

## Recommendations of the Governance Review Group

<u>Review Group Recommendation</u>	<u>Reasons</u>
<p><b>Number of Trustees – 15</b></p>	<p><b>Why 15?</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Fifteen is considered large enough to contain the right mix of skills, knowledge and experience, without becoming cumbersome and hence undesirable.</li> <li>• Number suggested in QC Roy Martin’s legal opinion.</li> </ul> <p><b>Why Not Less than 15?</b></p> <ul style="list-style-type: none"> <li>• Smaller Trusts, typically with an income of £3-10m, and often undertaking a single activity have fewer Trustees typically 8-12.</li> <li>• 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.</li> <li>• 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.</li> <li>• Fewer Trustees could mean that community funds become dominated by interest groups, and does not serve the best interests of the whole of Shetland.</li> </ul> <p><b>Why Not More than 15?</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>

<p><b>Composition of Board of Trustees – 7 Councillor Trustees and 8 Non-Councillor (Appointed) Trustees</b></p>	<p><b>Why Councillor Trustees?</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Councillor Trustees ensure accountability of the Trust to the community through elected members representation.</li> <li>• 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.</li> <li>• 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.”</li> <li>• 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.</li> </ul> <p><b>Why Appointed Trustees?</b></p> <ul style="list-style-type: none"> <li>• Appointed Trustees provide the required level of independence from SIC.</li> <li>• Appointed majority solves the conflict of interest issues when undertaking transaction with SIC. (see suggested quorum arrangements below).</li> </ul>
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	<p><b>Why Majority Appointed Trustees?</b></p> <ul style="list-style-type: none"><li>• The proposed split addresses the three key issues of accountability, independence and compliance with 2005 Charities Act.</li><li>• It helps deal with the issue of quorum arrangements and ensures a robust and appropriate decision making process.</li></ul> <p><b>Why Not Have An Even Greater Number Of Appointed Trustees?</b></p> <ul style="list-style-type: none"><li>• 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.”</li><li>• There is no legal requirement to go beyond this, as outlined above.</li><li>• 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.</li><li>• 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.</li></ul>
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<p><b>Quorum – 6 (Of the 6, a minimum of 3 must be Appointed Trustees)</b></p>	<p><b>Why 6?</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul> <p><b>Why Not More than 6?</b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul> <p><b>Why Not Less than 6?</b></p> <ul style="list-style-type: none"> <li>• Any fewer than 6 Trustees could undermine effective decision-making by the Trust.</li> </ul>
<p><b>Chair and Vice Chair – Appointed Trustees</b></p> <p><b>Appointed by the Trustees from within the Trustee group</b></p>	<p><b>Why Appointed Trustees as Chair and Vice Chair?</b></p> <ul style="list-style-type: none"> <li>• Appointed Trustees as Chair and Vice Chair would address issues of perceived direct or indirect conflict of interest with SIC.</li> <li>• It would demonstrate true independence from SIC.</li> <li>• It addresses the three key issues of accountability, independence and compliance with the 2005 Charities Act.</li> </ul> <p><b>Why Not Councillor Trustees as Chair and Vice Chair?</b></p> <ul style="list-style-type: none"> <li>• This could be perceived as giving SIC influence over SCT affairs, and to question the independence of the Trust.</li> </ul> <p><b>No Stipulation – Appointed Purely on Merit</b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>

<p><b>Method of Appointment - a combination of election, selection and appropriate co-opted appointments when required.</b></p> <p><b>No serving SIC Councillors eligible to stand for selection</b></p> <p><b>(ie 7 elected, 8 selected, with the capacity to co-opt trustees if required to a total of 15)</b></p> <p><b>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.</b></p>	<p><b>Why a Combination of Election and Selection?</b></p> <ul style="list-style-type: none"> <li>• Elections through the democratic process provide public accountability, which is tested regularly through the election process.</li> <li>• 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.</li> <li>• Combined election and selection appear to provide a mechanism, which suits the needs given the nature and activities of the Trust.</li> </ul> <p><b>Why Not Election Only?</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Risks not having the balance of skills, experience and interests required to deliver the objectives of the Trust</li> <li>• 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.</li> </ul> <p><b>Why Not Selection Only?</b></p> <ul style="list-style-type: none"> <li>• Selection alone may not be perceived as “fair and transparent” and have the accountability to the community associated with election.</li> <li>• Councillor Trustees are democratically elected by all the people of Shetland</li> </ul> <p><b>Co-opted Appointments?</b></p> <ul style="list-style-type: none"> <li>• This would provide a source of Trustees that have the correct skills and attributes</li> <li>• Could be co-opted from a pre-agreed list</li> <li>• Could be used if unable to recruit sufficient numbers of appropriate trustees though a combination of election and selection</li> </ul>
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<p><b>Duration and rotation of periods of office</b></p> <p>– for Councillor Trustees the term of office is from election to election (normally 4-5 years)</p> <p>- for Appointed Trustees, the term is from mid-point to mid-point of the elected Trustees' term</p> <p><b>Maximum of two consecutive terms whatever the appointment status</b></p>	<ul style="list-style-type: none"> <li>• Changing Appointed Trustees at the mid point between Council elections would give continuity.</li> <li>• Restriction to two terms would ensure a fresh inflow of new ideas.</li> <li>• This is considered best practice in public appointments.</li> </ul>
<p><b>Term of office for Chair and Vice Chair</b></p> <p><b>Elected from within the Trustee body, by the Trustee body, for one term.</b></p> <p><b>Must stand for re-election after one term and serve a maximum of two consecutive terms</b></p>	<ul style="list-style-type: none"> <li>• Restriction to two terms would ensure a fresh inflow of new ideas.</li> <li>• This is considered best practice in public appointments.</li> </ul>
<p><b>Annual General Meeting</b></p>	<ul style="list-style-type: none"> <li>• Considered good practice</li> </ul>
<p><b>Attendance Criteria – eg must attend 50% of meetings</b></p>	<ul style="list-style-type: none"> <li>• Considered good practice</li> </ul>
<p><b>Timescale for implementation – by May 2012</b></p>	<ul style="list-style-type: none"> <li>• Coincides with the next scheduled SIC elections when Trustees change under the present system.</li> <li>• Allows time for a smooth transition and to recruit new Trustees.</li> </ul>