. The core factors that Trustees had to take account of in reaching a decision were set out on page eight of the report. It was important to bear in mind the purpose of the charity and the beneficiary group, and whether any actions taken would help achieve these purposes. The interests of the charity had to come before any personal or other duties. It was important that the Trust was aware that it was bound by the decision of its predecessors, and of any action that OSCR might take. In November 2011, OSCR had indicated it was at the point of contemplating such action. OSCR had the power to suspend Trustees or others involved in the charity, and it could impose restrictions on transactions that the Trust could undertake. Such a direction had been issued in April last year in terms of restricting transactions that could be undertaken. OSCR had also reserved the right to seek awards on expenses against the Trustees. The report concluded there were no financial implications, and that was the case as the costs of implementing the scheme and recruiting new Trustees had been budgeted for. However there were potentially serious financial implications if OSCR got involved and suspended Trustees or restricted transactions that the Trust could undertake, and these were impossible to quantify. It was his recommendation that Trustees adopted the reorganisation scheme that had been submitted to OSCR.

Mr Mackintosh responded to queries from Trustees as follows:

- Should the Trust decide not to implement the new scheme at the moment, any new business between the Council and the Trust would have to be considered very carefully to see if the transaction could take place through rigorous application of the conflicts of interest policy. Any such business was liable to be supervised by OSCR, as it had said it would take particular interest in any transactions involving the Council. With regard to transactions that had taken place in the past, OSCR's view was that the Trust would need to consider its conflict of interests policy, its practical application, and whether it had applied in practice in the past. The advice received from Roy Martin QC was that it would be very difficult for Trustees to demonstrate that they had put aside all other interests and acted only in the interests of the Trust. The changes proposed in the new

scheme would put any transactions with the Council on a sound footing with no cause for concern.

- The Trust could not alter the scheme it had submitted to OSCR without having to submit a completely new application. This was set out in the legislation, and was not specific to this Trust. OSCR had indicated that any amendment to the proposed scheme was not possible, and the Trust would require to demonstrate how any deviation from the agreed course of action was in the best interests of the charity. It could only be speculated how OSCR would view a new proposal which was said to demonstrate that it was not in the best interests of the charity to implement the proposed scheme. The onus of proof would be on Trustees to demonstrate why that particular action was in the best interests of the charity. However, it had to be borne in mind that the Trust was not making such a decision from a clean sheet of paper, and there was a background of concern and engagement with OSCR. Trustees should think about the best interests of the charity measured against the current position, rather than the best solution, and there was a risk of intervention given the length of time it had taken to come to this position.
- OSCR was in a position to prevent any transactions between the Trust and the Council until a decision had been made on the conflict of interests issue, even those transactions relating to care of the elderly. There was a risk that OSCR would restrict transactions until they were satisfied that this issue had been dealt with. There were no restrictions presently imposed on the Trust, but OSCR had issued a direction at the end of April regarding the then proposal to invest further funds in Viking Energy. This was an example of the type of restriction that could be imposed.
- The meeting on 29 June 2011, referred to in paragraph 2.7 of the report, was an informal discussion with Head of Enquiry & Investigation of OSCR, held with the knowledge of the Governance Review Group. The meeting had discussed the position the Governance Review Group had come to at that stage, as OSCR had expressed concerns at the time it was taking for progress to be made, and the Trust was under intense scrutiny from OSCR at that time. It had been an informal discussion, and OSCR had had no involvement in formulating any scheme that had come before Trustees.
- Although it was not written into the reorganisation scheme, it would be possible for Trustees to add a condition for its successors that the governance scheme had been adopted by them on condition that a governance review takes place at an appropriate point, such as one year before the date of the next Council elections.
- It was not appropriate to speculate on the lines of argument that OSCR might take regarding pursuing individuals. It was probable that it would point to the long history of consideration regarding conflicts of interest, and the advice the Trust had taken from Senior Counsel. It was important to bear in mind that Trustees were not

starting from a clean sheet of paper, and that there was a history of discussion and engagement with OSCR.

- It would not be possible for the Trust to agree to adopt the proposed scheme, but say that it intended to look at a new scheme at the first possible opportunity. Once the revised Trust Deed had been signed, the process of change would start. However, as stated earlier, it would be possible for Trustees to add in a condition that there should be a review of the governance system. Trustees in office at that time could say that in the light of experience, a different scheme would be better for the administration of the charity. It would then be necessary to approach OSCR with an amended scheme, but this would be done against a different background. Given the size and complexity of the proposed Trust, it would be in order to have a group responsible for reviewing governance and constitution issues anyway.
- It was not possible to absolutely bind successors to take a particular decision. However a review could be built into the proposed new scheme for the future, and this would be a matter for Trustees' discretion and judgement. Any decision not to carry out a review would be done in the full glare of publicity.
- Even if current Trustees felt that the proposed new scheme was defective, it was the scheme that had been approved by OSCR and was therefore the only scheme that Trustees could competently adopt. Trustees had given undertakings to OSCR that they would adopt the proposed scheme.
- It was possible to have Trustees elected to represent someone else. It was fairly common practice in older charities to find that particular organisations would have the right to have someone sitting on the Board, and for people to hold office *ex officio*. However once someone became a Board member or a Trustee, they had a duty to represent the interests of the charity and not act as a delegate or representative of a particular group. Some organisations, such as the National Trust for Scotland, made provision for some of its trustees to be elected by its members. Other organisations set out criteria for its Board members or Trustees, and elections were held within a particular group that met the criteria.
- Most charities had not been through any process with OSCR regarding their governance schemes. Some may have had difficulties, but most existing governance schemes were operating without particular engagement with OSCR.

The Chair then updated Trustees on the grouping of accounts issue. He advised Trustees that the Trust had not co-operated with the Council on the grouping of accounts, and would not in future unless Trustees made that decision. Discussions had taken place with the Council, and it had been agreed that the Chief Executives of both organisations would make a joint approach to OSCR on this issue in the context of community planning.

In order to focus the debate that followed, the Chair advised that he would move the recommendations, with the addition of an addendum to cover the issue raised earlier regarding a future governance review.

Mr Wishart advised that he would second the motion on the basis of that condition.

After some discussion regarding the appropriate timescale for a governance review, it was agreed that the following would form the terms of the motion:

That Trustees agree to:

- adopt the reorganisation scheme as submitted to OSCR and approved by letter on 3 July
- delegate authority to three Trustees to sign the revised Trust Deed to exercise the Power of Attorney for that purpose
- instruct the Chief Executive to initiate the process of recruiting the first appointed Trustees
- consider at a future meeting the precise timing of the implementation of the new Trustee arrangements which, in terms of the revised Trust Deed, must be in place by 31 March 2013 at the latest
- a condition that there is an independent review of the organisational scheme within three years of its implementation, with this review to be laid before Trustees for decision before 30 April 2017.

Dr Wills moved a direct negative to the motion, and Mr Robinson seconded.

Mr Cooper called for a roll-call vote, and this received unanimous support from Trustees.

Speaking in support of his motion, Mr Ratter referred to the process of arriving at the recommendations, and said that it was an indication of the situation that the previous Trust had got itself into. Whilst he appreciated that the recommendations were not supported by all, he felt that OSCR observed Trustees delaying outcomes, and had put its credibility on the line in attempting to make things work.

Speaking in support of his amendment, Dr Wills referred to the history of the Trust, which had been set up in 1976, and said how surprised the original founders would have been to hear that the Trust was now speaking about ending democratic control of the Trust. Whilst a lot had changed since 1976, including both the Trust and the law, no-one was suggesting that things should be left as they were. It was essential that there was no longer a majority of Councillors on the Trust and this was not because they were corrupt, but rather due to legislative changes. Nothing had been proven against the Trust, which was one of the most transparent and best-run Trusts in the country. The Trust was a public trust not because its money was held in public, but because its money was a gift from public funds, being money that the Council had got from the oil industry and not from the State. OSCR had failed to take this into account when it had approved the defective scheme that had been put forward. Because of OSCR's lack of understanding, it had assumed it

was okay to replace the current Trust with Trustees selected by a committee of three people – only one of whom would be elected. This he had referred to as an ‘appointocracy’, and it had potential to turn into a self-perpetuating oligarchy. This would not be reform or progress, but instead a return to the ideas of the early 19th Century.

He went on to say that the proposed scheme ignored the need for people’s consent, and would create a democratic deficit in the control of Shetland’s community funds, which would soon dwarf those of the Council. Trustees would no longer be ensured an element of democratic continuation, and there would be no democratic accountability. OSCR had explained that if Councillors had a conflict of interest in future, they should withdraw and leave the appointed Trustees to take decisions. An unprecedented number of people had written to OSCR with objections to the proposed scheme, and the Association of Shetland Community Councils had also found it unacceptable. One thing that the proposed scheme did not do was solve the problem of the most serious problem facing the Trust of how to separate it from the Council both in perception and reality. The proposed scheme allowed for a remaining Councillor Trustee to be elected to Chair, and they would have a casting vote. However in a Trust of 15, with a quorum of six, that could mean that an important financial or policy decision could be made with three Councillors if the meeting was poorly attended. This had been the case with the Trust’s meeting in December, where nine Trustees had made the decision. The structure approved by OSCR would lay the Trust open to continuing allegations, and it would still be a creature of the Council. The grouping of accounts issue had not been dealt with, and the Council had agreed to join with the Trust in approaching both OSCR and the Accounts Commission to sort this out. Both agencies had different views on this matter, and the Trust was about to approve something that would make things even more complicated. The best legal advice supported the Trust’s refusal to comply with the request to group accounts, yet Council staff had gone ahead and consolidated the accounts. This was a problem that would have to be solved. It also fuelled the claim that the Trust was a subsidiary of the Council, and called into question the integrity of Trustees and staff. OSCR was aware of this when it had approved the proposed scheme, and this made the situation worse. *Ex-officio* Councillors would be nominated as Trustees, and the perception that they had been nominated by the Council to do Council work would continue. OSCR had failed to deal with this and also failed to deal with the quorum issue, yet was threatening to take over the Trust and charge Trustees with misconduct and legal costs. He had been charged with misconduct by OSCR, for being party to a decision to hold a referendum at meeting at which he had not even been present.

He went on to say that new information had been received from the Accounts Commission to the effect that a reduction of the proportion of Councillors to 20% would solve the problem. Both he and Mr Robinson had acted on that information by showing Trustees the first draft of a proposed new scheme. He was not suggesting that the work of the Governance Review Group be abandoned, and did not object to having appointed Trustees as long as they were in the minority. He did not object to the procedure for selection or to using criteria to select. He

asked Trustees to consider supporting his amendment, pointing out that there would be an opportunity to come to the November meeting with a revised and modified scheme for resubmission to OSCR. It was a result of a poorly drafted law that this had to be the case, but it would be possible to come up with a scheme that was in the best interest of the Trust and its beneficiaries, and this could be proven. The scheme that OSCR had approved was nothing of the kind.

Mr Cleaver expressed concern that Trustees were being asked to support a proposal that was fixed in a certain time and place that no longer applied. However Trustees would be held to this decision and, when it came to work in practice, it would be found that it was not in the best interests of the Trust or the Shetland people. The current Trust was being held to account because of a failure to deal with issues in the past, but it could not be held to account for failing to act in the best interests of the charity. There was a need to deal with the grouping of accounts issue before any decision was made. He expressed regret that he felt unable to support the recommendations because so much work had gone into formulating them. He felt that OSCR had responded to the failure of the Trust to respond quickly by trying to force something through. He had considered resigning from the Trust because he felt unable to work within the proposed new scheme. However he had decided not to in order to aid democratic enlightenment. He had not stood for election as a Trustee, and was here by default, and felt it was important to work to get a better outcome for the Trust.

Mr Wishart said that it would be perilous for the Trust to ignore the law. Whilst the Trust could challenge OSCR and confront the establishment, he would not like to find the Trust in the position of a lengthy legal battle, as he had previous experience of what this entailed. He would be backing the motion on the basis that a review of governance was carried out by the Trustees' successors. It would be a sensible approach for Trustees and the community to monitor the proposed scheme in operation, and review it within the next four to five years. It would also be up to the Council to decide how many nominees it wanted on the Trust, and it could set a minimum number.

Mr Bell said that he had some sympathy with the amendment and, had he been part of the previous Trustee body, would have argued against the proposed scheme. However the Trust was bound by the decision of its predecessors. He did not like OSCR's actions and being threatened by it, and his initial reaction was to resist them. However he had to ask himself whether rejection of the proposed scheme would be in the Trust's best interests, given the spotlight that it was under. He accepted that the best way forward was to accept the recommendations, with a view to a full and robust independent review over the next few years. Then it would be possible to place a revised scheme, using the experience gained by working through the proposals, in front of the new Trustees for consideration. It was important that any governance review in the future was independent.

Mr Campbell said that he was heartened that a time limit for a review of the proposed scheme had been included in the motion, particularly as many were of the view that there should be greater election of Trustees.

However the Trust was constrained by OSCR's rules, and the Trust should not be jeopardised or put at risk by confronting OSCR. By making a review a requirement of a future Trust, Trustees would be at liberty to express their views to the new Trust. He was hopeful that, in future, the Trust could become an elected one.

Mr G Smith said the he felt it was potentially a sad day for democracy in Shetland, as his natural instinct was that election was always more democratic than selection. It was regrettable that OSCR had adopted this position, as it would have been better to engage and discuss with Trustees, and reach a compromise. He found OSCR's correspondence objectionable, but was mindful of the legal advice received. Therefore he felt that, regrettably, the amended motion provided the best way forward in the circumstances.

Mr Cooper said that whilst he accepted that there was a perception of conflict of interest, he never saw the Council and Trust as working in conflict. He never thought the Trust had acted illegally, and felt it had delivered for the community and always acted responsibly. He still felt that the proposed scheme was wrong. If the proposer and seconder of the amendment were right that the Shetland community would not accept selection of Trustees, there should be a plea for no-one to put themselves forward for selection. This would then allow some sort of election process to take place.

Mr Hunter said that he had attempted to seek views as to whether Trustees should be elected or selected, and had not been able to ascertain any strong views in either direction from the public. He felt that the proposed scheme would not be the scheme that the Trust would put forward if it were starting from scratch, but this was not the situation that the Trust found itself in. OSCR would take action if the scheme was not approved and, if they were seen to not take action, its position would be in jeopardy. The proposed scheme had been the product of lengthy and careful consideration, and the Trust had to try and make the right decision based on the options available rather than the ideal solution. Therefore it would have to accept the recommendations.

Mr Sandison commended Dr Wills for his in-depth knowledge and research on the matter. He did not like being told by OSCR to make a decision, but it was with great regret that he felt the Trust had to take cognisance of the legal advice received. The Trust also had to accept that it was bound by a decision of previous trustees. He did not feel that the proposed reorganisation scheme would be sufficient to deal with the main issues affecting the Trust, and it would not deal with the grouping of accounts issue. From what he had heard today, the Trust would not be precluded from reorganising itself in future. If there was a desire to keep democratic control of the Trust, the people of Shetland would make it clear that this was the case. So there would be a chance to bring the Trust back under democratic control, and that would be his desire. However it was with regret that he would have to support the motion today.

Mr T Smith agreed with the sentiments expressed that it was a sad day for democracy in Shetland, particularly when consideration was given to

how well run and received the Trust had been. He disagreed that the public did not have views on the proposed scheme, as it was one of the issues that had regularly been raised when he was canvassing for election to Shetland Islands Council. It appeared that the public wanted the Trust to be as democratic as possible. He was concerned that the new Trustees may decide not to review the governance of the Trust. He pointed out that he had been voted on to both the Council and the Trust, and was disappointed that the proposed scheme would be veering away from this.

Mr Robinson pointed out that as a Trustee, he was obliged to act in the best interests of the Trust and its beneficiaries. He had seconded the amendment because he believed that OSCR had approved a potentially defective reorganisation proposal. Implementation of this scheme could not be seen to be acting in the best interests of the Trust and its beneficiaries, and would not achieve what it set out to do. The proposed scheme had been based on the recommendations of the Governance Review Group. However it was flawed as the Governance Review Group had clearly stated that there should be a combination of election, selection and appropriate co-opted appointments. Whilst there had been a plea that the Shetland community should not put themselves forward for selection in the hope that an election might take place, he suspected that people would put themselves forward, then there would be a community backlash. He would not support what he saw as a defective agreement.

In summing up, Dr Wills advised that he had always proposed there should be published criteria for Trustees. He argued that what he was proposing was not illegal, as the Trust had been led to believe. He had no problem with the concept of a review, but questioned who would carry this out and if people would actually vote themselves out of office. He pointed out that an even greater democratic deficit would be created should the Council nominate three members to solve the grouping of accounts issue, and that there would be no democratic accountability if there were eight self-elected Trustees and three Councillors. The Trust was not bound by OSCR. If it could demonstrate that what was proposed was not in the best interests of the Trust, as this had been demonstrated, then OSCR was bound to consider this. He felt that OSCR was trying to bully and intimidate the Trust, and the Trust should respond to this. Trustees were trying to protect the Trust, but approval of the recommendations would jeopardise it as it did not deal with the issue of the grouping of accounts, and made the democratic deficit worse. The majority of people did not want an unelected Trust, and would question why Trustees had voted to remove democratic control. Supporting the amendment would not mean that the good work of the Governance Review Group had been abandoned, but a period of reflection was required and it would be possible to come back on 15 November with a new proposal. Trustees were obliged to consider legal advice. However the decision was theirs, so Trustees should feel advised, but not bound, by it. It would not be possible to bring the Trust back under public control, and would indeed be a sad day for democracy if the recommendations were approved. Trustees had a duty to stand up and protect the public interest, and would be guilty of misconduct if they voted for the motion.

In summing up for the motion, Mr Ratter advised against voting on the basis of perception. OSCR existed and legislation existed, and experience had shown that this had to be taken account of. The credibility of OSCR was at stake, and it would stand behind any action that it took. Trustees would be appointed for a fixed period to operate the Trust Deed, and the Trust Deed could only be changed with the acceptance of OSCR. Any future decision not to carry out a governance review would have to be taken in the full glare of publicity. The Trust was not a public trust, but a charitable one. Whilst the people who had created it would have been astounded by changes in the legislative framework, he felt that there were no democratic notions about the Trust as it was a fund. The Trust had arrived at the situation it was in, and had a choice to proceed whilst allowing it to operate legally without long-term chaos.

Voting then took place by roll-call and the result was as follows:

Motion (Mr Ratter)	Amendment (Dr Wills)
Mr D Ratter	Mr G Robinson
Mr D Sandison	Mr T Smith
Mr G Smith	Dr J Wills
Mr A Wishart	Ms A Westlake
Mr M Bell	Mr G Cleaver
Mr P Campbell	Ms A Manson
Mr A Cooper	
Mr S Coutts	
Mr B Hunter	
Ms V Nicolson	
10	6

Decision:

The Trust agreed:

- to adopt the reorganisation scheme as submitted to OSCR and approved by letter on 3 July;
- to delegate authority to three Trustees to sign the revised Trust Deed to exercise the Power of Attorney for that purpose
- to instruct the Chief Executive to initiate the process of recruiting the first appointed Trustees
- to consider at a future meeting the precise timing of the implementation of the new Trustee arrangements which, in terms of the revised Trust Deed, must be in place by 31 March 2013 at the latest
- a condition that there is an independent review of the organisational scheme within three years of its implementation, with this review to be laid before Trustees for decision before 30 April 2017.

It was agreed that the following three Trustees would sign the revised Trust Deed:

- Mr D Ratter
- Mr A Wishart
- Mr B Hunter

However, after hearing that Mr Wishart did not have power of attorney to sign documents on the Trust's behalf, Mr D Sandison agreed to sign the revised Trust Deed instead.

Mr Robinson declared an interest in the following item, and advised that he would leave the meeting.

(Mr Robinson, Mr Cooper and Ms Westlake left the meeting)

34/12

General Administration

Charitable Trust Nominee Directors

The Trust considered a report by the Financial Controller (Report No: CT1209035), which outlined the activities of each of the Trust's subsidiary companies, sought approval to amend the structure of these, and recommended a new method of appointing directors to these companies.

The Financial Controller summarised the main terms of the report, advising that the Trust had faced problems doing business with its subsidiary companies, as there were issues with conflicts of interest when making decisions. The Institute of Directors had been asked to prepare a report and one of the key findings was that the Trust, as an investor, needed to find the right way of having ultimate control and scrutiny.

Mr G Smith referred to paragraph 3.4.8 and enquired as to whether it was sufficient for the Chair to address Trustees quarterly in terms of progress updates. He felt that quarterly reports were not sufficient, and suggested that monthly reports should instead be circulated to Trustees.

Trustees unanimously agreed to this suggestion that progress reports should be circulated to Trustees at monthly intervals.

It was also suggested that something would need to be included to give reassurance that directors would have local commitment or accountability.

The Chair advised that company directors had clearly defined responsibilities and an onerous set of duties, which was set out in a clear legal framework. He was sympathetic with this point, but felt that the requirements of directors and remuneration were pitched accurately, and directors could be found in Shetland.

Some discussion took place with regard to the companies associated with Viking Energy, and the Chair agreed to circulate again a structure chart to all Trustees that clarified the roles of each. He also pointed out that, in that particular case, the directors of the company were not running the process, as may have been indicated in the report, but that

directors of both Viking Energy and Viking Wind were engaged in the non-executive search.

Dr Wills moved, and Mr Campbell seconded, that Trustees should approve the recommendations in the report.

Decision:

The Trust agreed:

(i) to appoint directors, as shown in the table below, to the four companies in accordance with the recommendations of the Institute of Directors – Scotland report to serve for a three year term

Company	No
Shetland Leasing and Property Development Limited	3
Shetland Heat Energy and Power Limited	3
Viking Energy Limited	1
CT Shetland TM Limited	1

(ii) to agree that SLAP's articles of association should be modified

(iii) to note the proposals for recruitment to the partnership board of Viking Energy Shetland LLP.

(iv) that progress reports should be circulated to Trustees at monthly intervals.

(Mr Cooper returned to the meeting and Mr Wishart left the meeting)

35/12

Annual Report and Accounts for the year to 31 March 2012

The Trust considered a report by the Financial Controller (Report No: CT1209036), which presented the Annual Report and Accounts for the year to 31 March 2012.

The Financial Controller summarised the main terms of the report, advising that investment returns had fallen slightly short of spending and therefore assets were slightly below the long-term target. However this was not significant and related to the volatility of the world's markets.

On the motion of Dr Wills, seconded by Mr G Smith, Trustees approved the recommendations in the report.

Decision:

The Trust agreed to:

- approve the Annual Report and Accounts for the year to 31 March 2012
- authorise the Chairman and Vice Chairman to sign the accounts
- authorise the Chairman to sign the Letter of Representation
- note the summary report from KPMG LLP, the Trust's auditors

36/12

Risk Management – Annual Review

The Trust considered a report by the Chief Executive (Report No: CT1209037), which presented the Risk Management Assessment.

The Chief Executive advised that the two 'red' potential risks had been dealt with by decisions taken earlier at this meeting.

On the motion of Mr Ratter, seconded by Mr Bell, Trustees approved the recommendations in the report.

Decision:

The Trust agreed to:

- approve the Risk Management Assessment
- note that progress on the actions will be reported to Trustees from time to time
- that the major risks to which the charity is exposed, as identified by the Trustees, have been reviewed and systems have been put in place to mitigate those risks

37/12

Health and Safety Policy

The Trust considered a report by the Chief Executive (Report No: CT1209038) that sought approval and adoption of a revised Health and Safety Policy, procedures and guidelines.

In response to a query, the Chief Executive advised that the draft policy had been circulated to all staff, and had been discussed at staff meetings so all staff had had the opportunity to make a contribution. With regard to the relation to the Risk Register, she was comfortable that the Trust was sufficiently covered as an organisation and would therefore be classified as 'green'.

On the motion of Mr Cooper, seconded by Ms Manson, Trustees approved the recommendations in the report.

Decision:

The Trust approved the Health and Safety Policy, procedures and guidelines.

38/12

Lone Working Policy

The Trust considered a report by the Chief Executive (Report No: CT1209039), which sought approval of the Lone Working Policy, procedures and guidelines.

The Chief Executive advised that, as before, the draft policy had been circulated to staff and discussed at staff meetings. In response to a query, she advised that she would revisit the Risk Register to ensure this was included in it. She went on to say that an independent review of building security had recently taken place, and mitigating measures had been taken following this review.

In response to queries, she said that staff did not work alone outwith premises, but measures would be taken if someone were required to work on their own.

It was suggested that an assessment of perceived risks should be included in all Trust reports, and the Chair said that this would be taken on board.

On the motion of Mr Bell, seconded by Mr Cooper, Trustees approved the recommendation in the report.

Decision:

The Trust approved the Lone Working Policy, procedures and guidelines.

39/12 **Service Performance of Funded Organisations – Year Ending 31 March 2012**

The Trust noted a report by the Chief Executive (Report No: CT1209044), which presented information regarding the services provided by the various organisations to which the Trust provides funding.

Mr Bell advised that he wished to declare an interest at this point, as he had been interim General Manager for COPE within the past year. He therefore would not take part in any debate.

The Chair agreed to a suggestion that the information contained in the reports from each organisation should contain more factual information in terms of inputs and outputs, rather than analytical information as was the case at present.

Decision:

The Trust noted the contents of the report and appendix.

(Mr Cooper and Mr Coutts left the meeting)

Advice was sought from Mr S Mackintosh regarding the quorum for the meeting. He advised that as the remaining reports on the agenda were for noting, and the Trust was not transacting business, the meeting could continue.

40/12 **Windfarms – Health and Property Values**

A report by the Financial Controller (Report No: CT1209041) informed of actions taken in respect of the decision taken at the last meeting to commission an independent report on the health effects, if any, of windfarms, and to consider the suggestion that a fund be set up to compensate householders whose properties are devalued as a result of the windfarm, if and when they move.

The Chair advised that this was a progress report. Dr Sarah Taylor, Director of Public Health, NHS Shetland, had agreed to provide updated information relating to health implications, and this would be brought before Trustees at a later date. Only at that point would Trustees be in a position to consider what the next steps to be taken were.

Trustees expressed their concern at the response from Viking Energy, which was felt to be inadequate. It was pointed out that the health impact study had been an important part of the motion agreed at the meeting in respect of the investment made in Viking Energy, and this had not been made clear in the report.

Mr T Smith referred to the response from Viking Energy, which stated that the Royal Institute of Chartered Surveyors (RICS) had indicated that property prices were determined by a combination of many thousands of tangible and intangible factors. He advised that he was a member of the RICS, and that the RICS quoted on their website that the threat of a windfarm may have a significant impact on property prices. He expressed his disappointment with the response and questioned if Viking Energy had sought local advice.

The Chair agreed that Viking Energy should be asked to expand on their response, and suggested that Mr Smith could liaise with Trust officials regarding this correspondence.

Decision:

The Trust noted the contents of the report and noted that the Chair would be asking Viking Energy to expand on their response.

(Ms Nicolson left the meeting, and Mr Coutts returned to the meeting)

41/12 **Payments to Trustees in the year to 31 March 2012**

A report by the Financial Controller (Report No: CT1209043) showed the payments that had been made to Trustees in the year to 31 March 2012.

Decision:

The Trust noted the content of the report.

(Dr Wills left the meeting during the following item)

42/12 **SIC Unaudited Statement of Accounts 2011/12**

The Chair advised that Shetland Islands Council had chosen to group its accounts with the Trust's. This was a decision for the Council, and the position of the Trust had not changed. Clear legal advice had been received by the Trust that the grouping of accounts was unnecessary and unhelpful. However it was for the Council to decide how to present its accounts.

He went on to point out that decision to do this had been taken by the Council's Section 95 officer, as he regarded it as an appropriate accounting measure. There had been no requirement for him to consult with the Council prior to making this decision, and he had made the decision using publicly available information. In response to a query, he confirmed that although he had had a casual conversation with the Council's Section 95 officer on this matter, there had been no indication or prior notice given to the Trust that this decision would be taken.

Mr Bell added that the Council's Section 95 officer had made this decision from a professional accountancy view and a desire not to have the Council's accounts qualified. It had not been a political decision of the Council.

(Mr Cooper returned to the meeting)

43/12 **Management Accounts – Three Months Ended 30 June 2012**

A report by the Financial Controller (Report No: CT1209045) presented the Trust's Management Accounts to the end of June 2012.

In response to a query regarding the Planned Maintenance budget, the Financial Controller advised that there was no expectation that this budget would be over or underspent at the end of the financial year. There were around 30 buildings used for charitable purposes that the Trust did not necessarily own, but had agreed to provide funds for their maintenance.

In response to a query regarding the funding that had been made available for Viking Energy, the Financial Controller advised that of the £6.3million approved, there had been an urgent need for £1.8million to be brought forward as soon as possible so that work could be carried out over the summer. Trustees had agreed to this, and this had been done after the last meeting. Nothing more had been paid out. This report dealt with revenue budgets and expenditure, so it was not referred to in this report as it formed part of the investment budget.

Decision:

The Trust noted the contents of the report and appendix.

44/12 **Fund Management Transactions**

A report by the Financial Controller (Report No: CT1209046) provided information regarding investment decisions made by fund managers to 30 June 2012, and the movement on the Charitable Trust funds for the current financial year up to 24 August 2012.

Decision:

The Trust noted the contents of the report.

45/12 **Recommended Disbursements – Social Care**

A report by the Chief Executive (Report No: CT1209047) detailed Social Assistance grants approved by the Director of Community Care in the period to 31 August 2012.

Decision:

The Trust noted the contents of the report.

46/12 **Recommended Disbursements – Approvals**

A report by the Chief Executive (Report No: CT12090480) detailed community development grants approved by the Director of Development Services in the period from 18 June to 27 August 2012.

It was commented that there were some people that regularly received grants under this scheme, and it was questioned if it was appropriate for them to continually receive grants.

The Chief Executive advised that this was something that had been highlighted to officers, but that they were eligible under the current criteria of the Scheme.

Decision:

The Trust noted the contents of the report.

The Chair advised that it was not possible to move on behalf of the Trust that the meeting should go into private. However if those presented consented, he would move as a personal statement that in order to prevent the disclosure of exempt information, that the Trust, in terms of the relevant Regulations, agree to exclude the public during consideration of the remaining items of business.

Those present agreed.

(The media left the meeting)

47/12 **Loans to Local Industry – Agricultural Loan Scheme Update**

A report by the Financial Controller informed of decisions taken under delegated authority in relation to several agricultural loans, and informed Trustees of certain events affecting Agricultural Loan Scheme borrowers.

It was noted that there was an error in paragraph 2.1.

The Financial Controller advised that the scheme had been closed to new business since 2007. The scheme had been a successful one from the Trust's point of view. His role now was to manage the portfolio of diminishing loans, and there was a good history of getting the money back. All loans were secured, and Shetland Development Trust had provided security in respect of one of the loans referred to.

Decision:

The Trust noted:

- the amendments to the agricultural loans detailed in paragraphs 2 and 3; and
- the additional information provided in paragraphs 4 and 5.

48/12 **Loans to Local Industry – Sums Due but Unpaid Over One Month Old as at 31 July 2012**

A report by the Financial Controller provided information regarding overdue sums as at 31 July 2012.

Decision:

The Trust noted the contents of the report.

The Trust meeting concluded at 1.30pm.

CHAIR