

<p>ACCOUNTS COMMISSION FOR SCOTLAND</p> <p>SHETLAND ISLANDS COUNCIL: REPORT BY THE CONTROLLER OF AUDIT</p> <p>FINDINGS AND RECOMMENDATIONS OF THE ACCOUNTS COMMISSION</p>	<p>Comments below by Cllr. Jonathan Wills, 7/09/2010.</p>
<p>Introduction</p> <p>1. Shetland Islands Council was established in 1975, and is one of three islands councils in Scotland. The Commission appreciates the issues, benefits and challenges which arise for elected members and officers operating in a comparatively small and close-knit island community. Islanders' pride in their history and culture is obvious, as is the council's role in sustaining significant aspects of local economic and cultural life. Nonetheless, the issues and challenges in terms of good governance and accountability faced by Shetland Islands Council are in essence no different from those in any other council.</p>	<p>This is undeniable. So we should have been following the normal rules for local authorities in Scotland. Under the present council leadership we have not always done so. Whose fault is that? All of the councillors or those who are elected office-bearers?</p>
<p>2. The Commission notes the acknowledgement in the Controller of Audit's report that services provided by the council continue to be delivered to a high standard, albeit at a relatively high cost.</p>	<p>The commission ignores the well-attested fact that the scattered geography and settlement pattern of Shetland explain a great part of the additional costs, and that the standards of service we provide are in some instances significantly higher than on the mainland. We should not be ashamed of this and deserve credit for setting higher standards than normal.</p>
<p>3. The Commission finds that there has been an absence of clear, decisive and consistent leadership for Shetland Islands Council at councillor level. The council has struggled to agree and communicate a clear common purpose, which has been made more difficult by significant tensions among councillors and between councillors and officers.</p>	<p>It is not clear what this first sentence means. While the merest backbench councillor has responsibilities to the public and the council, leadership is primarily the role of the elected council office-bearers. That is the law. The commission does not seem to grasp this fundamental point about local democracy.</p> <p>The council does in fact have a "clear common purpose" and it is "communicated" in the annual corporate plan with considerable detail. No</p>

	<p>“struggle” was involved. The plan is agreed after open and democratic debate, as the commission would know if it had read the council’s minutes. Parts of the plan may be unrealistic and parts may not have been achieved yet, but it exists as a public document and is, I suspect, rather more specific and realistic than some other councils’ corporate plans.</p> <p>Tension is an inevitable and necessary part of the political process, whether at local or national level. The problem in Shetland has not been tension, which can be a creative force, but the actions (or inaction) of some of our elected office-bearers and the behaviour of a very few senior officials, notably the former chief executive.</p>
<p>4. The Commission finds that councillors have not demonstrated their ability to balance their corporate and community leadership roles effectively. Councillors appear to be effective advocates for their local communities. They place greater emphasis on local issues and circumstances than on the council’s corporate priorities. The Commission is concerned that it did not hear evidence that would change the conclusion of the 2005 Best Value audit report that ‘councillors have a marked tendency to represent the narrow interests of their wards at the expense of their wider corporate role for the council and Shetland as a whole’. The absence of party political groups does not explain why councillors have failed to show clear corporate leadership. Councillors receiving enhanced salaries for holding positions with additional responsibilities have a particular obligation to fulfil this role.</p>	<p>This is a collective slur on all councillors. Which councillors does the commission mean? Why does it not give examples?</p> <p>This is a fatuous remark. Is there a local authority in the world (or a parliament) where members elected for a geographical constituency do not try to do their best for their constituents, while trying to balance the interests of the wider community as a whole?</p> <p>Again, we read about councillors in general failing to show leadership when that is the specific role of the elected office-bearers, by law. Why does the commission not identify those whom it believes responsible and give evidence of their failures?</p>
<p>5. The council’s processes and procedures have not helped councillors and senior managers act in a coherent and authoritative manner. The Commission considers that meetings between senior councillors, and between senior councillors and officers, have for too long been ad hoc, informal and undocumented. The council must have rigorous systems which support leadership, transparency and clear decision-making.</p>	<p>This is a fair point and such procedural errors have indeed been a major cause of the failures of this council since 2003 and before. It would make the criticism more authoritative if the commission (which by its very nature is presumably interested in factual accuracy and precision) would specify which processes and procedures are defective, which meetings were not properly arranged and recorded, and who was responsible for these departures from normal local authority practice. To blame all councillors is another collective insult,</p>

	<p>particularly to those who have repeatedly protested against such conduct by the leadership. But the commission seems to blame the whistleblowers along with the guilty parties.</p>
<p>6. It is not clear how the council systematically seeks to identify and understand the needs and expectations of the community as a whole. The Commission noted public concern that elected members do not listen to, or communicate with, the community in a structured way.</p>	<p>It may not be clear to the commission but it is abundantly clear to everyone else. There is an elaborate structure for communicating with the public, not least through the local media, which is far more active and interested in council affairs than is normal in mainland UK communities. This council has indeed been accused of causing “consultation fatigue” with its endless forums, panels, public consultations, seminars, etc. Just look at the exhaustive public consultation on the Blueprint for Education and the planning section’s Main Issues Report.</p> <p>All 22 councillors are in regular contact with constituents, pressure groups and community organisations. Unlike urban councillors on the mainland, it is impossible to avoid such daily contacts, even if we wished to. This allegation is unfair, ignorant and unfounded.</p>
<p>7. The Commission does not have any sense of how the council develops a clear set of priorities which can be communicated effectively to the public. Councillors must now set aside personal differences and develop a clear and coherent set of priorities, based on objective evidence and a sound understanding of the needs and expectations of the community the council serves.</p>	<p>The commission does not “have any sense” about many things, due to its apparent failure to read the council’s minutes as part of the investigation. These show that, despite our public disagreements over various issues (which the commission perhaps finds distasteful and unfamiliar because in mainland councils such debates often take place in secret party cabals), councillors are in fact able to set aside personal and political differences for the public good. We do so frequently. Examples include the deal with the Total gas company, the introduction of the ‘gateway’ system for evaluating projects in the capital programme, and our efforts to extend care for the elderly and to build new houses, despite the national financial crisis.</p> <p>This comment is patronising, trite and offensive. The commission appears to be confusing personal differences (which must occur in any group of 22 people – MSPs, for example) with differences over policy. Often the debate has been about inept practice, not personalities. Assemblies of accountants may grope their way to fudged consensus by a process of cosy osmosis but that is not how it is or should be in local government. This council holds lively, public debates on policy</p>

	and does not need lay preaching from accountants to tell us how to do it.
8. The Commission found little evidence of Shetland Islands Council looking elsewhere to learn from good practice in terms of governance and leadership. All councils in Scotland operate under the same statutory framework, and Shetland Islands Council must now acknowledge and follow recognised good practice.	This is a valid criticism of the council leadership’s failure, over many years, to follow normal local authority procedure. So, again, why blame all the councillors, many of whom have in fact attended regular meetings with other local authorities, with joint boards and with Cosla and have reported their findings back to the council? Such reports are a standing item on all committee agendas, as the commission would know if it had read the minutes.
9. The Commission found limited evidence of effective leadership from the corporate management team. The last 12 months have been a particularly difficult period, but all senior managers have an individual and collective responsibility to lead for the good of the council as a whole, as well as in their area of direct responsibility.	Most of the blame for this rests squarely with one person, who has now left the council’s employment. This person reported directly to the council leadership. The criticism might be more fairly directed at them than at officials. The second sentence is yet another example of a homily stating the obvious. These are spattered throughout the report, prompting me to wonder if this is an account of a thorough investigation “based on objective evidence” or just a sermon expressing conventional opinions against municipal sin.
10. The events of the last year have made it difficult for councillors and officers to maintain mutual trust and respect. This makes it crucial that good governance is in place and that councillors and officers adhere to the agreed policies and procedures.	What has made it difficult to “maintain mutual trust and respect” is the lack of respect shown by the political leadership for those with dissenting views, for example in the failure to take appropriate action when serious concerns were raised through the proper channels, in the rigging of a disciplinary inquiry to exclude crucial evidence, and in the misuse of public funds for a vexatious and unsubstantiated complaint to the Ethical Standards Commission by five individuals falsely claiming to act on behalf of the council. The political railroading of a planning application where the council was the applicant certainly did not engender respect or trust either. It appears, however, that failing to “adhere to the agreed policies and procedures” carries no penalty, not even the censure by the commission of the individuals responsible.
11. The Commission heard evidence that robust appraisal and rigorous challenge of policy choices is lacking in the council. There is a poorly structured approach to engagement between senior officers and councillors, and a lack of appreciation of good practice elsewhere.	This is a surprising statement, given our frequent and heated debates about, for example, financial policy, the capital programme, the cost of senior care and the future of the education service. It is indeed true that the leadership often ignores dissenting views, but “robust appraisal and rigorous challenge” are much more a

	feature of Shetland Islands Council meetings than of many other local authorities. Again, this suggests that the commission is not familiar with the detailed evidence in the published minutes or the very full reports of our debates that appear in the local media.
12. The appointment of an interim chief executive provides an opportunity to improve corporate leadership. There is a danger, apparent in the evidence we heard, of unrealistic expectations being placed on the interim chief executive. The part he can play will only be successful if all councillors accept their responsibilities for good governance; if there is leadership from the office of convenor; and if all members of the corporate management team provide effective support.	This is a fair point. For many years in Shetland there has been a regrettable tendency for the public and some councillors to regard the chief executive as a “leader” of the council rather than a manager on the council’s behalf. The constitutional and legal position is that the elected office-bearers are the leaders. The chief executive and the staff are there to advise, inform and put into effect the decisions taken by the council, including those delegated by councillors to their elected office-bearers.
Governance	
13. The Commission finds that the approach to governance at Shetland Islands Council is haphazard. We are particularly concerned to have found a lack of appreciation of the seriousness of this issue, its importance, and the implications of any failings. The Commission did not find evidence of a shared understanding among councillors, and between councillors and officers, of what good governance means and requires.	This, alas, is true. But whose “approach” and whose fault is it? Can it be the fault of those of us who for over two years have repeatedly tried in vain to debate the future governance of the council at the Audit & Scrutiny Committee and at the full council? I am left wondering if the commission has actually read the evidence submitted to it, including my very detailed suggestions concerning the roles of convener and vice-convener, the division of responsibilities between committees, the roles of vice-chairs and spokespersons, put to Audit & Scrutiny in April 2009 but shelved due to the leadership’s hostility and inertia. I was told, but could hardly believe, that the commission would not consider my evidence because it was more than four pages long! If true, this is pathetic.
14. We do not accept the suggestion that the non-party political nature of the council, or the small close-knit community with people inevitably playing multiple roles, provides justification for this inconsistent approach to governance. On the contrary, in these circumstances it is the more important that issues of transparency and public confidence in decision processes are seen to be taken seriously.	I could not agree more and, like some other councillors, have persistently drawn the attention of Audit Scotland to this “inconsistent approach to governance”. I will not accept collective blame for the failings of the political administration.
15. For example, it is a matter of serious concern to the	It was surely the commission’s job to investigate and determine “whatever” the

<p>Commission that the council finds itself in a position where, for whatever reason, some councillors are able to report that they did not clearly understand the nature and implications of what the council decided on the position of the former chief executive at its meeting on 19 February 2010. This demonstrates a failure of governance and decision-making processes which has made it very difficult for the council to explain clearly these important decisions to the local community.</p>	<p>reason was. It appears to me that the procedure at the meeting on 19th February 2010 was deliberately left vague to give the ruling group freedom to offer the departing chief executive “whatever” they chose. This indeed “demonstrates a failure of governance and decision making processes” but ordinary council members were not to blame for this.</p> <p>The conduct of the meeting of 19th February 2010 and the contents of the agreement amount to serious maladministration, not just “a failure of governance and decision making processes”, that ought to be apparent to a body as professionally qualified as the commission.</p> <p>It would appear that the commission cannot have read the compromise settlement between Mr Clark and the council, despite being entitled to see it. If they had read it, as experts in public finance they would surely have remarked upon the outrageous clauses in which the council’s signatories agreed to pay compensation for “injuries”. They might also have spotted the tax-related clauses.</p> <p>That the commission entirely missed this (and actually rejected as evidence a copy of my notes on the compromise document – again, because it was too long!) does not inspire confidence in the commission’s ability, nor its judgment on other matters.</p>
<p>16. The Commission appreciates that an enquiring and engaged media is central to strong local democracy. However, council business should not be played out in the media as an alternative to pursuing solutions through the council. The Code of Conduct for Councillors demands that any confidentiality requirements relating to council business must be observed, regardless of personal views on whether information should be publicly available.</p>	<p>Here we have yet more platitudes, ignorance and condescension: council business has not been “played out in the media” as an alternative to pursuing issues through the council. The two processes are parallel and complementary if the public are to be kept informed and involved.</p> <p>The local news media have indeed taken an intense interest in council affairs over the past year but that is because of unprecedentedly newsworthy events. The media, and the public in general, have a perfect right to know about council business, other than legitimately confidential matters; councillors have an equal right to impart information and views to the media without interference by political cliques or censure from authoritarian busybodies.</p> <p>When gross violations of normal procedure occur, involving the most senior officials and office-bearers, and when a councillor is prevented from seeking</p>

	<p>redress through the normal channels and procedures, then his or her last resort may well be to inform the electorate through the media, as a recent investigation by the Ethical Standards Commission reminded us. That investigation, unlike the Accounts Commission’s inquiry, conducted a forensic examination of <u>all</u> the available evidence. It found no breach of the Code of Conduct.</p>
<p>17. It is crucial that councillors adhere to the spirit, as well as the letter, of the relevant codes of conduct and behaviours. As well as the Code of Conduct for Councillors, there is a wide range of guidance available which should set the benchmark for those in public life serving the people of Shetland. Councillors should familiarise themselves with this guidance, and in particular the report of the Independent Commission on Good Governance in Public Services.</p>	<p>Another patronising remark. We are all well aware of the Code of Conduct. We can all read. We all have it in a special file in our desks. None of the members involved in the Clark affair has been found to be in breach of the Code of Conduct during the tenure of the present council.</p> <p>A feature of the Accounts Commission inquiry in June was the persistent attempt by one of the members, a Mr Sinclair, to insinuate that councillors had been guilty of breaches of the Code of Conduct. This is repeated in the report. As I told the inquiry, if the commission or any of its members believes there is evidence of a breach, their duty is to report it immediately to the Ethical Standards Commission. That they have not done so speaks volumes. They should put up or shut up, as their repeated and unsubstantiated insinuations amount to a collective defamation on members of this council.</p>
<p>18. It is also the responsibility of senior officers to ensure that the guidance and good practice is brought to the attention of councillors. Senior officers must also ensure that councillors are given clear and timely advice so that they are in no doubt as to their obligations. In particular, it is essential for officers with specific statutory responsibilities to exercise, and be seen to exercise, their roles in an independent and proactive manner</p>	<p>Obviously, but if the commission is concerned that some “senior officers” have not done their job properly, should they not identify them, rather than risk smearing all? Again, the failure to specify undermines the authority and credibility of the commission’s conclusions.</p>
<p>19. The Commission is concerned that it received little demonstration of these principles being applied rigorously by either councillors or officers. Of particular concern is the council’s approach to identifying, acknowledging and managing conflicts of interest. The Commission is concerned to note several inconsistencies in these witnesses’ understanding of the requirements, and a lack of clarity in how this is dealt with by the council.</p>	<p>This is yet another scattergun smear with no specific examples or evidence presented. Instead we have more bureaucratic circumlocution, such as the pompous phrase “received little demonstration”. What does that mean, in plain English? The commission apparently considers itself too grand to have to stoop to justifying its partial opinions in plain English.</p> <p>As the commission would know if it had examined the council’s minutes or the many media reports on this matter over the past two or three years, councillors</p>

	<p>have in fact spent much time discussing their potential conflicts of interest, whether as charitable trustees or as council-nominated directors of companies and organisations. We are all reminded monthly by the administration section of our duty to update our registers of interests. I doubt if there is a council in the land where there is more awareness of this issue.</p> <p>For example, I and others have taken legal advice over the Viking Energy windfarm application but the commission seems unaware that the council is not the planning authority for this application and therefore we have no direct conflict of interest.</p> <p>If there were “inconsistencies” between (un-named) witnesses, perhaps the commission should have applied its vaunted expertise and re-examined those witnesses.</p>
<p>20. The view presented of the relationship between the council and the Shetland Charitable Trust was contradictory. The council has in the past asserted that the fact that councillors also act as trustees of the Shetland Charitable Trust facilitates co-ordination between the two bodies. On the other hand, councillors refused to acknowledge the possibility of conflicts of interest in relation to council business, as they asserted that they take decisions in each body entirely independently of any influence arising from their membership of the other.</p>	<p>This statement reveals ignorance of the unique situation that obtains in Shetland, where the Shetland Charitable Trust is a rather different creature from “arms-length” organisations established by some councils on the mainland.</p> <p>The trust has over the past year devoted much time to discussing with the Office of the Scottish Charity Regulator (OSCR) what changes may be required due to new legislation. A joint working group of the trust and the council has examined this in great detail and agreed that the majority of councillor-trustees needs to be greatly reduced, at the very least.</p> <p>With several colleagues, I have tried (unsuccessfully, so far) to persuade our fellow trustees to alter the composition of the trust so as to remove the majority of councillor-trustees and thus satisfy the justifiable concerns of OSCR, whose chief official has confirmed that my proposal (details of which were sent to the commission but rejected as evidence) would solve the problem.</p> <p>After this was rejected, the trust voted to keep the status quo, but only until we can reach agreement on a reformed constitution. So the commission is rather out of date on this subject.</p> <p>We will try again at the next trust meeting. Meanwhile we expect some credit from the Accounts Commission for our efforts at reform, rather than being</p>

	blamed for the recalcitrance of others.
21. Councillors do not appear to have considered their position on the Charitable Trust with regard to the Code of Conduct and how this might affect the way council business on certain matters is conducted. This is particularly important given the discussions and decisions likely to be involved in any projects or funding partnerships affecting both bodies.	<p>This is an ignorant and unspecified criticism.</p> <p>In fact we have considered our position very carefully, and have done so in the full glare of local publicity. Most councillors’ approach to “identifying, acknowledging and managing conflicts of interest” with regard to the code of conduct is perfectly clear.</p> <p>We are committed to working in partnership with the Shetland Charitable Trust, NHS Shetland, the Northern Constabulary and many other locally-based organisations. This is in line with Scottish Government policy. Complying with this policy necessarily involves some overlap and duplication in representation, responsibilities and reporting, but we are well aware of the potential problems and have been complimented rather than criticised by ministers for our approach to “joint working”.</p> <p>An accountancy examiner might say of this paragraph: “Give examples and show your workings.”</p>
22. The Code of Conduct highlights the importance of transparency where there is a possible conflict of interest between the council and another body. Councillors gave no evidence of having considered carefully and rigorously the requirements of the Code of Conduct in relation to transparency and erring on the side of caution in relation to interests.	<p>This is a very serious allegation and the commission should say what evidence it has, rather than indulging itself with another casual, collective insult.</p>
23. Councillors have an obligation actively to seek advice on how to manage potential conflicts of interest. There is also a responsibility on officers, in particular a statutory responsibility on the monitoring officer, to ensure that clear and timely advice is given to councillors to allow them to decide the correct course of action. The evidence we heard did not convince us that there has been a consistent approach to this.	<p>If the commission has a specific criticism of an officer it should say what it is. To be fair to the monitoring officer, he has in fact given councillors his advice on this matter. It conflicted, as I recall, with advice we were given as trustees by one of the foremost experts on Scottish charity law.</p> <p>What is the commission actually saying in this coded message? Why not be clear and direct?</p>
24. It is essential that councillors give due weight and respect to the professional advice provided by officers, and set it aside only	<p>The first sentence is another superfluous statement of the obvious.</p>

<p>after careful consideration and reasoned justification. The decision by the council to ignore the professional advice of officers in relation to the recruitment process adopted in the appointment of the former chief executive is a matter of concern. Criticism in public of the performance of the former chief executive, which the Code of Conduct for Councillors specifically states should not happen, raises similar concerns. We are concerned that the level of mutual respect and trust in the council among councillors, and between councillors and officers, falls below what should be expected.</p>	<p>In regard to the second sentence, the commission appears to have ignored evidence that most councillors naturally assumed that the office-bearers responsible would ensure that staff would fully check out the references and career histories of applicants. We were astonished to hear that this might not have been done as rigorously as we had assumed.</p> <p>If the commissioners read the report by the Chief Investigating Officer, they will find that no breach of the code occurred. The code cannot and should not be used to silence legitimate questions and criticism from dissenting members.</p> <p>As for “mutual trust and respect”, I would only comment that this cannot be earned by threatening violence to a councillor who has discreetly and quite properly inquired through the correct channels about reports of drinking on duty; nor can it be earned by being abusive and threatening to subordinates, by making false allegations against colleagues, by demoting staff without authority, by discussing a council employee’s private business at a general meeting of staff or by hiring cronies without going through due process. Those who behave in this manner or countenance such behaviour may expect a similar lack of trust and respect from me and any other councillor who merely tries to do his or her duty by constituents.</p>
<p>Financial management and accountability</p>	
<p>25. The Commission noted that councillors and officers acknowledge the very real financial pressures faced by the council. In recent years the council has drawn significantly from reserves to meet current expenditure. In her report, the Controller of Audit said: ‘The council has a substantial level of reserves, but it faces challenges in achieving its financial strategy. It has agreed budget savings for 2010/11, but has yet to demonstrate how it can sustain its current level of service delivery in future years, while maintaining its target reserves balance and delivering its capital plans.’</p>	<p>The council leadership has now acknowledged this problem, which several of us raised at least two years ago.</p> <p>The budget savings are already considerable and a new method of evaluating and prioritising capital projects is now in place, along with a new post to oversee capital projects (an innovation of the former chief executive’s that I and other members were happy to support, notwithstanding other differences with that gentleman).</p> <p>The Audit and Scrutiny Committee has been very active in this, as has the new finance working group (which some of us propose should be upgraded to a proper Policy & Resources Committee).</p>

	<p>So, in fact we can “demonstrate” that we have a reformed structure to tackle the financial problems and that we are working on plans to do so, using that structure. It is fair to say the council leadership took its time getting here but it is not fair to imply that we lack “the capacity to take difficult decisions in future”.</p>
<p>26. The Commission heard nothing to change this assessment. The council needs to demonstrate that it has the capacity to take difficult decisions in future to operate in accordance with its own financial strategy. The capital programme has been inadequately managed in the past, as acknowledged by the council, and there appears to be little consideration by the council of value for money in the delivery of services.</p>	<p>The commission can’t have been listening, then. See above.</p>
<p>27. We welcome the council’s appointment of a head of capital programming and its recent initiatives that aim to establish a sustainable capital programme, best value in procurement and a comprehensive asset strategy. The test of these initiatives, however, will be in whether the council is able to implement such plans effectively when difficult choices have to be made.</p>	<p>Obviously. See above.</p>
<p>28. The finance function in any council should play a central role in supporting good governance and effective decision-making. It is, therefore, essential that the finance department supports the council effectively as it seeks to sustain levels of service, while maintaining the levels of reserves required by its strategy. We are concerned at the level and quality of budget management information available to councillors, and at the apparent lack of critical appraisal of that information.</p> <p>Councillors must receive robust advice on policy choices and develop the skills to discharge their scrutiny role rigorously if they are to support decision-making across all areas of operation. The Controller of Audit’s report identifies some specific issues which highlight the difficulty the council has in effective decision making – such as the significant time and money spent, with very limited progress, on the redevelopment of Anderson High School.</p>	<p>The first sentence is another statement of commonplace piety, no doubt cut and pasted from the commission’s local government litany and shorter accountancy catechism.</p> <p>As far as I am aware, we are provided with all the budget information we need. Sometimes, indeed, I find myself reeling under the quantity of information available. In my two and a half years on this council I have never had occasion to criticise the Head of Finance for withholding information. On the contrary, he has always shown himself willing to answer my most awkward (and perhaps stupid!) questions in plain language and in as much detail as I wish. His advice is always measured, careful and robust and I would be very surprised if, after some of the grilling he has had at council in the past year, he would agree with the suggestion that there is a lack of “critical appraisal”.</p> <p>I sometimes disagree with him but he is a universally respected and valued member of staff and I’m annoyed and dismayed to find him pilloried in this</p>

	<p>manner.</p> <p>If there are valid criticisms of the finance section (and for all I know there may be) then surely they should be directed in the first instance to the elected office-bearer who chairs the finance working group. You do not expect the senior official at the Treasury to carry the can for the Chancellor of the Exchequer, after all, nor Mr Swinney to blame his subordinates when things go wrong.</p> <p>As for the comment on the AHS, it's good to hear that the commission recognises the problems. Audit Scotland initially fobbed off complaints about it, treating me and other councillors as troublemaking mavericks.</p>
<p>29. A particular issue in the Controller of Audit's report is the disagreement between the council and its external auditors about the accounting treatment of Shetland Charitable Trust, which has led to the Shetland Islands Council financial statements being qualified for four years in 30. We found no convincing argument to justify the way in which the council has prepared its accounts. We do not accept that the qualification results from a failure of Audit Scotland (and by inference, the previous external auditors Pricewaterhouse Coopers) to appreciate the nature of the relationship between the council and the Shetland Charitable Trust. Neither do we accept that this is a purely technical matter. It represents a material misreporting of the resources over which the council has influence, and has resulted in repeated qualification by the council's external auditors. We heard no reason to disagree with the appointed auditor on this matter. The Commission welcomes the willingness expressed by the convenor and senior councillors to resolve the qualification, but notes that such willingness has been expressed previously by the council without progress being made.</p>	<p>In fact the commission was presented with a very convincing argument but chose to ignore it without the indignity of compiling a detailed refutation based on evidence. Audit Scotland did the same.</p> <p>The argument, which I summarised in a recent letter to the commission chairman, is as follows:</p> <p><i>“When the council is dealing with a trust as a supplier of services and facilities for the discharge of its statutory responsibilities (as, for example, with Shetland Amenity Trust for providing museums and archives), the position is exactly analogous to a lease of commercial property for council offices or a contract to supply food to school canteens. No one suggests the council's accounts should be “grouped” with those of the proprietor of the offices or the wholesaler of fruit and vegetables, even if they give the council good deals below the commercial rate. So why, exactly, are dealings with trusts different?”</i></p> <p>The commission shares Audit Scotland's misunderstanding of the nature of the trusts. They do not appreciate, perhaps, that the Shetland Amenity Trust, Shetland Recreation Trust and Shetland Arts are independent trusts and NOT subsidiaries of the Shetland Charitable Trust, nor of the council. Our contractual arrangements with these specialist trusts, for the provision of services (many of them statutory council responsibilities) are governed by detailed service level agreements, analogous to contracts with commercial suppliers. This is no rational basis for the grouping of accounts.</p>

The Shetland Charitable Trust, on the other hand, mainly subsidises individuals who use council care homes and other services, rather than funding the council directly. This is a crucial point the commission missed. It is the public, rather than the council, who benefit from the charitable trust's support.

It is true that the charitable trust provides premises (mainly the care homes) in which the council carries out social care functions. However, the buildings remain trust property. It is important to note the little-known fact that the provision of old people's homes (for example) is NOT a statutory responsibility of the council. It is discretionary and, by its very nature, can only be defined as charitable.

The joint involvement of the council and the trust in this wholly charitable endeavour is worthy of the highest praise, not this mean-spirited, ignorant nit-picking by people who clearly do not understand what they are talking about but are determined to apply rigid rules (or, rather, recommendations, for that is what SORP is) rather than dealing with the case on its merits.

The council and the charitable trust are and always have been legally separate. The trust has taken practical steps to ensure that the two bodies are functionally separate. The trust deed will shortly be amended to provide for a majority of non-councillor trustees. The only point of debate is how many independents and how they would be chosen.

The commission does not seem to understand that the council does not own the trust's funds and the trust could not legally transfer the funds to the council if it were to be wound up. So while councillor trustees can obviously influence the disposal of the trust's income, they cannot use it to fund the council's statutory functions and would be in breach of the trust deed if they applied the money to any non-charitable purpose. No-one ever has alleged corrupt or improper use of the funds in the 34 years of the trust's existence, during which time it has worked with the council for the benefit of the community. Its financial affairs are wholly transparent. Its meetings, agenda papers and accounts are open to public scrutiny (with safeguards for the privacy of individual recipients). Neither the trust nor the council is trying to hide anything or cheat the public or the government.

The grouping of our accounts would be a potentially fatal danger to the trust as

	<p>our local “sovereign wealth fund” which is the property of “the inhabitants of the Shetland Islands” (to quote the trust deed) and not of the councillors or trustees.</p> <p>The clinching argument is that all trustees would be in breach of the trust deed, and thus subject to immediate disqualification, if they were to agree to the trust’s accounts being grouped with those of another organisation. This may be untidy and awkward for the Accounts Commission and SORP but it is a fact.</p> <p>For that reason, whether as a councillor or as a trustee, I will resolutely oppose the grouping of accounts. I suggest that it is the duty of all of us to do the same and I will support any efforts by the council and trust leadership (whoever may occupy those posts from time to time) to repulse this insidious attempt to let the government get its hands on the people’s money. I will even talk to the media about it, with or without the Audit Commission’s approval.</p>
<p>31. The head of finance, as the officer with statutory responsibility under section 95 of the Local Government (Scotland) Act 1973, has an obligation to take account of the Statement of Recommended Practice (SORP) in preparing the council’s accounts. The SORP constitutes proper accounting practice under section 12 of the Local Government in Scotland Act 2003, and its application cannot be set aside by either the council or its auditors. We are concerned that the council and the relevant statutory officers could provide no clear justification for not following the SORP. The council’s position on preparation of the accounts appeared to be based on a long-held view of the head of finance, but he offered no analysis of the accounting issues in support of this.</p>	<p>The commission has been provided with a very clear explanation and justification of why the Statement of Recommended Practice (SORP) cannot be applied in this unique case. It may disagree with that explanation but if it does so there is surely an obligation to present detailed argument based on clear evidence, which is exactly what the Head of Finance has done.</p>
<p>32. We consider that the other qualification of the council’s 2008/09 accounts, relating to the failure to value its financial assets in accordance with accounting requirements, also indicates weaknesses in the finance department and its appreciation of the importance of good accounting practice to public accountability.</p>	<p>My view is that this is indeed a technical matter, involving the detail of regulations that will in practice have little effect on the council’s accounts.</p> <p>If there are “weaknesses” they should be specified.</p>
<p>The former chief executive</p>	

<p>33. In these findings the Commission comments on the processes used in the recruitment and subsequent employment of the former chief executive. However, we do not comment on either the decision to appoint, or the competence of, the former chief executive.</p>	<p>Why not? This was supposedly one of the reasons for holding the inquiry.</p>
<p>34. The Commission found no convincing explanation for why the council departed from the professional advice of its officers on the processes to be used for recruiting the former chief executive. Further, there were no clear objectives and performance appraisal system agreed for the chief executive. Not to do so at the earliest opportunity was a substantial failure on the part of the council.</p>	<p>Here's an explanation: it's because we were assured there was no problem with all of us taking part in the interviews, using our own expert human resources staff to advise us. Nor was there. The problem as I saw it was a rather strange filtering matrix which appeared to me to have excluded several promising candidates, and the ungainly HR language used to phrase some of the questions. I raised these points and was told I was mistaken. I had no problem forming an opinion of the merits of the five candidates at the two days of interviews. I have not changed the view I held then and would vote the same way again.</p> <p>Councillors, as distinct from the leadership (and possibly even they) had no idea "there were no clear objectives and performance appraisal system agreed for the chief executive". Had we known this we would certainly have asked why not and ensured that the situation was dealt with immediately. The blame for this obviously rests squarely with the responsible office-bearers, not with the other councillors, so it is incorrect and unfair to blame "the council" as a whole. As usual the commission shies away from identifying those responsible and tries to blame us all. This is as ridiculous as if a back-bench SNP MP were to be held accountable for the actions of Messrs Cameron and Clegg. But mud sticks and the commission has knowingly and deliberately exposed all of us to public contempt and ridicule, when only a few of us merit it.</p>
<p>35. Similar issues arose in connection with a previous chief executive in 1999. We are concerned that this demonstrates continuing failings in the council's approach to recruiting senior people, and we found a lack of evidence of the council's ability to learn from past events. We note the council's stated resolve never to repeat these mistakes, and note with approval the improvements that the council has said it applied in the way it approached the recent appointment of an interim chief executive.</p>	<p>A good point, well made, for a change.</p>

<p>36. The Commission considers that it is deeply disappointing that public money has been spent on a negotiated settlement to agree the departure of the former chief executive. The Commission considers it to be a matter of very significant concern that working relationships had broken down to such an extent within a very short time of the former chief executive taking up the post.</p>	<p>The commission is not alone. All involved deplore what happened. The question is how and why did it happen and the commission makes no serious attempt to find out.</p>
<p>37. The Commission recognises that the decision to reach a negotiated settlement with the former chief executive has caused considerable anger in the local community. The council relied heavily on external advice in resolving the position of the former chief executive. It is important to emphasise, however, that responsibility for the decisions made is ultimately the council's alone, and it was for the relevant statutory officers to ensure that they advised the council clearly and comprehensively on all the implications.</p>	<p>I have a rather low opinion of the external advisers but after the errors of the responsible office-bearers it seems there was little choice but to follow their advice.</p>
<p>38. The Commission finds that the council must bear significant responsibility for reaching the position where it decided that a negotiated settlement had to be pursued within a few months of the appointment. Had proper steps been taken to introduce formal objectives and a performance appraisal process – as would be expected for all employees – the council would have been in a stronger position to consider other approaches to resolving matters, without the same cost to the public purse or damage to the council's reputation.</p>	<p>The convener “line manages” the chief executive. He is directly responsible for performance management of the postholder. Failure to do this has cost the public purse.</p> <p>Here, yet again, we have “the council” used as a synonym for the individuals responsible for this administrative imbroglio.</p>
<p>39. In addition, the actions of elected members further damaged the council's own position. The Commission finds clear evidence that elected members were cautioned in November 2009 that criticism in public of officers represented a significant risk to the council. Despite this, such criticism in public continued.</p>	<p>So we are supposed to remain silent when gross breaches of professional conduct occur, when attempts to complain about this through the proper channels are confounded by a rigged and bungled inquiry, followed by an unauthorised and vexatious complaint to the Ethical Standards Commission and a refusal to take decisive action on repeated complaints about the professional conduct (not the private life) of the Head of the Paid Service?</p>
<p>40. The Commission also heard clear evidence that the position of those negotiating on behalf of the council may have been significantly weakened by leaks of confidential information. In particular, we find that the leaking of confidential advice given to</p>	<p>I doubt it. Most of the matters complained of were public knowledge long beforehand – for example, the unauthorised publication of teachers' private letters to a senior councillor, the inaccurate calculation of the costs of the Staney Hill</p>

<p>the council meeting of 4 February 2010 prejudiced the position of the council's representatives in negotiating the amount of a settlement.</p>	<p>site for the Anderson High School, and the attempted “deletion” of the post of assistant chief executive.</p> <p>Why does the commission assume it was a councillor who leaked the information about the meeting of 4th February? Who else had access to it? Who had a motive to make it public? A very interesting question, not pursued by this slipshod inquiry.</p>
<p>41. Once the council was in this difficult position, we find that it was appropriate and in the interests of the council to resolve the situation quickly. We accept that not to do so would have risked a prolonged period of litigation and undermined the possibility of the council making progress from a position which by then risked paralysing the council's ability to conduct its business effectively.</p>	<p>This may be so but how did we get there and whose fault was it? The commission seems to find such questions indecent and ignores them.</p>
<p>The post of assistant chief executive</p>	
<p>42. The Controller of Audit's report explains the sequence of events relating to the proposed deletion of the assistant chief executive post, subsequent return to work of the postholder and continued uncertainty over the position. We would expect that a post at this senior level would have weighty and appropriate corporate responsibilities assigned to it. We do not understand, therefore, why no clear job description has yet been agreed or why neither the council nor the postholder has ensured that he has played a full part in the council's corporate management team.</p>	<p>I don't understand either. Ask the last chief executive but one and the present convener. They might be able to enlighten the commission but as it seems to have no appetite for finding out the details it may be a waste of time.</p> <p>How could the postholder ensure he played a full part in the management team when he had been excluded and not given a clear remit? This is illogical - making the victim the cause of the problem. The council in fact gave clear instructions some time ago that the postholder was to be invited to resume his duties. Why this has not happened is a question best posed to the political leadership and the senior management team.</p>
<p>43. The lack of transparency in creating and filling the post of assistant chief executive in the first place in 2006 has contributed to subsequent problems. The council must operate on the principle that recruitment for all senior posts will be robust and</p>	<p>Of course, but this was by no means the only senior post filled without advertisement or interview. To find out why, ask the last chief executive but one and the present convener. Or perhaps don't ask, if you're a member of this</p>

transparent.	profoundly incurious commission.
<p>44. It was not clear whether there was delegated authority for the chief executive to delete this post. We heard evidence from the monitoring officer that delegated authority had previously been granted for the chief executive to make changes to the staffing structure under certain conditions. We note that this evidence is different from that found by the Chief Investigating Officer. The former chief executive acknowledged with hindsight that there were failings in the way in which he managed his decision on this post. However, it is unacceptable that it was not clear and beyond dispute with all parties in the council whether or not this delegated authority existed.</p>	<p>It was very clear indeed that there was no such authority but it appears that senior councillors and officials tacitly (or maybe explicitly) backed the former chief executive at first, only to back off when the reaction was more than they anticipated. This matter has already been investigated in more detail by more competent and rigorous authorities and if the commission is not clear it should say why not and identify who is responsible for this lack of clarity.</p>
<p>45. The decision of the convener to meet the assistant chief executive to discuss a grievance in relation to his employment is a further example of a lack of understanding and inconsistent application of basic governance principles. The council should have adhered to the recognised policies and procedures that are in place for all staff in relation to grievances. We consider that the convener should have been provided with clear, robust and accurate advice on these points.</p>	<p>This is a bizarre statement. In defence of the convener (why does the commission insist on using the American spelling, ‘convener’, by the way? Are their keyboards set to “US English”?) there never was a formal grievance lodged and the commission would know that if it had done its homework. There was certainly unhappiness and disquiet and most of us were very glad when the convener belatedly offered a private meeting to see if he could resolve the situation without resort to formal procedures. He deserves credit, not censure, for this, at least.</p>
<p>Recommendations</p>	
<p>The Commission makes the following recommendations to Shetland Islands Council:</p>	
<p>The council must put in place a comprehensive programme of improvements as a matter of urgency to address the issues we have identified. The programme should set clear objectives, milestones and timescales for delivery.</p>	<p>I agree.</p>
<p>This programme of improvements should ensure that:</p>	<p>Obviously. Just follow the local government legislation and the Cosla tramlines</p>

<ul style="list-style-type: none"> • the council can develop the leadership, governance and strategic direction it requires; • there is the basis for effective working relationships among councillors and between councillors and officers; • all procedures for decision-making are robust and transparent, and can command public confidence; • the council has the capacity to deliver its financial strategy. 	<p>and all should be well. But it would help if Audit & Scrutiny's chair would at long last insist on a full debate about the future governance of the council, instead of finding endless excuses to put it off.</p>
<p>In particular, the programme of improvements should address the following specific recommendations:</p>	
<p>a) The council should establish a comprehensive programme of training and development to be undertaken by all councillors and senior officers to enable them to understand how to perform effectively in their roles and how to demonstrate the value of good governance through their conduct. This programme should ensure that:</p> <ul style="list-style-type: none"> ▪ councillors, in particular those holding positions with additional responsibilities, are able to develop clear and authoritative strategic leadership; ▪ councillors are able to distinguish appropriately the requirements of their separate duties as local representatives and corporate leaders; ▪ mutual trust and respect is established among and between councillors and officers for their respective roles; ▪ senior officers establish a strong and effective commitment to meet their strategic corporate responsibilities. 	<p>Well, yes, a noble catechism and who could disagree? But it would have been more helpful to have some specific recommendations. For example, should we separate the roles of civic head and political leader? Do our committees have too wide a remit? What exactly is the role of spokespersons? etc..</p>
<p>b) The council should review its approach to governance, and ensure that rigorous systems are in place to support clear and transparent decision-making, such as formal recording of meetings and routine systems for the dissemination of decisions and information to staff and the public.</p>	<p>Some of us have been trying to get this process started for a while now. But we will learn to live with our efforts being ignored by the commission.</p>

<p>c) The council should agree effective procedures for engaging with the local community and understanding its needs and expectations, and put these procedures on a systematic basis.</p>	<p>This is pious waffle. Specify, please.</p>
<p>d) The council should improve the way it develops clear, coherent messages to communicate with the local community, and take steps to improve the way it conducts its relationship with the media and recognises the media's legitimate interest in council matters.</p>	<p>Good plan. We could start by understanding that elected office-bearers, rather than officials, should normally speak to the media on behalf of the council. Council leaders have hidden behind their chief executive's apron for too long and should do this important job themselves.</p>
<p>e) The council should develop a systematic approach to engaging with the wider local government community, ensuring regular attendance at meetings of professional and representative bodies, and learning from good practice.</p>	<p>We already go to the meetings. It's a problem with attitude and perhaps a lingering hankering after the autonomous fantasies of the Shetland Movement, 30 years ago.</p>
<p>f) Councillors and senior officers should work together to improve the management information available to councillors, to enhance the capacity and commitment to deliver robust appraisal of policy choices, and thereby help to ensure that councillors are supported to develop the skills to discharge their scrutiny role rigorously.</p>	<p>A Plain English campaign would help here.</p>
<p>g) Councillors should work together to ensure that they have a shared understanding of the requirements of the Code of Conduct and other relevant guidance for the way they approach the council's business.</p>	<p>...and the Accounts Commission should perhaps "develop a clearer understanding" of how to conduct an inquiry without stuffing its proceedings and report with bureaucratic pieties written in impenetrable language...</p>
<p>h) The council should review the way in which it advises councillors on the issue of their interests, and ensure that it is able to explain coherently and publicly the way in which councillors are expected to approach recurring issues such as the role of councillors as trustees of Shetland Charitable Trust.</p>	<p>This seems clear enough already to everyone except the commission. Perhaps we could lay on a short course for them?</p>
<p>i) The council should ensure that senior officers, particularly the relevant statutory officers, are able fully to advise councillors on their obligations.</p>	<p>This is no doubt a coded message, well above my hoary old head. What exactly is meant by this?</p>
<p>j) The council should establish rigorous processes to ensure that it can put its use of resources on a footing that is consistent with</p>	<p>...and we should no doubt develop more inclusive policies on motherhood, apple</p>

implementing and sustaining its financial strategy, and demonstrate that it can deliver services in a way which achieves Best Value.	pie and reestit mutton...
k) The council should address the weaknesses in its finance function to ensure that it complies with good practice and relevant objective standards, and provides appropriate information to allow councillors to exercise robust strategic budget management.	Of course.
l) The council should ensure that the qualification of its accounts in relation to the accounting treatment of the Shetland Charitable Trust is resolved in time for the audit of the financial statements for 2010/11.	Not if it involves grouping the accounts.
m) The council should ensure that robust and transparent procedures are established and followed for the creation and filling of all posts, and the performance management and appraisal of all staff...	Agreed.
...We require a further report by the Controller of Audit in around 12 months' time on progress made by the council. We will give consideration at that point to any further measures that need to be taken.	Hopefully, by then we will have got the commission and controller of audit to understand the insuperable obstacle to the grouping of accounts.