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If calling please ask for
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Our Ref: EMA/TA1/1
Your Ref:

Date: 14 September 2011

Dear Sir/Madam

You are invited to the following meeting:

**Special Shetland Charitable Trust
Council Chamber, Town Hall, Lerwick
Wednesday 21 September 2011 at 3.00pm**

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

Yours faithfully

(signed) Dr Ann Black

General Manager

AGENDA

- (a) Hold circular calling the meeting as read.
- (b) Apologies for absence, if any.
- (c) Declarations of Interest.

For Decision

1. Future Governance Arrangements of Shetland Charitable Trust. Report enclosed.

REPORT**To:** Shetland Charitable Trust

21 September 2011

From: General Manager

Report: CT1109061

Future Governance Arrangements of Shetland Charitable Trust**1. Introduction**

- 1.1 This report is presented to seek Trustee approval for the recommendations of the Governance Review Group with regard to the changes to the new governance arrangements of the Trust.

2. Background

- 2.1 At their meeting in February 2009, Trustees agreed to review the governance arrangements of the Trust in the light of current regulatory and legislative framework.
- 2.2 At their meeting on 12 May 2011, after considering the legal advice from Senior Counsel, Trustees agreed that the governance of the Trust should change with regard to the composition of the Trustee Board, and in particular that the majority of the Trustees should be drawn from outwith the Council (Min Ref CT/27/11).
- 2.3 A seminar was held on 17 August 2011, which discussed recommendations from the Governance Review Group. Trustees had a constructive discussion at which a number of valuable points were raised.

3. Present Position

- 3.1 The Governance Review Group now presents their recommendations with regard to the new Trustee body. These are set out in table form in Appendix 1.
- 3.2 Trustees requested further information on the selection process, and this is provided in Appendix 2.
- 3.3 In response to a request from Trustees, the public have been asked to comment on the proposals, and the response will be summarised and tabled at the meeting.
- 3.4 Any change to the governance arrangements of the Trust will be by way of an application to the Office of the Scottish Charity Regulator in terms of the Charities Reorganisation (Scotland) Regulations 2007

("the Reorganisation Regulations"). As part of the procedure involved in such an application, OSCR is obliged to publish notice, in the format prescribed by the Reorganisation Regulations on its website for a publication period of not less than 28 days and not more than 42 days. In addition, since the gross income of the Trust exceeds £250,000, the Trust will be obliged within the first 14 days of the publication period to arrange for a notice in prescribed form to be published once in a newspaper circulating in the locality. This will give the public a further opportunity to comment on the Trust's proposals.

4. Financial Implications

- 4.1 There are no financial implications arising directly from this report. However it is acknowledged that there will be a cost associated with the transition process.

5. Recommendations

Trustees are recommended:-

- 5.1 to approve the recommendations of the Governance Review Group as follows:-
- a) the number of Trustees to be fifteen;
 - b) the composition should be seven councillor Trustees and 8 appointed Trustees, all resident in Shetland;
 - c) the appointed trustees should be selected, following recommendation of a selection panel for final approval by the Trustees;
 - d) the quorum should be six, with a minimum of three appointed Trustees;
 - e) the Chair and Vice Chair should be appointed trustees, elected by the Trustees for one term, and may stand for a second term;
 - f) the term of office of a trustee should normally be
 - for Councillor Trustees, the term of office from one Council election to the next;
 - for appointed Trustees, from mid point to mid point of the elected Trustees' term;
 - for the appointments in 2012, half should serve for 2 1/2 years, and half for 6 1/2 years, both of which will count as one term. This will establish rotation and provide for some continuity so that at no point could the entire body of Trustees need to be replaced;
 - g) no Trustee should hold office for more than two terms without a break of at least two years;
 - h) there should be an Annual General Meeting, published as such and open to the public;
 - i) there should be a requirement for Trustees to attend a minimum of 50% of meetings.

5.2 Subject to approval of 5.1 above

- a) to agree that the selection referred to in 5.1 c) above be carried out by a selection panel consisting of an independent chair with a proven track record in a relevant field, and two trustees selected by the Trustees. At least one of the Trustees should be a non-Councillor Trustee;
- b) to authorise the General Manager to engage a specialist firm to manage the selection process up to final interview stage, as detailed in Appendix 2;
- c) to authorise the General Manager to approach a suitably qualified professional from outwith Shetland with a proven track record in a relevant field, to chair the selection panel;
- d) to agree that the new trustees should be in post by May 2012 and
- e) to instruct the Trust's legal advisers, Messrs Turcan Connell
 - (i) to prepare the necessary application for a Reorganisation Scheme, in consultation with the General Manager, and
 - (ii) thereafter to submit such application to OSCR.

Reference: AB/EMA/TA38

Report Number CT1109061-f

Recommendations of the Governance Review Group

Appendix 1

<u>Review Group Recommendation</u>	<u>Reasons</u>
<p>Number of Trustees – 15</p>	<p>Why 15?</p> <ul style="list-style-type: none"> • Fifteen is an appropriate number given the breadth of activity funded by the Trust, the value of the funds held, the type of investments undertaken and the required knowledge of the community. • Fifteen is considered large enough to contain the right mix of skills, knowledge and experience, without becoming cumbersome and hence undesirable. • Number suggested in QC Roy Martin’s legal opinion. <p>Why Not Less than 15?</p> <ul style="list-style-type: none"> • Smaller Trusts, typically with an income of £3-10m, and often undertaking a single activity have fewer Trustees typically 8-12. • There could be a risk that unless “selected” carefully a board this size may not have sufficient knowledge and experience. It may also struggle to deal with conflicts of interest and quorum issues purely on the basis of insufficient numbers. • Given the responsibility to the community, it may be perceived as too small to be representative of the community and breadth of activities the trust funds. • Fewer Trustees could mean that community funds become dominated by interest groups, and does not serve the best interests of the whole of Shetland.
	<p>Why Not More than 15?</p> <ul style="list-style-type: none"> • Any more than fifteen could become problematic given, in a small community such as Shetland, the number of people with the time, desire and skills to serve on a number of public bodies is limited. There is also a concern that the experience and expertise that is available to the community is not spread too thinly in a desire to ensure independence. • The time and cost required to administer and manage such large numbers of Trustees must be considered, and whether this represents value for money in relation to the added value additional Trustees would bring.

<p>Composition of Board of Trustees – 7 Councillor Trustees and 8 Non-Councillor (Appointed) Trustees</p>	<p>Why Councillor Trustees?</p> <ul style="list-style-type: none"> • Councillor Trustees retains the strategic links with SIC. It would help to ensure that the common interests of the Community of Shetland are looked after, avoiding potential duplication and overlap. • Councillor Trustees ensure accountability of the Trust to the community through elected members representation. • Councillor Trustees provide a useful source of Trustees given the appointment process. Ideally SIC would nominate individuals with representative geographic spread and an appropriate balance of skills. • Roy Martin QC in paragraph 77 of his opinion accepts Councillor Trustees. “That OSCR does not regard the fact that some trustees of a trust having charitable status may be local authority councillors as depriving the trust of its character as a charitable trust appears to me to be entirely appropriate. I have not identified any reason why either an equivalent charitable trust, or the Trust in this case, should not be permitted to have, as at least some of its trustees, persons who are elected members of the local authority for the same area.” • Having no Councillor Trustees would address the concerns of independence, control and conflicts of interest in relation to SIC. It may improve the debate between SIC and the Trust, but equally there is a risk that tensions could arise. The Trust may struggle to get the geographic spread; breadth of knowledge or shared common understanding of the needs of the community provided by elected members.
	<p>Why Appointed Trustees?</p> <ul style="list-style-type: none"> • Appointed Trustees provide the required level of independence from SIC. • Appointed majority solves the conflict of interest issues when undertaking transaction with SIC. (see suggested quorum arrangements below).

	<p>Why Majority Appointed Trustees?</p> <ul style="list-style-type: none"> • The proposed split addresses the three key issues of accountability, independence and compliance with 2005 Charities Act. • It helps deal with the issue of quorum arrangements and ensures a robust and appropriate decision making process. <p>Why Not Have An Even Greater Number Of Appointed Trustees?</p> <ul style="list-style-type: none"> • The proposed Councillor/ Appointed Trustee split represents a significant shift from the current regime. The split of 4/11 suggested by Roy Martin QC is seen to be too significant a change given the nature of the community and the role the Trust plays in it. There is a risk that too dramatic a shift could undermine the effectiveness of the Trust, and this number is based on an assumed quorum of 8. In fact in paragraph 87 of his legal opinion Roy Martin QC refers to a 7/8 split and states, "My suggested arrangement should therefore not be seen as prescriptive and it may be that the Trustees can devise other arrangements which would produce the same result in terms of independence and appearance of independence. Ultimately, what will be appropriate will be what is acceptable to OSCR at least for the purpose of preserving the status of the Trust as a charitable trust." • There is no legal requirement to go beyond this, as outlined above. • There is a risk that too radical a departure from the current model might have adverse consequences, if changes in investment strategy and disbursements are undertaken without sufficient knowledge/understanding of the Trust and how it operates.
	<ul style="list-style-type: none"> • Given there is no payment for the appointments, which at times demand a significant time commitment, it may be difficult to attract sufficient numbers of appropriate candidates.

<p>Quorum – 6 (Of the 6, a minimum of 3 must be Appointed Trustees)</p>	<p>Why 6?</p> <ul style="list-style-type: none"> • A quorum of 6 Trustees is felt to be a sufficient number to ensure effective decision making and realistic in terms of attendance and ability to participate given the inevitable potential for conflicts of interests in a community the size of Shetland. • Would allow decision-making when Councillor Trustees have a conflict of interest and are unable to participate. It would deal therefore, with the issues of accountability, independence and compliance with the 2005 Charities Act. <p>Why Not More than 6?</p> <ul style="list-style-type: none"> • Given the reduction in number of Trustees to 15, and the potential for 7 Councillors Trustees to be conflicted, it was felt that just over 1/3 made a practical and workable number in order for the Trust to conduct its business. A quorum of 7 or 8, which would be closer to the current 50%, given Appointed Trustees may have conflicts for other reasons was seen to be too high a number. <p>Why Not Less than 6?</p> <ul style="list-style-type: none"> • Any fewer than 6 Trustees could undermine effective decision-making by the Trust.
<p>Chair and Vice Chair – Appointed Trustees</p> <p>Appointed by the Trustees from within the Trustee group</p>	<p>Why Appointed Trustees as Chair and Vice Chair?</p> <ul style="list-style-type: none"> • Appointed Trustees as Chair and Vice Chair would address issues of perceived direct or indirect conflict of interest with SIC. • It would demonstrate true independence from SIC. • It addresses the three key issues of accountability, independence and compliance with the 2005 Charities Act. <p>Why Not Councillor Trustees as Chair and Vice Chair?</p> <ul style="list-style-type: none"> • This could be perceived as giving SIC influence over SCT affairs, and to question the independence of the Trust. <p>No Stipulation – Appointed Purely on Merit</p> <ul style="list-style-type: none"> • The Chair and Vice Chair could be chosen purely for their skills and attributes. But there is a risk that if Councillor Trustees are chosen, the issue of independence would not be properly addressed.

<p>Method of Appointment - a combination of election, selection and appropriate co-opted appointments when required.</p> <p>No serving SIC Councillors eligible to stand for selection</p> <p>(ie 7 elected, 8 selected, with the capacity to co-opt trustees if required to a total of 15)</p> <p>Selection would be carried out by a selection panel, consisting of an independent chair from outwith Shetland with a proven track record in a relevant field, and two trustees selected by the Trustee body at least one of whom should be a appointed Trustee.</p> <p>(please see Appendix 2, which gives more detail on the proposed selection process)</p>	<p>Why a Combination of Election and Selection?</p> <ul style="list-style-type: none"> • Elections through the democratic process provide public accountability, which is tested regularly through the election process. • Selection gives a mechanism by which to ensure particular skills, knowledge and experience required to run an effective Trust board, are captured, thus better enabling the Trustee body to fulfil their duties under Section 66 of the 2005 Act. • Combined election and selection appear to provide a mechanism, which suits the needs given the nature and activities of the Trust. <p>Why Not Election Only?</p> <ul style="list-style-type: none"> • Election process can produce "random" results. There is a risk that the Trust does not get the appropriate mix of skills and experience it requires to have an effective board of Trustees. • Risks not having the balance of skills, experience and interests required to deliver the objectives of the Trust • Not all suitably qualified, experienced and able potential Trustees will put themselves forward as part of an election process, but may be happy to be part of the selection process. <p>Why Not Selection Only?</p> <ul style="list-style-type: none"> • Selection alone may not be perceived as "fair and transparent" and have the accountability to the community associated with election. • Councillor-Trustees are democratically elected by all the people of Shetland
	<p>Co-opted Appointments?</p> <ul style="list-style-type: none"> • This would provide a source of Trustees that have the correct skills and attributes • Could be co-opted from a pre-agreed list • Could be used if unable to recruit sufficient numbers of appropriate trustees though a combination of election and selection

Appendix 1

<p>Duration and rotation of periods of office</p> <ul style="list-style-type: none"> – for Councillor Trustees the term of office is from election to election (normally 4-5 years) - for Appointed Trustees, the term is from mid-point to mid-point of the elected Trustees' term <p>Maximum of two consecutive terms whatever the appointment status</p>	<ul style="list-style-type: none"> • Changing Appointed Trustees at the mid point between Council elections would give continuity. • Restriction to two terms would ensure a fresh inflow of new ideas. • This is considered best practice in public appointments.
<p>Term of office for Chair and Vice Chair</p> <p>Elected from within the Trustee body, by the Trustee body, for one term.</p> <p>Must stand for re-election after one term and serve a maximum of two consecutive terms</p>	<ul style="list-style-type: none"> • Restriction to two terms would ensure a fresh inflow of new ideas. • This is considered best practice in public appointments.
<p>Annual General Meeting</p>	<ul style="list-style-type: none"> • Considered good practice
<p>Attendance Criteria – eg must attend 50% of meetings</p>	<ul style="list-style-type: none"> • Considered good practice
<p>Timescale for implementation – by May 2012</p>	<ul style="list-style-type: none"> • Coincides with the next scheduled SIC elections when Trustees change under the present system. • Allows time for a smooth transition and to recruit new Trustees.

Selection Process

Introduction

According to the Charities and Trustee Investment (Scotland) Act 2005 (“the Act”), “The Charity Trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act”.

The Office of the Scottish Charities Regulator (OSCR) has not issued any specific guidance on the recruitment of charity trustees, other than that contained in the Act, and generic guidance in “Guidance for Charity Trustees: acting with care and diligence” where it states that charity trustees are responsible for ensuring that “the board of trustees are ‘fit for purpose’ and the charity trustees are working together” and gives as an example of good practice “Agree and implement programme for charity trustee training, board building and renewal”.

According to the Charity Commission (the English equivalent of OSCR), existing Trustees are legally responsible for the recruitment of new trustees. Under the proposed arrangements, this would apply to the appointed Trustees. Trustees of charities which employ staff can delegate some aspects of the recruitment to staff, but they must ensure that they retain overall responsibility and control of the recruitment, selection and induction processes.

In recruiting new trustees, the existing trustees must act in the best interests of the charity. In order to ensure that this is the case, and that they are in a position to explain to new trustees what is required of them, existing trustees need to be clear in their own minds about the purposes and aims of the charity, as well as their broader duties and responsibilities as trustees.

Method of Appointment

There are a variety of methods which trustee boards can use to recruit new trustees. Research undertaken by the Charity Commission shows that the traditional methods, personal recommendation and word of mouth, remain most popular. However the research also shows that whilst these methods are widely used, they are not necessarily the most effective ways of finding the people with the skills which the trustees have identified, as they limit the field from which trustees can be drawn. Using wider and more inclusive methods of searching for new trustees, such as advertising, can access a wider range of applicants and The Charity Commission recommend that trustees consider this method.

Being able to demonstrate openness and transparency in the recruitment process can also in the longer term help to increase the public’s confidence in the charity.

Why Selection?

Selection gives a mechanism by which to ensure particular skills, knowledge and experience required to provide a Trust board “fit for purpose” are captured.

Criteria for selection

According to OSCR, trustees must comply with the following requirements:-

- The appointment must be made in accordance with its governing document and the relevant statutory requirements and
- The person it wishes to appoint must not be disqualified from being a trustee

Appointments Commission guidance for NHS charities indicates that in an application process, applicants should demonstrate that they have the competences required to work effectively on a trustee body, including the ability to:-

- Contribute to the work of the trustees, particularly using the skills and experience required for the post;
- Assimilate and analyse information and situations and make strategic decisions based on that information;
- Work as part of a team and collaboratively with other stakeholders;
- Understand and commit to the public service values of accountability, probity, openness and equality of opportunity.

In addition, it is important that prospective trustees are made aware of the commitment in time that they will be required to make, and that charity trustees are generally unpaid.

The Process of Selection

The overall responsibility for the recruitment of new trustees lies with the existing trustees. However some aspects of the recruitment process can be delegated to a specialist body, provided that the final responsibility rests with a selection panel, appointed by Trustees.

For instance, in the recruitment of trustees of NHS charities, the selection panel consists of the chair of the existing trustee body who would chair the panel, another trustee and an independent assessor. Where appropriate the panel can include an individual competent to test specific areas of expertise included in the person specification in addition to the standard panel membership or as a replacement for the second trustee member.

It is very important that the process of selection is completely fair and transparent. To that end it is proposed to develop an application process which complies with the code of practice issued by the Office of the Commissioner for Public Appointments in Scotland (OCPAS). The proposed outline of the process is given below:-

1. Engage a specialist firm to administer the initial phase of the selection process, as follows;
 - Compiling a person specification and role description, based on the Trust's Objects and key objectives:

- Advertising for suitable candidates, as widely as possible in the local media:
 - Short-listing.
2. Establish a selection panel. It is proposed that the selection panel consist of an independent Chair from outwith Shetland with a proven track record in a relevant field, and two trustees, at least one of which must be an appointed Trustee. The panel would then interview the short-listed candidates.

The Charity Commission has issued guidance on Selection of Trustees, and this is attached as Appendix A to this paper.

Sources of External Assistance

From initial enquiries, it is clear that there are suitable organisations who would be able and willing to either advise or help in the selection process.

Specialist Firms

A number of specialist firms have the relevant expertise to assist with the selection process. One company in particular has a track record of acting as "Trusted Advisers" within the public and charitable sectors in Scotland, and specifically within the Highlands and Islands. In response to our enquiry, they stated that "we are respected by the Scottish Government and OSCR for our status as Trusted Partners due to our quality and governance around recruitment processes."

Scottish Government - Public Appointments

The Scottish Government's Public Appointments Office was very helpful in outlining the process which they followed in selecting candidates for public appointments. However they are unable to give practical assistance with appointments to "non-public" bodies.

Extracted from the Charity Commission's "Finding new Trustees"

Trustee recruitment at a glance

This section summarises the main stages in the recruitment of new trustees and sets out a typical sequence of events.

Making a start

- (1) A charity identifies the need for new trustees. This may be because vacancies have arisen through resignations, or it may be that existing trustees have decided that one or more new trustees with specific skills are needed to help run the charity more effectively.
- (2) The trustees agree what skills, experience and knowledge are needed, and write it down in the form of a short job description and person specification.
- (3) The trustees agree responsibilities and a process for recruitment; in doing this, they take care to comply with any specific requirements set out in the charity's governing document. Some of the work may be delegated to a sub-group of trustees, but the whole trustee board remains in full control of the process and decisions.

Finding potential trustees

- (4) The trustees consider the best methods of attracting a diverse range of candidates with the skills the charity needs. This may include advertising in the local and/or specialist press and using trustee brokerage services.
- (5) Short-listing and interviews take place against agreed criteria. Interviews are carried out by a small panel of trustees, and each candidate is asked similar questions to ensure a fair and objective approach. Notes are kept of each interview.
- (6) Preferred candidates are identified and invited to join the trustees, subject to references, formal vetting and approval by the full trustee board. Unsuccessful candidates are notified and thanked for their interest.

Who is responsible for recruiting new trustees?

The short answer:

Responsibility for the recruitment of new trustees rests firmly with the existing trustees. They must oversee the management of an open and efficient process and always act in the best interests of the charity.

In more detail:

Existing trustees are legally responsible for the recruitment of new trustees. Trustees of charities that employ staff can delegate some aspects of recruitment to staff, but they must ensure that they retain overall responsibility and control of the recruitment, selection and induction processes.

In recruiting new trustees, the existing trustees must act in the best interests of the charity. In order to ensure this is the case, and that they are in a position to explain to new trustees what is

required of them, existing trustees need to be clear in their own minds about the purposes and aims of the charity, as well as their broader duties and responsibilities as trustees.

Finding potential trustees

There are a variety of methods which trustee boards can use to recruit new trustees. Our experience and research shows that the traditional methods for recruiting new trustees - personal recommendation and word of mouth - remain the most popular. However, our research work has shown that whilst these methods are still widely used, they are not necessarily the most effective ways of finding the people with the skills which the trustees have identified, as they limit the field from which trustees can be drawn. Using wider and more inclusive methods of searching for new trustees, such as advertising and using trustee brokerage services, can access a wider range of applicants and we recommend that trustees consider these methods.

Is advertising a good way to attract trustees?

The short answer:

Yes. By advertising it is possible to reach out to more people than can be reached by word of mouth, and this can help a charity to attract a greater range of candidates with a wider range of skills and experience.

In more detail:

Advertising can be an effective way of reaching a wider group of people, and it gives a charity the opportunity to specify the skills that the trustee board is looking for. Advertising in the press can be expensive, and will not be appropriate for all charities. However, there are some low cost solutions available, such as free notices on local websites, local notice boards or newsletters. To make the most of advertising, trustees should think carefully about where to advertise, and make sure that the advertisement accurately reflects the charity and the skills and experience that the trustees are looking for.
