

ACCOUNTS COMMISSION FOR SCOTLAND

PUBLIC HEARING

on

SHETLAND ISLANDS COUNCIL

held at the

Town Hall, Upper Hillhead, Lerwick ZE1 0HB

on

Monday 28th June 2010

Before:

John Baillie (Chair)
Christine May
Bill McQueen
Graham Sharp
Douglas Sinclair (Deputy Chair)

Mark Brough (Secretary)

PROCEEDINGS DAY ONE

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1 [SESSION 1]

2 CHAIR: Good morning, ladies and gentlemen. Can I extend a warm welcome to
3 everybody to this hearing of the Accounts Commission? My name is John
4 Baillie and I am chair of the Accounts Commission. Let me start by
5 introducing my colleagues on the Accounts Commission. On my extreme
6 left is Graham Sharp; next to me is, on my left is Bill McQueen; on my
7 extreme right is Douglas Sinclair; next to Douglas is Christine May; and on
8 my immediate right is the Secretary of the Commission, Mark Brough.

9 This is a formal meeting of the Accounts Commission. The Accounts
10 Commission was established in 1975. It's the public's watchdog that
11 oversees the audit of Scottish local government; it considers reports arising
12 from such audit work. Now the Commission – and this is important –
13 operates independently of local authorities and of the Scottish Government
14 and reports in public. Its members are appointed following a public
15 appointments process.

16 In May this year the Controller of Audit delivered a report on
17 Shetland Islands Council. That report is on the Audit Scotland website and
18 copies are available here today. The Commission considered that report at
19 its meeting on 13 May of this year and, in the light of the matters raised in
20 the report, we decided to hold a hearing. The purpose of this hearing is to
21 allow the Commission to consider further the issues arising from the
22 Controller of Audit's report so that we can make findings. The findings may
23 include recommendations for action.

24 So we're here to explore the circumstances in more detail and to
25 understand the issues at the council. We'll be hearing from a wide range of
26 witnesses over the next two days, as you will see from the programme of

1 evidence, which is available to you. We'll be asking questions of the
2 witnesses. The witnesses will not be cross-examining each other. The
3 witnesses were asked to make written submissions in advance, and I thank
4 them for that. Those submissions are all available on the Commission's
5 website along with some from other interested parties.

6 Now I aim to conduct the proceedings today and tomorrow in a
7 straightforward and businesslike way, always consistent with the aim of
8 allowing a fair process. I aim to allow witnesses to express their views and
9 tell us of their experiences so that the Commission can get a clear
10 understanding of the issues.

11 We expect all witnesses to co-operate fully and to answer questions
12 put to them. Obligations of confidentiality on any particular matter do not
13 give grounds for declining to answer questions. Witnesses should have no
14 concerns about answering fully and honestly provided that no statement is
15 given maliciously; that is, untrue statements that are given knowingly,
16 negligently or recklessly.

17 We may consider in the light of the evidence heard, the need to
18 recall witnesses towards at the end of the hearing. This will be agreed and
19 announced during the course of the hearing. At the conclusion of the
20 evidence tomorrow the Commission will then adjourn to consider its
21 findings. The findings will be published as soon as possible. If it's
22 necessary for the hearing to be reconvened at a later date to take further
23 evidence, then we will do so, but we anticipate this being unlikely.

24 Now as I said, our aim in broad terms is to examine further the
25 circumstances at the council as highlighted by the concerns raised in the
26 Controller of Audit's report. The report covers some specific matters but

1 does so – and this is important – in the context of important general
2 concerns about strategic leadership; about roles and responsibilities; about
3 working relationships; about governance and accountability; and, finally,
4 about financial management. It is these more general concerns that are of
5 particular interest to us.

6 And I would stress that we can make recommendations but we do
7 not have the powers to make or overturn any decisions of the council. I
8 stress also that the Commission is not investigating specific incidents or
9 people. Matters relating to the behaviour of officers or members or specific
10 decisions of the council should be raised through the council's internal
11 procedures or with the Standards Commission.

12 Now as I said when I started speaking, members of the public here
13 today are most welcome. This is a public hearing and the purpose of the
14 Commission conducting it is to consider how the council can best act in the
15 interests of the people of Scotland.

16 Finally, ladies and gentlemen, can I ask you please to remember that
17 the hearing needs to be conducted in a way that is fair and allows everyone
18 involved to be heard and to hear. So I ask please, everyone, to hear all
19 witnesses with respect, without applause, calling out or any other disruption.

20 And finally finally, can I ask everyone, please, to switch off their mobile
21 phones now. Thank you.

22 Can I ask the first witnesses to come forward, please? Just as the
23 witnesses are getting themselves together, the secretary has pointed out
24 that a slip of the tongue meant that I referred to 'the local people of
25 Scotland', rather than 'the local people of Shetland' – it is, of course, the
26 latter. Thank you.

1 I welcome to give us evidence the Controller of Audit and other
2 representatives from Audit Scotland. Can I ask you please, ladies and
3 gentlemen, to introduce yourselves briefly for the record by stating your
4 names and your position?

5 CAROLINE GARDNER: Thank you, Chair. I am Caroline Gardner. I'm Controller
6 of Audit and Deputy Auditor General with Audit Scotland.

7 FRASER MCKINLAY: Good morning. Fraser McKinlay, Director of Best Value
8 and Scrutiny Improvement.

9 MARTIN WALKER: Good morning. My name's Martin Walker. I'm a portfolio
10 manager at Audit Scotland.

11 CAROL HISLOP: Good morning. I am Carol Hislop, Audit Manager.

12 LYNN BRADLEY: Good morning. I'm Lynn Bradley, Director of Audit Services for
13 Local Government and the appointed auditor for Shetland Islands Council.

14 CHAIR: Thank you very much. I am going to start the questions and then my
15 colleagues will pick up either on the answers or with their own questions,
16 and that's how the pattern of the questioning will go for each series of
17 witnesses.

18 Let me start then by referring to the Best Value report that was
19 published in 2005. Can you help us to characterise the progress? How do
20 you see progress the council has made over the time since then?

21 CAROLINE GARDNER: I think, Chair, we'd have to say that we believe progress
22 has been slow since 2005. If you look back at that original Best Value Audit
23 report, it did raise a series of concerns about the strategic direction of the
24 council and the capacity of the council to take difficult decisions to ensure
25 that the islands' services and economy were sustainable in future, with a
26 whole range of pressures around the cost of services and the demands and

1 difficulties of sustaining communities in such a remote and rural part of
2 Scotland. Although there have been some elements of progress since then,
3 it's often appeared to be the case that the council has had difficulty in
4 seeing those through and making sure that they have the impact they were
5 intended to have across the piece.

6 Since 2005, I have reported in formal terms again to the
7 Commission: in 2007 with a follow-up Best Value Audit report; in 2008 and
8 2009 on the back of the annual auditor's report to members and to me as
9 Controller of Audit; and, finally, this May on the range of issues that have
10 come into play over the last 12 months. And it's fair to say that, although
11 some movements have been made, there has not been a sustained attempt
12 or success in dealing with the range of challenges that the council faces.

13 CHAIR: Thank you. Now, there have been some criticisms in written submissions
14 to us that, after identifying problems at the council, your report was too high
15 a level; it didn't provide any recommendations for the future. What's your
16 response?

17 CAROLINE GARDNER: The issues which were identified in my report to the
18 Commission in late 2009 were wide-ranging but, in my view, they were all
19 symptoms of an underlying set of problems around strategic leadership,
20 around decision making, and governance and accountability. And I
21 therefore took the decision that the follow-up report, which the Commission
22 requested at that stage, should be looking at the underlying issues rather
23 than investigating all of those manifestations of the issues in a bit more
24 detail. You'll see that my formal report to the Commission this May framed
25 the issues in those terms and picked up a series of examples, including the
26 departure of the former chief executive; but also including longer-term

1 questions such as financial management, and prioritisation and leadership
2 for the council as being the areas where improvement and change was
3 needed.

4 One of the features of the system of accountability we have in
5 Scotland is that I report to the Accounts Commission, to you sitting here
6 today, as a basis for your own actions and recommendations. And I think it
7 is a great advantage that the Commission has the opportunity itself over the
8 next couple of days to hear directly from witnesses before making your
9 decision about what recommendations may be appropriate in terms of
10 moving forward. I'd be happy to talk through what the team and I think may
11 be necessary, but clearly it's the Commission's role to make those
12 recommendations for the future.

13 CHAIR: We will probably come back to your offer shortly. One of the things we've
14 noted is that there has been some concern that, if there have been serious
15 failings at the council – and I stress the word 'if', because we're here to
16 determine, among other things, our view of the council's processes – but if
17 there have been serious failings individuals should be held to account.
18 Your report does not apportion responsibility for any of the problems that
19 you've noted. Can you explain why the report takes that particular line?

20 CAROLINE GARDNER: Certainly. I think there are two main reasons: one is that
21 the decisions we've seen taken over the past 12 months have been
22 decisions of the council as a body; the council as a whole took decisions
23 and it's therefore very difficult, if not impossible, to single out individuals
24 who are more culpable within that or indeed those who may feel they're less
25 culpable. They were council decisions.

26 The other thing is that all of the audit work we've carried out in

1 Shetland has been notable in the extent to which there are different
2 recollections and different interpretations of the same events and a very
3 strong concentration on individuals looking backwards in terms of
4 apportioning blame to one another rather than looking forward to what
5 needs to change if the needs of the people of Shetland are to be better
6 served in future.

7 With the resources available to the audit process and the powers
8 that audit has, it's very difficult to unpick what the correct sequences of
9 events or responsibilities may have been. What I think we have very clearly
10 demonstrated, though, is a council which isn't functioning well to be able to
11 meet the challenges of the people of Shetland.

12 CHAIR: Thank you. Final question from me just now is this: Mr David Clark
13 states in his evidence that you amended your draft report partly in response
14 to a submission from him. Could you explain what happened and why that
15 happened – why that was?

16 CAROLINE GARDNER: Of course. It's standard practice for any of my reports to
17 be cleared for factual accuracy with the council to which it refers. The final
18 draft report was sent to the council for that purpose earlier this year and
19 once we received a request from Mr Clark for him to have sight of the draft
20 report for the same purpose we complied with that very readily. There were
21 a small number of amendments made to the report as part of that process.
22 I think it is very fair to say though that none of them related to points which
23 Mr Clark raised which hadn't also been raised by the council. I would like to
24 stress that the changes made to the report are those which reflect factual
25 accuracy; the conclusions are mine and mine alone. We would be happy to
26 give you more detail about the amendments made at that stage but I'm very

1 confident they were entirely in line with the normal process we'd apply to
2 make sure we have the factual basis of the report correct before it's
3 finalised.

4 GRAHAM SHARP: Controller, the qualification of the 2009 accounts in relation to
5 the treatment of the Shetland Charitable Trust was the original reason for
6 reports to come to the Commission. How significant a problem is this
7 qualification?

8 CAROLINE GARDNER: The qualification was the trigger for reporting to the
9 Commission. In my view it is an important issue in its own right, but the real
10 significance is the underlying set of questions it raises about governance
11 and accountability in the council, particularly the transparency with which
12 decisions are made and understood by local people. I'll ask Carol Hislop as
13 the audit manager for Shetland Islands Council to talk more about the
14 reasoning behind the qualification, but the reason for reporting it in the
15 terms that I did was the significance, in my view, for the broader
16 governance of the council.

17 CAROL HISLOP: So as stated in the audit certificate, the substance of the
18 council's relationship with the trust represented a significant interest and
19 their omission in our view resulted in the accounts being materially
20 misstated, so it was a key issue for us in the audit of the financial
21 statements over the past few years. Based on the trust's most recent
22 accounts at the time of the council audit last year, net assets of over
23 £200 million would have been added to the consolidated balance sheet and
24 that meant we really had to qualify the accounts.

25 GRAHAM SHARP: Alright. In his written submission the chair of the trust states
26 that the trust has had no dialogue with you and doesn't understand your

1 position on the qualification. Obviously, you don't audit the trust so there's
2 no particular reason you'd have such a dialogue, but other submissions
3 have suggested that you don't understand the true nature of the relationship
4 between the trust and the council. Would you like to comment on that?

5 CAROLINE GARDNER: Thank you, I'm grateful for the opportunity to comment
6 on that. Carol will want to amplify it, but I'm very clear that there has been a
7 great deal of dialogue between the appointed auditor and the council about
8 the accounting treatment of the trust, the nature of the relationship between
9 the council and the trust and the implications that has for the council's
10 financial position across the piece. That discussion has included
11 conversations with the individuals who play a part in both the council and
12 the trust, as many councillors in Shetland do, and with the Office of the
13 Scottish Charity Regulator because of their particular interest in this. In our
14 view it's clear that the substance of the relationship between the council and
15 the trust requires consolidation; and indeed, the council itself has
16 recognised that in its own decision making. The difficulty comes when that
17 moves across to the trust decision making as the next stage in the process.
18 I'll ask Carol to amplify that a bit more, if I may.

19 CAROL HISLOP: I would say that we do understand the relationship between the
20 two bodies. Our concerns relate solely to the accounting treatment of the
21 Shetland Charitable Trust, it's not to the actual activities of the Shetland
22 Charitable Trust. So our annual report says our concerns are to do only
23 with the group accounting issue. We acknowledge that the trust is a
24 separate legal entity but as auditors we audit the accounts to ensure they
25 comply with the SORP, and in our opinion for accounting purposes -

26 CHAIR: Excuse me. What's a 'SORP'?

1 CAROL HISLOP: A SORP is a Statement of Recommended Practice; it's the
2 accounting regulations that we're required to audit against. And, looking at
3 the SORP, it's very clear that for accounting purposes the trust's accounts
4 should be consolidated. But I have to repeat that this is an accounting
5 adjustment only, required by the SORP and does not imply any change in
6 activities or control over the charitable trust.

7 GRAHAM SHARP: Okay, thank you for that. There have also been comments in
8 a number of the submissions we've had that this matter's being progressed
9 by the council and indeed the trust with you. What's happening on
10 progressing it?

11 CAROL HISLOP: Every year we look at the main issues in the audit. This is the
12 main issue as far as the auditors are concerned. And so we've had
13 meetings with the charitable trust actually for the first time ever since we've
14 been appointed – we've had meetings with the charitable trust. And I would
15 like to thank the charitable trust for meeting with us recently to discuss the
16 qualification and where they stand with it. We have meetings with officers –
17 and we would do this every year – but we've seen nothing to change our
18 views this year, so as far as we are concerned the qualification will stand.

19 LYNN BRADLEY: Perhaps I could add to that, that the nature of the discussions
20 at the moment seems to be focusing very much on the legal aspects, and
21 as Carol says, we're not challenging the trust as a separate legal entity; this
22 is very much an accounting issue. We haven't had any discussions so far
23 which lead us to expect there will be any progress on the accounting
24 matters.

25 GRAHAM SHARP: So, there's been dialogue but it hasn't been addressing the
26 accounting issue as such?

1 LYNN BRADLEY: Exactly.

2 GRAHAM SHARP: There was a second qualification on the valuation of certain
3 investments. Has there been progress made on solving that?

4 CAROL HISLOP: Yes, progress has been made on that. We're starting the audit
5 of the financial statements this week and we have been given evidence that
6 this qualification may be removed.

7 GRAHAM SHARP: Right, and that was a mechanical issue that needed to be
8 sorted out in terms of sorting out a valuation process?

9 CAROL HISLOP: Yes, it was.

10 BILL MCQUEEN: Many of the submissions that we've received indicate concerns
11 amongst the local public about elected members having conflicts of interest
12 as a result of their involvement in the Shetland Charitable Trust and other
13 bodies and projects. What's your view as to the effect of those issues on
14 the council's position and its standing?

15 CAROLINE GARDNER: We are very much aware that in a community the size of
16 Shetland Islands Council, and with the particular economic and
17 sustainability challenges it faces, there are real difficulties here in making
18 sure there is separation of responsibilities that you might expect elsewhere
19 in Scotland. On the other hand though, that means that in our view it's all
20 the more important that the appropriate checks and balances are in place,
21 and particularly that the openness and transparency that is expected of
22 everybody in public life is given due prominence and significance in
23 Shetland. It's one of the reasons why we feel that the issue of the
24 charitable trust's accounts being grouped with those of the council is so
25 important. The trust clearly controls a very significant sum of money which
26 has a big impact on the life of people in Shetland; both through services that

1 might otherwise be provided by the council, and in seeking to stimulate
2 economic activity that will have wider benefits for the islands community.
3 And making sure that decision making around the investment of that money
4 is done properly and done in ways which are transparent to the people of
5 Shetland, in my view, is all the more important because of the close-knit
6 nature of the community which is here. So I think that's one reason why I
7 think what would otherwise be a technical accounting matter is of real
8 significance here in Shetland.

9 There is also obviously a great concern that if people feel, rightly or
10 wrongly, that decisions are being made for reasons other than the best
11 interests of the islands community, then their confidence in those who are
12 governing them and in the wider representative role that elected members
13 have to play can be diminished; and I think we have seen some of the
14 impact of that over the past while in Shetland.

15 BILL MCQUEEN: Thanks. A further aspect of that in submissions to the
16 Commission is concern about conflict of interest going beyond elected
17 members also being trustees of SCT to situations where this might be
18 regarded as affecting council decision making through SCT, having a direct
19 interest. Those members on SCT in other bodies like Viking Energy Ltd has
20 been mentioned to us. What are your views on that and has Audit Scotland
21 examined whether these issues have affected the efficient delivery or value
22 for money of public services in Shetland? And finally, are you doing any
23 additional analysis or work – audit work – in some of the organisations that
24 have been named to us; the links between the council and Judane and
25 Viking Energy Trust and so on?

26 CAROLINE GARDNER: One of the difficulties we face is that we aren't the

1 appointed auditors for the trust, we're the auditors for the council. The
2 council has a significant arm's length relationship with the trust which we
3 believe is significant enough to merit grouping consolidation of the accounts
4 together. And as you know, the council disagrees with that view at the
5 moment. That means that we have to focus on the arrangements which the
6 council has with the trust to make sure that its interests are being properly
7 taken care of, that conflicts of interest are being managed appropriately and
8 avoided where possible and that the overall results for the people of
9 Shetland are as good as they can be. That's one reason why we're as
10 concerned as we are about the lack of transparency in the dealings
11 between the council and the trust.

12 When we receive concerns from members of the public about any
13 decision making by councils across Scotland, the first action we take is to
14 ask the appointed auditor to review them to see whether there is sufficient
15 grounds for concern that that issue should be investigated through the
16 normal audit process. Carol will be able to tell you more about one of the
17 issues which I know has come up this year and which is being considered
18 through the audit process, but it may be that there are issues of real
19 concern which, because we're not auditors of the trust, it's difficult for us to
20 follow up other than indirectly through the council; and we are concerned,
21 as you know, about the transparency of those links. Carol, do you want to
22 add to that?

23 CAROL HISLOP: We've been asked to look at the affairs of the Judane issue
24 here. So I can confirm that the audit team is looking at that just now. We're
25 due to report on this by the end of October with our annual report. This is
26 something on which we had done some work already. We've had meetings

1 with officers and we will, as I say, report fully with our annual report.

2 CHRISTINE MAY: Good morning. Both your report and recent, and indeed
3 historic, Standards Commission reports have highlighted significant
4 difficulties in working relationships in Shetland Islands Council. Can you
5 say what you think the effect of this has on the council and how it does its
6 business? What you think is at the root of it? And what do you suggest can
7 be done to rebuild or build trust and effective working relationships?

8 CAROLINE GARDNER: I'll certainly do my best. I think the impact that we've
9 seen of those difficult working relationships over the past 12 months
10 particularly has been to make it much more difficult than it otherwise would
11 be for the council to take significant decisions. One example of that and
12 probably the most important in the long term – is the need for the council to
13 really look at the way in which it can make sure that its service provision is
14 financially sustainable for the future. All councils in Scotland are facing
15 significant reductions in future in the amount of funding available to them.
16 Shetland Islands Council has traditionally provided high levels of good
17 quality service but at relatively high cost. And the council itself recognises
18 that it's not sustainable to keep on funding those services by drawing from
19 reserves. So the recognition is there that the council needs to take serious
20 action to tackle that but we haven't yet seen real evidence of their ability to
21 do that because it means making tough choices between different priorities,
22 between the preferences of different groups across the islands community.
23 The underlying tensions in working relationships make that more difficult
24 than it would be in normal circumstances; it would never be an easy thing to
25 do.

26 I think also the way in which tensions and disagreements are played

1 out in public in this council has led to a general and genuine lack of trust
2 between people who need to be able to work closely together in future and
3 it has also led to a lack of confidence in the council among local people,
4 which again is not a good basis for consulting on significant questions for
5 the future like the way in which children are educated and where investment
6 in schools ought to be made. So I'm confident there's been a real and
7 detrimental impact on the council's effectiveness as a result of that.

8 It's very difficult for us to speculate on the reasons for it I think. As
9 you say, there's a long history to this. I think the nature of the islands
10 council and the close-knit relationships between people on all sorts of
11 levels, personal relationships, but also business relationships, employment
12 relationships, complicate the picture in important ways. And I think there is
13 also a legacy of mistrust which probably does go back to 1999 and beyond
14 perhaps, and the way in which difficult issues in the past have been dealt
15 with.

16 It's clear that there isn't going to be an easy resolution to the
17 situation the council finds itself in, simply because of the length of time it
18 lasts for. In my view, though, a focus on some of the basic governance
19 expectations for any public body of openness, transparency, rigorous
20 decision making, good communication within and outwith the council are all
21 important parts of that. Insisting on the standards that are expected of
22 people in public life in terms of respecting confidentiality, dealing with
23 disagreements in a robust but respectful way and putting in place the right
24 structures for people to work together will also help. And I think the
25 Commission's hearing can be an important milestone in setting the tone for
26 a new start.

1 I'm going to ask Fraser and perhaps Martin Walker to come in to
2 amplify that because they've carried out much of the audit work that led to
3 those parts of the audit report.

4 FRASER MCKINLAY: Not much to add on the specifics but it might be helpful just
5 reflecting on the wider environment. I'm responsible for Best Value audit of
6 all councils on behalf of Audit Scotland, and I think what's striking is that
7 there's no doubt Shetland is different. There are a different set of
8 circumstances here; it's an independent council, we absolutely recognise
9 that. I suppose our experience tells us that most councils in the country will
10 tell you they're different; they all have particular issues to cope with, and to
11 deal with, particularly since May of last year. Coalition and minority
12 administrations are now the norm. Many other councils find a way of
13 making that work and are able to balance the need on one hand to
14 represent their constituents and be effective elected members in terms of
15 representing their wards, while at the same time as recognising when there
16 is a corporate good, a corporate leadership required for the whole area and
17 the council as a whole. I think our experience in Shetland more recently is
18 that that's the bit that elected members have found difficult, is that sense of
19 corporate leadership amongst elected members. That – while not
20 suggesting for a minute it's easy, but recognising that other places do seem
21 to recognise the points at which it's good to have a bit of politics, either with
22 a big P or small p, and recognise the times where it's better to set those
23 aside and to do things for the good of the whole area.

24 CHRISTINE MAY: Thank you, if I could just follow that up. Whilst yes, every
25 council will tell you they are different, this is an independent islands council,
26 but there are other islands councils which are also independent, non-party-

1 political. Are you saying to me that they have managed similar issues in a
2 way which allows them to represent their constituents and do the corporate
3 – the corporate governance? And can you also pick up on whether there
4 are similar trusts, perhaps not of the same size as Shetland Islands
5 Council's trust, and how they've managed that?

6 FRASER MCKINLAY: I do hesitate to get into specific comparisons of one council
7 and others. The point I made was a general one I guess. I mean Lynn and
8 Carol would be better placed to talk specifically about the trust issue.
9 Certainly, arm's length external organisations are a much more common
10 model of delivering services these days. The grouping of those in lots of
11 other councils doesn't seem to be as much of an issue, while recognising
12 there are particular issues and characteristics of the charitable trust in
13 Shetland. But again, it's entirely not unique and not insurmountable.

14 LYNN BRADLEY: Yes, and perhaps on the charitable trust issue; I can't think of
15 any that are directly comparable to the situation in Shetland, but several
16 councils have charitable trusts which are part of their group structure. For
17 example, Scottish Borders Council's common good fund is constituted as a
18 charitable trust and that is included within the group accounts of Scottish
19 Borders. Several other councils have leisure trusts providing those services
20 on their behalf. Glasgow City Council have their culture and arts service
21 provided through a trust and again they're part of the group structure.

22 CHAIR: Martin Walker, were you about to comment after Fraser McKinlay?

23 MARTIN WALKER: Yes. It was just on the working relationship side of thing,
24 again I don't think it's necessarily helpful to compare council A with council
25 B but, but having done a large number of Best Value audits myself now;
26 having visited lots of places – some highland places, big cities, the central

1 belt, lots of different places – this was the first time doing this kind of audit
2 work where I was struck by the nature of the working relationships and the
3 point they had reached when we came to do the audit work in March. In
4 many other places you would have discussions around, ‘We know what the
5 differences are but this is what we need to concentrate on.’ I did find when
6 we were here in March that a lot of that concentration was on blame.
7 Caroline mentioned earlier the issue about lack of trust, and as I say it was
8 quite striking for me; it set it apart from any other councils that I’ve audited
9 over the years.

10 BILL MCQUEEN: Many of the submissions to us and the written material we’ve
11 seen suggest a recurrent, persistent theme of failure to appreciate and
12 follow rules and procedures that one would associate with good
13 governance. I think that over the next two days we’ll be hearing more about
14 that in terms of appointment of the chief executive, managing delegated
15 authorities, conducting disciplinary hearings and so on. Do you think this is
16 symptomatic of a disregard for recognised standards? Why has the
17 situation persisted, because there are examples in the recent and distant
18 past and you might have thought lessons would have been learnt and
19 experience would have been observed and adapted? And do you think the
20 council has the capacity to change the way it goes about these aspects into
21 the future?

22 LYNN BRADLEY: I think you’re right that the way in which the council does
23 business has been characterised by a certain informality with regard to the
24 sorts of processes and structures you might expect in any council taking
25 significant decisions and committing significant amounts of public money –
26 and the examples you refer to are examples that come through from the

1 audit work we've done over the past few years. The reasons for that I think
2 are difficult to speculate about. I think there is a challenge within Shetland
3 of a lack of contact with the way things are done elsewhere in Scotland. It's
4 our experience, for example, that both members and officers tend not to
5 take the opportunities that may exist for more interaction with other councils
6 with their counterparts elsewhere. And that may lead perhaps to less
7 familiarity with or less of an understanding about the of getting governance
8 processes right and adhering to them, particularly when difficult situations
9 arise.

10 In terms of future capacity, I think one of the most important things
11 will be to make a strong appointment of an interim chief executive who can
12 use the period after the hearing to really set the tone for what's expected in
13 future and to make sure that good processes are not only designed and
14 refined where they do exist but that they're applied consistently and
15 transparently and openly and that failures to comply with them are dealt
16 with quickly. I think that's been one of the characteristics in the past that
17 has led to further problems.

18 DOUGLAS SINCLAIR: Good morning. I have a number of points. Firstly, could I
19 just go back to the point about the slight reluctance to compare council A
20 with council B? I absolutely accept that councils reflect different
21 circumstances, different challenges, different population structure; but
22 would you agree that the principles of good governance apply to every
23 single council in Scotland irrespective of size, scale or operation?

24 CAROLINE GARDNER: I think all of us would agree with that without hesitation,
25 yes.

26 DOUGLAS SINCLAIR: We then turn to your report; your first overall conclusion

1 was that you express serious concern that a significant amount of public
2 money had been spent on reaching a negotiated settlement. And then on
3 paragraph 14, I quote from your report, 'When it became clear the council's
4 relationship with the chief executive was becoming problematic, the council-
5 ' in your view, 'Took appropriate external advice and settled – the
6 settlement was negotiated on a reasonable basis and in compliance with
7 appropriate legislation.' So, on the one hand you express serious concern,
8 significant concern; on the other hand there's a sense, well, that the
9 outcome was reasonable. There is a potential contradiction in there. I
10 wonder if you could just amplify the difference between the two statements?

11 CAROLINE GARDNER: I'm happy to do so, and you won't be surprised to hear I
12 don't think there is a contradiction. I think we're talking about a complicated
13 situation. In my view, first of all, it is never welcome to spend public money
14 in this way and should be avoided if at all possible. The work that was
15 carried out by the audit teams suggest to me that had the council acted
16 differently earlier on in the process it may have been able to avoid finding
17 itself in that situation. And I am thinking particularly about the process by
18 which the chief executive was appointed; the way in which his performance
19 was managed; and the way in which concerns were dealt with once they
20 became apparent. If those things had been managed better and more
21 decisively it may have been possible to avoid the point where the council
22 felt that a negotiated settlement was the best outcome available to it.
23 However, in my view once it reached that point the actions which it took
24 were reasonable. It took proper external advice; the evidence available to
25 us suggests that it looked at the options which were open to it; and it
26 reached a decision based on a proper understanding of the likely costs and

1 benefits of that decision.

2 Now there is inevitably an element of judgment involved in the
3 decisions the council took. There is no single right outcome in that situation
4 and it's not possible to know what would have happened had it taken a
5 different course, but my conclusion against that background of complexity
6 was that from that point its actions were reasonable. Fraser may wish to
7 add to that.

8 FRASER MCKINLAY: Not a lot to add; I think that's exactly as we would see it.
9 You would never choose to use public money in this way, all things being
10 equal, but given in the end, the circumstances that the council found itself,
11 we felt that they took reasonable steps to, one having taken the decision,
12 they took reasonable steps and took advice that was appropriate.

13 DOUGLAS SINCLAIR: Let just me explore that just a little further. The point you
14 make in paragraph 31, are you saying that if the council, when Mr Clark was
15 appointed, had set in place a set of clear objectives for him and a
16 performance appraisal system, that if that had been in place they would
17 have been able to test the effectiveness of the chief executive's
18 performance and hold him to account and if that had been done then, as
19 you say in your report, 'Some of the issues which subsequently arose could
20 have been avoided or at least mitigated'? Was that the fundamental issue?

21 CAROLINE GARDNER: I think there is a possibility that is the case. As I say,
22 none of us can know what would have happened had circumstances been
23 different, but it is good practice in any case it is good practice to have clear
24 performance objectives for any senior member of staff, particularly the chief
25 executive. They weren't in place in this case. That meant that when
26 members started to raise concerns about the chief executive's performance

1 there wasn't a clear baseline to go back to in order to review whether the
2 concerns were grounded in fact and then when particular allegations were
3 raised, I think there was an opportunity to deal with those more decisively
4 and more clearly. All of those mean it's possible that the council may have
5 found itself with options that didn't involve negotiating the departure of the
6 chief executive but none of us can be sure whether that's the case; it would
7 have been good practice to have had those things in place though.

8 DOUGLAS SINCLAIR: Can I just explore a little further the statement in your
9 report that, 'The settlement was negotiated on a reasonable basis'. I would
10 just like to explore what you meant by the phrase 'reasonable basis'; was
11 that in terms of the amount of money or was it the process, or perhaps it
12 was both? I'd be interested in your view.

13 CAROLINE GARDNER: My main concern was the process which the council had
14 gone through and I was satisfied that the council, at that point, had taken
15 appropriate external advice, including legal advice, about the options open
16 to it. Had looked back at the process which it had followed since the chief
17 executive's appointment, to see whether there was further action that could
18 be taken at that point given the view that there had been shortcomings in
19 what they had done before that point and then acted properly in the way in
20 which it narrowed down its options and negotiated a settlement with the
21 chief executive.

22 I am aware that the chief executive also took legal advice and that
23 the legal advisers would have come from different positions, as is quite
24 understandable in that situation. Again I think there is inevitably an element
25 of judgment which the council had to exercise in deciding whether the
26 precise amount, for which they settled, was the best possible outcome for

1 the council given its need to move on. But I'm satisfied that the process
2 was reasonable. I think it would be very useful for the Commission to
3 explore those questions with the council and with the chief executive over
4 the course of the next two days, but my focus was on the process.

5 DOUGLAS SINCLAIR: As a follow-up to that, what's your reaction to the concern
6 expressed, for example by the local MSP, that your report did not
7 sufficiently explore the justification for the settlement?

8 CAROLINE GARDNER: As I said at the beginning of this evidence session, this
9 report wasn't intended as a forensic examination of that particular issue.
10 The audit team did enough work to be satisfied that the council's actions
11 had been reasonable and I made the judgment at that point that I would
12 report that fact to the Commission but use it as a way of exploring the wider
13 concerns about governance, accountability and decision making which are
14 apparent in a whole range of the council's workings. My view as expressed
15 in the report and amplified this morning is that it would have been much
16 better had the council not found itself in that position, but once it did its
17 actions were reasonable.

18 DOUGLAS SINCLAIR: Thank you. Can I shift my line of questioning a little? In
19 paragraph 37 of your report you refer to the fact that six elected members
20 made a formal complaint under the disciplinary procedure for chief
21 executives and outlined 20 areas of concern. Paragraph 38 said, 'The
22 convenor's assessment was that the issues raised had been addressed
23 through the relevant policies and procedures.' And then paragraph 39 you
24 say, 'A number of members held the view that the complaints were never
25 fully investigated or dealt with...' and you make the point, 'If a more
26 thorough and decisive action had been taken it might have affected the

1 outcome of this situation.’ My issue is a procedural one. My reading of the
2 JNC procedure is that if members make a complaint the leader of the
3 council, the convenor, should establish a group of at least three members to
4 carry out a preliminary investigation and if there is a case to answer that
5 would result in the establishment of an investigating committee and
6 appointment of an independent adviser. You’re silent on the point, but did
7 you consider whether the action of the convenor at that point in time was in
8 accordance with the JNC procedure or not?

9 CAROLINE GARDNER: The convenor was very clear that the action that had
10 been taken within the council addressed the concerns raised by the
11 councillors. There’s clearly an element of judgment involved in that and I
12 don’t think it’s a clear and absolutely prescribed requirement that in every
13 case where a complaint is made an investigating committee ought to be
14 convened. I do think though it’s unarguable that had more decisive and
15 more timely action been taken at that stage the council may have avoided
16 finding itself in a position where it had no alternative but to end the chief
17 executive’s employment with the council. It’s unarguable that members of
18 the council felt their concerns hadn’t been properly addressed and I think
19 that concern persists to this day. And there was a delay in communicating
20 clearly what action had been taken on the back of the complaint which
21 allowed those concerns to continue and to grow from there. Fraser, I think,
22 wishes to add to that.

23 FRASER MCKINLAY: Thank you Caroline. Just to say, that this was one of, I
24 guess, many occasions where from the audit team’s perspective, we felt the
25 most helpful thing we could do was in a sense play back and play out what
26 we were being told because this was one example where there are just

1 quite different views about what had happened. In doing the audit, the
2 convenor was pretty clear that it wasn't that the issues in that complaint
3 hadn't been investigated but that they had been investigated by various
4 means earlier on and therefore there was no need to do it again.

5 Now, as we say in the report, there are members who disagree with
6 that view. I genuinely think it would be quite difficult for us as auditors to
7 come down one way or the other and make a judgment about that and no
8 doubt there will be more of that over the next two days. As I say, I think it's
9 indicative of many things that we came across in the course of doing our
10 work where there are just very different views about the same events.

11 DOUGLAS SINCLAIR: My point is that you didn't, from your answers, you didn't
12 necessarily test that sequence of events against whether the JNC
13 procedure had been properly followed or not.

14 FRASER MCKINLAY: It was not a bit of work we did specifically, Douglas, no.

15 DOUGLAS SINCLAIR: The issue that you raised of the appointment of an interim
16 chief executive. Do you have a concern that there is a danger of too much
17 expectation being placed on the interim chief executive in terms of
18 governance and moving the council forward? For example, in the council's
19 submission, quote, 'The council will debate the governance and decision-
20 making structure as a matter of priority once the interim chief executive's in
21 place.' I take it you would argue that governance is not just an issue for the
22 chief executive; it is as much if not more of an issue, ultimately a key issue,
23 fundamental issue, for elected members since they take the final decisions
24 in terms of governance. The chief executive is an important role but
25 ultimately his role is that of an adviser.

26 CAROLINE GARDNER: I'd agree with that absolutely. I think our view as the

1 audit team for the council is that the appointment of a strong interim chief
2 executive is necessary but not at all sufficient to making the changes that
3 are needed. I think an interim chief executive, particularly has got the
4 advantage of being able to come in and to put forward some difficult
5 decisions for the council to make about ways of working for the future, but
6 the council itself needs to be able to respond to those challenges and to do
7 so in a much more corporate and collegiate way than it's demonstrated over
8 the last few years.

9 CHAIR: Thank you. Let me put one final question to you collectively and
10 individually; you may have something to say. You, like everyone in this
11 room, has access to the other written submissions of all the other
12 witnesses. Is there anything in any of those submissions you would wish to
13 comment either by elaborating on what somebody else has said or
14 alternatively disagreeing and giving reasons? Is there anything else you
15 wish to offer comment on?

16 CAROLINE GARDNER: I think Chair, given the number of submissions you've
17 received and the range and variety of views expressed in those
18 submissions I think it would be very difficult for us to do that. My view on
19 reading them was that in many ways they demonstrate the challenges
20 which the council faces and indeed which the Commission faces over the
21 next two days in investigating the circumstances at the council. But I think,
22 on behalf of the team, if during the course of the hearing there are issues
23 within the submissions that you would like our views on, specifically, we'd
24 be very happy to do our best to respond.

25 CHAIR: Thank you. We'll reserve the right to ask you to come back in the mean
26 time, but give you plenty of notice. Thank you very much.

1 We then move on to invite the Shetland Islands Council political
2 leadership to come forward and give their evidence to us.

3
4 [SESSION 2]

5 CHAIR: Ladies and gentlemen, councillors, welcome.

6 I am going to start again and, pretty well with the same question I
7 posed of the Controller of Audit and the Audit Scotland team. We'll pose
8 the questions initially through Convenor Sandy Cluness, but as the
9 discussion goes on no doubt we'll get into other discussions, individually,
10 with councillors.

11 So, in starting then can I put the same question to you Sir, that we
12 put to the Controller of Audit; the Best Value report of 2005 was critical in
13 many ways. How would you characterise the progress that the council has
14 made over the time since then?

15 CLLR CLUNESS: Well I think we've made every effort to develop-

16 CHAIR: Sorry – I do apologise. Can I ask you each please for the record to
17 introduce yourself briefly by name and position.

18 CLLR CLUNESS: Surely I think that we have made significant progress. It might
19 be interesting historically to know that the reserves and the charitable trust
20 were designed as partners in the early years following the agreements with
21 the oil companies, and since the start we have invested between the two
22 partners £500 million in this economy, both in infrastructure and, of course,
23 in using the interest of investments for the purposes that we now have
24 difficult in. We have had difficulty in not being able to obtain this from
25 central government and this will be a particularly hard task for us in future,
26 but the result has been, as someone has said, had we not done so the

1 population of this community might have been as low as 20,000. So, I just
2 want to indicate to you that councils over the period of time that I've been
3 involved with them have made a very real contribution towards how the
4 community runs. I believe that despite what people have said, this is
5 accepted by the large majority of the community that Shetlands councils
6 have been – and trusts have been excellent over the years.

7 And we have struggled with the qualification of course. I myself have
8 asked that we do everything we can to settle this particular matter because
9 all our accounts are in order. The charitable trust's accounts are published
10 every year. It's an accounting technicality that we do not group them, but if
11 we possibly can group them of course we shall. But in the mean time, as I
12 say, we are well aware of the global financial situation. We've invested in it
13 for 30 years and we have great concern about whether we can sustain the
14 level of services which have maintained this population, basically as it is, for
15 10 years.

16 So we are concerned and we have to attend to these accounting
17 difficulties. I understand that you'll be hearing, I think from, later from our
18 financial director and so on, but I think we have made progress. If we
19 haven't made as much as we might have I hope we do so now.

20 CHAIR: Thank you. Can I now just stop there and ask you to go round the table
21 and for the record just to state who you are and what your responsibility is
22 politically? I might start with, we have Cllr Sandy Cluness as convenor and
23 can we just move to his left please, and each of you introduces yourselves
24 please?

25 CLLR SIMPSON: I am Joseph Simpson, better known as Josie Simpson, and I'm
26 Vice-Convenor.

1 CLLR HAWKINS: I'm Iris Hawkins, Chair of Infrastructure and ZetTrans.

2 CLLR WISHART: I'm Alan Wishart and I am Vice-Chair of Infrastructure and
3 ZetTrans, the transport partnership.

4 CLLR ANGUS: I am Leslie Angus, usually known as Gussie Angus, and I am
5 chair of the Services Committee and a Lerwick councillor.

6 CLLR FULLERTON: I'm Betty Fullerton and I'm Vice-Chair of the Services
7 Committee.

8 CLLR DUNCAN: I am Allison Duncan, Vice-Chair of Audit and Scrutiny and I'm
9 also the housing spokesperson for Shetland Islands Council.

10 CLLR GRAINS: Florence Grains, Chair of Audit and Scrutiny.

11 CLLR COOPER: Good morning, Alastair Cooper and I'm the Vice-Chair of the
12 Development Committee and member for Shetland North.

13 CHAIR: Thank you very much. Now going back to the questions, if you were to
14 characterise the political leadership of the council, how would you so do?

15 CLLR CLUNESS: Well, other members in the community have heard me about
16 this for some time. I have difficulty as someone, like Douglas, who has a
17 long history in local government, in recognising and accepting the way that
18 Shetland Islands Council has composed itself over the years whereby the
19 three major committees who deal with virtually everything except planning
20 have every council member on it. They also have substantial delegated
21 authority. So, the only ones that come to – in the old days we had a range
22 of sub-committees and committees that reported and in the long term, of
23 course, the council took their decision. I find it very difficult as someone
24 who's interested in how local authorities are governed, with this in
25 particular. And in addition, I have found over the past period of time that
26 most councillors are reluctant to see any kind of cabinet system. If you can

1 imagine what that is like in a situation where no one stands as a member of
2 a party, then each decision really has to be taken by the full council and it's
3 difficult to tell in advance necessarily how people are going to vote because
4 – you could say that this is a true kind of democracy because there are no
5 party politics that intrude, although there are of course people who hold
6 different opinions. It is not easy to lead in such circumstances; you have to
7 lead by consensus, which is never easy in local government.

8 DOUGLAS SINCLAIR: Good morning convenor. I wonder if we would find it
9 helpful to start with if you could outline how you think councillors see their
10 roles? Arguably three roles: community leadership role; the corporate
11 leadership role in the council; and thirdly their scrutiny role.

12 CLLR CLUNESS: I think initially that the one, I think, good decision we took
13 relatively recently was that of the Audit and Scrutiny Committee which has
14 done a good deal of work. Other than that, I think that the individual
15 members of the council see themselves as representatives of their local
16 areas which has been indicated earlier, can create difficulties when you
17 have painful decisions to take such as closing schools perhaps. I think a
18 good deal of work has been done on that. As I say, if you like to think of it,
19 our corporate structure is basically the whole council.

20 DOUGLAS SINCLAIR: And secondly, how do councillors see the role of officers?

21 CLLR CLUNESS: Well over the years that I have been part of this particular
22 council we have seen officers as partners as far as I'm concerned. In the
23 main the way I have always operated in the considerable number of posts I
24 have held is that the best way of achieving results is to be on a good
25 relationship with your staff and respect their views. I know because I do
26 know how the other island authorities work that that is very much the case

1 in similar island authorities; it's seen as a partnership and largely that is the
2 way we operate in Shetland.

3 DOUGLAS SINCLAIR: And just to follow that specific point up, the Controller of
4 Audit says in her report at paragraph 56 made the point that some officers
5 had expressed concerns about what they saw as a lack of support and
6 professional respect.

7 CLLR CLUNESS: Yes, I don't think they would have had that from me; I don't
8 think there was any member of the staff who would say that of me.

9 DOUGLAS SINCLAIR: But the fact they can say it about councillors shows there
10 is such an issue.

11 CLLR CLUNESS: I think that's a great pity. One of the difficulties has been, as
12 again I think was mentioned previously, has been the fact that many of
13 these issues have become public and so that makes life very difficult for
14 staff who are not able to respond in such circumstances.

15 DOUGLAS SINCLAIR: Just to explore that a little further in the sense that, if you
16 look at the way a council operates the argument is that councillors are at
17 the beginning and end of the process; they set the policy and they scrutinise
18 the effectiveness of officers implementing those decisions. The bit in the
19 middle – the day-to-day management of the council is the responsibility of
20 officers. Would you say that that analysis applies and characterises
21 Shetland Islands Council? Are there clear roles – clear understanding of
22 the roles and relationships that people operate effectively; or for example, is
23 there in a small community, I understand the point, is there a danger of over
24 closeness between members and officers and a lack of trust and respect?

25 CLLR CLUNESS: Well I don't believe there is lack of trust and respect in the
26 main, I believe that this, in the main, we have a system which works

1 reasonably well Where we have directors and deputy directors who are
2 responsible for most of the big committees. In that situation, for instance,
3 the Chair of Services will deal, if not daily certainly very like that with the
4 respective staff there and that has been relatively successful. The same
5 applies to development and the same applies to our other big committee
6 which deals with infrastructure.

7 So my difficulty has been in effect to a certain extent I have not, if
8 you like, had a full period of time with a chief executive in recent times so I
9 have had to co-operate with other senior staff to try to and make things
10 work well at the same time keeping services going and that has been an
11 extremely difficult matter.

12 DOUGLAS SINCLAIR: If I just turn to explore a bit more the point about members'
13 roles. In your submission you say the council would submit that all 22
14 elected members are motivated to do their best for the community. I'm sure
15 that's right. But what I want to explore is – to test out a bit more your views
16 as to how well they discharged that corporate leadership role; that idea of
17 setting clear directions and setting clear strategy, making difficult decisions
18 and that strategic overview of where the council's going. And indeed your
19 own handbook for elections to the council in 2007 said that as well as your
20 role as local member – you have a responsibility – all councillors have a
21 responsibility, to provide strong corporate leadership for the council. And
22 yet you'll see the criticism in the Controller of Audit's report; 'We found little
23 evidence of strategic leadership or of elected members acting in the
24 interests of Shetland Islands Council as a whole. Councillors have not
25 demonstrated that they can set and maintain a clear strategic direction for
26 the council.' Now I suppose what's worrying is that that criticism was also

1 reflected in the Best Value report in 2005: 'Councillors have a marked
2 tendency to represent the narrow interests of their ward at expense of the
3 wider corporate role as councillors.' What assurances can you give the
4 Commission, but more importantly the Shetland public, about how the gap
5 between what you should be doing in terms of your second role and what
6 you're currently doing can actually be filled?

7 CLLR CLUNESS: Well I think we do have both a corporate plan, and of course we
8 have the single outcomes agreement and we have an effective community
9 partnership as well. In the absence of any party representation on the local
10 authority, what we did after the last election, we took all the manifestos and
11 tried to draw out of that a composite pattern of what the general aim of
12 councillors would be because two thirds of them were new to the job. So
13 we had this particular system where we – actually economic development
14 was the leading one – but we have struggled from time to time, as I say,
15 because we always meet as a full council whether we're part of the
16 committees or not – people have changed their minds. That has been a
17 disappointment to some of us but in essence this is a new council. They
18 have taken, perhaps, a bit more time to settle but I think it has been working
19 well – it's been working well in recent times. The education blueprint is one;
20 our transport system is highly regarded. Indeed, we have many local
21 authority and representatives who have actually come to Shetland to see
22 how we undertake the work we do, whether it's the waste heat plant or
23 whether it's the way we run our ferries. We have a wide range of people
24 who are very impressed by our leisure activities. We had 1,000 people from
25 all over the world here last week for a couple of weeks, with some degree of
26 connection to Shetland, who were amazed at the standard of life that

1 people in Shetland enjoy, and a great deal of the credit for that goes to
2 Shetland Islands Council and the Shetland Charitable Trust. And as I say,
3 I'm perfectly convinced that every single member of this council is
4 determined to act in the best interests of their community. There is always
5 a difficulty when – school closures are a perfect example – when you have
6 choices to make, but in the main I think we are capable of making them.

7 DOUGLAS SINCLAIR: I certainly wasn't trying to dispute that the council provides
8 high-quality services. I think the area of interest to the Commission is the
9 point that good services need to be matched by good governance and good
10 and consistent decision making. So let me just pursue that a little bit
11 further. Another point you made in your submission is that you're not
12 organised on a party-political basis, that's self-evident. And you say that
13 open dialogue and robust debate is a feature of an independent council and
14 can result in decisions being changed. I might add as an addendum;
15 sometimes decisions are not made, if you look at the Anderson High
16 School. How would you explain if that is a function of your council – and I
17 go back to a point in terms of – we touched on with the Controller of Audit –
18 there are examples, indeed of a neighbouring council to you which is also
19 organised on an independent basis but seems to be able to demonstrate
20 consistent corporate leadership? What is it that is different about Shetland
21 that makes delivering corporate, consistent decision making so much more
22 difficult than it is in other councils?

23 CLLR CLUNESS: Well I think to be honest that we do make decisions which are
24 followed through. You've chosen one example where council have
25 changed their mind, but in the main the decisions we make in relation to
26 services in the community are taken by the whole council and are carried

1 through by the staff. I do not know to which council you are referring, but
2 part of this council's activity do relate significantly to economic development
3 because unless we are prepared to invest in the future of this community
4 we are going to have considerable difficulty as the money supply tightens.
5 So that is one significant difference from any other local authority in
6 Scotland. We take our decisions based on how we are going to safeguard
7 this community and keep and retain our population, because if we start the
8 population tumbling, as it has elsewhere, this community will be in
9 considerable difficulty. I think the great majority of the public of Shetland
10 recognise exactly why we do these things, but investment in the economy
11 can have its risks. We've had our failures but in the main the £100 million
12 we have invested in the economy has brought excellent results, as have our
13 investments through our reserve funds and indeed through our charitable
14 trust. These are both healthy and strong. We have finance directors on
15 both, who make sure we are kept informed on a weekly basis how these are
16 performing. While I accept that this particular issue relating to the former
17 chief executive has caused us considerable difficulty the remainder of the
18 work we do, the services we provide are just as good as in any other part of
19 Scotland.

20 DOUGLAS SINCLAIR: Let me just pursue the point and again let me reiterate that
21 this is not an argument about the quality of the service you provide; this is a
22 focus is on the effective governance in the council. The example I gave
23 was of Orkney Islands Council. Let me take that from another perspective
24 of good governance, which is mutual respect by one councillor to another.
25 You've had, I think, if memory serves me rightly, something like 12
26 references to the Standards Commission. Your neighbouring councils have

1 had two. Does that not say something to you about the nature of the
2 relationships within the council? There is a lack of mutual respect and the
3 council has difficulty coming together. And the perception that must give to
4 the community of Shetland, does that not cause you concern?

5 CLLR CLUNESS: Of course it causes me concern, yes. A number, of course, of
6 complaints have not come from councillors but from members of the public.
7 In the main, having been in the local authority and public life for many
8 years, I think I have a fair idea of what the Shetland public in general think.
9 And in the main of course they're concerned with these references, the
10 Standards Commission and so on, but I don't think they're indicative of the
11 standards of governance or leadership that we have in these islands.

12 CHRISTINE MAY: If I could just pick up one aspect, I don't know whether every
13 single member sitting round the table has a responsibility allowance. But of
14 those members including yourself, there are a number who claim a special
15 responsibility allowance for having positions of leadership and of great
16 difficulty. I would consider it reasonable to see that group as the leadership
17 of the council, albeit not party-politically aligned but aligned behind the
18 jointly agreed manifesto combination. That doesn't appear to be the case
19 from the evidence we've had. Can you comment on how you seek to build
20 that consensus?

21 CLLR CLUNESS: Well I'll also let the other chairs respond to that because that is
22 only fair. But what I was saying was that we don't have a formal cabinet
23 system. We do, of course, meet on a regular basis; our offices are next
24 door to each another, so we meet on a daily basis. But the council over the
25 past has not wished to have the leadership make fundamental decisions;
26 they have been looked on as advisory, I think. Individually of course we

1 co-operate. Maybe-

2 CLLR SIMPSON: I'm vice-convenor but we also have a Resources and Finance
3 Committee, and the Head of Services is on that committee along with
4 officers. Now I think that is one of the biggest tasks that faces us, given the
5 economic climate in which we now find ourselves now. That group, I would
6 say, has worked very well together, officers and members, and we know
7 what we have to save a lot of money in this next decade. We have a five-
8 year plan to map out where we have to take the finances of this council; we
9 have to look five years ahead. I think that's a perfect example of how well
10 members and officers work together. At the end of the day our
11 recommendation has to come back to the full council for ratification. But I –
12 I think this, that councillors, members and officers doesn't work together; I
13 don't think that, I don't believe that. I think we have a very very good
14 working relationship on working together, and that is a perfect example.

15 CHRISTINE MAY: Thank you. However, the point I was trying to get at was that,
16 if I were in the convenor's position, for example, I would anticipate that,
17 following that discussion, my leadership group would act as one in advising
18 the council of a position to take. The impression I get from the evidence
19 we've received is that that can change between the discussion of the group
20 acting in an advisory capacity and then when it comes to a vote in the
21 council.

22 CLLR ANGUS: Yes, I'll take that if you like. Absolutely right; that's what happens
23 on occasions. I think it emphasises the role of the independent councillor
24 and, as the Audit Scotland report has identified, the consultation on ward
25 issues. I simply add to that that it's perhaps difficult for you to understand
26 the pressures that individual members are subjected to from the

1 constituents in a way that I understand is not typical of councillor colleagues
2 elsewhere; the degree of pressure that people exert on individual issues
3 affecting their areas. So it would be very difficult. For instance, the recent
4 debate we've had and decisions taken on the blueprint for education
5 highlighted that, where people were subjected to massive pressures night
6 and day from constituents on individual school closures. I understand that.
7 It's quite difficult then for people to come to a public meeting and vote to
8 close their local school.

9 The other point I would make is that, this particular council, officers
10 have always had a large role in policy making. The point you make about
11 councillors deciding the policy and then management getting on with it in
12 the end is not quite how it happens here. Officers are very much involved –
13 senior officers very much involved in policy development and to some
14 extent claim ownership of policies along with councillors, so that's different.

15 I'd like to think I treat staff with respect, I'm not aware of any particular
16 issues around that but if there are then we should be dealing with them,
17 certainly.

18 But the interface with the charitable trust is an interesting one for me
19 because the Shetland Islands Council Charitable Trust, as it was until it was
20 rebranded, was created with two principal benefits to the community: a) it
21 would enable the community through its elected representatives to do
22 things that the local authority couldn't do, because it was restricted by
23 legislation until the 2002 Act; the power to create well being. The other of
24 course was a tax advantage. But what it has created – the dilemma we
25 now have is that at the time of plenty – and we were talking about a
26 charitable trust that was worth in excess of £300 million with interest

1 sloshing about looking for good causes – that we did develop services
2 provided through a range of arm’s length trusts and so on, that were and
3 are uneconomic, in the sense that they would be unthinkable in other areas,
4 but which the Shetland community through its elected representatives were
5 – not demanding – but seeking to be addressed. Social care would be one;
6 so we have locality based social care in our remoter islands that you
7 wouldn’t find anywhere else. It’s totally uneconomic but it was built and
8 provided on the understanding that the external sums which that the council
9 was earning from its investments would supplement, support and assist in
10 the maintenance of these peripheral island communities and it does. So to
11 that extent we, looking through the other end of the looking glass; have
12 been profligate. We see it as responding to the needs, as we see it, of our
13 community.

14 CHRISTINE MAY: Thank you Councillor Angus, but – like Douglas – I’m not
15 suggesting that the services that the council provides are anything less than
16 exemplary. That I think is clear from the evidence. What I’m seeking to
17 look at is how you as the senior leadership team of the council act as that
18 team. I do want to move on to other questions. But I’m familiar with the
19 issues which affect a leader, having been the leader of two local authorities
20 myself in terms of responding to constituents’ concerns and taking the
21 difficult decisions which may act against the individual interests of those
22 constituents. I thank you for your explanation, and I have listened to it very
23 carefully.

24 Can I move on, perhaps, to ask councillors about the recruitment
25 process for the chief executive? Because it did appear to be less rigorous
26 than the one used to appoint executive directors, and I wondered why the

1 council on this occasion, in terms of appointing Mr Clark, why it chose to
2 adopt the approach it did with no external advice and support, no
3 assessment centre and an interview panel of all members. Why was the
4 HR advice to use a more rigorous approach not followed? What lessons
5 have you learned and what will you do, not for the interim chief executive
6 but for the appointment process for the next one? And can you talk a little
7 about probationary periods because that has been raised in a number of
8 pieces of evidence, whether you normally include those?

9 CLLR CLUNESS: Yes, we will learn from our mistakes. Of course we had a – we
10 felt that we had pursued a reasonable rigorous process in getting a short list
11 of candidates of who we had some, we had a – I think we ended up with
12 four or five. As you say, I don't think we'll go down the route again of the
13 full council actually interviewing all these people. But the result was that we
14 made the appointment because of his lack, possible lack of knowledge of
15 local government Mr Clark was given time to go round the departments and
16 assimilate – get as much information as he possibly could to be ready for
17 his job. Come the summer the instruction was to try and tidy up or to try
18 and reach some kind of conclusion in relation to all the problems or
19 possibilities in relation to the Anderson High School. We did have – we had
20 an appraisal form available, if you like, by the end of the summer, which I
21 appreciate is not good enough.

22 CHAIR: Can I interrupt you convenor, if I may? I think one of the key points we
23 need to try to understand is why you chose not to adopt the normal
24 processes.

25 CLLR CLUNESS: Well as far as I was concerned we did adopt the normal
26 process. You will be able to hear, as I say, from our human resources and

1 elsewhere. We certainly felt that we could go ahead on the basis of the
2 information we had. I hold my hand up and say that was wrong then and of
3 course I take responsibility for it. As I say, by the time the summer had
4 ended we were in a period of difficulty in exchange between the chief
5 executive and others. As time went by we went through the first process of
6 the JNC system. I made a point of going to COSLA to meet with the
7 president and the chief executive to try and ensure that they would assist us
8 in appraisal from that time onwards, together with the invitation to the
9 improvement service to come and assist us in this matter, but as I say, the
10 situation deteriorated from thereon and the result is as we see it.

11 CHRISTINE MAY: Can you say what you will do for the appointment of the next
12 permanent chief executive?

13 CLLR CLUNESS: I hope that by tonight we will have a new interim chief executive
14 in place. We will proceed exactly on the same basis with the appointment
15 of a new chief executive, when the time comes we will endorse, I would
16 hope, I'm sure every advice we get in relation to that appointment and we
17 will follow whatever – as we have done this time. I think we've gone down
18 the right route; that's been essentially accepted by Audit Scotland; we'll do
19 the same when it comes to a permanent chief executive.

20 CHRISTINE MAY: Okay, thank you. Can I ask in terms of working relationships,
21 in his evidence David Clark referred to you 'Allowing a vote of censure
22 against me without giving me the opportunity to speak', and that is, if you
23 like, typical of the comments that have been made in terms of the
24 relationship between the then chief executive and members of the council.
25 Are you able to explain what you think led to that state of affairs, talk about
26 how you dealt with it and, more importantly, not looking backwards but

1 looking forward, what will you do to make sure that something like that
2 doesn't happen again?

3 CLLR CLUNESS: I don't think that – I can assure you personally that nothing like
4 this will ever happen again. Certainly, it's the first time it's ever happened to
5 me. I had no knowledge of the previous Reiter matter. I can only say to
6 you that I tried to be fair to both Mr Clark and to those who were
7 complainers against him. And I seem to be now criticised by both sides, so
8 perhaps I was being reasonably fair there. I have always believed that you
9 should give people the benefit of the doubt and that is what I tried to do
10 throughout this. I should also say that right from the first complaint which
11 came in, which did go through a procedure, I insisted that we had the best
12 possible advice we could get from employment, from Anderson Strathern
13 who are recognised as major employment specialists. Everything I did at all
14 times, I ensured that I had that advice because I am not anyone who's a
15 particular specialised knowledge in employment law. So everything that
16 was done, I took the advice of our internal legal team but I boosted that with
17 the appointment of Anderson Strathern; every decision that I took was with
18 their advice.

19 CHRISTINE MAY: Okay, thank you. Can I go on? Ian Clark in his submission
20 suggested that tensions between members and chief executives have been
21 a recurring issue in Shetland and indeed there appear to have been
22 persistent problems since 1999 and that previous situation. Now your
23 council submission speaks of 'reviewing policies', but there have been
24 previous statements that policies would be reviewed. What confidence can
25 we have, and can the people of Shetland have that on this occasion policies
26 will be reviewed, effective polices will put in place and enforced?

1 CLLR CLUNESS: I think the fact that you're here and are going to make
2 recommendations will ensure that we follow precisely whatever
3 recommendations are made. As I say, I was not here during Mr Reiter's
4 term of office but I was – I have been in local government I think, in some
5 form with all the other chief executives we've had from Ian Clark onwards. I
6 cannot say that, certainly in relation to the past former chief executive, Mr
7 Morgan Goodlad, that we had any real difficulties which could not be
8 resolved. So I accept the criticism that we did not learn from what had
9 happened with Reiter and I can assure this Commission and the people of
10 Shetland that's the case, that in that respect at least, lessons will be learned
11 and every recommendation made by the Commission will be followed to the
12 letter.

13 CHRISTINE MAY: Thank you; I welcome that. In your submission, and this is the
14 final point I want to raise with you, your submission indicates that you're
15 putting a lot of emphasis on the new interim chief executive to sort things
16 out. And I wondered if I could pursue with you the question that was asked
17 of the Controller of Audit. Is it not for the members as well as the new chief
18 executive and officer team to take a grip of the situation and sort it out? Ian
19 Clark in his evidence suggests that the problem is that senior elected
20 members do not protect the position of the council's officers appropriately.
21 Do you think there's a systemic issue here that needs to be addressed, and
22 what are you as leader doing to make sure that the members have a code
23 which is followed and enforced?

24 CLLR CLUNESS: I don't agree with Mr Clark on this occasion. I think that in
25 general, and the officers who you're hearing from them later can say for
26 themselves and say whether they do or do not have the support they should

1 have. We're anxious to have an interim chief executive in post fairly early.
2 We've tried to do this through COSLA as quickly as we can because the
3 present deputy chief executive has shouldered an enormous burden in the
4 past year. Along with myself he has attempted to deal with this situation, at
5 the same time trying to deal with the normal day-to-day operations of the
6 council. So we are not pinning all our hopes on the new chief executive; we
7 fully expect that we will work closely with him or her in order to ensure that
8 we get a working relationship that is satisfactory in the future.

9 CHRISTINE MAY: Thank you. Can I turn now to the negotiated settlement with
10 the former chief executive? In his submission he outlines his view of the
11 processes leading up a decision; a negotiated settlement for departure was
12 required. Can you explain exactly how the council got into that position and
13 what actions and/or omissions, which are referred to in your own
14 submission, do you think resulted in that settlement having to be made?

15 CLLR CLUNESS: As I said, every decision that I took and the vice-convenor took
16 was based on advice we received from expert external advisers. Insofar as
17 the actual settlement is concerned, this council, as I told you, I had made an
18 initial approach to COSLA for their assistance in what was becoming an
19 increasingly difficult time for everyone and they agreed to help. And so in
20 getting to the stage of a settlement we took their advice; they appointed a
21 consultant who-

22 CHRISTINE MAY: Forgive me, convenor. My question though was about how
23 you got into that position. I'd like to hear from you how you think the council
24 got itself into the position of you having to seek that advice.

25 CLLR CLUNESS: Okay. We got into the position because we had, there were
26 considerable difficulties between some of the members and the chief

1 executive and they showed no sign of diminishing as time went by; in fact
2 the reverse appeared to be the case, so something had to be done, it was
3 as simple as that.

4 CHRISTINE MAY: Those were perhaps the actions referred to in your
5 submission. What were the omissions to which you refer in your
6 submission?

7 CLLR ANGUS: The principal one in my opinion was that we didn't have a proper
8 appraisal system in place against to measure or assess the chief
9 executive's position against, and that was our fault. My understanding was
10 that we had an effective staff appraisal system in place, and we do. Right
11 up to but excluding the chief executive, that was news to me, I should have
12 known that and I accept full responsibility for not knowing that, but I didn't
13 know it. I found out about it during the time when people were trying to
14 negotiate a settlement. We, at that point, it seemed to me that at that point
15 we were left with very little option but to negotiate a settlement because we
16 didn't have effective measures in place against which to assess the chief
17 executive's performance.

18 CHRISTINE MAY: Thank you, but Mr Clark's view is that the situation related to
19 advice about the conduct of elected members rather than the conduct of
20 himself. So can you comment on that and say what you intend to do about
21 this?

22 CLLR ANGUS: Comment on the conduct of elected members? In what respect
23 could I ask?

24 CHRISTINE MAY: Well Mr Clark's view is that there were – the conduct of elected
25 members – I have quoted what he said about the convenor, for example –
26 but other elected members who complained about telephone calls and that

1 type of behaviour. Can you say what action you will take should such a
2 thing happen in future? I'm trying to get-

3 CLLR CLUNESS: Well I hear what you say, but I don't think I can say what will
4 happen in future other than that everybody has learned a considerable
5 lesson here and we will – I cannot see us going down this route again. This
6 is a once-in-a-lifetime episode as far as I'm concerned and I dealt with it in
7 the best way I could. I think that; I do not imagine there will be difficulties
8 with future chief executives, certainly not if we get an interim chief
9 executive. And if necessary, we will set up whatever protocols are
10 necessary to ensure that what – but councillors, as you know have a code
11 of conduct and I try to abide by it as I think all councillors do.

12 DOUGLAS SINCLAIR: To ask a supplementary on that; because in – taking the
13 point that Christine May said, that in your submission you said that, 'The
14 council regrets any actions or omissions on its part which resulted in the
15 payments being made.' Is the inference from that, that some of the
16 comments, the criticisms in public by councillors of the former chief
17 executive, which were a clear breach of the protocol in terms of the code of
18 conduct between employers and employees? Is that what you're referring
19 to? That some of the statements made by councillors resulted in payments
20 being made which, if they had not been made, might not have resulted in
21 the payments?

22 CLLR CLUNESS: Well it is of course a possibility. Insofar as the complaint from
23 the six members was concerned which I did refer immediately to our
24 lawyers for advice on, and theirs was that most of this had been covered
25 earlier. Despite that I did not reject it at that stage. But in that particular
26 case the actual complaint was delivered to me by Cllr Robinson who came

1 in specifically to ensure that this was kept private by handing me the
2 complaint in a sealed envelope so that he could ensure that none of this
3 became public. Despite that, by that evening and by the following day,
4 when the packets were still on my desk, the media had the entire complaint.

5 That was where the lawyers who were advising said, 'This is where, you
6 know, you could have difficulty if an individual member of staff wishes to
7 make a claim against you'.

8 CHRISTINE MAY: Okay, can I then pursue that line; how rigorously did the
9 council consider the options regarding the chief executive before arriving at
10 the negotiated settlement? How was it arrived at, by whom, and can you
11 talk about the council meeting of 19 February?

12 CLLR CLUNESS: I can. 19 February was where we made the decision to pay the
13 money?

14 CHRISTINE MAY: Yes. I wanted to ask about whether the full council had
15 considered the matter before it came before the council.

16 CLLR CLUNESS: Yes, well we spent four hours discussing the project – the
17 possible settlement. In an initial meeting – because it was in two halves –
18 we asked the lawyers and COSLA to look at what alternatives we had,
19 options we had. Clearly, it was distressing to and angered I think us that
20 such a sum would have to be paid in the circumstances. However, we took
21 the advice that we got. We spent a very long time discussing it. Everybody
22 had the opportunity to speak. In the final stage 18 members of the council
23 who were present, including myself, took the decision to make the
24 settlement on the basis of the advice we had got.

25 BILL MCQUEEN: Can I just check with you Mr Cluness, did every member of the
26 council get written advice from COSLA and your legal advisers about the

1 elements that would go into the compromise agreement and the amounts
2 that would go into that document before the decision was taken?

3 CLLR CLUNESS: Yes. The meeting was in two halves. As I say, in the first half
4 Mr Mair and Mr McCall indicated that having looked at precedent and
5 whatever complete cases were available to them a settlement in the
6 eventual figure was likely. We asked them in a sense to go back and think
7 about that again and consult with whoever was necessary and come back
8 with a recommendation. All the members of the council had copies of that,
9 but because of the sensitivity of any settlement of this nature the papers
10 were returned at the end of the meeting.

11 BILL MCQUEEN: Sorry, so just to confirm – so every member of the council saw
12 written advice; they saw documented the likely sums of money?

13 CLLR CLUNESS: Yes.

14 BILL MCQUEEN: And saw the heads of terms that would go into the compromise
15 agreement?

16 CLLR CLUNESS: Those who were there saw the information.

17 BILL MCQUEEN: The 18 members that you described attending the meeting?

18 CLLR CLUNESS: They saw the proposals that our lawyers were making for a
19 settlement.

20 BILL MCQUEEN: Can I just take one step back; Mr Clark says in a letter from the
21 council on 26 February that he had confirmed to him by the council that his
22 legal fees would be paid by the council. Did that mean that, when you
23 came to the meeting in February to consider the options, the option of
24 disciplinary action and dismissal had gone by the board for the either that
25 reason that you had paid – agreed to pay his legal fees or for the reasons
26 that you hadn't got a process of performance appraisal against which to

1 implement that procedure?

2 CLLR CLUNESS: All options were still available to the 18 members who met and
3 made that final decision.

4 CHAIR: Cllr Angus, did you want to say something in addition to that? I thought I
5 saw you wanting to speak.

6 CLLR ANGUS: Not in addition. I think we had very clear, unequivocal advice from
7 both the COSLA adviser and our legal adviser, but the – and we agreed the
8 global sum inasmuch as Mr Mair, I think, said that, ‘It would be of that
9 order’, and on recommendation we agreed to meet Mr Clark’s legal
10 expenses. The actual details in the compromise agreement were kept
11 confidential in the council’s legal department and councillors were invited to
12 have sight of that if they wished. I did certainly.

13 CLLR CLUNESS: We were concerned that it should remain private.

14 DOUGLAS SINCLAIR: I have one particular point about the assistant chief
15 executive. I wonder how you justify or explain how the establishing the post
16 of assistant chief executive in 2006, without, as I understand it, the post
17 being advertised either internally or externally, without – at the time it was
18 established – with a proper job description and without interview to the post,
19 simply an appointment was being made. How can be justified as either
20 good employment practice or good governance?

21 CLLR CLUNESS: Well Mr Shannon had done a number of different jobs for us
22 and it was felt he could be of assistance to the chief executive as a result of
23 this in a more wide-ranging post. It was again, it was as far as I can recall it
24 was a full decision of the council.

25 DOUGLAS SINCLAIR: With great respect convenor, I don’t think you’ve answered
26 my question.

1 CLLR CLUNESS: No I haven't, but I've answered it to the best of my ability. At
2 that time the council felt that because of the experience Mr Shannon had
3 gained elsewhere he would be a suitable assistant for the chief executive.
4 That's the best I can do I'm afraid.

5 DOUGLAS SINCLAIR: What part did members play in the discussions about
6 changes to the roles and responsibilities of the chief executive's
7 department? This point is touched on in the Controller of Audit's report.

8 CLLR CLUNESS: Early on the then chief executive, Mr Clark, indicated that he
9 considered that Mr Shannon could do a valuable job as a capital projects
10 manager, or something of that kind. It seemed to the senior councillors who
11 met as a group this time that that would be suitable. As it happened, Mr
12 Shannon found that unacceptable.

13 DOUGLAS SINCLAIR: The council in its submission states that its policies and
14 procedures were not followed correctly and that was confirmed by the Chief
15 Investigating Officer in his report to the Standards Commission. Why were
16 the council's policies and procedures not followed?

17 CLLR CLUNESS: Is this in relation to Mr Shannon or-?

18 DOUGLAS SINCLAIR: Yes. As a supplementary to that, the former chief
19 executive, Mr Clark, states that, 'Councillors were fully aware of the
20 proposal'. His argument was that what he proposed to do had the support
21 and agreement of senior councillors.

22 CLLR CLUNESS: I think there is simply a misunderstanding there. I will be told if
23 I'm wrong, but I think most of the people who heard these original thoughts
24 from Mr Clark assumed this would go as a report to the council.

25 CLLR FULLERTON: I think it's absolutely right to say that this was discussed with
26 senior members of the council. However, I remember the meeting clearly

1 and several of us questioned whether this was under delegated authority or
2 not and several of us queried the right way to go about such a change and
3 eventually closed down the discussion, saying that this was no place for the
4 discussion and that it was for the council.

5 CLLR COOPER: In fact it was me who said this was not the right forum to discuss
6 the position of the assistant chief executive and it needed to be dealt with in
7 the council chamber. The convenor agreed and at that point the discussion
8 was closed down.

9 DOUGLAS SINCLAIR: Would it be fair to say that the council took a pretty
10 principled position in terms of who should be able to delete the post; i.e. it
11 should be the council, but was pretty haphazard, it seems to me, about how
12 the post was established in the first place?

13 CLLR CLUNESS: Well, that could easily be. Of course, the post was never
14 deleted and Mr Shannon is in that post at present.

15 CHAIR: We move on to items of governance and accountability. I'd like
16 Graham Sharp first of all to talk about the charitable trust.

17 GRAHAM SHARP: Earlier in your evidence you referred to the fact that the
18 community here enjoys high levels of service due to the efforts of the
19 council and those of the charitable trust alongside the council. What's the
20 council's view about its long-term relationship with the charitable trust?

21 CLLR CLUNESS: What has happened since we had the Shetland Islands Council
22 Charitable Trust, which as I told you was a partner in the way we wished to
23 promote the community and the benefit by it, the legislation has changed.
24 We have gone through a series of advice from senior legal teams in
25 Scotland and elsewhere, and discussions very recently with OSCR on what
26 the future make-up of this charitable trust should be in order to comply with

1 the new legislation. I have no difficulty whatsoever in the grouping of
2 accounts personally, but what has happened when councillors have met
3 during the charitable trust is that they have had consistent advice that if they
4 do so that could create difficulty for the constitutional integrity of the trust.

5 GRAHAM SHARP: If I may interrupt you for a moment, I think later we will deal
6 with those issues. At the moment I was just asking about your relationship
7 with the charitable trust going forward and whether you saw it continuing in
8 the way it has in the past or working more closely together or separately.

9 CLLR CLUNESS: We have tried to separate it to a certain extent. A few years
10 ago, prior to the change in legislation, the chief executive of the council was
11 also the chief executive of the trust. The financial affairs were handled by
12 the finance department of this particular council. Following changes in
13 legislation, I should say that the charitable trust has been given more of a
14 life of its own with its own headquarters, its own secretariat, its own chief
15 executive and so on. What the present constitutional position is that we are
16 debating, if you like, what the future membership should be because it
17 seems to be the view of OSCR that there should be fewer councillors and
18 more independent trustees. So that's the present position.

19 GRAHAM SHARP: I'll read you a quote, if I may, from a report from your chief
20 executive on 4 July 2007. Commenting on the trust and the structure you
21 have at the moment, he said, 'It provides a co-ordinated approach such that
22 community benefits can be maximised and that clear accountability for
23 performance is vested principally with the elected members, albeit in an
24 extended and separate but related role.' I was going to ask you if you
25 agreed with that.

26 CLLR CLUNESS: I agree with that. I mean, what the Shetland Islands Council

1 did was transfer the ownership of Sullom Voe – the terminal – to the trust.
2 This was to enable the trust to receive a sufficient income to do the kinds of
3 things it does, which is pay for recreation, pay for amenities and pay for a
4 huge range of other areas that are of benefit to the people. So the Viking
5 Energy proposal is somewhat similar. We were concerned that, with the
6 difficulties of financing the projected – at the time it seemed a reduction in
7 the value of the trust, that it was essential that there should be sufficient
8 income from these various investments. They also have a shareholding in
9 a Shetland leasing and property company which owns property and delivers
10 its profits to the trust, so the attempt, both with the transfer of Sullom Voe
11 terminal and also Viking Energy, is to ensure that the trust for the future has
12 sufficient funds invested so it can pay for the services. As I say, recreation
13 is one, arts and leisure another, culture, a good deal of care in the
14 community and so on. That's the intention.

15 GRAHAM SHARP: So, it's fair to say that you consider it important that going into
16 future the trust's activities and those of the council are co-ordinated in
17 supporting the community?

18 CLLR CLUNESS: Yes, that's my personal view, of course, and I think a number of
19 people agree with me.

20 CHAIR: Convenor Cluness, you said it was your personal view and I understand
21 that. Is that view shared by the rest of the people round the table today?

22 CLLR FULLERTON: I think that it's – there will have to be changes. Again, this is
23 my personal view, but I think there will have to be changes, but I think it
24 would be a great pity for Shetland if the council and the trust, in whichever
25 way it was reformed, were not able to work together; otherwise, we could
26 see a duplication of services and not getting best value for money for either.

1 So I hope that the current close working relationship enjoyed will continue
2 into the future for the overall good of Shetland.

3 CHAIR: Thank you, and Cllr Angus, I think you wanted to speak?

4 CLLR ANGUS: No, I just can't conceive of a situation where the benefit to the
5 community could – in terms of the trust deed and Shetland Island Council's
6 statutory duty – be served by these activities being uncoordinated.

7 CLLR COOPER: I think we have to accept that the charitable trust will change in
8 future; OSCR is demanding it. And it's the extent to which the Shetland
9 community wants to see that change carried out, but at the end of the day, I
10 think in community planning terms – and community planning is very much
11 a feature of how we as a community are moving forward – the charitable
12 trust carries out a lot of functions in this community and we need to make
13 sure that all the functions and services carried out are integrated. So to that
14 extent the charitable trust will feature in community planning terms in the
15 future going forward.

16 CHAIR: Thank you. Does any other councillor wish to add a voice in a different
17 way or are you content? Thank you.

18 CHRISTINE MAY: I'd like to put a supplementary. A number of those who gave
19 evidence to us suggested that there was fear in the islands among
20 councillors and among those in the community that making changes to how
21 the trust's funds were administered or how their accounts were grouped
22 could lead to 'them' – undefined – 'taking our money away.' Can you
23 perhaps comment on that, please, and the extent to which you've taken any
24 advice as to whether this is a reasonable or rational fear?

25 CLLR CLUNESS: It's an irrational fear. In our time we have had to stand up to
26 the largest oil companies in the world, the British Government, the Scottish

1 Government. We've taken the European Commission to court. We'll do the
2 same if there's any attempt to assimilate our funds anywhere else.

3 CLLR ANGUS: We did take advice at the time of the last council – I and
4 Willie Shannon sought advice. The advice we got was that, (a), the chief
5 executive of the islands council shouldn't be chief executive of the trust.
6 When we came back with that advice he promptly resigned, so we acted on
7 that advice. But we also had advice that the charitable trust as it was then –
8 and still is – constituted was a public trust; it was an independent council.
9 The agendas were published; the meetings were held in public; the press
10 attended; the minutes were published. So we can – and the accounts are
11 published. So transparency is built into everything the trust does. The one
12 issue which exercises all the solicitors that advise us is this one of conflict of
13 interest and the perception that there could be a situation where all the
14 councillors were conflicted out. Now, that has never happened in the 40
15 years of the trust, so it seems to me to be more a perception than the
16 reality, but if that's what OSCR's findings are, then we'll have to comply, I
17 guess.

18 GRAHAM SHARP: A specific question that relates to a comment in the audit
19 report; an event that happened a little while ago. How do members
20 reconcile taking a decision to follow a particular course of action as
21 councillors and then rapidly opposing that course of action as members of
22 the board of the trust?

23 CLLR CLUNESS: It doesn't happen very often; in fact I can't think of an example.
24 Can you?

25 CHAIR: Refusal to group accounts? Refusal to pass accounts for grouping?

26 CLLR CLUNESS: Yes, absolutely. Well, I think most members of the charitable

1 trust would – well, I can't say that. But I think that there is no difficulty in
2 grouping accounts. What we have is consistent legal advice from Turcan
3 Connell who are acknowledged experts in this field that if we do so they feel
4 that in some way that would jeopardise the constitution of the trust. We
5 could ignore that advice. I think they perfectly – it's an example of how
6 there is independence between the two bodies, when they can do... But I
7 mean, as far as the council is concerned, in effect the grouping of accounts
8 is essentially a problem for the trust, I suppose; ourselves as trustees if you
9 want to look at it that way. But until – and what I have done over the past
10 year; in particular I have asked the finance director and also the assistant
11 chief executive to try and see whether they cannot get through this in some
12 way and get these accounts grouped so we can get this off our – get this
13 qualification taken off together with the other one, because in all respects
14 the accounts of the Shetland Islands Council and that of the charitable trust
15 are in perfect order; always are.

16 GRAHAM SHARP: Two points on that. First, in terms of the trust itself, I have
17 looked at the trust deed. It's quite brief and gives very wide powers and it's
18 certainly not clear to me without further explanation how acceding to a
19 request by the council to provide information to enable the council to
20 incorporate the trust's accounts in its own could in any way attack that trust
21 deed.

22 CLLR CLUNESS: I don't either. Having been around when the trust deed was
23 created – the original one - I personally don't see it either, but as I say – and
24 I hope that the matter can be resolved soon because it's not the case that
25 the people of Shetland – it would make no difference to the people of
26 Shetland; what they expect is to be able to use the services that are

1 provided through the charitable trust. To them and to me this qualification is
2 a technical point, which, if the lawyers and accountants could get round the
3 table, you'd think they could sort it out, wouldn't you?

4 GRAHAM SHARP: Well, I'm not sure if the Controller would agree it is a technical
5 point. She explained it had some considerable significance and effect; for
6 example the transparency in looking at the funds that were –

7 CLLR CLUNESS: I have to disagree there. The charitable trust funds – the
8 annual report – it is published every single penny that's been spent is in that
9 report, so the public know what the charitable trust has done and they can
10 make a decision. I respect the view that because of accounting practice
11 these accounts should be included with ours. If I had the ability to do so, I
12 would, but at the moment I don't.

13 CHAIR: Can I just pursue that – we don't wish to go down this road into too many
14 technical areas but we need to understand your position. Can you tell me
15 how soon after they're prepared the charitable trust's accounts are available
16 to the general public?

17 CLLR CLUNESS: I can't; I don't know if anybody else can. I know that you're
18 meeting the chair of the charitable trust this afternoon and he can surely
19 say.

20 CHAIR: You see my point that if they're made available to the general public then
21 by definition they're available for consolidation into the council's accounts?

22 CLLR CLUNESS: Well, I agree with you.

23 CHAIR: And you've agreed that you would treat them as group accounts; you just
24 can't get them in the first place?

25 CLLR CLUNESS: The charitable trust is not prepared to allow their accounts to be
26 grouped with ours.

1 CHAIR: Hence my question.

2 CLLR CLUNESS: Yes.

3 GRAHAM SHARP: I was just going to wind up by saying that what I don't entirely
4 follow about this is that the grouping of the accounts is a matter for the
5 council; it's the council's accounts; it doesn't affect the charitable trust. And
6 the council has asked the charitable trust, which is an organisation with
7 which it works closely, to assist it in preparing its accounts to meet the
8 regulations it needs to meet. And in the absence of further information to
9 the contrary, the provision of that information would not seem to be
10 damaging to the charitable trust. I don't see why a body, even if it didn't
11 comprise all the councillors, would decline that request.

12 CLLR CLUNESS: You would have to ask them. I mean, you are going to, as I
13 say, meet the chair; he is more deeply involved in this than I am. Certainly,
14 our advice is and has always been that the charitable trust is seen as a
15 distinctly separate body from the local authority.

16 CHAIR: But would you agree as a councillor with Mr Sharp's point?

17 CLLR CLUNESS: Yes.

18 CHAIR: Thank you. Can I ask, before asking Bill McQueen to take up the story
19 on other matters, just one point in the meantime? Earlier in your evidence
20 to us, you referred to, I'll quote it, 'our charitable trust'. Can you tell me who
21 'our' is, please?

22 CLLR CLUNESS: 'Our' is the Shetland communities. This is the Shetland
23 communities' trust. It was set up specifically following agreement with the
24 creators of the Sullom Voe oil terminal that this would be a trust in
25 perpetuity which would be there for the benefit of the people of Shetland.
26 As you have said, it has completely wide objects.

1 CHAIR: Thank you. Bill McQueen, as I say, is going to pick up the questions.

2 There's one particular point, though, he wants to raise before he goes onto
3 the area he's going to explore.

4 BILL MCQUEEN: Thanks, Chair. I'm going to go back to the issue of the
5 settlement with the former chief executive, because as you appreciate even
6 better than we do there's considerable local interest in that.

7 Then I'm going to go on to some general questions about the media
8 and how you're handling the management of difficult high-risk investments
9 and so on. But coming back to the settlement with the former chief
10 executive, it's helpful for us to get the facts established. Can you tell us
11 whether at the time you embarked upon a negotiated settlement, the former
12 chief executive had raised any constructive unfair dismissal or other claims
13 against the council?

14 CLLR CLUNESS: I don't think he had at that time, no.

15 BILL MCQUEEN: Okay, thanks. Did the legal advisers or yourselves as
16 councillors have any objective evidence of – submitted by the former chief
17 executive that he'd suffered personal injury or injury to feelings, or was
18 there any medical evidence on the table at the time you were involved in the
19 negotiations?

20 CLLR CLUNESS: We had a complete review by our lawyers of the extent of a
21 potential court action in which we might have been involved, yes.

22 BILL MCQUEEN: Okay. And I think one aspect of the compromise agreement I'd
23 like to ask you about is, did you as councillors ask your legal advisers
24 whether it was usual in such compromise agreements for the employer to
25 indemnify the employee against any future tax demands in respect of the
26 personal injury element?

1 CLLR CLUNESS: I think we had a very full discussion on what the potential
2 payments which could result and as I say, we – that was the first half of the
3 meeting which was adjourned to allow discussions between our
4 representatives and Mr Clark’s representatives. And, as I say, we then
5 accepted the advice that they gave us that they should proceed and
6 conclude such an agreement.

7 BILL MCQUEEN: Thanks. Finally on this whole business, did you as councillors
8 not think that a total figure of over £250,000 was a large sum in relation to
9 someone who had worked for nine months or so in that capacity?

10 CLLR CLUNESS: Of course we did, yes; we were extremely concerned at the
11 size of the amount and so on, but the advice we were given was that in the
12 normal run of things and in precedential cases and so on, this was getting
13 near a norm.

14 CLLR FULLERTON: I think it’s fair to say that yes, we were all very surprised.
15 Certainly, I was very surprised at that amount; I had not expected that, but
16 we got legal advice and we had advice from COSLA and at the end of that
17 discussion I was convinced as a member for this council that that was the
18 only route we could go down to get us out of the situation which we had got
19 into. And I was quite clear on that. Certainly, that was based on the legal
20 advice and the COSLA advice which we got that day.

21 CHAIR: Thank you. And Cllr Cooper.

22 CLLR COOPER: Exactly the same point.

23 CLLR GRAINS: I agree with Mr Fullerton. That was the advice we got and they
24 assured us it was a reasonable figure in the circumstances and I was
25 prepared to accept their advice.

26 CLLR DUNCAN: I just wish to make it clear that I declared a pecuniary interest

1 that day and left the chamber, so I had no part in that final decision.

2 CLLR WISHART: Thank you. Yes, I do recall during the early part of those
3 discussions that in the long meeting that the convenor has referred to, that
4 every other possible option was looked at including the suggestion of
5 dismissal. And these options were completely ironed out by our legal
6 advice and from COSLA.

7 CLLR HAWKINS: Just the same. I mean, we did have quite a long time
8 discussing it with the people who have been named – COSLA and the legal
9 advisers – and there seemed to be no other option and no smaller sum of
10 money that could be paid to actually sort the situation, so that's why we took
11 the decision.

12 CHAIR: Can I play back what I have heard? I'm inferring from everything that
13 you've just said that you were facing a position that was quite dire in terms
14 of financial circumstances around this issue; i.e. the extent of the complaint
15 against you was such that this – in your considered wisdom was – and with
16 your advice – was a reasonable settlement in all the circumstances. That
17 must have been quite a significant amount of pressure on you in terms of
18 the complaints against you. Was it?

19 CLLR CLUNESS: Yes, I think that's a fair assessment, thank you. We were
20 under considerable pressure at the time; we had been for quite a long time.
21 I think we were anxious to see an end of the difficulty we were in, but
22 nevertheless, as I say, we took our time and everyone was able to ask
23 either Rory Mair or the adviser questions and so on. At the end of the time,
24 the decision was unanimous; without any dissent.

25 CHAIR: Yes, it's not a decision you wanted to take but you felt it was a good deal
26 for the council?

1 CLLR CLUNESS: Well, we were advised that any other situation might be
2 considerably worse for the council.

3 DOUGLAS SINCLAIR: Just a supplementary on that. You make the point that
4 you settled against the best estimate of Mr Clark's likely chance of success
5 if he'd taken an action against you. What was the basis of that estimate?
6 What contributed towards the view of your professional advisers as to what
7 his chances of success would be and why?

8 CLLR CLUNESS: These are very specific legal matters. As far as I'm concerned
9 the advice we gave was that his case was a good one. As I say, the – you
10 will hear Mr Mair from COSLA who actually conducted these discussions
11 and meetings with the other lawyers. He will have a more specific view on
12 this than I intend to give.

13 CHAIR: Do you want just briefly to mention the kind of heads or the areas where
14 you felt particularly under pressure?

15 CLLR CLUNESS: If you wish; I would prefer to do that in writing.

16 CHAIR: That's fine, but it would have to be in writing on the basis that it would be
17 public information.

18 CLLR CLUNESS: What I am trying to say is I would look for legal advice as to
19 whether I could deliver that particular report to you.

20 CHAIR: I understand that. Thank you.

21 CLLR CLUNESS: If I can I will, but I have always understood that these matters
22 were to be maintained private.

23 DOUGLAS SINCLAIR: Just as a supplementary, would it be fair to say – you said
24 councillors were surprised at the level of settlement that was required. But
25 was that level of settlement caused at least in part by the public criticism of
26 the conduct of the chief executive by some councillors?

1 CLLR CLUNESS: The advice I received consistently from our internal and
2 external advisers were that part of the difficulty was indeed the publication
3 of complaints, and as I said to you, particularly in relation to the complaint
4 by the six. I know that Cllr Robinson had made every effort to ensure that
5 this was kept in private, but as I say, somehow or other it became public in
6 detail and also the details of the individuals who had signed it. That made it
7 exceedingly difficult for all of them and for me.

8 DOUGLAS SINCLAIR: Just on that point, convenor, in your submission you say,
9 'The council is committed to develop a protocol to better support staff and
10 members in understanding the practical application of the code of conduct.'
11 You'll forgive me if I say that Shetland Islands Council has been in
12 existence since 1975 and the code of conduct has been in existence since
13 2002.

14 CLLR CLUNESS: I'm certain that every new member gets a copy of the code of
15 conduct and –

16 DOUGLAS SINCLAIR: How do you ensure that going forward there will not be
17 further breaches of the code of conduct?

18 CLLR CLUNESS: I cannot actually recall whether the code of conduct was part of
19 the initial advice we got from members when this new council came in. I
20 cannot remember. I would have hoped it was, but if it's not – yes, it was.
21 People are confirming to me that there was advice on the code of conduct.
22 I thought that was the case but my memory is not what it was.

23 CHAIR: Can I just come back to this point you're going to write to us about?

24 CLLR CLUNESS: It's not about writing – I would ask – as I say, the information
25 which we got on which we made our decision was retrieved at the end of
26 the meeting, so I actually don't have it but I can get legal advice as to

1 whether you should have it. I don't see why you shouldn't have it. If the
2 legal advice is that you should have it, it should be public, but I don't have
3 that power.

4 CHAIR: I understand what you're saying to me. I would just remind you of my
5 opening statement that unless information is given maliciously and
6 knowingly recklessly and so on, then –

7 CLLR CLUNESS: Nothing would please me better than to have the whole
8 information available in public and I will try to ensure that I have that answer
9 before the end of this hearing.

10 CHAIR: Thank you very much.

11 CHRISTINE MAY: I have a couple of questions which have arisen from what I
12 have heard, so if other members have finished with the questions they
13 wanted to ask. Can I pick up on something you said, convenor, that you
14 were convinced that all members round the table of your senior team, and
15 indeed all councillors, would always want to act in the best interests of their
16 community. I quite accept that is the case. The difficulty seems to be
17 members acting as corporate leaders for the council. Can I ask you and
18 perhaps other members as well if (a), you accept that that is a correct
19 assessment of the current position but, secondly, what, if you are still in a
20 leadership role going forward, what you're going to do to change that?

21 CLLR CLUNESS: My view is that the chairs of development, services and
22 infrastructure are leaders and that is their role, is to present, you know, the
23 views of that particular area of council interest to the community, and that's
24 what they do quite successfully, I think. As I say, what we do not have is a
25 formal cabinet system because we don't – we found that difficult to achieve
26 in the past.

1 CHRISTINE MAY: Could I perhaps ask other members for their views on whether
2 the assessment is correct and what you intend to do about it?

3 CLLR ANGUS: I think the assessment was correct. What do we intend to do
4 about it? It's difficult to say. I take the example of the recent debate on the
5 blueprint for education. It had to be presented in such a way that left
6 options, that the option – the do nothing option found favour with some of
7 the leadership here representing their own constituencies. As Sandy says,
8 we don't have a cabinet system; it's difficult to see how we, the collective
9 political leadership, could enforce that. It does create difficulties on big
10 decisions and I would say Sandy's role has always been to try and achieve
11 a consensus and we've all tried to follow that. It's very, very difficult and I
12 don't have an answer for you about how we'd – how the collective
13 leadership would act corporately. I wish we could.

14 CHRISTINE MAY: Okay. Thank you. The next question is something else
15 entirely - the appointment of the interim chief executive. Are there
16 performance targets and a clear remit and clear reporting mechanisms in
17 place for this appointment, never mind the other?

18 CLLR CLUNESS: Yes, yes.

19 CLLR WISHART: Can I come back on your first question, please? I think that – it
20 is my view that all councillors feel they are serving Shetland to the best of
21 their ability; it's just that there's sometimes a very definite difference in how
22 that is done. Whilst some will follow the leadership and take advice on
23 board, there will be others who, being independent councillors, will do it the
24 way they see best.

25 CLLR FULLERTON: I'd also like to comment on that, because it is a very difficult
26 line that we tread. I do think that we are here to represent our constituents,

1 but we also should have the bigger picture of the better good of Shetland
2 also very close to our hearts. And Cllr Angus referred there to the blueprint
3 where we're talking about – for education – where we're talking about
4 closing schools and I certainly personally have found that very, very difficult.

5 My view is that we are not taking a far enough ahead view and that we're
6 doing it a little bit at a time and I think that that's making it much more
7 difficult for members to actually set aside their local needs of constituents,
8 because believe you me, our phones never stop ringing, the emails never
9 stop: 'Do not close our school. You are our elected representative.' Yet,
10 as a senior councillor, we know that we absolutely have to close some
11 schools. And I don't think there is an answer to this without having a
12 politically led council. That was tried once in Shetland and the electorate
13 threw it out. So unless the electorate decides that's a better way to go in
14 future, I don't think that what we have at the moment is going to be very
15 easy to actually change.

16 CHRISTINE MAY: Thank you. I know Cllr Cooper wants to come in, but can I ask
17 when these big decisions come up, whether you have clear criteria on
18 which you can base your decisions? For example, on school closures, is
19 there a list of reasons why you might close one school or another against
20 which you can justify those? I know Cllr Cooper wanted to come in –

21 CLLR COOPER: Yes, there is clear evidence. And bearing in mind the closure of
22 schools, there will be the need for public consultation between the summer
23 and Christmas in terms of the legislation. So we're going to do it around the
24 consultation on that one. But I'll go back to what Cllr Simpson said earlier
25 on. I had 41 years' service as a local government officer prior to retiring
26 and becoming a councillor. I think one of the biggest issues facing this

1 community is how are we going to be able to rationalise it or explain it going
2 forward and meet the challenges in the next 10 to 15 years. And to some
3 extent, this year – and going back on what the Accounts Commissioner said
4 earlier on, in February of this year we actually start to take some difficult
5 decisions on budgeting; we did say there were going to be no allowance for
6 growth items coming in just willy-nilly at committees; it was only going to be
7 dealt with at one point in the year. We are actually sitting under the
8 chairship of Cllr Simpson working very, very hard to put in place the
9 framework going forward to meet the financial criteria which will be shed
10 upon us by government. I think we that are going to have to change the
11 way we do things and we are going to have to work as a team and if we
12 don't work as a team, Shetland will be the loser and I can't stand for that. I
13 have to believe we have a team that can go forward.

14 BILL MCQUEEN: Many of the comments that you've seen and we've seen talk
15 about the leaks to the media sometimes of confidential information. And it
16 seems to us that much of the council's business is played out in the media
17 in addition to or perhaps instead of in the council chamber. Now, obviously,
18 a vibrant and engaged local media is an essential part of a functioning,
19 good democracy, but is there a peculiar problem in Shetland about this
20 aspect? Is it more prevalent here than elsewhere? Does it have an
21 adverse impact on your ability to dispatch the council's business effectively?

22 CLLR CLUNESS: The answer is no, I think. I mean, it's only natural that the
23 press is interested, the media is interested in everything we do, and rightly
24 so. I think the difference possibly in a place like Shetland is that so many
25 people are connected or related and, therefore, much of what appears
26 provides difficulty for individuals and others. But as far as I am concerned –

1 so when we can have – we normally have all our meetings in public,
2 providing – unless under the normal exempt rules, but what's been different
3 on this occasion is that what were exempt items related to staff were
4 published and that's what has caused me difficulty. But in general terms I
5 don't know of any local authority particularly happy about their local press,
6 but I'm as happy with this press as I need be.

7 BILL MCQUEEN: Have you got any kind of media protocol or policy for members
8 dealing with the media and is that bang up to date, or does it need revision?
9 Have you got the appropriate buy-in, do you think, to implementing that
10 protocol?

11 CLLR CLUNESS: We have a different system here. When I'm on the end of a
12 phone, whenever anybody wants to ring me – so, might – whatever, people
13 from the media phone me up and I try to respond to them. We went
14 through a period, I think, with the former chief executive of particular press
15 conferences on a regular basis. I don't know if these were terribly
16 successful. From time to time we have considered the question of the
17 appointment of a publicity agent or department or whatever, but I think in
18 general we take the view that councillors are there to be asked questions by
19 the media and they should answer it when they can. We don't have an
20 official protocol.

21 CLLR WISHART: Yes, thank you. I – this is one of the issues that I keep talking
22 about back and forth. I think it's fair to say that everyone here, and indeed
23 all the councillors, can get phone calls from the media during the day,
24 during the evening, weekends, and we respond to these enquiries as best
25 we can. I don't think the council is good at getting out information quickly
26 and accurately as a corporate body and I do think that this is something that

1 we should really be looking at. As we've heard about working as a team
2 together, this is going to be very, very important into the future, to get this in
3 order, whether it's by way of having media training or media advisers. But I
4 think there is a gap here that we have to fill.

5 BILL MCQUEEN: Thank you. Moving on again in this area of the submissions
6 that we've had made to us, some suggest that some of the high-cost and
7 the high-risk investments have been made without sufficient or good
8 enough accurate appraisal. And they also suggest concern about the
9 involvement of elected members in some of the businesses supported. So I
10 think there are two aspects to that that I invite comment on. How do you
11 manage the conflict and the perceived conflict in your decision-making
12 processes? And are you satisfied as the leaders of the key committees that
13 the council's officers are producing good, robust, objective options
14 appraisals so that you can make value-for-money judgments and scrutiny
15 appropriately?

16 CLLR ANGUS: Well I can – I mean, as the chair of services can confirm that we –
17 one of the – the second item on every agenda is declarations of interest.
18 And it's – any member – all members are encouraged to do so. We also
19 are required on a monthly basis to update our register of interests. That's in
20 the public domain as well. It is difficult, as Sandy says, when so many
21 people are related or connected in some way to businesses and to external
22 agencies, but it's generally a pretty robust process in that anybody who's
23 perceived to have an interest generally, as far as I'm aware, declares that
24 interest. It's difficult without being specific to respond to your point, but it is
25 certainly a very live issue within the council. Each and every councillor is
26 very well aware of his or her responsibilities to declare these interests, and

1 then some.

2 BILL MCQUEEN: Thanks. The 'value for money' point? I mean, are you happy
3 with the objective nature of the appraisals, the business cases and so on
4 coming forward? Some of the submissions suggest that these have been
5 not right in all cases.

6 CLLR ANGUS: Yes, I understand that point. The investments which the council
7 through its development trust made in local businesses came on the back of
8 what was – previous councils before my time – known as the high-risk
9 unsecured loan scheme. So that'll give you some idea of where it was
10 coming from. That it was an attempt to assist in enterprises where
11 essentially the banks wouldn't lend and where the council, through its
12 development agency – development department – and its sister agency,
13 Highlands and Islands Enterprise, working closely together, would
14 proactively assist mainly in the peripheral areas of the Islands with projects
15 that seemed to have a hope of maintaining some kind of employment in that
16 particular area. Some of the investments we got involved in in past years
17 were huge and some of them were spectacularly unsuccessful, there's no
18 question about that. But all I would say in defence of previous councils to
19 this one is that it did sustain a lot of employment. Some of the – for
20 example in the agriculture industry – were subsequently taken over by
21 foreign investors so the employment is still there. So it could be argued that
22 in community terms these were successful. In strict profit and loss terms
23 some of them were not, but overall the portfolio shows – of all investments –
24 shows fairly good profits overall.

25 CLLR WISHART: Yes I like four other members on the panel got elected in 2007
26 and had not been a councillor before. I think that the quality of the reports,

1 which was the question, is good. I think there is exhaustive research,
2 analysis done and pretty good reports have been submitted to the council or
3 its committees. It does not always find favour with members, again
4 referring back to Cllr Fullerton's point on if it's a local issue, but I don't think
5 there's any question about the general quality of the reports we get.

6 BILL MCQUEEN: I think final point from me is to follow up with you as the leaders
7 of the council a point I put to the Controller of Audit about submissions
8 before us and some of the written material suggests recurrent and
9 persistent failures to follow rules and procedures to do with good
10 governance. Obviously, we've talked about the recruitment of the chief
11 executive, and conducting disciplinary hearings and following of HR
12 policies. I think that's picked up in your draft assurance and improvement
13 plan that we've just seen, which I believe is to be published very soon.
14 What's your sense of whether that is symptomatic in the council? And why
15 does it seem to be a persistent theme? Can you, will you change it in the
16 period ahead?

17 CLLR CLUNESS: We will certainly change and accept whatever
18 recommendations they are. I accept the position in relation to recruitment
19 and so on. I'm, as far as I'm concerned when we get advice in relation to
20 these matters we normally follow them. I think maybe the point is
21 overstressed by Audit Scotland, frankly.

22 GRAHAM SHARP: I should like to ask you a bit about financial management. But
23 before that just go back and touch on the 'qualification' aspect of the
24 charitable trust. The convenor has already commented on that a couple of
25 times, so we might be able to short-circuit that a bit. Notwithstanding views
26 on the seriousness of the qualification, the fact is that your accounts do

1 contain the statement that there is a material misstatement of the group
2 accounts. You've been in receipt of qualifications from Audit Scotland and
3 before them PricewaterhouseCoopers. And without taking account of any
4 future changes that may or may not happen to the structure and relationship
5 with the charitable trust, could I ask you all whether you think that in the
6 current circumstances the accounts of the charitable trust should be
7 grouped in the council's accounts?

8 CLLR CLUNESS: We are working hard to try to achieve a formula by which this
9 can be achieved.

10 GRAHAM SHARP: But in the existing situation, do you think we should be?
11 That's the question.

12 CLLR CLUNESS: I have no problem, personally, them being grouped; I never
13 have had.

14 GRAHAM SHARP: Can I ask the other councillors?

15 CLLR WISHART: I think the trustees need to be completely satisfied that there is
16 no threat – legal threat to the structure and performance of the trust to fulfil
17 its objectives for the people of Shetland. I believe if that legal advice can be
18 clarified then I wouldn't think the trustees would have a problem with it.

19 GRAHAM SHARP: And that's your answer as a councillor?

20 CLLR WISHART: Yes.

21 CLLR SIMPSON: I think the main thing here, the big debate I suppose, would be
22 about the governance of the charitable trust. There is a review group set up
23 to look at the governance of the charitable trust. I mean, I think if we can
24 get an assurance we're not going to lose or be changing the governance of
25 that trust there would not be a problem with the accounts. I think to me, the
26 governance is the most important thing.

1 GRAHAM SHARP: Is it the consensus that all of you as councillors would take on
2 board the situation of the charitable trust before answering that?

3 CLLR FULLERTON: As a councillor obviously I would want to see the
4 qualifications removed from the council's accounts. So therefore as a
5 councillor, it would be very attractive for the charitable trust trustees to
6 agree to the proposal. Further than that, I cannot say today because I'm
7 here as a councillor.

8 CLLR GRAINS: I'm quite happy if we get the legal advice. If everything is in order
9 then I'm happy.

10 GRAHAM SHARP: I'll turn to financial management. I think everyone accepts
11 that all public services over the next few years are going to be facing a
12 difficult time, and here in Shetland you've benefited from the investment
13 income from your funds and you've benefited from the support of the
14 charitable trust which also depends on investment income; and investment
15 income itself is under pressure at exactly the same time. So you're facing,
16 potentially a particularly difficult period over the next few years. And also it
17 has been the historically case that there has been a tendency to run budget
18 deficits and have a substantial capital programme. There has been quite a
19 bit of talk about the difference between representing your constituency
20 interests and the corporate interests of the council. In the context of
21 financial management is the council in terms of its strategic approach and
22 its political leadership ready and able to take on these difficult decisions that
23 you are going to face?

24 CLLR ANGUS: I'll field that if you don't mind Angus. Betty's and mine committee
25 is the largest one and is responsible for 80% of the council's revenue
26 budget, so I suppose it falls to us. The short answer is yes, but I think we

1 have a long difficult road to get there. Although the decision we took last
2 week on the future of our school estates must still be homologated by the
3 full council, it is a small step for most authorities but is a giant leap for this
4 one. I think that – my own impression is that that corner has been turned.
5 We have to drive down the cost of delivering our services – the point that
6 has been made Audit Scotland; the high cost of delivery of whilst at the
7 same time trying maintaining the level and quality of that services. Now in
8 education all the advice is that we can do that. It's difficult to see how we
9 can translate that onto other services but we have to do just that. If we are
10 to maintain our dispersed care model, for example, that will be a very
11 difficult thing to achieve, but I think we're looking very closely at that.
12 Tearing our hair in fact at how we're going to pull off this trick, but I can
13 assure you that it's very high on my list of priorities as councillors, and Betty
14 and I and the rest of the leadership on this particular issue.

15 GRAHAM SHARP: Now you said 'the leadership'. You've explained how you
16 operate as a council and everything goes to the full council for decision. Do
17 you believe there is a collective commitment across the council to support
18 corporate decisions that may be to the disadvantage of particular individual
19 interests from time to time and probably at some time or other will be to
20 everyone's disadvantage over the piece?

21 CLLR ANGUS: Because all of the councillors are on all the committees unless
22 there are to be summersaults later this week the answer to that is yes; we
23 are now facing up to that.

24 GRAHAM SHARP: Turning to a slightly different aspect, do you believe you have
25 sufficient information and support in terms of reporting structures to enable
26 you to do that, to manage both the revenue and capital spend?

1 CLLR ANGUS: Reporting structures?

2 GRAHAM SHARP: Frequency of reports, etc?

3 CLLR ANGUS: We've recently refined our procedures and processes so that, for
4 example, the capital projects are now subject to rigid scrutiny and
5 assessment by what we call a gateway process which involves all the
6 principal players. A very sharp focus is kept on the value-for-money
7 objective. The group chaired by the vice-convenor, the Finance Working
8 Group, also exercises a close scrutiny over where our expenditures gone.
9 We're still in the early stages of coming to terms with what our settlement
10 will be; and all we have at the moment are press on what the likely Scottish
11 Government settlement is going to be. We were told that it is to be x per
12 cent, so we're all anticipating something of that order; so our thinking is
13 focused around that.

14 GRAHAM SHARP: If I can give you an example, I understand from the
15 information I've looked that your revenue budgets frequently generate quite
16 high variances between the budgeted amount and actual amounts and
17 those variances aren't always fully explained. Is that an issue of which
18 you're aware and are you doing something about it?

19 CLLR ANGUS: Yes. We discuss this regularly. Our budgeting exercise is far
20 from refined; it has got to be improved.

21 GRAHAM SHARP: Sorry, I didn't get that.

22 CLLR ANGUS: Our budgeting exercise, annual exercise needs a lot of refining;
23 and to answer the point that you've made, no.

24 GRAHAM SHARP: Well I was making two points, both the budgeting exercise
25 itself which creates large variances and also the reporting which should
26 explain large variances where they occur.

1 CLLR FULLERTON: I think as I intimated earlier, this situation we're in whereby
2 we really do need to look at the whole Shetland picture and yet at the same
3 time represent constituents is one which we feel very keenly in Shetland. I
4 do think we're moving in the right direction and I do think we will get there,
5 but there is some way to go. I do think there is a need for us to set
6 priorities. We have not really set these priorities as yet, although we have
7 talked about it. We've done quite a lot of work on the single outcome
8 agreement, actually making sure that our corporate plan reflects what's in
9 the single outcome agreement. I think the step down from that is that our
10 senior managers then use that to monitor the performance of their staff
11 against. So I think we have done quite a lot of work but we still have some
12 way to go. And you're absolutely right, Mr Sharp; in that we do need to
13 ensure the financial reporting is showing where variances occur and why
14 they occur and whether that is something we can use in future because that
15 is where we will have to find savings as well as looking at different ways of
16 doing things. I think the biggest hurdle is to get the people of Shetland to
17 accept that we do not have the money to spend that we've had in the past
18 and everybody must feel the pain. If people in Shetland get behind us and
19 accept we are in this together and all of us will feel the pain, I'm afraid just
20 as is being said in Westminster and in Holyrood, we may move forward, but
21 we will have to get a grip on the financial reporting so we know where a
22 variance occurs very quickly in case something else needs to be done.
23 That is a moot point. I have the utmost confidence that we can do it but we
24 will need a bit of time and we will certainly have to act as leaders probably
25 more so than we have in the past.

26 CHAIR: Thank you for that. Two of your colleagues also want to contribute;

1 Cllr Hawkins first.

2 CLLR HAWKINS: Given the situation the UK is in at the moment we all know that
3 cuts will come. We get harangued sometimes. There is the impression that
4 we can't possibly make cuts; reference is made to the school system and
5 the fact we don't close certain schools, but we have made savings in the
6 past year and we shall make them in future. We can't spend money we
7 don't have and we don't intend to use the reserves until they're gone in
8 10 years' time. We have a floor in the reserve fund and we intend to keep
9 to that. We're not in the situation where we're irresponsible. We do know
10 the situation, we do know how to deal with it and we will do so.

11 CLLR WISHART: I think the question was: are we satisfied with the budget
12 reporting procedures and any discrepancies? And I think for myself I am
13 pretty satisfied. It is complex. We get a lot of information and a lot analysis
14 and I see at meetings, whether committee meetings or the full council,
15 these things are rigorously examined and questions are put by members if
16 there are any discrepancies. No doubt anything can be improved but I think
17 generally it's satisfactory.

18 CLLR GRAINS: We have discussed these things at the Audit and Scrutiny
19 Committee regularly. I find the meetings we have at the performance
20 reviews extremely helpful because we have face-to-face meetings with
21 each director of each department. We find how much we made savings
22 over the years. Three times a per year we meet them; sickness absence,
23 fuel reductions, all these we've managed to get them all down and I find that
24 extremely helpful because they have to explain why they've gone over their
25 budgets or why they still have quiet an amount left. So that certainly is
26 been done.

1 CLLR COOPER: As an ex-member of the finance department I would say we're
2 doing better now than we used to.

3 CLLR DUNCAN: I certainly concur with what the chair of Audit and Scrutiny has
4 said to you. Just to prove that we have an effective Audit and Scrutiny
5 Committee, I have a list of achievements here that I'd be glad to put to you.

6 GRAHAM SHARP: If I pick up a point made by Cllr Fullerton. You all seem to
7 agree on the direction in which you need to go and say that progress has
8 been made but you are only part of the way down the road and there is
9 some way to go. I suppose the concern is that if, for example, one looks at
10 both the Best Value reports in both 2005 and 2007 there are recurring
11 themes about matching capital projects with financial resources and service
12 provision with financial resources to create a balanced budget. This has
13 been the case for some time. Frankly, if you're under pressure from
14 constituents on specific issues and you do have cash it's quite easy to get
15 over today's problem but over time you will deplete the capital resources
16 and then it won't be there. If the people of Shetland do not understand the
17 whole situation you face and the need to act corporately as well as in an
18 individual capacity do you have any plans to deal with that?

19 CLLR FULLERTON: I didn't mean to give that impression because I think we've
20 already started dealing with that. I can think of, I won't go into the details
21 but just recently there was a scheme which we had to put a stop to and I
22 actually personally visited several people and said, 'Look, we cannot
23 continue to do this because we do not have the money'. I think we are all
24 having to do that now; we're all having to say to our constituents, 'I'm sorry
25 but we're not going to be able to fix this up because money is getting
26 tighter. It will be different in the future. We've had the good days. Let's be

1 thankful for them, and we need to move forward together to ensure that in
2 future we leave something behind for our children.’ And I am finding that
3 people accept that when you actually explain it to them. We’ve started that
4 process, but as a leadership team we need to be all doing that and all
5 ensuring that all other members are aware that’s how we need to move
6 forward. I know it sounds a small thing but that’s how you need to get to the
7 people in Shetland. The population is small enough that I think we can talk
8 to an awful lot of them.

9 CLLR SIMPSON: I think the reports we get from the finance people I think are
10 very very good and very very clearly settled. I have no problem with that at
11 all. I agree with Cllr Fullerton that we have to let the people of Shetland
12 know the financial situation we are in now. The situation is completely
13 different from four or five years ago. I think we have to – what I do – I have
14 to go to five different community councils and there I spread the message
15 that we have to tighten our belts but we do not have to be alarmist at the
16 same time. We have to look at it very carefully and plan what we do
17 perhaps better than we did in the past. I think it’s – there cuts to be made
18 out there but I think we do not scaremonger at the same time.

19 CLLR WISHART: I think, just what I was going to say about scaremongering,
20 because this community is on a tightrope given the population and its
21 remoteness and so on, so we have to be very careful how we do it. But I
22 think already that there is already a strong knowledge that there will have to
23 be changes and there will have to be cuts, but the usual reaction is, ‘Yes,
24 there have to be cuts as long as it’s somebody else.’

25 GRAHAM SHARP: One final point, it is intended to be a very brief point. The
26 capital budget, you’ve revised the capital budget program down to

1 £240 million or £270 million, depending on which numbers you look at, to
2 £100 million over five years, according to the papers I've seen. But my
3 understanding is that initially that was approved only on a one-year basis
4 and subsequently in years two to five. That suggested there was some
5 resistance to adopting that. And I wondered if very briefly you could
6 comment on that?

7 CLLR CLUNESS: What we're looking at, what we have, as far as concerns
8 capital, we now have a specific officer, an asset manager, who is geared to
9 looking at what we hold and what kind of programme we can have. We are
10 determined to do it over five years, but of course we have an election in
11 between. As we found last time when there is substantial change, then
12 democracy is democracy; people can change their minds, but we are
13 determined to stick to this five-year plan if we possibly can. We're also of
14 course interested in, continually interested in the economic future of this
15 community. Recently, we have concluded an arrangement with Total
16 whereby this community will derive an income benefit for as long as gas
17 comes from the west of Shetland. We have interests in the potential
18 development of wind and all kinds of renewable energy. So while we
19 realise we have to live within our means and tackling that, we're also
20 looking, as we were advised by Mr Salmond, to see whether we can
21 encourage new employment and so on. So we're trying to balance them
22 both things, but we are in a slightly more fortunate position than others.

23 CHAIR: Thank you. We have just about ended the session with you. I have just a
24 couple of points to make; two or three actually. The first is to say that
25 towards the end of the hearing tomorrow I think it will be right to say we'll
26 probably ask you to come back, not least to give you an opportunity to

1 comment on all the evidence you will have heard in the mean time. And
2 this is something we always do in these hearings in public. Therefore, at
3 that time if there are any other aspects that you feel you have not had an
4 opportunity to cover fully you can deal with them. The other aspect, and of
5 course one of them is the question on the accounts.

6 Just one point on the confidentiality that may be helpful. As you
7 know there is a confidentiality undertaking at clause 10 of the compromise
8 agreement that provides that neither the council nor the chief executive will
9 disclose the terms of the compromise agreement, except – and as you
10 know there is a exception – except as required by law or where necessary
11 or appropriate and including in particular any enquiries made by the
12 Accounts Commission or Audit Scotland.

13 Councillors, thank you very much for giving evidence to us. Ladies
14 and gentlemen, that concludes session two.

15 [Adjournment]

16 [SESSION 3]

17 CHAIR: Good afternoon everyone. Welcome to the third session of today's
18 evidence gathering. The first session this afternoon is with the council's
19 executive team. Again, I welcome you all to this evidence session. Can I
20 ask, please, the team that is in front of us just now to state their name and
21 position, just briefly for the record? Thank you.

22 HAZEL SUTHERLAND: Thank you inviting us to attend today. My name is Hazel
23 Sutherland; I am Executive Director at Education and Social Care at the
24 council and I also carry the deputy chief executive responsibility. I'll pass
25 on for my colleagues to introduce themselves.

1 GORDON GREENHILL: Good afternoon. I am Gordon Greenhill; I am the
2 Executive Director of Infrastructure Services.

3 GRAHAM JOHNSTON: Hello, Graham Johnston, the Head of Finance.

4 ROBERT SINCLAIR: Robert Sinclair, Head of Capital Programme.

5 MURRAY MCCALL: Murray McCall, partner with Anderson Strathern LLP.

6 NEIL GRANT: Good afternoon. My name is Neil Grant. I am the Head of
7 Economic Development with Shetland Islands Council.

8 JOHN SMITH: I am John Smith; I am Head of Organisational Development.

9 JAN RIISE: I am Jan Riise; I am Head of Legal and Administration, and
10 Monitoring Officer.

11 CHAIR: Thank you all very much. I will start with a general question, which is this:
12 How would you describe how you work as a senior executive team? If you
13 were asked to encapsulate that, what would you say?

14 HAZEL SUTHERLAND: I suppose I could speak for the last five months, since I
15 took up the post of deputy chief executive, and what we've done since then
16 is met regularly, on about a weekly basis, and all the team attend those
17 sessions and we split that into two areas. We have an ongoing
18 performance review programme, where we've identified the key targets and
19 the key performance issues that we want to pay attention to and monitor at
20 a corporate level, so we've got a programme ongoing activity. Then we've
21 also got some project work as well; you will be aware that the committee
22 cycle kicks up things from time to time that we also need to pay attention to,
23 and I don't need to say to you that this public hearing, as well, has been
24 high on our agenda over the past few months in light of the interest in just
25 how we perform as a best value council and how all that comes together.
26 So, that's generally the way we work: meeting regularly, weekly as this

1 team, and then we invite our other heads of service, the service areas, to
2 meet roughly monthly. We catch up with all the business that has been
3 going on at the committees, and again, topic and performance based.

4 CHAIR: Thank you for that. Now, the action plan that you outline in your
5 submission, I think the obvious questions is this: that you will have seen the
6 Controller of Audit's report, and that sets out a number of significant
7 concerns. So, can you help us with this: what confidence do we have that
8 these action plans will be implemented and will be successful?

9 HAZEL SUTHERLAND: I don't dispute the fact that we've done quite a lot of
10 systems – management systems type work over the past while, and our
11 philosophy has been – if you want, we have all the ingredients there; we
12 had budgeting going on, we had service planning going on, we had
13 performance management going on, and capital programme and so on, and
14 really what we've been trying to do is to combine that into a coherent whole.
15 So we have taken a systems-based approach to doing that, and we started
16 with a single outcome agreement, where we've got clarity of purpose and
17 one overall objective, working with the members and our community
18 planning partners for what is important to Shetland. What we've settled on
19 is trying to maintain an economically viable population, because we think
20 that's the thing that everything else will stem from. Through that, we then
21 refreshed the corporate plan to make sure that for the rest of this council,
22 working alongside the members, then we were clear about what objectives
23 they would like us to deliver on for the next two and half, two years, their
24 term of office. Again, that has moved from being quite a long document into
25 a much more focused performance-based and outcome-based documents.
26 Through them, we then, if you like, do the operations stuff, the service plan

1 and the finance stuff, the capital programme and the service reviews and
2 efficiency design.

3 So, I want to give you some reassurance that we've combined the
4 systems in a way that we think makes a coherent whole; that our team here
5 today are behind that in terms of taking that forward, and I would also say
6 the wider leadership team are behind what we're trying to do and what
7 we're delivering on. So, I would like to reassure you that we have
8 confidence that we've established the systems to take this forward, and that
9 we feel as if we've changed enough to make the difference to have now all
10 the elements stacking up to move forward to give good evidence, good
11 robust information to our fellow councillors to help them take good decisions
12 for this community.

13 CHAIR: That's helpful, thank you very much. That's a useful background. We're
14 now going to move into the area of leadership and roles and relationships,
15 Douglas.

16 DOUGLAS SINCLAIR: Thank you, a couple of questions to open with. How well
17 do you think councillors perform in their three roles, that's community
18 leadership, corporate leadership and their scrutiny role?

19 HAZEL SUTHERLAND: If I describe their role being a balance, as you say, the
20 community role, the corporate role and then our involvement in terms of
21 providing professional and technical advice, and then the word 'interest'.
22 What we find is some really good examples of close working relationships,
23 which was, I think, referred to earlier today by some of our member
24 colleagues. For example, the Finance Resources Working Group, where
25 we've got good relationships, good systems for working together that
26 appear to have the start of a good outcome: that we've got clarity of

1 purpose, clarity of direction and we're able to take that forward. So, I think
2 when it's specific issues, then that seems to work quite well.

3 The bit that we've perhaps not been so good at in the past, and this
4 may be the recognition in your work, is that when that comes to the
5 corporate decision making, then there's been difficulties in combining all
6 those interests into one package, where you can balance the strategic, the
7 service, the community and the financial aspects. That's maybe where we
8 haven't been so strong in pulling all that together for the members. But,
9 perhaps some of my colleagues would wish to come in?

10 GORDON GREENHILL: Gordon Greenhill, Infrastructure Services. I come from a
11 slightly different background and speak from a, maybe, a slightly different
12 perspective. Strangely enough, I've been here 18 months, and I'm going on
13 to my third acting chief executive, so there may be a common link there.

14 The situation in relation to community, when I first came here, I went
15 round all the community councils, and the councillors absolutely on the
16 button, fantastic, their liaison and knowledge of the local communities; they
17 absolutely represent the people who have elected them.

18 In relation to the corporate, unlike other councils where I've worked,
19 with the party group system, there are 22 separate manifestoes, so there
20 has been good work within this council to try to bring a focus on what is
21 communal amongst those manifestoes, so that there is a common aim
22 achieved. But what happens occasionally is that there are interests which
23 conflict, because of local community matters.

24 In relation to scrutiny, in the 18 months I've been here, I have to say it
25 has improved greatly. They've gradually got in place assistance; they are
26 looking at the things that are key to good outcomes, for instance, simple

1 things like your sickness absence, your budgetary management, but asking
2 deeper questions for further reports on things like fleet management. I do
3 feel that going forward, we've actually got that right, that the safety net of
4 actually questioning what has been going on and monitoring it, and our
5 scrutiny is actually moving forward to not just the scrutiny, but an
6 improvement agenda, which is really what scrutiny should be about; it is
7 about identifying and carrying that forward.

8 So, that's my overall summation of where we are at present, I would
9 suggest.

10 HAZEL SUTHERLAND: Would you wish to hear from the Head of Organisational
11 Development, who is in charge of the Audit and Scrutiny Committee?

12 CHAIR: Yes please.

13 JOHN SMITH: Thank you very much. The Audit Scrutiny Committee, I guess,
14 arose in part – or its independence arose in part - from the work that was
15 done around BV1, where that was felt to be an area where there was felt to
16 be a potential for improvement of how we carry out those activities in the
17 council, and was established on the back of that. I think Gordon is right
18 when he says that it's therefore a development process that has created
19 better and better results and more experience we've gained working with
20 that. I think it has also benefited, especially in the past five months from the
21 coherency work, the cohesion work that Hazel was describing - that is as
22 the budgeting systems and the performance management systems have
23 been looked at critically, and then the linkages between them both in time
24 and in reporting methods have come together more effectively. That's why
25 it, the audit and scrutiny arrangements, have blossomed a bit. There is still
26 a good deal of work of improvement to do there, I'm sure. But as you build

1 together these key building blocks into a stable and effective wall, then you
2 start to build up a far more solid building rather than just having foundations,
3 which maybe haven't emerged that far above the ground.

4 DOUGLAS SINCLAIR: So the impression I get is that things are going in the right
5 direction, that's what you seem to be saying. Why then do you think the
6 Controller of Audit, said in the report that some officers have expressed
7 concern about what they see as a lack of support and professional respect?

8 HAZEL SUTHERLAND: I can appreciate that that's an area of concern for you,
9 and I think –

10 DOUGLAS SINCLAIR: Is it not an area of concern for you as well?

11 HAZEL SUTHERLAND: Yes, but – the last few months, and indeed, the last year
12 probably has been disruptive, I suppose in terms of just being able to focus
13 on the day job and what we're here to do. I think that we would feel that
14 sometimes the political difficulties that are now hopefully behind us, sort of
15 spells the end to how some members relate to us, and deal with us, or take
16 advice from us, or our ability to provide information in a robust and open
17 way. I think that's what we were getting at, that sometimes being sucked
18 into those difficulties; we sit here as an advisory body to support the whole
19 of the council, and that's what we would hope to do, but there have been
20 difficulties, where I would say that we have been part of those political
21 difficulties that have been laid out.

22 DOUGLAS SINCLAIR: Was an example of that, presumably you gave
23 professional advice in terms of the recruitment of the last chief executive,
24 that they should use an external advisor given this is the most important
25 post in the council, and that advice was set aside by the council? Can you
26 explain – I know that the councillors' submissions said that this was a

1 democratic decision, and so it should've been, but it did not explain why
2 they didn't accept your advice.

3 HAZEL SUTHERLAND: I was interviewed for the post of chief executive, and I
4 would like to pass that question on to the Head of Organisational
5 Development.

6 JOHN SMITH: Thanks, the recruitment exercise for previous chief executives was
7 drawn in line with the council's recruitment selection policy. What it didn't
8 do was replicate the best practice, or the evolving best practice that we'd
9 used in the two previous most senior appointments. I think you've picked
10 that up, the assessment centre, and other activities associated with that.

11 We'd also, in the last two or three years moved from whole council
12 panel interviews for senior appointments, head of service, to a more
13 focused panel, and that wasn't thought to be the right direction. Ultimately,
14 the recruitment was carried out in line with policy. The members had the
15 choice to repeat the exercises that they'd done before. They had quite a
16 lengthy debate, I think, around this, but arrived at a very clear direction that
17 that's how they wanted to proceed.

18 DOUGLAS SINCLAIR: Can I just pursue that further? What reason did the
19 councillors give you that it somehow was not good practice to involve and
20 use an external expert to advise them in what was the most important post
21 in the council. What was the reason?

22 JOHN SMITH: From the minuted meetings and reporting of the sub-committee
23 that made those recommendations was their belief that the primacy of the
24 interview and presentation activity outweighed other information that they
25 might receive from those other channels, and that was the area they wished
26 to focus on.

1 DOUGLAS SINCLAIR: Can I move onto the submissions that you made, and it
2 touches on points that you made earlier about the follow-up of some issues,
3 and Best Value one. You made the point that you're working on HR
4 policies, and that's commendable. You will forgive me if I make the point
5 that Shetland Islands Council has been in existence for more than 30 years,
6 and some of the work you're doing strikes me as pretty bread and butter
7 things that should've been there in the first place, you know, recruitment
8 policies, retention policies, performance appraisal. Secondly, I suppose a
9 concern is, why did it need a trigger, an Audit Scotland report, to get that
10 work going?

11 Secondly, could I put it to you that, perhaps slightly more worrying is
12 that some of the issues were actually identified in your response to the 2005
13 Best Value report? For example, performance management was meant to
14 be rolled-out, according to your response to the Best Value report, by 2005.

15 Building the capacity of councillors and officers through understanding of
16 the roles, which is a major issue, through effective development
17 programmes was also to be delivered by 2005. My question is why the
18 delay in implementing these things? There's a long history. What
19 confidence can the Commission, let alone the public in Shetland have that
20 what you're going to put in place, or intend to put in place will actually take
21 route and prosper and develop?

22 JOHN SMITH: Thanks, I will try to address the – I guess very long detailed points
23 there – but an overall issue about the things taking route and becoming
24 embedded and becoming the natural way we do things. I think in policy
25 terms, performance management framework was established, both for
26 service performance and for individual staff performance. Policies in place

1 and implemented. I guess the aspect of that that's had some discussion
2 earlier today is the performance management of chief executive. That is
3 not outside the council's employee review and development programme.
4 The last chief executive was subject to that policy, and it's pretty much in
5 line with the SJNC policy for chief executive appraisal.

6 The records of individual staff appraisal stay with management, so I
7 don't have access to the individual details of what was conducted in there,
8 and I'm not aware that the annual appraisal activity, which you saw are the
9 core of both these schemes was carried out for the last chief executive. I
10 think the themes that we have tried to pursue through this is not to be
11 defensive about where we can make further progress with the work that
12 we've done. There is building up from this a solid set of foundations, that
13 still requires to be done. That needs, I guess, in terms of your analogy, if
14 things are going to spring and blossom, then that needs the right conditions
15 for those to happen in. It also needs some fairly long-term care tending
16 before fragile seedlings, in some sense, can grow into more robust plants.

17 CHAIR: Just for clarification, when you refer to the last chief executive, are you
18 referring to Mr Clark or Mr Goodlad?

19 JOHN SMITH: Mr Goodlad. My understanding, Mr Goodlad was participating in
20 annual appraisal activity.

21 CHAIR: Right okay.

22 JOHN SMITH: I guess one development that I would suggest that we did make
23 there, around induction, both of officers and of members, would perhaps be
24 to make a together link to the immediate establishment of targets in a formal
25 and verified sense. I think that the informal discussion or the regular
26 dialogue that SJNC and councils reviewing development schemes both

1 require, that certainly gets into place pretty immediately upon recruitment.
2 The annual appraisal activity can be left for a year and then the objective
3 and documented targets, perhaps, which would've been helpful to have
4 been unambiguously in place, could be required to appear. That is a
5 reflection of the intent with the interim chief executive, is certainly to ensure
6 that we close that loop immediately.

7 The induction of members, we certainly sought in the last council
8 intake, we're aware that there was likely to be a significant turnover of
9 members, given the changes in local government, put in place a very
10 comprehensive exercise of member induction, the definition of member
11 roles, the carrying out of a quite comprehensive training programme, that
12 needs to be built on further; that continues to be a priority of trying to take
13 the – perhaps, the cohesive and integrated approach we've sponsored
14 around this team, and make sure that that feeds out as far as possible and
15 does deliver results. It's no use having good intentions unless you carry
16 them through into actual results.

17 DOUGLAS SINCLAIR: Just from a point a little bit further, then I want to move on
18 to something else, which is the sense of Shetland Islands Council as a
19 learning organisation. You made the point that the incident with Mr Reiter,
20 when he was the chief executive was the absence of a proper appraisal
21 system. That was rectified, according to your own words when Morgan
22 Goodlad was appointed as the chief executive, then when Morgan Goodlad
23 left, the learning stopped; it was not continued, the appraisal system. I think
24 there is an issue there: what confidence can we have that the council is a
25 truly learning organisation that learns from its mistakes. You made that
26 point about induction of councillors into their roles. Induction needs, as you

1 said yourself, needs to be built upon, needs to be developed, needs to be
2 nurtured and sustained.

3 JOHN SMITH: Yes, that's right. I think that if we had been quicker to implement
4 or faster off the ball with the scheme that was in place, its implementation
5 with a new member of staff coming into the post wasn't rapid enough in
6 these circumstances to have met that. So that's another learning point, and
7 that's what I was talking about, this immediate link between induction and
8 performance appraisal rather than that having a gap, potentially built into it.
9 So, where there are risks or gaps identified, then we have to find
10 responses that deal with that effectively.

11 DOUGLAS SINCLAIR: I mean, just to finish that point, the convenor in his
12 evidence made the point that he wasn't a councillor at the time Mr Reiter left
13 the council, he subsequently was, although some councillors who are
14 currently councillors today were councillors at that time, but there is a
15 responsibility in the officers to ensure the collective memory of the council
16 continues from one council to another, and that did – with respect, that
17 doesn't seem to happen. It happened with Morgan Goodlad, but it didn't
18 happen with the subsequent chief executive. Would you accept that?

19 JOHN SMITH: In part, I think the timing here is significant here as well; all the
20 activity in a very short tenure, which was interrupted on a couple of
21 occasions, it was difficult to get all that work done. So, if we'd have – I
22 guess the conclusion you might arrive at, that we should expect that every
23 chief executive we get to need the most immediate and careful handling
24 right from the start and with the next one, there will definitely be heads up
25 on that one.

1 DOUGLAS SINCLAIR: I don't want to put words in your mouth, but you would
2 agree with me that clear objectives need to be set for any chief executive
3 from day one?

4 JOHN SMITH: I think the clear objectives derive from the council single outcome
5 agreement from the corporate plan. Both of these corporate plans being
6 refreshed on Wednesday, and a significant lead derived from the current
7 audit comment on risks and priorities and improvement schemes. Those
8 were right on the table and in the middle of the initial activity of the chief
9 executives, so in terms of the schemes' requirements for regular dialogue
10 between political leadership and the chief executive and their regular
11 discussions there is every appearance that that had been established.
12 What wasn't in place was a formal recording of those, signed off by both
13 parties, which should then be used in another process later. Technically,
14 that can be fixed relatively straightforwardly.

15 DOUGLAS SINCLAIR: That's why the council approached COSLA for help?

16 JOHN SMITH: Yes, the council approached COSLA for help, and we are still
17 working with that in a variety of areas, used as best we can.

18 DOUGLAS SINCLAIR: Moving on to another area which is the draft Assessment
19 and Improvement Plan. In it, you've said council services with the
20 exception of one area shows no significant scrutiny risk identifying that was
21 clearly housing. I was a little bit surprised that you didn't make reference to
22 the fact that the summary said 'significant risks have been identified with the
23 council's governance arrangements, vision and strategic direction and use
24 of resources. The council is not well placed to demonstrate that it is
25 achieving best value in delivering in these areas'.

1 Could you just explain why, in your submissions, you didn't make any
2 reference to that and what do you see as the role that you as senior
3 managers have with helping improve the corporate governance
4 arrangements, and setting the vision and strategic direction?

5 HAZEL SUTHERLAND: I'm happy to take that one. My comment – or our
6 comments – in terms of the submission from the management team around
7 the audit and insurance improvement plan was just in connection – we are
8 trying to put across the message that we managed to maintain good service
9 delivery, meanwhile, while all this unusual activity was going on. We
10 wanted to acknowledge that housing was an area that we needed to do
11 some work on, but in terms of our social care inspections or education
12 inspections and other learning activity, we feel that we've got good, best
13 value practices embedded in what we do, that there's a good plan and
14 process, a good performance management arrangement and good scrutiny
15 around that, so that, if I could just set that one to one side. All that I was
16 trying to do there was to give a shape to how we think about service
17 delivery. Absolutely acknowledge the comments and the reasons why we
18 are here today in terms of the governance accountability and correction –

19 DOUGLAS SINCLAIR: You didn't put in your submission –

20 HAZEL SUTHERLAND: Pardon?

21 CHAIR: You didn't put that in your submission, the acknowledgement.

22 HAZEL SUTHERLAND: I –

23 CHAIR: The acknowledgement you have just given, you didn't put that in your
24 submission.

25 HAZEL SUTHERLAND: Well, as I say, the submission we put together was only
26 commenting on service delivery in that sense, and by its submission, that

1 doesn't mean to say that I don't accept it, if that's what you're looking for
2 from me.

3 DOUGLAS SINCLAIR: I come back to my question: what do you see as your role
4 as the senior managers of the council? And councils have to operate in the
5 basis of partnership between elected members. The contribution that you
6 think you can make to ensuring the council achieves good governance.

7 HAZEL SUTHERLAND: Probably, I'll go back to my opening remarks, about what
8 we see as the good systems that we can put around that, so we've started
9 the process of the single outcome agreement, the corporate plan and the
10 high-level service plan, and well-connected to work for first development
11 budgeting, capital programme service reviews. Through that process, we
12 see a system developing where there's clarity of objective, what we're all
13 signed up to do for this community, and then sets in place a train of being
14 able to be clear about the priorities, and the decisions, and the targeting
15 that needs to come next.

16 We are definitely on a journey; I'm not going to sit here today and say
17 that we've solved everything. We've done the building blocks for it, and
18 what we've been able to do is combine the thinking on corporate planning,
19 service planning and resource allocation into one element, and we've been
20 able, with the members, to put together a commitment to thinking about any
21 changes – and when I'm speaking about changes, I'm probably speaking
22 about savings, both on capital expenditure and revenue savings – that tests
23 the impact and the outcome on this community around the population
24 changes that I've already reference, and which the convenor mentioned this
25 morning, about poverty and deprivation, and just about the strength of the
26 economy locally, being a remote and rural area, then we need to keep

1 people here and we need to keep them working here. So, it's a system that
2 we've built that moves from being maybe ad hoc and project based to being
3 a cohesive whole, while we're trying to embed those strategic priorities on
4 all the decisions we make going forward.

5 So, as an example, when education blueprint comes forward, then
6 they will be testing it against those strategic objectives. By providing that
7 advice and support to members, we hope to come together with them to
8 shape this in a partnership approach that makes sense for this community,
9 but communicates well what we are trying to do in a more joined-up way.

10 DOUGLAS SINCLAIR: Thanks for that. I'm still struggling, because I think what
11 you're describing is commendable; it is about improving strategic planning.
12 What I'm trying to establish is the role that you believe and feel you properly
13 have in terms of the contribution you make to good governance in the
14 council?

15 HAZEL SUTHERLAND: I think that John Smith would like to come in here.

16 JOHN SMITH: Just to add a wee bit, and hopefully, it will pick up on the question
17 that you're asking as well. One of the other activities in this five month
18 period, looking at what we – because you can't do everything at once, but
19 looking at a sequence of things that we have to do, one that has run over
20 the top of that was to Commission a comprehensive BV2 self assessment,
21 where that Best Value 2 is on the horizon, that the pathfinders have been
22 drawn, and that we'll have the opportunity to participate in that when we find
23 a place in the sequence.

24 Part of that exercise was to scan the whole horizon again, but do it in
25 a comprehensive, objective and thorough and rigorous fashion. So, it took
26 all the characteristics of a Best Value organisation that work from the

1 working group and the management contributions, has come to the point
2 where, I think, practically after the summer recess, then, we will be looking
3 to bring that self-evaluation to members, look at the areas where we have
4 identified that there are – and we've tried to use the red, green, amber to
5 get ourselves into the approach that Audit Scotland and others are using,
6 and to discuss and debate, come to an agreement with members as to
7 where the respective roles best do lie, in tackling these areas. We have
8 opinions, I guess about how much or how little we should do and where the
9 lines between policy development, governance system creation should lie.

10 This is fundamentally a responsibility of councillors. What we need to
11 do to try to help good governance is to prepare evidence in a systematic,
12 authoritative and easily-understood sense, and then that hopefully should
13 make the difficult debates that bit easier, because at least everybody is
14 operating from a well-evidenced starting point. So I think there is a overt
15 and a genuine wish to have that discussion properly with members, rather
16 than to assume a whole set of responsibilities for ourselves, which might be
17 going too far.

18 DOUGLAS SINCLAIR: Just one final question for Mr Riise, as the monitoring
19 officer. Could you tell the Commission how you exercise your role in
20 providing advice on conflicts of interest? Do you do that in a proactive way,
21 i.e. if you believe a member is in danger of potentially having a conflict of
22 interest, would you go out of your way to advise that member or would you
23 wait for the member to approach you?

24 JAN RIISE: A bit of both to be honest, but I have certainly got examples of
25 situations where I've tried to anticipate conflicts of interest arising and
26 prepared a report for the council, in fact, on the subject of that in relation to

1 their interest as charitable trust trustees and dealing with the Viking Energy
2 application, planning application, so that's an example of the proactive
3 activity, but yes, I will have a quiet word if I am aware of a conflict arising.

4 Generally, I find that the members are quite aware of their own
5 potential for conflict, and very many of them will phone me and ask for
6 advice and guidance as to how they deal with that. So, I've got a good
7 relationship with members in that respect.

8 CHRISTINE MAY: Good afternoon. Can I pick up on one thing that Mrs
9 Sutherland said in her opening response? You spoke about the wider
10 leadership team. Could you just amplify who you mean by that? Is it just
11 officers or is it officers and members?

12 HAZEL SUTHERLAND: For that particular one, it would bring in, for example, our
13 head of schools, head of transport and all the other heads of service that we
14 have, and there are about 19 of us in total that would join that group.

15 CHRISTINE MAY: So you mean all officers, and not members?

16 HAZEL SUTHERLAND: Yes, excuse me, yes.

17 CHRISTINE MAY: Thank you.

18 HAZEL SUTHERLAND: We have different systems for engaging with members,
19 but for that one, yes, officers only.

20 CHRISTINE MAY: Thank you, can I then explore with you how you develop and
21 how you are going to develop in future the strategic vision for the authority?
22 You spoke about a commitment to thinking about changes and trying to
23 encourage that in your members. Would you accept that in a non-politically
24 organised council, there is an enhanced role for officers to assist senior
25 members, the leadership members, member leadership, in managing the
26 conflicts which there are in every local authority between the ward and the

1 strategic interest, and can you describe, if you do accept that, how you have
2 gone about it or how you intend to go about it in the future?

3 HAZEL SUTHERLAND: I'm sorry, can I just come back to you, did you say, in a
4 'political council'?

5 CHRISTINE MAY: No, in a non-political council. In a council where all members
6 are independent; and I accept that is the case in Shetland, but it is also the
7 case in other authorities, so there is officer history in doing this.

8 HAZEL SUTHERLAND: Yes, we would try as best we can to support the
9 members in doing all aspects of their jobs, so trying to assist with good
10 advice and guidance on the strategic issues that the population, the
11 economic, the finance and so on that goes along with that. Also, from a
12 service point of view, just the good, professional, technical advice that you
13 would normally try and provide as best you could, across legislative
14 requirements, best practice, best industry practice for any of our service
15 areas, and combine that with a ward interest. So, I would hope that we
16 would always have an eye on all aspects of the members' role, and the fact
17 that they have many competing demands on their interests when they are
18 making their judgements as a whole on the best way forward. So I would
19 never expect only for them to listen to our view. They have a ward
20 responsibility, they have wider community responsibility as well. It is that
21 balance that makes it difficult, but challenging and exciting, because that's
22 how you get good decision making coming through.

23 CHRISTINE MAY: Would that advice include helping to build a level of consensus
24 among a group of members, so that the strategic vision that had been
25 articulated could be – could succeed in a council vote?

1 HAZEL SUTHERLAND: If you don't mind, I'd like to use the example of the work
2 that was referenced this morning, which we call the education blueprint, but
3 we've had an ambition which was driven by the chair and vice-chair of the
4 Services Committee from, really, day one of their election to this council,
5 where they were recognising the population changes where we've got
6 reduced population numbers in some areas, but then we've got different
7 dynamics of where people want to live and work now, so we've got small
8 schools with falling school rolls, and we've got increasing unit costs.

9 What we did in that scenario was create a member-officer working
10 group to provide a particular focus on that topic. That was led by our head
11 of schools, and we set in train a sequence where we took that political
12 direction and worked up a good evidence base for what the principles for a
13 good education system would be like, alongside good cost and what's
14 happening at the moment. Over a period of a couple of years, we've
15 reached the point now where there's a number of options going forward.
16 So, we hope that what we did was put in place a good option appraisal
17 against the suite of objectives that balances the school side of things the
18 community side of things, the legal aspects and the financial and capital
19 investment requirements going forward. But absolutely embedded in that
20 was what the best educational experience would be for those pupils, so I
21 hope through that, you get a sense that we have systems that work well
22 together, where members and officers engage in that dialogue in a very
23 constructive way.

24 CHRISTINE MAY: Thank you, but I'm also aware of course that the issue of
25 music tuition and charging was a decision that had been taken and appears

1 to have been overturned. So, would you accept that there is a way to go
2 before a robust system of that sort of support to members is in place?

3 HAZEL SUTHERLAND: Yes I would, and I think on that particular example that
4 you've used, that's a timing issue. We have significantly changed our
5 planning process for doing the budgeting and both the topics that you talk
6 about came about from the need to make savings, and I accept your point
7 that we maybe haven't done that as well as we might've done, in engaging
8 the local community in that decision making process. But what we've done
9 from now on in is we've taken the decision points much earlier in the year. I
10 think it was Cllr Cooper who mentioned this morning that we didn't want to
11 walk into a situation where there was growth items coming through for next
12 year's budget that hadn't been well thought about or discussed. So, we've
13 brought all that forward to the June cycle meetings for the planning for the
14 next financial year. This is the point at which we try to bring together
15 service choices corporate choices, prioritisation, alongside our budget
16 process. So, I take your point, and the system is new and needs to be
17 tested and evidenced as we go forward, but we have acknowledged that
18 there were weaknesses in all our systems going in parallel but perhaps not
19 being as well connected as might have been expected.

20 CHRISTINE MAY: Thank you, that leads me to the final element of my questions,
21 and that's on how you gather the views of the communities to help to
22 support that, how you've done it for the current exercise, more importantly,
23 how you will continue to do it and develop it with your community planning
24 partners for the future. Then, how that understanding, once you have
25 distilled it from the evidence you've got, is communicated back.

1 HAZEL SUTHERLAND: Can I talk about the community planning aspect first,
2 because I think Cllr Simpson mentioned that when he talked this morning
3 about the acknowledgement of the significant financial challenges facing the
4 community. We are doing some work with our community planning patterns
5 to acknowledge the impact on other public sector and voluntary sector
6 providers locally: the police, the health, the fire service and so on.

7 We want to explain to the community what's going on here, and the
8 degree of change that we may have to face. But we want to do that in a
9 joined-up way so that the first person who goes forward, with fairly
10 significant changes, the one that gets all the bullets fired at them, if you
11 want, so that's one exercise.

12 The education blueprint exercise has been a really ambitious
13 programme of going to talk to pupils, parents and the carers and the staff in
14 community councils to explain the financial difficulties. Really, the drivers
15 for change, I can't remember all the numbers off-hand, but I would like to
16 reassure you that we have been to all areas of Shetland with that message,
17 and that's what we believe it. We do not believe in getting people into the
18 Town Hall to come and talk to us about something; we really believe in
19 getting out there and having an open dialogue with communities

20 That was the education blueprint. Gordon might also talk about the
21 recent STAG processes which we've used for transport agenda, but we
22 have a philosophical belief about community engagement and really getting
23 involved in our decision making process. We've got a live example at the
24 moment; we're doing some budgeting by a community on choices for
25 projects that they might want to take forward. It's quite small-scale, but it
26 starts to build that capacity within each of the communities for thinking

1 about how we have to think, about what choice, what service would make
2 the most difference, if we try and get that back in terms of information, in a
3 clear and as concise a way as we possibly can.

4 CHRISTINE MAY: I wonder if anybody else was going to come in on that, if you
5 could also cover how you keep abreast of good practice, in terms of going
6 to national conventions, conferences, learning from others or even inviting
7 people here to learn from them?

8 GORDON GREENHILL: It's a very good question, it was kind of alluded to this
9 morning, that there seemed to be a misconception, I have to say, that we
10 don't go and learn from other councils, or invites experts up here. Certainly
11 in my time here, it's one where we have gone south to get best practice.
12 We have invited people here. We do listen to our customers, it's particularly
13 well mature, the system of your voice, where you go and do an audit of
14 what the public think. And the service satisfaction is very, very high, which
15 we can evidence if you wish. I think it is one where sometimes the fit isn't
16 sometimes quite the same; if you say to us, 'Shared services', it is quite
17 difficult: there is a geographic problem, obviously. But we are very aware
18 that we need to take the best practice and give the best practice, because
19 we have visitors who come to see how well, for instance, our waste
20 management is carried out. But we do take that on board, and I'm sure we
21 will take it away and go and look at it again, but my general feeling is that
22 that is a misconception that you have, that we don't learn from other places.

23 GRAHAM SHARP: I will start talking about the charitable trust. First, a general
24 question then, moving to the qualification issue. You probably heard before
25 lunch me ask the members about their view of the long-term relationship

1 between the council and the charitable trust. Is that one with which you
2 concur?

3 HAZEL SUTHERLAND: Can I invite the head of finance to answer this one?

4 GRAHAM JOHNSTON: The legal position is a very clear one, in which the
5 charitable trust is a separate entity, and the trustees when sitting in trust
6 meetings must have the trust's interests at heart. Now, the practical
7 difficulty there is that we cannot do the grouping of the accounts without
8 their co-operation, and until the charitable trust comes to the view that that
9 cooperation is going to be made available, we are where we are. As to you
10 question, as to whether I share the council's view, I must say my view is
11 that on the basis of the evidence, the separateness of the charitable trust
12 has been established by their actions and by the fact that they are in a
13 position to deny their cooperation to the council. I believe, myself, that that
14 establishes the case that there is not a group relationship between the two
15 bodies.

16 GRAHAM SHARP: That is not quite what I was asking; I was asking how you see
17 the relationship between the two organisations going forward, whether they
18 would continue to cooperate in supporting the Shetland community, and
19 whether that was necessary or a good thing or what?

20 GRAHAM JOHNSTON: Sorry for not getting your point on that one. Yes, the two
21 organisations are bound by their common interests, in the interests of the
22 Shetland community going forward. It follows that the closest practical
23 cooperation between those two bodies is extremely important for the future,
24 as it has been in the past, over the last 30 years or so.

25 GRAHAM SHARP: In fact, the trust is specifically set up to serve the areas
26 administered by the local authority of Shetland, isn't it?

1 GRAHAM JOHNSTON: It covers the same geographical area, certainly yes.

2 GRAHAM SHARP: But, in the trust, it actually says, 'The area administered by the
3 local authority'?

4 GRAHAM JOHNSTON: Yes indeed.

5 GRAHAM SHARP: Okay, moving on to –

6 CHAIR: Graham, can I just interrupt for a second? I'm looking at the chart which
7 shows the setup of Shetland Islands Council, and then the chart that shows
8 Shetland Charitable Trust, with all its subsidiaries, including Viking,
9 Shetland Heat, Energy, and so on and so forth. Do I understand it, for
10 example, that Viking Energy has I think three councillors as directors? Is
11 that right?

12 GRAHAM JOHNSTON: Three councillors who are also trustees, yes.

13 CHAIR: Well, three councillors are directors of Viking Energy Limited?

14 GRAHAM JOHNSTON: Yes.

15 CHAIR: So, directors?

16 GRAHAM JOHNSTON: On behalf of the charitable trust, who are the
17 shareholders of Viking Energy.

18 CHAIR: Yes, but can we just stick to the point for a second? Are there three
19 councillors who are directors of Viking Energy? That is a simple question.

20 JAN RIISE: No, my understanding is that they are directors by virtue of being
21 trustees of the charitable trust; they are not appointed by the council to
22 Viking Energy.

23 CHAIR: Are there three councillors who are directors of Viking Energy Limited?
24 That is a simple question.

25 JAN RIISE: Yes, not by appointment of the council.

1 CHAIR: But they are directors. Thank you. Is it the same with C.T. Shetland,
2 where there are four councillors who are directors?

3 HAZEL SUTHERLAND: If what you are asking is that, yes, these people are all –

4 CHAIR: These councillors are directors, yes?

5 HAZEL SUTHERLAND: They sit as councillors and they sit as trustees, and they
6 may hold directorships.

7 CHAIR: That's fine.

8 HAZEL SUTHERLAND: But, I would say that –

9 CHAIR: Sorry go on.

10 HAZEL SUTHERLAND: Yes, but I wouldn't like to sit here and talk on behalf of
11 Shetland Charitable Trust and their structure and their appointment system.

12 CHAIR: I'm not going to go there; I'm sticking very strictly to the position of the
13 council. What happens in council meetings, do you know, when the subject
14 of Viking Energy comes up?

15 JAN RIISE: They declare their interest and depart from the chamber.

16 CHAIR: What happens when a council meeting talks about C.T. Shetland?

17 HAZEL SUTHERLAND: A council meeting would never talk about C.T. Shetland.

18 CHAIR: Okay, so can you explain the distinction between C.T. Shetland and
19 Viking in the very context we are talking, council perspective?

20 HAZEL SUTHERLAND: It would be in the context of a planning application.

21 CHAIR: Alright, okay. So, the three councillors, you say, would withdraw? I will
22 tell you where I am trying to get to with this, because I am puzzled. It's this:
23 the three councillors, as you say quite properly, are trustees. But, the
24 trustees of the trust own 90% - sorry, the trust owns 90% of Viking, so does
25 that not mean that all the councillors are debarred from discussing it?
26 Because they control, as individuals in your argument, they control the

1 subsidiaries of Shetland Charitable Trust, right? So why would only the
2 people who are directors of the subsidiary withdraw? Why not everyone
3 else who has a vested interest, i.e. the trustees of this charitable trust?

4 JAN RIISE: That was exactly the subject matter of my advice to the council, when
5 as monitoring officer, I identified –

6 CHAIR: Sorry, I –

7 JAN RIISE: That was exactly my advice to the council when, as monitoring officer,
8 I presented them with a report saying that there was a potential for a conflict
9 of interest in relation to their role as trustees and their ownership of Viking
10 Energy, or shares in Viking Energy, and their position as councillors. So, I
11 think that I have already done my piece in putting the advice on the table,
12 and it was noted.

13 CHAIR: Okay, so can I just play that back to you, because this may be important.
14 Your advice as monitoring officer to the council was that all trustees of
15 Shetland Charitable Trust should withdraw when the subject of Viking
16 Energy was discussed, is that correct or...?

17 JAN RIISE: Well, with respect, thank you for the question again, but with respect,
18 that wasn't really the subject matter of my report. What the council was
19 facing at that time was the potential for the Section 38 consent request
20 coming forward, and in that the council itself would not have been decision
21 maker. What I was postulating was the possibility that in spite of that, the
22 nature of their interest was such that perhaps they should consider setting
23 up a mechanism whereby they could act as a representative role for the
24 community but not actually act as a statutory consultee on the consulting
25 process. Actually, the whole question of the role of a councillor in Section

1 38 consent was a matter of decision by the Chief Investigating Officer and it
2 took some guidance from that in my report to members.

3 CHAIR: But I think you see what my point: just as the councillors who are
4 directors of the subsidiary should withdraw, anyone else, including those
5 controlling that subsidiary, called 'the trustees of the trust', should also
6 withdraw? And you are left with no meeting, because there is nobody left?
7 It seems a rather unusual position, does it not?

8 JAN RIISE: It would be the scope for consideration of a dispensation request to
9 the Standards Commission.

10 CHAIR: The sole consideration?

11 JAN RIISE: Sorry?

12 CHAIR: In terms of whether they are acting within –

13 JAN RIISE: The scope for a dispensation request.

14 CHAIR: Yes, thank you for that. Graham?

15 GRAHAM SHARP: Right, I was going to move on to the qualification. Let me start
16 with Mr Johnston. I asked the members this before lunch, but you have a
17 rather different perspective, because you've a statutory obligation to bear
18 the accounts in accord with the relevant regulations, which includes the
19 statement of recommended practice. As matters stand without any
20 changes to the structure or operations of the trust or council, is it your
21 opinion that the trust or council should be consolidated in the council's
22 accounts?

23 GRAHAM JOHNSTON: It is my professional view that in circumstances where the
24 charitable trust can and indeed has withheld the necessary cooperation, it
25 appears to me de facto that a group relationship does not exist between the
26 council and the charitable trust. It is not subordinate to the council; it is not

1 owned by the council; and on the evidence, is not controlled by the council,
2 is my professional view.

3 GRAHAM SHARP: And you've taken that by considering the tests and wording of
4 the relevant statement for recommended practice?

5 GRAHAM JOHNSTON: That is indeed the case, yes.

6 GRAHAM SHARP: Can you take me through that thought process?

7 GRAHAM JOHNSTON: As I say, we did the necessary checks and tests and
8 came to this view, along with the argument that I've just set out, that in
9 practice, consolidation of the accounts cannot take place without
10 cooperation of the charitable trust, and the charitable trust has established,
11 by its actions, its autonomy to deny that cooperation.

12 Having said all that, were the situation to change, and were the
13 charitable trust to go along with the request for cooperation, I would, in
14 compliance with the views the council has expressed this morning, be
15 happy to go along with the consolidation of accounts; were it possible, we
16 would do it.

17 GRAHAM SHARP: You mention by its actions: can you just give me an example?

18 The example, presumably, is the refusal to give accounts?

19 GRAHAM JOHNSTON: Indeed.

20 CHAIR: You mentioned plural, you mentioned 'actions', plural. What other
21 actions?

22 GRAHAM JOHNSTON: The council has requested on two occasions the
23 cooperation, most recently last year and the answer was the same on both
24 occasions.

25 CHAIR: What was the subject of the request, the accounts again?

26 GRAHAM JOHNSTON: Simply that, yes.

1 CHAIR: Was there any other area where the charity has refused requests by
2 councillors?

3 GRAHAM JOHNSTON: I can't think of an example of that, no.

4 CHAIR: How many times a year does the council ask the charity for help and
5 assistance, and it's agreed?

6 GRAHAM JOHNSTON: To be frank, I don't think the relationship was one in
7 which the council asks for assistance, and/or receives it. I think there is an
8 ongoing dialogue about the interests of the Shetland Islands community that
9 lead to cooperation.

10 CHAIR: What I'm trying to establish is whether this refusal to give accounts is an
11 isolated exception to the general practice you refer to. Because I think
12 you'll agree that one instance can hardly be described as a practice?

13 GRAHAM JOHNSTON: All I can say is there have been two examples in respect
14 of this grouping of accounts, and those are the only examples I can think of.

15 CHAIR: But as I said, those are both on the same topic. Ms Sutherland?

16 HAZEL SUTHERLAND: Excuse me, I may be able to assist here, in terms of
17 describing some of the dialogue that goes on in this unusual relationship.
18 When it's in connection with the funding for a local charity called Shetland
19 Recreational Trust, where we've been in dialogue over the recent while
20 about the appropriate level of payment for schools using those centres, and
21 just this week, that request for funding was refused through Shetland
22 Charitable Trust. We've also had instances; I think that is going back,
23 perhaps, to the last year, where we have a fairly ambitious programme of
24 capital investment for care home facilities and care services, and again, on
25 that occasion, when we requested a contribution towards new investment in
26 care homes, that request was refused.

1 GRAHAM SHARP: You say you made the request on two occasions and on both
2 occasions it was refused. When was the first time this happened?

3 GRAHAM JOHNSTON: I think the previous occasions were not a request by me
4 but by the former chief executive, Morgan Goodlad. I'm afraid, by
5 recollection, I can only give you an approximate date, and I think that was
6 maybe two or so years ago. I don't know if my colleagues can pin it down
7 any more precisely than that.

8 GRAHAM SHARP: So would that be approximately after the accounts had been
9 qualified on two occasions?

10 GRAHAM JOHNSTON: Yes I think that was an initiative by the chief executive at
11 the time to try and break the deadlock that -

12 GRAHAM SHARP: Because they were originally qualified by
13 PricewaterhouseCoopers and then by Audit Scotland?

14 GRAHAM JOHNSTON: Yes.

15 GRAHAM SHARP: So is it correct to say that before that, during the period when
16 the accounts were qualified on the first two times, your professional opinion
17 was that the charitable trust should be consolidated?

18 GRAHAM JOHNSTON: No, I don't think that was ever my personal opinion on the
19 matter, but it was one that the chief executive at the time was willing to
20 follow through on.

21 GRAHAM SHARP: But what was your opinion of that?

22 GRAHAM JOHNSTON: As I've said, my view on this has been consistent
23 throughout.

24 GRAHAM SHARP: But this is before there was a refusal by the charitable trust to
25 provide the information?

1 GRAHAM JOHNSTON: Yes, and as I say, my view on this matter has been
2 consistent throughout; I have never been of the view that a group
3 relationship exists between the charitable trust and the council.

4 GRAHAM SHARP: Sorry, I understood you to be saying, because you could not
5 obtain the information from the charitable trust, that was why you took the
6 view that a group relationship did not exist.

7 GRAHAM JOHNSTON: I appreciate the point that you're making; in a point, I'm
8 stating that as the evidence to prove the view that I hold that this
9 relationship isn't there; that the charitable trust is autonomous, is in a
10 position to deny its cooperation, and has in practice done so.

11 GRAHAM SHARP: So without that evidence, it's just your opinion that it's
12 autonomous?

13 CHAIR: You say, 'just', I don't think that's quite fair.

14 GRAHAM JOHNSTON: That is another matter in my opinion.

15 GRAHAM SHARP: I'm pressing this, because obviously looking at the exchange
16 of correspondence you've referred to in your submission, that includes
17 letters from Audit Scotland, which set out their view and sets out the
18 conditions that needs to be met in the statement of recommended practice,
19 and these are, 'A local authority should include in its group accounts as a
20 subsidiary any bodies over which the authority is able to exercise control
21 and the authority is able to gain benefits from', in rough terms. So, your
22 contention is that the authority has never been able to exercise control,
23 notwithstanding the fact that the councillors are habitually the trustees?

24 GRAHAM JOHNSTON: That is indeed my understanding, and it is based on the
25 view that whilst the councillors sit as trustees, they must have solely the
26 interests of the trust in mind, and in this particular instance, their view on

1 that matter has involved them not providing the cooperation necessary to
2 group the accounts.

3 GRAHAM SHARP: When a councillor, or indeed, a director of a large company is
4 appointed to any other company within his own organisation, a subsidiary
5 company or anything like that, they are appointed as an individual, and they
6 have a responsibility to the organisation to which they're appointed as an
7 individual. That's always the case. How do you distinguish – they are
8 appointed as trustees; they clearly have responsibility as trustees. Why
9 does that mean that you fall outside the sort of wording?

10 GRAHAM JOHNSTON: It is my understanding, and this goes somewhat beyond
11 my expertise as a finance officer, that in this case, trust law would be the
12 predominant issue whilst they are sitting as trustees.

13 GRAHAM SHARP: Although the SORP itself, I believe, specifically refers to the
14 fact that local authorities should take account of the substance of the
15 relationship and not the form, and there are other authorities which have
16 trusts?

17 GRAHAM JOHNSTON: In my limited understanding of other authorities, I believe
18 the subordinate relationship between the council and those trusts is
19 apparent in those cases, but it is not apparent in this.

20 GRAHAM SHARP: And you see no other way of solving this problem; you
21 describe it as an 'impasse'?

22 GRAHAM JOHNSTON: I'm afraid that is my view and it will require a movement
23 by some party other than the council to resolve this issue; the charitable
24 trust could offer its cooperation if it comes to the view, taking its
25 independent advice that that is something appropriate for it to do, and that

1 would change the circumstances, but I cannot for myself see how the
2 council can radically change the circumstances.

3 JAN RIISE: It is a discussion I've had with Hazel, so she's aware of what I'm
4 going to say. I actually think the conditions could be created, and I think
5 this is work that the council could do with Audit Scotland; the principal
6 problem arose, and we're aware of communications between the council
7 and the charitable trust at the time, but it was primarily as a result of
8 dialogue leading up to the management letter in the last year, of
9 PricewaterhouseCoopers, where the references were made to the exercise
10 of 'dominant control', and you can imagine what the solicitors for the
11 charitable trust thought when they saw that the conditions under which this
12 was being requested assumed that the authority was exercising 'dominant
13 control' over a trust that had just become subject to the Charities (Scotland)
14 Act, where it was determined that that would be illegal if the charity trustees
15 were operating and demonstrating that they were actually subject to that
16 dominant control.

17 So the position that I'm putting forward is that if we change the
18 question, I think we'll change the minds of the lawyers that have been
19 advising on this, and I think we'll get the sort of harmony that you were
20 getting today from the councillors in terms of where they thought this could
21 go.

22 GRAHAM SHARP: Just to check I've correctly understood what you're saying.
23 PricewaterhouseCoopers refer to 'dominant control', I don't believe Audit
24 Scotland have referred to dominant control at all, but the advice that has
25 been driving the trust's position has been based on advice that was
26 obtained at the time of the PricewaterhouseCoopers qualification, and that

1 has not been updated, and that is continuing to drive the trust's position up
2 to today, is that correct?

3 JAN RIISE: I can't speak for the advice that was received by the charitable trust,
4 but I would say that I have seen it, so I am aware of its content. You're right
5 in saying that the language in Audit Scotland's approach to us has changed,
6 but they still use the language of 'the right to exercise control', and I really
7 think that we're essentially arguing over the removal of a few words to get
8 some degree of an outcome here, to be honest.

9 BILL MCQUEEN: I'm going to move on to ask some questions about the
10 compromise agreement and negotiated settlement and then some about
11 question, which you probably heard me put this morning to the members
12 about discussions in the media and some HR related matters.

13 I think we heard from the convenor and some members that they were
14 surprised at the size of the settlement but had questioned you hard, I'm
15 looking at the legal advisors here, and followed your advice. So, I think it
16 would be helpful and indeed, I think the convenor invited us to put questions
17 to you about how you came to the advice that you did come to. Can you
18 just tell us first off, what were your instructions that you were working to
19 from your client, the council?

20 HAZEL SUTHERLAND: Can I explain the circumstances as well, surrounding
21 this? That is one of the reasons why Mr McCall is here, for that particular
22 part of council business, then Rory Mair as chief executive of COSLA, and
23 Murray McCall for Anderson Strathern stepped in to, for all intents and
24 purposes, be the council's advisors in these circumstances. So, with your
25 permission, may I ask Mr McCall to answer that question?

1 MURRAY MCCALL: Thank you and good afternoon. You asked about the
2 instructions, first?

3 BILL MCQUEEN: Yes.

4 MURRAY MCCALL: Following the council meeting on 4th of February, the
5 instructions given to myself and Rory Mair, the chief executive of COSLA,
6 were to carry out a without-prejudice discussion with the advisors of the
7 chief executive, to examine the likely cost that might be associated with the
8 termination of his employment by mutual consent. So the first instruction
9 was to conduct those without prejudice discussion.

10 BILL MCQUEEN: And did those instructions change as the events unfolded? For
11 example, did they include the ability to advise the council about whether you
12 could pursue disciplinary action with a view to dismissal?

13 MURRAY MCCALL: I was about to come onto the second instruction.

14 BILL MCQUEEN: Sorry, I thought you'd finished.

15 MURRAY MCCALL: The first instruction was to conduct the without prejudice
16 discussions. The second key instruction was to examine the potential that
17 there might be any other route available that could lead to a resolution of
18 matters, and that could involve disciplinary action, for instance. So really,
19 two clear instructions: without prejudice discussions and an examination of
20 any other route the council could take, and we were mandated to come
21 back to the council and report on our findings.

22 BILL MCQUEEN: Right, and did you advise the council that you thought the chief
23 executive could bring a claim for unfair dismissal?

24 MURRAY MCCALL: Yes, when we came back to the council on the 19th of
25 February, by that stage – if I could just preface it by saying we'd introduced
26 one other factor, and that was an analysis of a range of claims and

1 counterclaims that the chief executive and his advisors indicated that they
2 might be willing to take against the council, so we were – not only had we
3 had the without prejudice discussions, and we'd analysed other routes that
4 might be available; we also had, by that stage, an analysis conducted into
5 the range of claims that the chief executive might bring, and one of those
6 claims was in fact a claim for unfair, constructive dismissal, founded upon
7 the whistle blowing legislation. But there were a range of other claims and
8 those were outlined at the council meeting on the 19th of February.

9 BILL MCQUEEN: Good, in that case, can you say a little to us about the
10 comparators that you took to the council when – I think as we heard this
11 morning, you gave them a range of advice about options and likely risks
12 and costs. Where did you derive those comparators from?

13 MURRAY MCCALL: Sorry, maybe just clarify what you mean by 'comparator'?

14 BILL MCQUEEN: Sorry, in terms of estimating the likely risks and costs, I'm
15 imagining, but you'll tell us, that you would have looked at the range of
16 awards made by courts and employment tribunals and so on, and your
17 knowledge of settlements in similar circumstances, that's what I meant by
18 'comparators', but there is probably a better legal term for it?

19 MURRAY MCCALL: Yes, absolutely. In relation to the legal heads of claim that
20 might be raised by the chief executive, I had in fact already carried out an
21 assessment before the council meeting, because in November 2009, I had
22 given the council some legal advice about a range of claims that the chief
23 executive might take against them, if certain actions were not taken, to try
24 and effectively calm the situation down, in terms of the amount of
25 information that was now in the public domain about the chief executive's
26 position. So, when I went to the council on the 19th of February, to an

1 extent, I was going over ground that I'd gone over before, by outlining the
2 fact that under the whistle blowing legislation for instance, you did not need
3 a year's service to mount a successful claim for constructive unfair
4 dismissal. That being a case where the chief executive may resign and put
5 a claim in. Or, if the chief executive were to be dismissed by the council
6 unfairly, and brought his claim under the whistle blowing legislation, he did
7 not need a year's service and moreover, that any claim under the whistle
8 blowing legislation would not be subject to the unfair dismissal cap, which at
9 that time was around £65,000, and it could be open-ended compensation.

10 But there were a range of other headings under which the chief
11 executive had by that time intimated to us, through his legal advisors, and
12 they fell into broad categories involving personal injury claims, claims under
13 the discrimination statutes, particularly race discrimination, and
14 discrimination based on religion or belief, delictual liability in relation to
15 misfeasance in public office, defamation and general allegations of bullying
16 and harassment. So, there were a whole range of factors that we had to
17 take into account, whistle blowing being one of the predominant ones, but
18 there were a range of other legal remedies that could've been pursued
19 through the civil courts as opposed to the employment tribunal system.

20 BILL MCQUEEN: Okay, and I think we heard this morning that there was a lively
21 discussion at the meeting and then advisors gave final advice, and I think I
22 heard that you did associate likely costs with the options considered?

23 GRAHAM JOHNSTON: That's correct. In addition to just looking at the potential
24 damages awards that could be open to the chief executive if he were to be
25 successful, because remember at that time, we were talking about
26 something that was still a speculative claim, that does not mean that there

1 were no grounds to the claim, but you would only ever get an answer on the
2 financial outcome if you were to take matters to tribunal or court.

3 But, we were also looking at the reputational damage that could be
4 done to the council, we were also looking at the time involved in either
5 defending these matters through the tribunal system or the court system,
6 and so there were a range of non-financial aspects that also came into play
7 that we looked at including loss of pension rights, including stigma damages
8 for the compensation that might be awarded and, as I say, both these
9 claims could've been run through tribunals and the civil court system. The
10 most worrying aspect on the whistle blowing one, being that it was entirely
11 feasible that the chief executive could have resigned, claimed unfair
12 constructive dismissal under the whistle blowing provisions and made a
13 claim for interim relief, that could've allowed him to maintain his salary if
14 he'd received an earlier judgment on that, pending a full hearing. So, there
15 were a range of financial issues that were considered at the meeting.

16 BILL MCQUEEN: Thank you. I wanted simply to move on now to the area of
17 questioning around leaks to the media that I put this morning, in order to get
18 a sense –

19 CHAIR: May I just interrupt? Clearly the amount was settled for, let's call it
20 £300,000 to keep the arithmetic simple. Clearly the quantification of all
21 you've told us was more than £300,000, otherwise you've done – is there
22 any way you can share with us the quantification of all that – all that
23 aggregation that you're talking about?

24 MURRAY MCCALL: Yes, I mean, you've got to look at this on the basis that the
25 initial expert report that was furnished to us was by the chief executive's
26 legal team, indicated a compensation award in the order of £2 million may

1 have been available because of loss of salary and loss of pension for a
2 significant period of time. There was also a very detailed report on the
3 likelihood that the chief executive would find any kind of work within the
4 immediate future, any kind of work within the public sector within the
5 immediate future, and the assessment in that court was pretty bleak as far
6 as the chief executive was concerned.

7 So that aided his team in establishing that if he'd gone to tribunal
8 and/or a court, and been successful, there could've been, as I say, a seven-
9 figure settlement.

10 DOUGLAS SINCLAIR: Can I just ask one supplementary? You mention, I think I
11 recollect, that in November, you carried out an assessment, your words
12 were, 'certain actions needed to be taken to calm it down'. What were the
13 certain actions that needed to stop?

14 MURRAY MCCALL: In blunt terms, there needed to be a cessation to the public
15 discussion of the chief executive's employment situation. This was an
16 internal, staffing issue, even though it's the highest officer in the council,
17 and it ought not to have been played out through the media.

18 DOUGLAS SINCLAIR: In effect, you were saying that councillors were breaching
19 the code of conduct in talking about the performance – criticising the
20 performance of the chief executive in public.

21 MURRAY MCCALL: In essence, the councillors ought to have raised their
22 concerns other than through the media, and unfortunately, matters were
23 being raised in the media, sometimes on the record, and sometimes
24 matters were being put off the record, but they were played out in the
25 media. There had already been one referral to the Standards Commission,
26 and there was every possibility that there could've been further referrals

1 following that one, because matters continued to be played out in the
2 media, even after the first referral in late-October.

3 DOUGLAS SINCLAIR: If that had not happened, and given the relationship
4 between the chief executive had broken down, is it a fair statement for me
5 to make that the settlement, the ultimate settlement between the council
6 and the chief executive would've been of a lesser sum if these actions by
7 councillors had not occurred?

8 MURRAY MCCALL: There may not have been an exit if these actions had not
9 occurred, so on that basis, yes, it could've been a lower sum, because there
10 may not have actually been an exit in the first place. If I could just add one
11 supplementary point: this media briefing carried on even when we were
12 negotiating. So, between the 4th of February, when we were mandated to
13 go and negotiate, and the 19th of February, it also made matters extremely
14 difficult.

15 BILL MCQUEEN: Moving to a different area, which I touched on this morning with
16 the elected members. Actually follows this notion of leaks, can we get a
17 sense from you of why you think that situation is possibly more prevalent
18 here than in other local authorities, and what impact it has on you as the
19 senior officials trying to manage the business of your colleagues of the
20 organisation, and is there anything you're doing in the way of a protocol or
21 policy to improve this situation?

22 HAZEL SUTHERLAND: Just in general, I suppose we are in circumstances now
23 where we need to approach our business knowing that issues are likely to
24 be leaked, and I think that may sometimes influence the way that things are
25 presented or analysed or discussed, so there's an awareness that we need
26 to take care around that. I haven't worked in any other authority, so with

1 your permission, I might ask my colleague Gordon Greenhill to talk about
2 his experiences in this area?

3 GORDON GREENHILL: Yes, I find it possibly unique; something which is exempt,
4 which can refer to someone's personal employment issues, can get into the
5 public domain. It is something which I haven't experienced previously in my
6 working career. Why it happens, I don't know. It is maybe because things
7 are so up close and personal that it's a small community, but it is certainly
8 something that has to stop and it has to actually give people the integrity to
9 know that if something is being discussed then it isn't going to go into the
10 public domain, but it isn't my experience in the other council I worked in that
11 something which is exempt goes into the public domain.

12 HAZEL SUTHERLAND: Can I say as well that this is an issue that we recognise
13 not only through your report, but through our Best Value 2 self-evaluation,
14 the whole question of communication internal, external and media relations
15 is something we would like to work hard at, and that's one of the reasons
16 why we have, I think it's in the members' submission, a planned programme
17 to try and work-up some protocols in this area, so that there's a shared
18 understanding of what that looks like and what the drivers for that are.

19 BILL MCQUEEN: Finally from me, one of the submissions to us argued that there
20 had been an upsurge in the number of grievance and disciplinary cases in
21 the current year. Is that founded and have you got comments on any that?

22 HAZEL SUTHERLAND: I would ask the Head of Organisational Development to
23 comment on that.

24 JOHN SMITH: Yes, I think our monitoring in this area we keep – and this is one of
25 the regular pieces of performance monitoring that Hazel talked about at the
26 start, and we make sure that it's being monitored at the corporate level,

1 through the executive but also at service and service-manager level. There
2 has certainly been an increase in the number of grievances and
3 disciplinaries we have recorded. I don't have a forensic examination or the
4 detail of a breakdown there; my opinion, my professional judgment is that is
5 a reflection of the heightened, both tensions and issues created by the
6 events within the last year, you are talking about partially. Partially it's a
7 little bit I think a reflection of the substantial change exercise that we pretty
8 much completed successfully; we're into single status project about a year
9 ago, but nevertheless, was very substantial change to a large number of
10 staff. Partially, it's a reflection, I think of the developing agenda of change
11 that we're moving into where there are going to be significant issues in
12 terms of reshaping services, in terms of the overall spending reductions, so
13 I think it's a sign that this pressure on the systems, and it's one that we do
14 have to be very conscious of, that we don't let that be the way that we deal
15 with; we try to find solutions, try to find answers, and I think what we were
16 hopefully this process is part of the exercise that draws some lines over
17 some areas of where we then move ahead into a shared renewal and
18 improvement agenda, but there certainly has been an increase.

19 HAZEL SUTHERLAND: May I say as well that whilst this may not seem so, for the
20 people who are going through the disciplinary process, from a manager's
21 point of view, it's a commitment on our part to tackle some of the difficult
22 issues and the cultural issues around performance and so on, in an
23 outcome-based approach. I would just make an observation that, having
24 been party to quite a number over the last year, being one of the biggest
25 service areas, I don't feel that any of them have been inappropriately called.

1 GRAHAM SHARP: I just want to finish my touching on financial management.

2 I've already done this with members and I won't go through the background
3 to which I'm sure you're all equally sensitive. In terms of your budget
4 processes in the past, I've picked up comments such as there've been
5 difficulties in gauging budget-responsible officers, and the process which
6 has led, essentially, to poor budget estimates. Obviously, there have been
7 issues about agreeing capital programme expenditure. So, you referred
8 earlier to changes in budget planning, and I just wondered if you could
9 comment, both in terms of revenue and capital planning, whether you
10 believe you now had processes in place and the commitment of officers
11 throughout the organisation and of members to make a much tighter
12 budgetary process work?

13 HAZEL SUTHERLAND: Can I say a bit in general terms first about the systems,
14 and then I might invite Robert and Graham to talk in more detail about it, but
15 we've had experiences in the past of carrying, like a deficit into each year,
16 so you'd have a credit line on your budget that you were required to save
17 during the year. I think that causes a degree of confusion in terms of
18 kicking up some fairly hefty variances that then have to be explained and
19 over-explained. So there wasn't a natural snapshot of how things were
20 going over the time. We're pulling forward the whole budget planning
21 exercise and trying to get that earlier in the year. We would have an
22 ambition to hit next year's financial planning exercise without any of that;
23 you'd just have your set budget of the services that you were going to
24 deliver insofar as we could. That's a system change, but Robert Sinclair
25 might talk about the capital programme changes, and I think Graham will
26 talk about the revenue budget changes.

1 ROBERT SINCLAIR: Thanks. What we're trying to bring forward in line with the
2 timetable for budget planning throughout the whole council, is a capital
3 programme that is aligned with that. At any point in the year, projects can
4 come ahead or go through the gateway process, and either be approved or
5 not for further consideration. There then is a prioritisation of the projects, or
6 a review of the capital programme on a once-yearly basis, and the timing of
7 that will also tie in with certain revenue budgets. It's been very encouraging
8 so far, members have embraced both the gateway process and the system
9 for prioritisations. They will have, later on this week, an indicative five-year
10 capital programme presented for comment and feedback, so that by
11 October, we should be able to have a final proposal to them once that
12 indicative programme has been checked against issues that are essentially
13 out with the control of service departments such as land purchase, finance,
14 that sort of thing. So, it's been really encouraging that the members have
15 embraced that new system, and maybe Graham can explain a bit more on
16 the revenue side of it?

17 GRAHAM JOHNSTON: Thank you Robert. The council in February set perhaps
18 its most challenging budget ever, in circumstances where it needs to make
19 substantial spending cuts in the current financial year, and I believe the
20 council's beginning to face up to the challenge of the future with the
21 prospect of ever tighter financial settlements from the Scottish Government
22 in years to come.

23 In setting that particularly challenging budget in February, the council
24 has gone on to commit itself to the receipt of regular cyclical reports on
25 progress on meeting the budget for 2010/11, and has set up the financial
26 resources member officer working group, that has been referred to earlier,

1 for detailed, ongoing dialogue and liaison between officers and members.
2 So, whilst it is early days to speak about a transformed situation, I believe
3 the building blocks are in place for a greatly-improved focus on revenue
4 budgeting in the council, that should if carried through successfully meet the
5 challenges that the council faces.

6 CHAIR: Thank you very much, let me just check with my colleagues, are there
7 any other questions that anyone wants to raise?

8 DOUGLAS SINCLAIR: Just one quick one. I think some of you mentioned shared
9 services were difficult because of geography, but shared services with other
10 public bodies within the Island group is a possibility, you have got a pay roll,
11 the health board has got a pay roll, has that been explored?

12 GORDON GREENHILL: That's a very astute point; absolutely, I was talking about
13 shared services with other local authorities on the mainland, but there are
14 partnership working in places all over that, yes.

15 CHAIR: Thank you very much, can I thank the executive team for their helpful
16 comments and information. Can I also thank Mr McCall for giving us that
17 information? Mr Riise, do you want to say something else?

18 JAN RIISE: Only if, in view of that, I wondered if you required any additional
19 information from our convenor, because I think maybe the depth of the
20 answer you got earlier satisfied that, but...?

21 CHAIR: Let me answer that after the break. I suggest we reconvene in 15 minutes
22 at half-past three. Thank you.

23 [Meeting Adjourned]

24 [SESSION 4]

1 CHAIR: Welcome to Session 4 of today's evidence gathering. We have two
2 witnesses in front of us, and in the usual way, can I ask them please, for the
3 record to state their name and their position?

4 CLLR MANSON: I'm Bill Manson; I'm the Chair of the Shetland Charitable Trust. I
5 am also – I've made – well, you've taken it as two submissions, and I think
6 that's the right way to do it, I'm also Cllr Bill Manson, member for the
7 Shetland North Ward, and as council's spokesperson on education.

8 JEFF GODDARD: Good afternoon and thank you for the opportunity to
9 participate. My name is Jeff Goddard and I'm the financial controller of
10 Shetland Charitable Trust.

11 CHAIR: Thank you very much. Just before we go on, can I just clarify,
12 Cllr Manson, I suppose I address you as Cllr Manson – or are you
13 appearing here predominantly or indeed exclusively as trust chair or as
14 councillor?

15 CLLR MANSON: It's unwise for me to make comment on my, in some things, as
16 my role as a councillor, so I presume I can be asked about that, but I'd
17 ideally like to keep the two things distinct if I may –

18 CHAIR: Indeed –

19 CLLR MANSON: And I'm here predominantly as the chair of the charitable trust

20 CHAIR: Thank you. Obviously, you'll point out to us which hat you're wearing
21 given any answer you choose to give us.

22 CLLR MANSON: Right.

23 CHAIR: Thank you. Let me then start off by asking you about your submission,
24 because you say there that the problems regarding the trust are simply
25 technical. Could you just expand on that for us please?

1 CLLR MANSON: I suppose that problems are what they become but they started
2 off as an accounting issue, and I would like to keep them on that level, and
3 to discuss them with relevant to accounts. There's been much talk about
4 the legal position and so on, and I might add that that's not talk that's come
5 from the trust. The trust has been in the whole question of the years when
6 this qualification has been around, has been talked about in some quarters,
7 but hasn't been talked to, and while I realise that it's not the council's
8 auditor's job, or within their remit to talk to third parties, and they may
9 indeed regard themselves, when talking to the council as them talking to the
10 lead organisation within a group, but if the third party considers itself to be
11 separate, then they are being talked about rather than being talked to.
12 Now, having said that, we're perfectly willing to join in discussions – we're
13 not trying to be dog in the manger about this, we'd be more than willing to
14 talk this through and to understand this fully, which we don't at the moment,
15 really, although we've seen some, at least, of the correspondence. We
16 don't necessarily wholly agree if not understand the Audit Scotland's
17 position.

18 CHAIR: Thank you. This morning, you probably heard me ask a question of the
19 convenor, about how soon after the year-end the trust accounts are
20 available to the public. Could you clarify that for us?

21 CLLR MANSON: Yes, Jeff, six months I think?

22 JEFF GODDARD: Yes, the trust is required to produce its accounts within nine
23 months of the year-end, so by the end of December. Every year we aim –
24 we have a trust meeting in September and we aim to do the accounts or
25 review the accounts with the trustees at the meeting in September, but we
26 don't always succeed, so sometimes it's later than September.

1 CHAIR: But the record is of approximately six months after the year-end, is that a
2 fair summary?

3 JEFF GODDARD: I think it is more truthfully seven, eight, nine months.

4 CHAIR: Alright.

5 CLLR MANSON: That would be the time they are filed; they come in front of the
6 trustees and come as a public document, within a public agenda, so the
7 salient points will be known, as I say, the aim is at that September meeting,
8 which we usually catch.

9 JEFF GODDARD: Could I just add to that, for example, the last two weeks, we've
10 had our auditors with us, KPMG, so we have draft accounts and we have
11 enough information to give to our auditors at this point, which is only a few
12 months after the year-end.

13 CHAIR: That's useful, thank you. So does that mean that if the council had a
14 decision or a will to include the trust accounts as part of group accounts, if
15 they were able to do that in September, but not earlier, they'd be able to do
16 so, is that correct?

17 JEFF GODDARD: I think we have heard today that some of the council does at
18 least have such a will. It's not as easy as we're making it sound; our
19 accounts are produced – we have our own SORP to worry about; our
20 accounts are produced to the Charities' Statement of Recommended
21 Practice. The information that I believe the council would need, although I
22 don't know this in detail, is in a different format to how we produce our
23 accounts, and that inevitably means more work. But I don't suppose
24 anybody's going to be too worried about me and my staff or if my staff and I
25 have to do more work. Technically yes, is the answer; we could produce the
26 information to the timetable that I believe the council will require.

1 CHAIR: That is interesting. We will leave that there just now. The question of
2 technicality you've covered. I think one of the concerns raised by those
3 who believe the council accounts should include the trust accounts is one of
4 public accountability. The council are responsible for the assets and
5 liabilities of all the resources that they have either got themselves or have
6 given elsewhere. But, of course, the argument is that the councillors act
7 independently on the trust. But I think those who argue that would argue
8 that it's more than a mere technical – they may argue that it's actually a
9 matter of significant material understatement of assets, liabilities, income
10 expenditure and reserves. Is there anything you want to add to that
11 summary of what I see as the auditor's position?

12 CLLR MANSON: If it is transparency and knowledge of what the situation is, then
13 the charitable trust's accounts are just as clear, I believe as the council's
14 are, and that the public, whether it be the financial authorities or the public
15 of Shetland, have equal access to the picture regarding the charitable trust.

16 CHAIR: So there's no issue of transparency, so there'd be no reason if there was
17 a mind to do so, to include them?

18 CLLR MANSON: The question of grouping is one which I don't suggest that we
19 are closed to; we are willing to consider it. We do not fully understand the
20 position, and secondly, I think you need to point to us as a trust to some
21 advantage or gain to the beneficiaries of the trust, from that grouping. Right
22 at this moment, I'm not sure I can see what it is.

23 CHAIR: Finally, just before asking others to pick up the questioning, the issue of
24 including the accounts in the council accounts, I think I picked up from you
25 earlier, you're fairly sanguine about that, just to play it back to you?

26 CLLR MANSON: I wouldn't say I'm sanguine about it; I respect –

1 CHAIR: I didn't wish to lead you, I'm sorry.

2 CLLR MANSON: That's alright. I, as I say, if there is a sound reason for it, I'm not
3 going to be dog in the manger about it, but at this moment, I don't see any
4 advantage to the trust in being grouped.

5 GRAHAM SHARP: First, thank you for appearing in front of us as the trust. The
6 first thing I was interested in was, we have a situation where there are two
7 organisations that work with each other for the benefit of the community and
8 have clearly a good and close working relationship. One of those
9 organisations, in order to meet its responsibilities in properly producing its
10 accounts and not having them qualified, in fact by two different sets of
11 professional auditors, requires to group the trust accounts with its own. It's
12 asked you for the information to do that, and the trust has declined, and I
13 assumed there was a very good reason for the trust declining, but I haven't
14 been able to see one in any of the papers, and in the last session, there
15 was an indication that there might be a specific reason, but I wondered if
16 you could throw light on that?

17 CLLR MANSON: Well, yes, you've said that one of the organisations, what you
18 would regard as the lead organisation, the dominant organisation if you
19 want to call it that –

20 GRAHAM SHARP: Sorry, I didn't call it the dominant organisation.

21 CLLR MANSON: No, alright, well certainly the entity into which, into whose
22 accounts ours are expected to be grouped in Audit Scotland's eyes. I think
23 it might be a simple thing that the trust doesn't regard the situation as being
24 that if we're asked to jump, the only question we should ask is 'How high?'
25 The first question we ask is, 'Why?' Right, I accept that they are being
26 asked – it is being asked, and as a councillor, being asked, to provide group

1 accounts, but we regard ourselves as an independent entity and we're not
2 at all certain that we should be grouped within Shetland Islands Council
3 accounts.

4 The charitable trust, as I said in my submission to you, if we'd been
5 doing this 10 years ago, and during the preceding history of the charitable
6 trust, at which time it was still called Shetland Islands Council Charitable
7 Trust, but having said all that, it was set up from the word go as a separate
8 entity and accounted for separately and not grouped for the early part of its
9 history.

10 Now, in recognition that times were changing and in recognition that
11 there was Scottish legislation on charities coming forward, we started a
12 process of separating from the council, which I've enumerated some of the
13 points as to what was done. The one, so far, trip in that has been that at
14 the last – the latest step within it, when we would've reformed the actual
15 trust body, the trust body postponed that decision. Now, I don't particularly
16 agree with that, and more importantly, nor does OSCR for that matter; the
17 meeting I referred to between OSCR and the trustees in my submissions
18 actually took place last week, and OSCR made it abundantly clear that they
19 expected – they didn't regard the current composition of the trust as
20 appropriate and they wanted to see changes. So that matter will return to
21 the trustee's table in fairly early order and may result – I can't at this stage
22 predict the outcome – but it may well result in a change.

23 GRAHAM SHARP: Just to be clear, a general point, at the moment it is the case
24 that councillors habitually become trustees, i.e. when they are elected as
25 councillors, they are assumed as trustees; if they cease to be councillors,
26 they leave as trustees. Is that correct?

1 CLLR MANSON: With the exception of two, that is correct.

2 GRAHAM SHARP: Who have conflicts, or some particular circumstances?

3 CLLR MANSON: The trustees of the Shetland Charitable Trust are all ex officio
4 from one job or another, in one job or another.

5 JEFF GODDARD: I just wanted to add that nobody can be a trustee who doesn't
6 want to be a trustee. So, trustees can resign, but it's one of the points that
7 has been made in the past, is it is not the council choosing who are the
8 trustees; it is the trust and the trust deeds sets who are the trustees.

9 GRAHAM SHARP: Indeed, but the fact of the matter is that since inception, the
10 trust board has essentially comprised people who are at the same time,
11 councillors?

12 JEFF GODDARD: Plus two independent trustees, for a long time.

13 CHAIR: Can I just pursue that a little, that answer, because there's a danger of us
14 going round in a circle here. You say that the trust decides who shall be the
15 trustees, but the trust is made up of the trustees, who are the councillors, so
16 it's a circular argument, isn't it?

17 JEFF GODDARD: Sorry, I accept that it is not the trust that decides; it is decided
18 as is set out in the trust deed.

19 CLLR MANSON: Could I just add that the decision to change the composition of
20 the body would be by way of an amendment or a change to the trust deed.

21 GRAHAM SHARP: Yes, which I believe you have clear power to do in your trust
22 deed. Just going back to when you said there needs to be some benefit to
23 us in complying – leaving aside the issue of possible change to the
24 composition of the trust board for a moment, would you not regard it as a
25 benefit that the organisation with which you have such close relations, and

1 you have a mutual interest in supporting the community, was having a
2 problem that could well be damaging to it, removed.

3 CLLR MANSON: Yes, I would regard that as a benefit, but I would need to be
4 sure that any potential disbenefits to the trust outweighed that or didn't
5 outweigh that.

6 GRAHAM SHARP: So that brings us back to whether there is a problem for the
7 trust in the council grouping the trust's accounts and the council's accounts.

8 CLLR MANSON: Yes, and just let me, I hope maybe anticipate some questions
9 by saying that I and the trust management, I don't think we've ever shared
10 any views that there was a threat to the trust's charitable status by being
11 grouped with the council and so on. We don't regard there as being any
12 legal impediment to that.

13 CHRISTINE MAY: You spoke about potential disbenefits. Can you amplify that a
14 little, please, as to what these might be?

15 CLLR MANSON: Well, I think that one of them is the very thing which I think you
16 or Audit Scotland believe may be happening; that is the question of control.
17 I mean, if you are grouped into a larger or some parent entity's accounts,
18 there is at least the implication of some form of control; you're grouped as
19 an associate or subsidiary or whatever. But, I think that the possibility of
20 control grows rather than reduces, and I don't believe that the trust in the
21 past, there was significant cross-working, shall we say, between the council
22 and the trust, but I don't think that's been the case in recent years. There's
23 been a steady disengagement, the last steps are still to be taken. It doesn't
24 mean that we won't work, I hope, in close partnership with the council, but I
25 think that the perception of control will grow rather than diminish if we're
26 grouped under the council.

1 CHAIR: Can I just put an obvious point to you, just to get it on the record, for you
2 to answer, that is. It seems obviously an usual circumstance this, where
3 you can have a group of people who are councillors take a decision,
4 change the label of the meeting and immediately disagree with themselves.
5 What would you say to that?

6 CLLR MANSON: I think that the councillors felt themselves backed into a position
7 where they should. I mean, it had been done, as was said – I think it was
8 actually in 2007, that they were first asked about it. It wasn't referred to
9 them again as trustees until earlier this year? Yes, earlier this year. I think
10 they felt, as a council, probably backed into the position that, here they were
11 with what the Head of Finance on the council described quite rightly as an
12 impasse, and in that position, that they should ask the other body what their
13 view was. Now I wholly understand that it is largely the same number – the
14 same body of people, but the – but it's been dinned[?] into them that when
15 they go into the trust that they are doffing their council hat, putting their
16 charitable trust hat, and they are expected to act in the interests of the trust.
17 They weren't convinced that that was necessarily the case.

18 CHAIR: Mr Goddard?

19 JEFF GODDARD: Thank you, can I just add a little bit to that. I think we cannot
20 let it pass, the inference that it's the same meeting; these are separate
21 meeting on separate days –

22 CHAIR: Yes.

23 JEFF GODDARD: And a significant difference is that the trust has different
24 advisors: myself and other officers, and we have our own source of legal
25 advice which is out with the council or anything to do with the council.

1 GRAHAM SHARP: Sorry, just come back on this point about perceived control
2 and that possibly creating a problem for the trust. The grouping of the
3 trust's accounts and the council's accounts is, in a sense, a matter of form
4 that follows some underlying situation. The underlying situation is the one
5 that is assessed under the SORP for the council accounts, which requires it
6 to consolidate the charity accounts, and it involves the same membership of
7 the council as the trust body and a number of other factors. Do you not
8 think if there is a problem of perceived control, it isn't dealt with by simply
9 declining to allow the council to follow the SORP it has, and having a
10 qualification that that highlights this whole issue?

11 CLLR MANSON: It certainly isn't done by that alone, by declining that invitation
12 will not ever, in itself, dispel that. I think that Shetland and the beneficiaries
13 of the trust, the people of Shetland, had been used over a long, long period,
14 that the trust and the council were intertwined. The fact that they are
15 separating; it's a dry subject. It doesn't make riveting news necessarily, and
16 these things take a while to get instilled into the public perception, and
17 declining to have the accounts grouped will not dispel that notion on its own.
18 However, agreeing to their absorption, if you like, into the council's
19 accounts certainly wouldn't do anything for the perception of the trust as an
20 independent body either. In fact, it might have precisely the opposite effect.

21 GRAHAM SHARP: I asked the members this morning whether they supported a
22 comment made in a report by the chief executive of the council in 2007,
23 which essentially said that there's actually a strength in the councillors also,
24 to a large extent, being the board of the trust, in that it promoted co-
25 ordination between the two bodies, but also it indirectly allowed the people

1 of Shetland to have a voice on who was a trustee. That was the thrust of
2 the comment. What's your observation on that?

3 CLLR MANSON: It certainly gives the people of Shetland a voice of who is a
4 trustee. If they recognise, as I think the vast majority do that when they
5 elect councillors, they are electing a trustee, I believe that legislation has
6 passed the point where the current body is sustainable, and that there
7 should be a change made. I have supported that view for a considerable
8 time; if you examine the records of the charitable trust, which I don't believe
9 anyone from Audit Scotland has –

10 CHAIR: I don't think we're in a position to, actually.

11 CLLR MANSON: Well, but having said that, we're not being again, as I said, we're
12 not being dog in a manger about that; we are perfectly happy to make the
13 records of the trust available to Audit Scotland for them to correct the
14 position which they hold. I say 'correct', I'm not necessarily saying they will
15 change their view; I hope they might, but they can correct at least the facts
16 on which they're basing them. There are a number of anomalies in the
17 examples which they tend to quote, where we are aware of just simple
18 factual errors within them, and I'm sure that were they to know all of the
19 facts, they would at least acknowledge – and they may well acknowledge
20 today for all I know – but they acknowledge that the trust is making
21 strenuous efforts to separate itself from the council. I hope that we'll always
22 have a sensible working relationship with the council, but I think – I believe
23 that we should, as I believe we do today, we are moving towards, I believe
24 that we should be doing it, if you like, of our free will. Not just because
25 someone's made up their mind in the council, and then moves across into
26 the trust, and takes the same view, perhaps on different advice.

1 CHAIR: Thank you, I've just got one question and then I'm going to ask Douglas
2 Sinclair, who also has a supplementary, and then on to Bill McQueen. In
3 your submission on this second page, last paragraph, you say in the
4 opening sentence, 'Our professional staff and advisors have looked at the
5 local authority statement of recommended practice. It seems that the
6 issues come down to two key issues'. Can I just ask you who are your
7 advisors, because you're vesting some authority in that statement on them?

8 CLLR MANSON: Our advisors are our general manager, who is actually here
9 now, today, but who we chose, since this is an accounting matter, to have
10 the financial controller here, but it is –

11 CHAIR: He's not a professional staff, sorry to talk about you in the third person –
12 he's not the professional staff.

13 CLLR MANSON: He may help –

14 CHAIR: In your sentence?

15 CLLR MANSON: He may well be the professional help –

16 CHAIR: Who are your advisors?

17 CLLR MANSON: He is certainly the person through whom it comes, if not the
18 originator of all of it.

19 CHAIR: And the accounting advisors?

20 CLLR MANSON: We also have – well, with the – I'll let you come in a moment
21 Jeff – with the exception of myself and the general manager and one other
22 member staff, the charitable trust core staff are entirely accountants, but the
23 – so we have in-house expertise headed up by Jeff, but we also have our
24 own auditors, and where it comes to legal matters, we do have our own
25 legal advisors who are, for reference, Turcan Connell.

1 CHAIR: Well, yes legal advisors I will put to one side for one moment, because
2 I'm concerned about the interpretation of the sort. So does that mean
3 KPMG are your advisors on this matter?

4 CLLR MANSON: Jeff?

5 JEFF GODDARD: I am a chartered accountant, and I am the advisor to the
6 trustees on matters to do with accountants. However I have consulted with
7 KPMG, amongst others, on this matter, and would it be helpful if I gave you
8 my views on the grouping of accounts?

9 CHAIR: Well, I'm more interested, with respect, just now on your advisors' view.

10 JEFF GODDARD: Alright –

11 CHAIR: Because, you've referred to your advisors as an authority, and I'm trying
12 to weigh the evidence by determining what authority that is.

13 JEFF GODDARD: The advisor referred to there is me.

14 CHAIR: Oh, I see, okay.

15 JEFF GODDARD: I have consulted with KPMG and all that KPMG will allow me to
16 say today is that they are content with our accounts, that our accounts are
17 fulfilled on the charities side, and they have no issues. That is all they are
18 prepared to say.

19 CHAIR: Thank you. So, they've obviously offered no comment on the other issue
20 about the interpretation of the SORP for the council, and that would be quite
21 right that it didn't frankly.

22 JEFF GODDARD: Well yes, but inevitably, being accountants, we've gossiped
23 and looked and perhaps, informally, they have informed my views to some
24 extent.

25 DOUGLAS SINCLAIR: Cllr Manson, I've got a couple of questions later about
26 your second submission as a councillor, but I want –

1 CLLR MANSON: It is a trustee matter at the moment.

2 DOUGLAS SINCLAIR: Alright, exactly, and I'm going to ask you as a trustee,
3 Mr Manson. From what you have said it seems to me you're saying that the
4 independence, and perhaps, at least equally important, the perception of
5 independence of the trust can only be achieved if, as OSCR seems to be
6 suggesting, there is a change in the composition of the trust. Is that
7 correct?

8 CLLR MANSON: No, I'm not particularly saying that; I don't think OSCR have
9 necessarily got issues that the trust is not taking independent decisions, but
10 they foresee as a real danger that it may not independent decisions. They
11 respect the road which we have travelled and are urging us to step over the
12 finishing line, if you like.

13 DOUGLAS SINCLAIR: Okay, on the second point, if the trust in its business was
14 considering an application for financial assistance from the council, right,
15 what do the trustees do? Do they declare an interest as councillors?

16 JEFF GODDARD: That particular example, the trust deed actually precludes the
17 charitable trust from giving any financial assistance to the council in any
18 direct manner.

19 DOUGLAS SINCLAIR: Suppose it was faced with an application giving assistance
20 to a body in which the council has a direct or indirect interest. What would
21 you expect the trustees to do in terms of conflict of interest?

22 CLLR MANSON: I would expect the trustees at the very least to examine whether
23 they were being asked to fund something which ought to be funded by the
24 local authority, and if they felt that it was something that ought to be funded
25 by the local authority, to say no to it. Equally, whether or not they wished to
26 fund it, they also need to have regard to the trust's financial position. There

1 might be something which we reckon is not within the ability of the local
2 authority, something which we could usefully – would perhaps ideally like to
3 do, but if we can't afford it, we can't do it, so I certainly expect him to make
4 a decision in the light of the circumstances and the interests of the trust.

5 DOUGLAS SINCLAIR: And just to push the point a little bit further, you wouldn't
6 think the issue or potential issue of a potential conflict of interest would
7 arise, by virtue of the fact they were, as well as trustees, they were also
8 councillors?

9 CLLR MANSON: Yes, I think a potential conflict of interest could arise; I think that
10 they have been pretty good about realising that they have two different roles
11 to fulfil, but that is why I want to see a separation – sorry, well the final
12 separation, and when I say final separation, I have no problem with seeing
13 members of the local authority on the trust; I actually think that is the best
14 way in giving OSCAR's ideas, that the public of Shetland have of having
15 people elected by them on the trust, but – and certainly there's obviously
16 the potentially for conflict of interest.

17 Interestingly, I know that there is – I don't know whether it's still there
18 or recently been decided, a case in the Court of Session, where a trust, I
19 think, in fairly similar circumstances to our own petitioned in the Court, and
20 I'm not clear whether it's they, under the guidance of the Court, or the Court
21 that has come up with the separation, which I believe is entirely possible,
22 whereby there are councillor representatives on the trust, but that the two
23 bodies take separate decisions through separate people. Although the
24 decision put before the trust in February was quite simply for the alteration
25 of the trust – the composition of the trustee body, the working group which
26 had led up to that point had at least discussed some of the detail which had

1 to be gone into further, but that would've done – that would've looked at the
2 issues of separating the decision makers and setting the quorum so that
3 separate people could make decisions.

4 CHAIR: Mr Goddard, you wanted to add something?

5 JEFF GODDARD: Thank you, yes. Conflicts of interest has been a topic that
6 OSCR has been very interested in recently, over recent years. Our
7 understanding of where we've got to there is that there are some pieces of
8 business that we do where the other party in some form is either the council
9 or something that the council affects. Where OSCR have got to is that in an
10 ideal world, the trustees should withdraw from that meeting. However, if
11 that happens, we can't do any business, and OSCR have taken a pragmatic
12 approach to this; it is that for the time being, all the while they believe the
13 trustees are looking for an appropriate structure that will eventually resolve
14 these issues, they have accepted that we must continue doing business.

15 DOUGLAS SINCLAIR: I'm less than clear how OSCR's pragmatic view squares
16 with the councillor's code of conduct. It deals specifically with the role as
17 members of bodies such as trusts.

18 CLLR MANSON: Although there is much advice to us and we can seek advice
19 from the monitor – this is me speaking as a councillor – we can seek advice
20 from the monitoring officer and all the rest of it, the simple fact is that each
21 councillor or, if you're talking about OSCR regulation, trustee, has to
22 examine themselves and decide whether they're doing these things. I have
23 to say that I'm in a marginally different – somewhat different position from
24 other councillors; the chair of the trust does get a small honorarium, a small
25 remuneration, and as such I have a pecuniary interest, but not that that
26 weighs tremendously strongly with me, because I think I have a strong

1 interest in it. I am sure there are some members of the council who might
2 think I've gone native, but I am in the simple position that in most matters to
3 do with the trust, and/or its subsidiaries, I declare an interest in the council,
4 and I leave it. It makes the decision without me. That is no different from
5 when I first joined the council, and the council had some fairly – some vital
6 negotiations in progress with the oil industry, which was then my employer,
7 and I withdrew from those. During most of the interim period, I've had a
8 business in Shetland which, again, since I left the oil industry I mean, and
9 again, when matters pertaining to that particular area of business came up
10 in the council, I withdrew. I don't truthfully in my case, see the trust is any
11 different.

12 BILL MCQUEEN: Thank you. We've heard a lot about conflict of interest. I just
13 really wanted to finish off with a general point about that in relation to the
14 trust. Does the trust have a view on what the community interest is that it
15 serves, and how do you go about formulating that? I think you touched
16 upon this earlier, but can you just tell us where the trust is, or where your
17 own views are in relation to the longer-term relationship between the trust
18 and the council? Is there anything more you want to say to what you've
19 opened up with?

20 CLLR MANSON: The council is the biggest player in Shetland. The trust is a
21 significant player. It would be certainly bad for Shetland and in some
22 circumstances, fairly disastrous for Shetland if the two lock horns and are in
23 conflict. So, I would expect that the trust would work in partnership with the
24 council on many of the areas in which it operates. I have to say that the –
25 and there have been a couple of exercises. The biggest single one, which I
26 have referred to very briefly in my submission, was back in 2003/4 when

1 there was an examination of where the boundary lay between what the
2 council was doing, either statutorily or of its own volition, and whether the
3 trust was impinging on that. That resulted in some redistribution if you like.
4 In fact, it resulted in some things which the trust funded that ceased to be
5 funded. The council, some of them ceased and some of them, the council
6 decided to fund itself. But I think it's important that all of the parties in the
7 public or community area within Shetland work together and work together
8 sensibly. I would expect that.

9 I would say that, I think, is the role of community planning to some
10 extent; that is where the local authority expected to be the lead body, but it
11 brings in all of the public sectors within Shetland, or within any local
12 authority for that matter, and certainly, if nothing else, the third sector, of
13 which I see the trust as being a leading member in Shetland.

14 BILL MCQUEEN: And so is it that community plan that gives you the sense of
15 what the community interest, in addition to the views of the trust, and those
16 of the local authority?

17 CLLR MANSON: I hope so, and I hope that that community plan is arrived at
18 through consultation with the public itself and other bodies. Community
19 planning, just as its difficult to old habits dying hard, it's difficult to change
20 community views on whether – how close and together the council and the
21 trust are. The concept of community planning is only beginning to impinge
22 really on the public, and it again, is not a terribly riveting subject; it is a fairly
23 dry matter, but it's important, and I think that it's extremely important,
24 particularly in light o the circumstances that seem to be coming on with
25 public expenditure, that community planning is well done, and as inclusive
26 as possible.

1 CHRISTINE MAY: Trustee Manson, you said in your response a moment ago that
2 when the council discusses anything regarding the Shetland Charitable
3 Trust, you declare an interest and withdraw. Earlier on in the afternoon,
4 Jan Riise has said the council never discusses anything regarding Shetland
5 Charitable Trust. Can you clarify that?

6 CLLR MANSON: Well, I'm not sure I heard him say that, but what I mean is that I
7 think it may perhaps have been taken up wrongly. You would need to
8 check that with him.

9 CHRISTINE MAY: I beg your pardon, it was Ms Sutherland.

10 CLLR MANSON: Ah right, okay. The council does discuss things to do with the
11 charitable trust and/or its subsidiaries from time to time, but it's not a daily
12 occurrence, nor that frequent a one, and might I say that one of the
13 problems that Audit Scotland have are the perception that when
14 transactions occur between the two, that these are, as I've said in here,
15 cosy in-house arrangements. I think if those are examined in detailed, you'll
16 find that they're anything but. There are good reasons for the price being
17 charged, such things as the instance I use, that it takes no account of
18 liabilities being assumed as well as assets, and things like – which was
19 referred to this morning, the transfer – they glibly referred to as transfers –
20 they are not transfers, they are sales and purchases. The transfer – the
21 sale of Sullom Voe by the council to the trust – I'm sorry, I just solidly
22 disagree with Sandy Cluness on that one. The driving force, actually there
23 was that the council owned the site of the Sullom Voe terminal; the council
24 was desirous of having a capital receipt and the trust, frankly, the trust on
25 many occasions would rather have a stream of income rather than a capital
26 sum, and so the trust bought it, and it's been a decent deal for the trust. But

1 it was paid for by a lump sum, which formed a large proportion for a period,
2 of the general fund reserve of the council. If it was still there, there would
3 be a less of a problem in one respect, at least, in the council.

4 CHAIR: Can you just clarify for me something that I kind of touched on it earlier.

5 You have a negotiation with the council, and so we have a position where
6 the councillors line up and say, 'We want x', and the trust says, 'No, you can
7 only have it for x+' or whatever it might be. How do you negotiate with
8 yourself?

9 CLLR MANSON: We rarely do negotiate in that sense. No, no, sorry the trust
10 negotiates, but the negotiation is done substantially at times by Jeff or by
11 the general manager, and the – and with appropriate advice. For instance,
12 the transfer – the sale of the Sullom Voe terminal – was based on the
13 expected flow of income from it.

14 CHAIR: May I interrupt? I'm sure there are good bases for the calculation of the
15 figures sought. But, with respect to Mr Goddard, ultimately, any decisions
16 have to be sanctioned by the trustees? So, how can one negotiate with
17 oneself?

18 CLLR MANSON: Well, any deal –

19 CHAIR: Sorry, Mr Goddard?

20 JEFF GODDARD: Just to say that the trust has - I don't know whether it's two
21 regulators, as well as OSCR, we have the Inland Revenue. Certainly in
22 recent years, the Inland Revenue have taken quite a lot of interest in our
23 investment activity, and it's not just my recommendation that this is a
24 suitable investment for the trust; I often have to go and get the Inland
25 Revenue's blessing as well.

1 CHAIR: But I am still puzzled by the conceptual purity of this. How does one
2 negotiate with oneself?

3 CLLR MANSON: Well, in the particular instance I've chosen to highlight, the
4 council was a willing seller, and they had a buyer –

5 CHAIR: But the – sorry, but the other half of that deal were the same people?

6 CLLR MANSON: The same people having regard to the interests of another body.
7 But any deal –

8 CHAIR: Sorry, Mr Manson, this is straining credibility is it not? How does one
9 negotiate with oneself?

10 CLLR MANSON: The negotiation happens largely through the officials of the
11 bodies and the sanctioning comes from the two bodies.

12 CHAIR: But did you not take my point that the officials, I am sure, do an excellent
13 job on both sides, negotiating a particular deal, but both have to be
14 sanctioned by the same people. How can one be objective and then be
15 objective on the other side of the same deal?

16 CLLR MANSON: I am telling you that I have been for some time an advocate of
17 separating those functions, and that I believe the composition of the
18 charitable trust should be different precisely so that – I mean, as I say, there
19 aren't terribly many of these transactions, but when they take place, the
20 decisions are made by different people.

21 CHAIR: Thank you for that. Can I just check with my colleagues if there are any
22 further questions?

23 DOUGLAS SINCLAIR: A couple, I'll put them together with your capacity as a
24 councillor if I may? Would that be acceptable?

25 CLLR MANSON: Could I just say one thing, as a member of the trust? That is
26 that you have one – I've no idea whether you intend to question on it, or

1 whether it's of any interest to you, there is one submission, and I've spoken
2 to the person who made that submission. It's the submission that you're
3 going to question, I believe, from Kathy Greaves, where she asserts that the
4 appointment of a director to Viking Energy was done by the minority
5 shareholders. That's a conclusion she's drawn. The preceding paragraphs
6 there were a direct line, more or less, from a letter that I sent to her, and that
7 appointment was made by the directors of Viking Energy, not by the
8 minority shareholder.

9 DOUGLAS SINCLAIR: I'll restrict this to just the one question: you make
10 reference in your submission to the issue of the issue of recruitment of a
11 chief executive? You say the major difficulty is the salary structure in
12 Scottish local government is such that it is the people one would ideally like
13 to apply are actually debarred by the fact that they would be taking a salary
14 cut if they were successful. Could I just point out, and would you accept in
15 fact that the salaries set by COSLA, the employers' body, are ultimately
16 recommendations. Shetland Islands Council, along with every other
17 council, 31 councils, an independent employer in its own right, and so you
18 have the right to determine the salary advertised in the post of chief
19 executive, perhaps in a rolling contract, to provide enhancements. The
20 point I'm trying to make, and I wonder if maybe you'd accept it is the
21 solution actually lies in the hands of the council and it is within its gift?

22 CLLR MANSON: Yes, I do accept that. I do wholly accept that these are
23 guidelines rather than a dictation of the level – I noticed that one of our local
24 media outlets immediately interpreted this as I wanted to pay the chief
25 executive or the senior officials more. That was not the conclusion that I
26 drew from this; it's simply that – and I accept that the solution lies in our

1 own hands - if we want to offer then more money, I think that the perception
2 of offering them more money in the public of Shetland would go down like a
3 lead balloon at the moment, and probably at any time. However, I stand by
4 what I say, and I think the solution doesn't lie with offering more money; it is
5 being cleverer in (a) growing our own and (b) in the recruitment process.
6 But, when we do have to go external, if I was to portray my ideal external
7 candidate, and hope for two or three of these to be around, they're not in
8 the current circumstances, because as I say, in the main, for the salaries we
9 are offering, they would be taking cuts.

10 DOUGLAS SINCLAIR: You're right; it is a combination of factors; recruitment
11 practices, growing your own and having a sensible salary structure. Thank
12 you.

13 CHAIR: I nearly called you Cllr Manson. Mr Manson, Mr Goddard, is there
14 anything else you want to add to your evidence before we call a halt to his
15 session?

16 CLLR MANSON: No, I think there – we are interested, I think I would just reiterate
17 that we are more than willing to take part in discussions, but we would hope
18 that the first part of those discussions would be leading to Audit Scotland
19 thoroughly understanding some of the examples that they are using,
20 because they are seeing them from one point of view, and I think from a
21 limited point of view. I think there are actually two solutions to this. One is
22 that we agree for, I hope, good reason, to have our accounts grouped. The
23 other one is that our accounting friends decide that the grouping of
24 accounts is not actually going to benefit anyone particularly, and that the
25 transparency is already there.

1 CHAIR: Thank you for that. Audit Scotland will have a chance, if they wish to
2 make comments on your points about their view of this.

3 CHAIR: We would welcome tripartite discussion, but as I say, I do believe that this
4 trust operates as an independent entity and will take the final steps very
5 soon to sort out the trustee body and the question of possible future
6 transactions.

7 CHAIR: Gentlemen, thank you very much indeed.

8 [Meeting Adjourned]

9 [SESSION 5]

10 CHAIR: Welcome, gentlemen, to the front table. You will see that you have been
11 arranged in alphabetical order, so that there is no comment on hierarchy or
12 anything else. That is quite deliberate. Can I ask you please to state your
13 name and your position for the record, briefly?

14 CLLR ANGUS: Cllr Leslie Angus, Chair of Services with Shetland Islands Council.

15 CLLR DUNCAN: Allison Duncan, Chair of Audit and Scrutiny. Also the
16 spokesperson and councillor for Shetland South.

17 CLLR HUGHSON: Andrew Hughson, elected member for Shetland Central ward.

18 CLLR ROBINSON: Gary Robinson, councillor for Shetland West. I'm also the
19 council's representative on COSLA's Human Resource Management
20 Executive Group, and by virtue of that, I'm also on the SJNC for the Chief
21 Officials.

22 CLLR SMITH: Cecil Smith, councillor for Lerwick South, and Chair of the
23 Licensing Board.

24 CLLR WILLS: Jonathan Wills, councillor for Lerwick South, and also, of course, a
25 trustee of Shetland Charitable Trust, in which capacity I would like, if the

1 opportunity to arises this afternoon, to address you on the matters raised by
2 Mr Manson just now, there is a point I would like to make.

3 CHAIR: Right, well, we will come back to that, and I'm sure you will remind me if I
4 forget.

5 CLLR WILLIS: Could I also ask you chair, if you could clarify the position as regard
6 privilege of oral evidence to this Inquiry? I have been trying to find out
7 whether evidence is privileged or not, because there are confidential
8 matters that I may have to refer to; in a hope to avoid this, I sent you a
9 dossier of papers, but that has been rejected by you, Sir, so I would like
10 guidance from you as to the legal position on privilege of oral evidence to
11 this Inquiry, and I think my colleagues might likewise wish to be reassured.

12 CHAIR: Alright, the general position is as I read it into the record in my
13 introduction. The position is that unless you make statements that are
14 malicious, by which I mean are knowingly wrong, reckless or negligent, then
15 your evidence should not be challenged as something that can be pursued.
16 It is for you, also, I might say Sir, to check your own legal position.

17 CLLR WILLIS: Of course, but for additional clarity, I'm sorry to push this point; we
18 are concerned that if we say anything, it might be founded upon in other
19 legal proceedings. We are, to some extent, inhibited in what we – we feel in
20 what we can say to you, because of these legal considerations and we
21 would wish you Inquiry to be as full as possible, and we obviously wish to
22 cooperate with it, and in order to do that, we would ask you for a categorical
23 statement that the proceedings of this hearing are privileged.

24 CHAIR: Well, the position is, as I have just said, unless the remarks you are going
25 to make, and this is for you to judge at this time, are malicious, by which I
26 mean knowingly wrong, reckless or negligent, then the position we have is

1 that should keep you on the right side. Now, let me just go on and also say
2 again to you that we have a general right to ask for information, and that's
3 built into statute.

4 CLLR WILLIS: Thank you, I appreciate that. I am not at all happy, though,
5 because I think if you want to get to the bottom of this, you have to actually
6 see the settlement, the compromise agreement between Mr Clark and the
7 council, and you also have to see the complaint made by the six councillors
8 on the 7th of December, and I honestly, respectfully suggest that you cannot
9 come to a determination without seeing those documents, which have
10 necessarily – or until now, have been confidential. I would prefer they
11 remained confidential, because that was the legal advice I received.

12 CHAIR: I note your comments and I think we should now proceed with questions,
13 if you feel able to answer them. If you don't, we then have to decide what to
14 do about that.

15 So, with everyone's agreement, then, let me proceed to our questions.

16 The first one is a general one: it is about the Controller of Auditor's report.
17 I should say I realise that while you are appearing together, you are not
18 appearing as a group per se; you may have differing views on all sorts of
19 things here, and I'm sure you'll probably tell me. So, the first thing is the
20 Controller of Audit's report. It sets out a number of significant concerns
21 about the operation of the council. What do you see as the top priorities for
22 making the circumstances improve from that stated position of the
23 Controller of Audit? Who would like to go first?

24 [Pause]

25 Cllr Willis, then.

1 CLLR WILLIS: I welcome the auditor's report and I've written to Audit Scotland
2 about it making some suggestions. In April last year, I suggested changes
3 to the governance of the council, to the Audit and Scrutiny report. The
4 debate on that has been repeatedly stalled, and I think the suggestions that
5 I made there at least deserve discussion. They may be shown to be silly, if
6 we discussed them, but they deserve to be debated in open council as soon
7 as possible. We don't need to wait for a new chief executive to tell us what
8 to think about that. So, that's the first thing. The second thing, of course is
9 to get the finances back under control. On Wednesday this week, we'll
10 meet to consider a report by the deputy chief executive which I believe is an
11 excellent report and a very honest report, although it is extremely disturbing
12 to read it, and I think the concerns addressed - the concerns raised by the
13 Controller of Audit are being taken very seriously by all of us, even those of
14 us who don't necessarily agree with the council political leadership, and we
15 are working together on it, and I'd be happy to support what I've said earlier
16 on that topic.

17 CHAIR: Thank you very much. Can I just perhaps put a point to Cllr Duncan, for
18 the Scrutiny Committee; what's your observation on Cllr Willis' first comment
19 about scrutiny.

20 CLLR WILLIS: I feel that the debate has been delayed. I mean, the document is
21 here, if you would like to read it. It was published in the newspaper,
22 because I'm one of these awkward councillors who believes that things
23 should be discussed in public. I don't feel that we made any progress at all;
24 there's been a lot of waffle and I want to see some serious debate, and I
25 want to see papers arguing against what my paper said, so we can debate
26 it and come to a conclusion.

1 CHAIR: Okay. Cllr Duncan, do you have a response just now to help inform us?

2 CLLR DUNCAN: The most important thing to me here, my perspective, is we
3 must get all our finances under control. That's very important indeed, and
4 it's something that I've always been concerned about, to make savings in
5 this council since I joined in 2007.

6 CHAIR: Okay, what about the other point about getting on with it rather than
7 waiting – getting on with in terms of scrutiny, audit and so on, rather than
8 waiting.

9 CLLR DUNCAN: In what sense of the word do you mean...?

10 CHAIR: Well, I think the general theme this morning, we heard from members, is
11 that they are waiting for the interim chief executive to be appointed. I think
12 we were hearing from Cllr Wills that, 'Let's get on with it now', and I see
13 nodding from Gary Robinson. I'm just seeking a response, if you have – if
14 you feel able to give a response.

15 CLLR DUNCAN: Yes, I will give you a response to that. I think it's very important
16 that the new chief executive should be in place immediately, and from a
17 governance issue, it is something which we have to take on board and get
18 our act together in the governance of this council. There are improvements
19 to be made there; I can see that, and the sooner the better, Sir.

20 CHAIR: Okay thank you. Cllr Robinson, you were about to speak, and you were
21 just pre-empted about the top priorities for the council in terms of
22 improvement.

23 CLLR ROBINSON: Yes, I do agree that governance is something we need to be
24 moving ahead with, as soon as possible. But I supported Jonathan Wills at
25 the Audit and Scrutiny Committee, when we tried to get this moving, and as
26 I recall, we were the only two in that committee that supported doing

1 anything ahead of the appointment of a new chief executive. I have to say
2 that I found that tremendously disappointing.

3 CHAIR: Okay.

4 CLLR ROBINSON: Going back to your initial question about what we should be
5 doing and where we should be going. I picked up in Caroline Gardner's
6 comment earlier that this council was still looking back and not looking
7 forward. Well, I think there are some fairly good reasons for that.
8 Unfortunately I have the report by Robert Black into the departure of the
9 former chief executive Nick Reiter and sadly, there are all too many
10 occasions in this document where you could remove the words, 'Nick
11 Reiter', and insert 'Dave Clark', and it would still read through today. So, I
12 think to some extent, we need to look back and recognise the mistakes and
13 right them, before we can move forward. I strongly believe that what is
14 holding us back to some degree anyway, is things that have happened in
15 the past that are coming back to haunt us continually.

16 CHAIR: I suppose it is stretching a point for me to say that I pattern emerges from
17 two instances, spread over about 11 years, but is there some general point
18 behind the linking by you of – obviously, there's a point where you say the
19 council hasn't learned; is there anything else behind that that you want to
20 articulate in terms of what's specifically wrong that is causing this?

21 CLLR DUNCAN: I think it was recognised in this report, in fact it was the final
22 sentence of the conclusions, was the –

23 CHAIR: This is the earlier report?

24 CLLR DUNCAN: The earlier report, yes, Robert Black's report from July 1999.
25 Finally, I would suggest that there should be a review of the disciplinary
26 procedures for chief executives and as part of that review, a consideration

1 of the role of independent person and any recommendations made by that
2 person. That review never took place. I was asked by our Head of HR and
3 our Head of Legal to pursue that through the council group that I was on; I
4 did so, I met considerable resistance and it was finally, in December of last
5 year, that I managed to persuade the committee that that review should
6 take place. So, it's not just the council that's behind here.

7 CHAIR: Right, thank you for that. Now, who would next like to volunteer an
8 answer to my question, posed by Caroline Gardener's report? What are top
9 priorities of the council for improvement, please? Cllr Hughson?

10 CLLR HUGHSON: Well, I think the finances, answers you have heard, it's like a
11 no-brainer, because we have to be good at finance in order to run a
12 successful council. I think there has to be a realisation among councillors
13 that, you know, we're in an – every one of us are independent, and we have
14 our ward issues that we look out for in our ward, and it's a realisation
15 perhaps, it's maybe been exacerbated, but with a strain under the past year
16 with the chief executive, but we haven't been operating particularly well as a
17 council body, working together and when you're – even the atmosphere in
18 the work room, you know, there's just little bits of – when I was first elected,
19 everyone was newly elected, it was a great feeling to think that you were in
20 the council doing some good for Shetland. That may be a bit naïve, but
21 there's quite a strain in our own, small community. I think now – I think
22 we've been quite lucky to get this chance at recruitment – it's going well, I
23 think we are lucky to get Mr Buchan in place. I actually suggested to some
24 of the members when Morgan Goodlad left, that perhaps we should appoint
25 an interim chief executive, and I was knocked back by the reaction – well, it
26 was just people's opinion. Maybe in retrospect, it might have been a good

1 thing to have done, but I think now, we must make full use of Mr Buchan,
2 and we're not looking for fireworks: we just simply want a council that – if
3 he could just come in and steady the ship and get our ship back in order.
4 I'd be happy with that.

5 CLLR SMITH: Thank you. I think that the finances are certainly the main issue for
6 us at the moment, but we can look back as far as we want and what's
7 behind us is behind us now; we have to try and look forward, and I think that
8 this council can move forward, but it can only move forward if we as
9 members are prepared to change, and change our attitude. Also, that goes
10 for officers as well. In the past six months, I would say there hasn't been as
11 much working relationship with officers and members, or officers and
12 officers, and I think the way forward is we have got to sit down together and
13 iron out our problems and our issues and take this council forward, because
14 the main thing that I see is that we've got to get the community of Shetland
15 get back their confidence after what's happened over the last year.

16 CHAIR: Thank you very much. Anyone else wish to offer comment?

17 CLLR ANGUS: Well, I will just say briefly that I agree very much with Cecil that we
18 have to move on; we can move on; there is no question of there being
19 divisions created between some of the members over recent events, but
20 there's a lot more unites us than divides us. I am sure I am speaking for all
21 the councillors: we want to cooperate together in the interests of the
22 community and to take the council forward; we cannot do that entirely until
23 we successfully deal with the baggage that we're all carrying, and I think we
24 can do that in a mature and adult fashion, and I've made some suggestion
25 to Sandy as to how we might start that process.

26 CHAIR: Okay, yes, Cllr Duncan, please, then we'll move on.

1 CLLR DUNCAN: Thank you again, Mr Chair. Yes, we have to set priorities and
2 the first thing we have to do is get our finances in order. That's very
3 important, and there's governance as well, as I've said as well. We all – all
4 the councillors are aware of the seriousness of the situation here in
5 Shetland and it's very unfortunate that you've had to come to
6 Shetland today. However, there are good points to be made as well. The
7 whole council do agree on the way that we're going to go forward on
8 housing; it had a low priority when I joined the council, and it was the SNP
9 government in Scotland that stepped it up the ladder and the result is that
10 we are moving forward and, as you know quite well, and I think – I can
11 honestly say it's a unanimous voice from all the councillors on that issue.

12 There is restructuring to be done in other places, which are going to
13 be reviewed, and so the Total agreement, that showed that we are getting
14 out act together, so –

15 CHAIR: Thank you very much. I think what we'll now do with that opening
16 question, which sets the scene for us a bit is to move on to look at
17 leadership and roles and relationships, and Douglas, can I ask you to pick
18 up the questions?

19 DOUGLAS SINCLAIR: Thank you, Chair. Can I just pick up first of all, a comment
20 that Cllr Angus made that you need to move on, and we can move on. But
21 it touches on a point that Cllr Robinson made: where's the evidence of a
22 learning organisation, that learns from its mistakes? You made the point
23 that you have a pretty unique situation, that you've managed to terminate
24 the employment of two chief executives for the same principle: you had no
25 performance appraisal system in place. That's a fundamental common
26 denominator in the two; so, how can you persuade the Accounts

1 Commission and the people of Shetland this is a learning organisation, it's
2 an organisation that learns from its mistakes? Or, is it the case, a
3 perception, that Shetland is unique, that you are not bound by the same
4 principles of good governance, of good conduct and good standards and
5 good procedures that apply to the rest of Scottish local government. Which
6 is it, gentlemen?

7 CLLR ANGUS: We are certainly bound by all the codes of conduct and we are
8 expected to observe all the statutory obligations of every council in
9 Scotland, I think any of us hasn't any doubts about that. I think the
10 independence of the council and the differences that we've heard about
11 today, you spent a long time discussing the charitable trust. This makes us
12 different, and we do have to face different issues on a regular basis, but as
13 far as the governance of the council is concerned: you are right, we do
14 have work to do there, and the evidence that we are a learning
15 organisation, I hope you will accept that we have taken that on board and
16 we are starting to do work on that. The baggage that I referred to earlier, I
17 do believe have got to do with our internal structures, that we've got to start
18 addressing and I accept the point that we can't expect that an interim chief
19 executive is coming in and wave a magic wand; we have got work
20 ourselves to do. We also, I believe have to look at the structure that the
21 previous council has left us with, a council I was a member of and didn't
22 really agree with the present committee and other structures we've got now,
23 I think now is the opportunity to do that. And, other than that, I would leave
24 for the rest of my colleagues to comment on. But I think we are a learning
25 council; I hope we'll be able to produce evidence to that effect in the weeks
26 and months to come.

1 CLLR ROBINSON: If I could just pick up on that as well, I think one of the biggest
2 difficulties we've had, and again, it's not a recent problem is just the failure
3 to follow procedures, whether it's HR, disciplinary – that's picked up in the
4 1999 report; it's also picked up in more recent reports. I think where I would
5 hope that that would be somewhere where the new chief executive would
6 engage and try to ensure that we were following the procedures that we do
7 have, because in the main, I don't think we have bad procedures; it's just
8 that we've been lackadaisical at actually following them. I think members
9 need to be proactive in that as well, but that needs to be a team effort.

10 CLLR WILLS: Chair, I would like to make some comments on this issue. In my
11 submission, I listed what I saw as the several failures in the management of
12 the large project. One of the things I was very glad to support Mr Clark on
13 when he became chief executive was his moves to improve this and revert
14 to standard practice, which is all I was asking for. And, through that we
15 achieved the reorganisation and we've got Robert Sinclair in post now, and
16 I think that things are very definitely improving. I'm seeing that in the
17 reports that are coming to committees and to the full council. If you look at
18 our agendas, which of course are public, you'll see that this process is
19 happening, so I don't want you to think it's all criticisms.

20 What I am concerned about in moving on is that if you move on
21 without actually finding out what went wrong and who was responsible.
22 This is about accountability; it's the basis of accountability. I've detected
23 from Audit Scotland, and I hope not from you Sir, there is a tendency to
24 assign collective responsibility and collective guilt, even to those councillors
25 who have done their damndest to prevent the follies and errors and waste
26 which we have chronicled, certainly in the two years since I became a

1 councillor. So, I will not take personal responsibility for the errors of the
2 council leadership; I regard my job is to scrutinise them as a member of the
3 Audit and Scrutiny Committee, and to question them, and to question
4 officials and some of them haven't liked it. But that's going to go on. That's
5 what we're for.

6 Can I remind your vice chair, Mr Sinclair, that not a single councillor
7 has been found guilty of a breach of the code of conduct. I was accused of
8 10; I was exonerated on all 10 points. So, let's have none of this, 'It's all the
9 fault of the whistle blowers', if that's what we were, real whistle blowers in
10 this case. We were just doing our job and our duty, and we're not going to
11 be tarred with the same brush; I'm sorry, but we will not accept that.

12 DOUGLAS SINCLAIR: Can I just explore that a little bit further, then. I take it you
13 all accept that adherence to the code of conduct is a fundamental part of
14 good governance? Let me just take you through, then the Controller of
15 Audit's report, paragraph 36, 'In November 2009, the chief executive raised
16 concerns about public criticisms made about him by some members. The
17 council sought legal advice and the convenor circulated an advice note to
18 all members outlining the potential risks to the council', and Mr Clark in his
19 submission, paragraph six, 'The situation was of such severity that I had no
20 option but raise matters with the convenor. Shetland Islands Council
21 sought legal advice, warning members of the potential consequences of
22 their action. All but a couple abided by the code of conduct'. Go back to the
23 Controller of Audit, paragraph 37, 'Six elected members,' I think the six are
24 gathered here today, 'made a formal complaint to the convenor about the
25 performance of the chief executive.' You listed 20 issues of concern, and

1 the letter was circulated the next day to the local media; or it was in the
2 hands of local media the next day.

3 Would you accept that what happened was a clear breach of the code
4 of conduct, because the protocol is quite clear: public criticism of an officer
5 is not only a breach of the protocol, it is a breach of the code. My second
6 point is that if there is an argument that somehow there was ignorance of
7 the code, given the fact that the convenor had issued an advice note
8 advising you all of the potential risks, I have difficult understanding how
9 ignorance might be a defence. I would be interested in your comments.

10 CLLR WILLS: We are none of us, Chair, ignorant of the code of conduct. We've
11 all read it, and the Ethical Standards Commission, in an investigation which
12 took seven months in my case, went into these allegations and found that
13 the comments I had made were justified in the public interest. I said that
14 the issues I was raising, for example, hiring a former business associate to
15 do a review without going through the proper procedures, without going
16 through a committee, I thought was improper. I had to do something about
17 it quickly; there were other instances where I felt that when the teachers'
18 letters, private letters, to Mr Angus were published by the chief executive,
19 this is a gross breach of all sorts of regulations. I was acting in the public
20 interest as a whistle blower, and I will continue to do so. I hope that it is
21 never necessary to do so again, but the code of conduct cannot be used,
22 and I quote the Ethical Standards Commission, not exactly, but roughly,
23 cannot be used to shut down criticism, to silence awkward critics who are
24 acting in the public interest as whistle blowers, which is what I was doing.

25 CHAIR: Mr Robinson?

1 CLLR ROBINSON: Yes, I think you mentioned the advice that we received from, I
2 think Anderson Strathern, I think it was: that advice arrived with us towards
3 the end of November; I had actually sought that advice. I had emailed the
4 convenor on the 9th of November expressing concern about various
5 matters, concern on the chief executive. I waited weeks before we got that
6 legal advice. As I understand it, Mr Clark complained on the same day the
7 advice was produced, and got that advice within four hours. I just have to
8 question whether or not, had the convenor acted more promptly, upon my
9 suggestion at that time that he should make contact with COSLA, and
10 engage with the joint secretaries, that a considerable amount of what took
11 place after might have been avoided.

12 CHAIR: Just come back to Cllr Wills. Would you not agree, Cllr Wills that when
13 you're elected as a councillor, you sign an undertaking that you will abide by
14 the code of conduct; it's not part of the code of conduct, it is a clear
15 undertaking you will abide by the code of conduct. You can't pick and
16 choose which parts of the code of conduct you will abide by or not.

17 CLLR WILLS: That is self-evident. I have abided by the code of conduct; if you
18 think I haven't, I suggest you make a complaint to the Ethical Standard
19 Commission and do it tonight.

20 CLLR ROBINSON: Could I just scotch another rumour: it was suggested that the
21 six of us had leaked our own complaint. Could I just point out that there
22 was absolutely nothing to be gained by us either singularly or collectively in
23 leaking that complaint. It was entirely detrimental to our cause; several
24 members questioned whether it was one of us that had leaked it. I took the
25 step of approaching the reporter that had broken the story, and I understood
26 that as a journalist, he'd be unwilling or unable to reveal his sources. But, I

1 asked simply that he confirm that it was not one of the six who had leaked
2 the document to him. He confirmed that it was not one of the six, and he
3 also volunteered that it was not the convenor either. Just to be absolutely
4 clear, what was actually leaked was a draft which had only ever existed on
5 email, so how it came to be in the hands of the press, I can't say, but it
6 certainly was not leaked by any member that made the complaint.

7 CLLR HUGHSON: Just about a breach of the code of conduct. I actually have the
8 complaint here that went in, and it was done in confidence and it was a
9 formal complaint to the convenor; it was in terms of section 86(e) of the
10 COSLA chief executive disciplinary procedures. It was a procedure that we
11 went through, and as far as I can see, I broke no code of conduct by doing
12 that. I had severe concerns how the way things were going, listed in the
13 complaints and I was in no breach of the code of conduct.

14 DOUGLAS SINCLAIR: I don't think this is an issue of finding out who leaked it or
15 not; the point is the information was leaked; the information contained public
16 criticism of the chief executive. You've heard from the council's external
17 legal advisor that that weakened the council's case. It ended up with the
18 council paying more in the settlement than might have been the case.
19 That's my point. Do you accept that you need to observe the code of
20 conduct in full, particularly the issue of the protocol governing the
21 relationship between members and officers, that it is inappropriate in any
22 circumstance to criticise the performance of an officer in public? There are
23 other avenues for achieving that.

24 CLLR WILLIS: We did not do so in that instance, Chair; you've just been told we
25 didn't do it.

1 DOUGLAS SINCLAIR: I'm not asking you whether you did it, I'm asking you
2 whether you can accept the point of the advice given by the council's
3 external advisor that the fact, whoever did it, who made public criticism of
4 the chief executive weakened the council's case in negotiating with the chief
5 executive, entered the council in a situation where it had to pay more than it
6 might have to otherwise, and the only way to resolve that in the future, as a
7 learning council, is to get a guarantee that the councillors accept that the
8 code of conduct means what it says.

9 CLLR WILLS: We know that, we need to investigate who leaked it.

10 CHAIR: Cllr Wills, can I interrupt you, please I think Cllr Angus has been patiently
11 waiting to speak, and I'd really like to call the panel to some order here,
12 thank you.

13 CLLR ANGUS: I'd just like to reinforce what Gary has said; none of us leaked that
14 to the press, none of us, as far as I'm aware, and I certainly never made
15 any public criticism of any officer, I never would. But I would simply add to
16 the leaking of this document, to a letter which I had my solicitor write to the
17 convenor about matters not related to this, but to other matters, that I
18 required answers for as a councillor, that I felt were exposing me in a
19 manner that I didn't wish to be exposed to possible legal challenge. That
20 letter also found its way to the media within hours. Now, I hand delivered
21 that letter, and the convenor certainly didn't leak it. So, it's a sign of a
22 systemic failure in this council, and that's part of the baggage I think we've
23 got to address. I hope you'll accept that we do fully appreciate that there's
24 a serious issue for us, and we've got to address it.

1 CHAIR: I'm seeing nods around the entire group of you as well. Can I suggest we
2 then move on to other issues, thank you? Briefly then, just before we move
3 on.

4 CLLR ROBINSON: Briefly then, if I may before we move on, in Mr Clark's own
5 submission, I was absolutely astounded to read that the advice that was
6 given to councillors had also been formally shared with him, advice which
7 he subsequently used to found a case on. I find that absolutely astounding
8 and incredibly, and I would like to know who formally gave it to him.

9 CHAIR: I note your comments and the nods around the table again. We will move
10 on to Christine May.

11 CHRISTINE MAY: Thank you, good afternoon gentlemen. My question picks up
12 on Cllr Angus's last point, which is that you need to move on and rebuild
13 trust and I'd like to hear from as many of you as have a view on how, given
14 the tensions that have already been described as existing in the members'
15 lounge and wherever, given that they exist, how and what steps are you
16 individually and collectively going to take to repair that lost trust?

17 CLLR ROBINSON: I stated publicly some eight months ago, or maybe longer, that
18 there needed to be some truth and reconciliation within this council. I think
19 before we can move on, we must strive to understand what has gone wrong
20 here, and put steps in place to make sure it doesn't happen again. I think
21 only if we can manage to fully air the issues that have existed will we be
22 able to move forward. I want to look forward more than anybody else that
23 this whole past year really has been a distraction from what members would
24 really like to be doing.

25 CLLR WILLS: I think it's all very well to tell us about rebuilding trust; I find it a little
26 difficult to build a working relationship with officers who've signed, without

1 council authority, a vexatious and as it turned out, groundless complaint,
2 which led me into seven months of intense stress being under investigation,
3 with the possibility of losing my main income, which being a councillor is. I
4 haven't received an apology. I find it difficult to work with people who
5 allowed there to be a complete travesty of process at a disciplinary hearing
6 where I was basically, as victim, turned into the accused. I find it difficult to
7 work with people who appear to have withheld evidence from that Inquiry,
8 which might have changed its outcome. I find it difficult to deal with people
9 who misrepresented the actual result of that Inquiry as an exoneration,
10 when in fact it was a 'not proven'. And I will say I found it very difficult to
11 work with a convenor who almost immediately I was elected at a
12 by-election, and raised with him the concerns of constituents about the
13 siting of the new high school has treated me, I'm sorry, with consistent
14 hostility and condescension. I do my best; I have very good relationships
15 with many council officials. Most of the people I deal with on the council are
16 extremely helpful, none of it gets any publicity because it's constituents'
17 cases and I do a lot of that, with all sorts of departments, I don't have any
18 problem at all. I've had one or two high-profile clashes with senior officials.
19 I get on with most of my colleagues as councillors, and what I'm doing is
20 what I've always done, is I have a very good argument with people, but I
21 don't expect it to remain or get personal, and several of my colleagues will
22 testify that after furiously debating against them one week on one issue, the
23 next week I'll find I'm in agreement with them on something else. I think we
24 should all be big enough to set aside our personal differences and vote for
25 what we think we are trying to do, which is the interests of the community as
26 a whole, not just my ward. I don't think any of us is just acting in the

1 interests of our ward; I can think of several of my colleagues here who could
2 demonstrate that to you.

3 CHAIR: Can I just pursue that a little further, because I was about to ask you, but I
4 think you then got to the end of your statement and you became much more
5 conciliatory in terms of working as a group for the better good of the council,
6 and I note that with some interest. But, until then, you were really saying
7 you can't work with a number of people. We won't bother with who they are
8 for the moment –

9 CLLR WILLIS: Sorry, Chair, I didn't say that, I said I felt it difficult. Difficulties can
10 be overcome, and I'm making the effort to do so.

11 CHAIR: Well that was the reassurance I was seeking, thank you very much, Sir.

12 CHRISTINE MAY: Thank you, I wonder if any of the other members wanted to
13 have a stab at answering that question?

14 CLLR ANGUS: Well, I have suggested to the convenor that we meet together,
15 perhaps with a facilitator to discuss the kind of discussion that I think
16 Jonathan – I think we should be having with us, and the rest of his
17 councillor colleagues, in a confidential session, so that we can determine
18 what baggage we can leave behind and what baggage we have to carry.
19 Because we have to move on; there's mountains of work waiting to be
20 done, and I think we're getting along with our stumbling along in our own
21 way, but we do have to clear this baggage that I referred to, because it is
22 debilitating the work of the council and I think we can approach it in a
23 mature and adult fashion, and we just need the opportunity and the sense
24 to do it, and as I say, I have spoken – in fact, Gary and I have spoken to
25 Sandy about this, and he's agreed to do this, so I think that would be a first

1 step. But we have to get the terms of reference quite clearly laid out, and
2 make sure that the purpose is moving on.

3 CHAIR: Thank you. Cllr Smith wanted to say something.

4 CLLR SMITH: Thank you Chair. When I was a newly elected councillor in 2007,
5 and I came into the council with a lot of interest and a lot of enthusiasm, but
6 having the first two years under my belt, and what's happened in the past
7 year, I have to say that I'm still interested, but the enthusiasm has waned a
8 wee bit. However, I realise that we have problems in-house, and I suppose
9 I have to admit I may be a part of that. But nevertheless, we're big boys
10 and big girls and should be able to sort ourselves out and apologise to one
11 and other, but I think that also goes a bit further in that we have to realise
12 how we are dealing with officers and senior members as a council. Now,
13 what I fail to see in the council, and what I expected there to be, was
14 meetings with the chief executive, would come for an informal meeting with
15 the members and ask us what was going wrong, and what was going – that
16 never happened. It has never happened. What I can say is that the chief
17 executive we've got to take on in an interim period, was one of the
18 questions that I asked him, what his views on that was, should he be
19 appointed, and he said that was one of the essential points that he saw:
20 was meeting with members on a regular basis, in some instances two or
21 three times a day he'd walk into the lounge. I think if we get that person in
22 place, in post, and we as members can start to act and behave, we will get
23 the council back on a track to move forward.

24 CHAIR: Thank you very much, and I think Cllr Hughson wanted to add
25 something?

1 CLLR HUGHSON: It was really to follow on the comments that Cllr Angus was
2 saying, that how we can move on. But, you know, even at these difficult
3 times, it's not all been doom and gloom. I signed the complaint against the
4 chief executive, and it might not have made me the most popular person in
5 the council for doing so, it's only six of us, but when the issue of the
6 extension to the Shetland College – I should have said earlier on that I'm
7 Chair of Shetland College – I got support to get the funding from the capital
8 programme to build the extension to the college, so we have been able to
9 conquer some of the difficulties and the misunderstandings or
10 disagreements. But we have a long way to go, but we have shown that we
11 can do that, and now Cllr Duncan also mentioned the Total agreement.
12 Well, I think we did quite well in that as well, so there's more, I think, good
13 than bad.

14 CLLR WILLS: Chair, one of the problems we've had is the failure of the political
15 leadership to do like holding press conferences. I mean, I've seen councils
16 work in Fife and Edinburgh and Stirling when I lived south and was a
17 journalist. They don't work like this; the convenor fronts it, or the
18 vice-convenor, or the political leader, or the political leader. The chief
19 executive – both the last two chief executives were very much public
20 figures. And if they go out in public and start making public statements,
21 they can expect to get criticised; it comes with the territory.

22 Now, there was a point raised earlier – I might be running ahead of us
23 here, but the appointment of the chief executive, I was one of those that
24 thought the full council could interview candidates. I thought that because
25 I'd seen some of the silly questions that came from experts: psychological
26 profiles, I don't have much time for those sorts of people. I thought we

1 could make a decent job of it. But it never occurred to me that our own
2 human resources department would not do due diligence on checking the
3 references, checking the career history; I just assumed that would all be
4 done. That, I think, was the problem. When we came to the compromise
5 agreement, I was the only person, I think on the 4th of February who moved
6 that we didn't settle for an agreement, and I couldn't get a seconder. Now,
7 when the day came, on the 19th, I was away at a family engagement south,
8 and the meeting was reconvened at less than 24 hours notice, so although I
9 tried, I couldn't physically get back, and I tried to take part, not to vote of
10 course, but to take part by telephone, and that was denied.

11 What happened there was, from the members I've spoke to, they
12 thought they were sending Mr McCall and Mr Mair away to hammer out a
13 deal and come back with the nuts and bolts, with the clauses. Now, I don't
14 want to quote this document; I've seen this document, most councillors it
15 seems didn't read it. They certainly didn't read it before it was signed. I've
16 made notes on it which I've sent to you and they've been rejected as
17 evidence. They show, very much what Mr McCall was telling you earlier,
18 that there are individual sums of money of named for *solatium*. He
19 mentioned, you know, harassment, defamation, injury to feelings, the Race
20 Relations Act, making all sorts of allegations collectively against councillors
21 for misdemeanours that we never committed. It also says that the council
22 doesn't admit any liability for any of these alleged misdemeanours. Why, in
23 that case, pay money under headings which I've given you – I assume you'll
24 ask to see the document yourselves, so you won't need my notes, but why
25 do that? I don't understand it and I think it was extremely badly handled.

1 If there is one other thing I might say regarding Mr Clark, I've said in
2 my submissions that I'm quite happy with what Ethical Standards did in this
3 business, but I read in Mr Clark's submission, which you'll discuss tomorrow
4 and I may not be here, because I have to work. I would like to say two
5 things: my account of my dealings with him, which were initially cordial
6 although I wasn't one of his supporters when he was elected, is in the
7 papers that I've given you here. I've given you my entire email
8 correspondence with him; I've given you the document that the disciplinary
9 inquiry refused as evidence, which is an account of my relationship with
10 Mr Clark from the year dot. There's a specific allegation that Gary
11 Robinson and I brought *The Sun* to Shetland to expose Mr Clark's private
12 life. This is a fantasy; we did not contact *The Sun*. We were contacted by
13 *The Sun*. I agreed to meet *The Sun* reporter in the New Harbour Café,
14 where I bought the cup of tea and the bacon butty. I tried to get him
15 interested in the governance issues of Shetland Islands Council and gave
16 him copies of everything I'd said in public – only public material – he then
17 asked me lots of questions about Mr Clark's private life. I said, as I've
18 previously said to Lerwick gossips, that was none of my business, and I
19 didn't think it was any of his either, and I refused to answer them. He asked
20 about Mr Laidler and his career here, and I said, 'You'd better speak to the
21 people he stayed with the first night he was here', and he did that. In fact, it
22 was Mr Clark's problem with *The Sun* arose from what his partner's sister,
23 who ran the guest house where Mr Laidler stayed told *The Sun* and his
24 estranged wife. They gave the quotes, I didn't, and Gary didn't, and I will
25 not be smeared by this man any longer. Thank you.

26 CHAIR: Thank you Cllr Wills. Can we hear from Cllr Duncan?

1 CLLR DUNCAN: Thank you again, Mr Chair. In 2007, I was elected to serve the
2 people of Shetland, and it's in our interests to move forward for the people
3 of Shetland. That's why I'm here; I wouldn't have stood for Shetland if I
4 wasn't putting the people's interests at heart, because I've been a suffering
5 public servant visiting the length and breadth of Shetland since 1967. Yes,
6 we have our problems in house, which I can only say I apologise for, and I
7 have to maybe accept some of the responsibilities, and I will do so quite
8 publicly. I don't think that I'm 100% bad, but maybe coming towards that.

9 The one thing I would like to say where I think that we have fallen
10 down within the council as a whole is with communications. There have
11 been breakdowns in communication, and we have to get that area of
12 improvement made, and when that comes to fruition, I think you'll see better
13 working relationships among councillors and with our officers. That's one of
14 the weakest links I've seen, is the communication breakdown.

15 CHAIR: Thank you very much, I'm going to ask Christine May to take up the
16 questioning again, and it may bring you in Cllr Robinson as part of that.

17 CHRISTINE MAY: Thank you, we've strayed quite a long way from the question
18 you were originally answering, and Cllr Wills has indeed some of the
19 questions I was going to ask later on. What I'm wanting to explore though
20 is the capacity that you think you yourselves have and the rest of the
21 elected members in getting a form of working together that does not
22 preclude you from raising serious concerns, but has an agreed way in which
23 those concerns when they are raised can and will be dealt with, including
24 for example, time scales, and allows debates which should properly be held
25 in private, you know, disagreements between individual members on
26 structures or whatever, are things that should not necessarily be aired in

1 public unless they become so contentious. So, I wanted to talk about how
2 you get these things resolved before they become points of such contention
3 that people feel the only recourse they've got is to make them public.

4 Mr Robinson.

5 CLLR ROBINSON: Yes, I would like to respond to that if I might. I think, although
6 I haven't personally been involved in a lot of the reason for going out in the
7 media, going into the press, it's just the sheer frustration at times at not
8 being able to get the information. My folder here contains several emails
9 which I've either not had a response to from officers or have had a less than
10 respectful response from officers. I think it was highlighted in the Audit
11 Scotland report that there was, I think, that members were disrespectful of
12 officers. From where I'm sitting, it's a two-way street. Indeed, one email in
13 here dating from last November, I asked the deputy chief executive to
14 chase up for me last week, because in spite of verbal assurances that I
15 would get an answer, I still hadn't got an answer, and when the answer
16 came, it was so simple and straightforward, I just can't understand why it
17 took from November.

18 So, I think a good deal of what has happened here in the past has
19 been borne out of frustration. Again, maybe coming back to issues
20 regarding Mr Clark, there seems to be a complete inertia for weeks if not
21 months in dealing with the Willie Shannon situation, with the assistant chief
22 executive. In spite of myself and Cecil Smith and others urging the
23 convenor to do something, just nothing happened, and it was in fact Cecil
24 and myself that made the suggestion to the convenor about involving
25 COSLA and the Improvement Service. But I think that was probably late

1 October or early November before that happened, and not shortly after the
2 summer, as I think the convenor said earlier.

3 CHRISTINE MAY: Do other members have thoughts on how you get a collective
4 view among members?

5 CLLR HUGHSON: I can only go by, as you know, the wards now that are made
6 out of three – I represent Central Ward with Cllr Fullerton and Cllr Hawkins,
7 and we hold regular ward meetings, and we realised that we can never
8 agree on everything all the time, but we always try to agree on the issues
9 that are important, and if we had differences, then we'd just have to allow
10 for that at times. But that doesn't stop us from running a successful ward,
11 you know, we're quite proud of the way we do run our ward. But it takes a
12 bit of working and there are times when you simply don't agree and I will
13 admit there have been one or two places where I think you tend not to
14 speak for a day or two, but then you get back together and you're back on
15 side again. So I think, maybe sometimes, what's maybe been underlined in
16 all this is that unfortunately sometimes the council business, rather than just
17 stay quiet and get on again, it becomes a public issues, and it goes out into
18 the wider public. I know it's good to be accountable to the public, but at
19 times, if you have a falling out, sometimes it's best the least said.

20 CHAIR: Thank you, can I just go back to something Cllr Wills said, because I
21 need to pursue this a little. I think you said that the HR department did not
22 do due diligence on references for Mr David Clark, is that correct?

23 CLLR WILLS: Well, I assumed they did, but we're told there's a problem. I don't
24 know the details of it, and I'm not going to discuss Mr Clark's personal
25 references in a public forum.

1 CHAIR: No, indeed, I'm not suggesting you do. It was more whether you were
2 saying that the HR department had not pursued the references.

3 CLLR WILLS: No, what I'm saying is that I would assume that the human
4 resources department, which I would prefer to call personnel or staffing,
5 would have the resources to do that, but apparently they don't have the
6 resources to do all the work that needs to be done to hire somebody; you
7 need to get a consultant in, so I'm now told.

8 CHAIR: I'm still unclear; Mr Robinson might be able to help me.

9 CLLR ROBINSON: I think, just on that same subject, the way that this came about
10 was following the recruitment, in fact, alarmingly soon after the recruitment,
11 several members of the public contacted members, myself, Dr Wills and
12 others, because there were circulating copies of – I think at least one,
13 possibly two different versions of Mr Clark's CV, which had not emanated
14 from the council, I hasten to add. It was an application form application that
15 was made to the council, but there were these CVs circulating, and some
16 people claimed to know that some aspects were perhaps questionable.

17 CHAIR: Alright, okay. So, I think Mr Will's position is – and I think you're saying,
18 turn it around the other way, but I'm trying not to put words into your mouth.
19 I think you're not telling me that HR did not pursue the references, is that
20 correct?

21 CLLR WILLS: No, I don't know what they did. I said I would assume they would
22 have the resources to do that.

23 CHAIR: Alright, thank you.

24 CLLR WILLS: But it seems that if they did, they may have got things wrong.

25 CHAIR: It was for your own position I was concerned, thank you. Alright, we can
26 now move on to governance and accountability, and Bill McQueen.

1 BILL MCQUEEN: Thanks, Chair. I think in fact, you've heard me on these themes
2 of leaking to the media with Audit Scotland and then with other elected
3 members this morning, and then with officials, and I think we have well
4 detected a sense that this is perhaps more prevalent in this area than in
5 some other parts of Scotland. It's very important to have a vibrant, active,
6 engaged local media, so I don't think one wants to rehearse more of that.
7 We've got a sense that it's better to be able to disagree without being
8 disagreeable about it, but is there anything else in the mix, in terms of a
9 protocol, a policy, stronger – I think we've heard – internal communications,
10 if the council had a stronger effort there, that might assist in this area. I
11 think we're trying to gather ideas for how to better improve public trust and
12 confidence in the council's business. But I don't think there's much point in
13 rehearsing what we've heard from other contributors this morning, unless
14 there are particular points to add.

15 CLLR ANGUS: I'd just like to add that I would've thought by now that everybody,
16 every councillor and every employee of the council would be aware of the
17 consequences of leaking exempt information. On Monday of this week, or
18 last week sorry, we were given a report which included the details of an
19 offer to be made to an interim chief executive. When I got home, about two
20 hours later, the press were asking me to confirm the precise details of that.
21 Now, that's what I mean by systemic failure; we've got to stop that and
22 that's for us to do. When I say 'us', that's councillors: we've got to do that.

23 CLLR WILLS: Chair, I think what you're saying here, and it may be a little
24 unfamiliar is actual real, live working democracy without the party caucuses
25 that you see in many mainland councils. It's a bit prickly, it's a bit personal,
26 but it quite often, more often than you would think, works, because your

1 attention has been drawn to problems; your attention is not drawn to things
2 that are working today and tomorrow, routinely in every council office and
3 the fact that most of us get on fine with our staff.

4 What would really help is if we had more active leadership, political
5 leadership. One of the things I've suggested is that we should divide the
6 functions of civil head and impartial chair from political leader. It doesn't
7 have to be a party political leader; there is a lot of talent on this council.
8 There are a number of people who could fill those positions, and I hasten to
9 add I don't want any of them; I've got other interests and far too much to do
10 already. I'm not doing this; I haven't made all this fuss to win myself a
11 political empire.

12 CHAIR: Thank you for that. Is there anyone else who wants to respond to Bill
13 McQueen's point?

14 CLLR ROBINSON: Chair, just to touch on the whole question of leaks again, I
15 think there's almost been an assumption that it must be a member that's
16 leaking. I'm not convinced of that; I mean, certainly in the terms of our own
17 complaint.

18 BILL MCQUEEN: Can I just say there was not presumption in my comment; we
19 have heard throughout today and from Audit Scotland's report that this is a
20 more prevalent concern, and especially in relation to confidential material,
21 than probably in other parts of the country, and certainly I come from a
22 background in central government where there are leaks going on, and the
23 assumption is not that it is a politician always, or the officials. I was
24 certainly not making that.

25 CHAIR: And neither is the Accounts Commission.

1 CLLR ROBINSON: That's okay. Just to relate an experience of my own,
2 mid-December this year, I had an exchange of emails with two senior
3 officers and two senior councillors over a period of maybe 48 hours or so.
4 About 48 hours later, there was a freedom of information request from a
5 solicitor regarding those – what I presume to be those emails in the
6 exchange. I'll say no more than that, I'll let you...

7 BILL MCQUEEN: I think just one final point from me, to you Cllr Robinson, your
8 submission picked up the point that you were making that I think you have
9 elaborated it in the course of the afternoon, perhaps in your most recent
10 remarks, that officials seems to have been following an official party line, in
11 quotes, instead of representing the interests of all councillors, and I just
12 wondered if there was more to be said about that, and apart from improving
13 culture and behaviour and following good practice, best practice guidance,
14 what is to be done?

15 CLLR ROBINSON: I think you hit the nail on the head, there. It is, I think, from my
16 mind, an issue of culture change. I think there are ingrained practices
17 within this council that do need to change, and perhaps the most
18 fundamental of those, as I keep going back to, is just following the
19 procedures. The procedures that we have; I don't think we necessarily
20 need different or more procedures, but just to follow the ones that we have.

21 DOUGLAS SINCLAIR: Just two points, because I think these things are slightly
22 hanging in the air. Firstly, Cllr Wills, just coming back to the point about the
23 HR department collating references. I take it that you have no evidence
24 that neither did they collate their references nor did they handle that
25 improperly?

1 CLLR WILLIS: No, not at all, I've just heard it criticised that they didn't do a very
2 good job apparently, I don't know.

3 DOUGLAS SINCLAIR: But you've no evidence?

4 CLLR WILLIS: I wasn't a party to that; I was just a member of the committee.

5 DOUGLAS SINCLAIR: And equally Cllr Robinson, you've made the suggestion
6 that possibly leaks didn't just come from councillors. There's no evidence of
7 that, nobody does the leaking, but you suggested by implication that there's
8 a possibility of leaking by officers, but again, I put the question to you, do
9 you have any hard evidence of any leaks to the media by officers of the
10 council?

11 CLLR ROBINSON: No, I think the unfortunate thing is that nobody has got any
12 evidence of any of the leaks or where any of the leaks came from, and that
13 is, I suppose the distressing thing in this case.

14 DOUGLAS SINCLAIR: We can agree that it came from within the council?

15 CLLR ROBINSON: Yes.

16 CLLR WILLIS: On leaks, Chair, I of course, have been suspected of leaking to the
17 press for years because I used to be a journalist. But in fact, I stopped
18 being a journalist in 1993.

19 CHAIR: I think nobody here is accusing you of anything.

20 CLLR WILLIS: And I am not the sort to leak, but we do have very resourceful
21 journalists in Shetland, and probably more journalists per square inch than
22 anywhere else in Britain, and that may be the source of the problem.

23 CHAIR: Let's move on, I've got one eye on the clock, there are one or two other
24 questions coming our way, but first of all, Christine.

25 CHRISTINE MAY: Thank you, I wanted to follow up Cllr Robinson's point. He
26 said, 'We've got lots of very good policies and procedures, we just need to

1 follow them'. Can you expand a little on who you think is going to be
2 responsible for ensuring (a) that they're implemented and (b) that they're
3 followed?

4 CLLR ROBINSON: I think I touched upon that earlier, in saying that that was a
5 team effort for both members and officers. I would hope that the new chief
6 executive would take a leading role in that, but as I say, we all have a part
7 to play.

8 CHRISTINE MAY: Let me just press you a little on that. As the HR spokesperson,
9 do you see yourself as having a role in doing that?

10 CLLR ROBINSON: Yes, absolutely.

11 CHAIR: Thank you. We move on finally to the subject of financial management.

12 Can I just say, everyone, ladies and gentlemen, we are not going to be
13 terribly much longer, so if you just bear with us, we are within minutes rather
14 than hours of finishing.

15 GRAHAM SHARP: To sweep up on financial management, following the
16 questions I put earlier in the day. Everyone agrees about the financial
17 situation, and broadly the actions that need to be taken, so I won't rehearse
18 that, but a critical part of the whole way the system has worked here has
19 been members' ability to put behind the ward interests and look at the
20 corporate interests when approving major financial decisions and capital
21 programme, and indeed, budget revisions that may affect some wards more
22 than others, etc. I'd like particularly to ask the four members who didn't sit
23 before us before whether they believe there is a genuine commitment to
24 take a more corporate approach to this aspect of managing the council over
25 the next few years?

1 CLLR SMITH: I think that we've already started on that. I think we realised that
2 the capital programme has to go ahead and we've got to get a better grip of
3 things. I think that it's very difficult, when there are 22 independent
4 councillors, and you've all got you little goal that you would like to go for, but
5 at the end of the day, some of us have got to back off and say, 'We're not
6 going to get that this time, it's got to carry on'. That's where I find it difficult
7 for a lot of people. I'm different, I suppose in Lerwick South ward, because
8 we do quite well, and we're looking for a lot of big capital spend at the
9 moment, whereas maybe some of the country areas that are looking for
10 that, so I think that for me, I don't find that quite so difficult. But
11 nevertheless, if I think that I've got a point to shout for my constituents, I'll
12 do that, but I do think that we've started to make inroads.

13 CHAIR: Thank you, any other comments, Cllr Robinson?

14 CLLR ROBINSON: Yes, I was aware of what you mentioned earlier on about the
15 Best Value report, and I think it hinted that some councillors are behaving
16 parochially and I've been mindful of that, I think, for as long as I've been a
17 councillor. I suppose the most recent evidence of that would've been last
18 week when we had to discuss the blueprint for education, and I think the
19 important thing there was that we looked at it as a Shetland wide solution,
20 and we didn't start having a bun fight about which bit was in whose patch. I
21 admit, that may not have made me popular with some of my constituents,
22 but at the end of the day, I felt it was important that we did look at the wider
23 picture, and we did actually end up with an education system that we can
24 hopefully afford.

25 CLLR WILLIS: Yes, this impinges to some extent on the discussions about the
26 trust, because the Shetland Charitable Trust and several other trusts, which

1 I hasten to add are not subsidiaries of Shetland Charitable Trust, they are
2 independent, Shetland Recreation Trust, Shetland Arts, and Shetland
3 Amenity Trust, are independent trusts; they are not subsidiaries, and we
4 don't control them, and sometimes we wished we did. They provide
5 services to the council which frankly are not available in the private sector in
6 Shetland in a population of 22,000 people.

7 One of the reasons for trusts is that if they weren't there, you'd have to
8 invent them. They commonly provide services and facilities: we're the
9 clients, and they're the suppliers, and normally they are governed by
10 service level agreements or contractors, I prefer to call them. Some of
11 these agreements relate to the performance of the council's statutory duty,
12 like a recent example is providing physical education to school pupils, and
13 we have to do that by statute, but maybe we're doing a little extra, and
14 maybe we have to distinguish between what's discretionary, optional, and
15 what's statutory. If it's statutory, and the trust is giving us a cheaper deal
16 than the going rate, then that's wrong, you're quite right. But if it's
17 discretionary, frankly, and arrangements we make for charitable donations
18 from a charitable trust are our business.

19 Some of these agreements relate to the statutory duties, and some to
20 discretionary. One of the main areas which I understand is discretionary is
21 the care of the elderly. The council has a duty to assess the elderly people
22 and assess their needs, but I don't think we have a duty to provide old
23 people's homes. Therefore, you need to understand that when you talk
24 about grouping accounts, because the council gets a very good deal from
25 the trust, because it's charitable; it actually relieves the national exchequer
26 of some money, because it's charitable money coming in, admittedly to

1 provide a higher-than-national standard of provision in smaller units. So,
2 let's make sure we understand all this before we start saying that we must
3 group the accounts automatically.

4 Where the trusts are helping us, it's normally in charitable areas,
5 where I don't believe grouping of accounts is appropriate. If the council, for
6 example, contracts with the Recreation Trust, to provide leisure services,
7 and contracts with the Amenity Trust to provide museums and archives,
8 which are statutory functions –

9 CHAIR: Can I interrupt –

10 CLLR WILLIS: We need to know that we're getting value for money, we're getting
11 a good deal, and we're not being subsidised, you're quite right.

12 CHAIR: We seem to have backed into the trust's affairs again, rather than the
13 capital programme –

14 CLLR WILLIS: We are, my point Chair is that it has such an effect on the council's
15 finances that if you're – if we're going to have to terminate these
16 agreements, it's going to cost a lot more the council's statutory services.

17 CHAIR: I understand your point.

18 CLLR WILLIS: I do suggest to you that the auditors slightly misunderstand the
19 position, and if I could just finish on that same point, just one sentence –

20 CHAIR: Very briefly.

21 CLLR WILLIS: Again, I've presented you with a discussion paper I wrote for my
22 colleagues on the trust, making suggestion that we should change the
23 constitution of the trust so it had eight independent directly elected trustees,
24 and seven councillors, one from each ward. I asked OSCR at a meeting
25 last week, 'Would that satisfy your concerns as to demonstrating the
26 independence of the trust from the council?' and they said, 'Yes'. When I

1 put it up at the trust, Trustee Cluness and his coterie voted it down, so there
2 we are.

3 CHAIR: Thank you very much, and then Cllr Duncan, please.

4 CLLR DUNCAN: Thank you again, Chair. In answer to Mr Sharp's question of a
5 corporate approach to financial management, we've already started on that,
6 Mr Chair, because there are members now working alongside officials in a
7 Financial Resources Working Group led by our Vice-Convenor Simpson.
8 We're taking on board very seriously the situation, because we have to find
9 savings of £9.9 million this year, and we've been told on the guesswork of
10 percentage reductions from the Scottish government of grant, that next year
11 we have to find somewhere between £15 and £17 million, and we're already
12 looking at that as well. So, in answer to Mr Sharp's question, we are
13 making headway to have a corporate approach in our budgets. Thank you
14 Chair.

15 CHAIR: Thank you. Cllr Hughson?

16 CLLR HUGHSON: Thank you, I think also, we know there'll be cuts in the future,
17 but I think that if we're aware of the cuts, we'll fall upon those, but we can
18 also make efficiencies, hopefully we can make efficiencies: if you can
19 match the efficiencies with the cuts, well then really you should be able to
20 manage it quite well. I think with the appointment of Robert Sinclair to
21 manage the capital programme, I think we've made a step already in the
22 council because we should be more able to manage our capital spend. I
23 mentioned earlier on the college extension, but that wasn't in the capital
24 programme, and we had at a council meeting, it was put into the capital
25 programme, but with the understanding, you know, that the gateway
26 process would probably stop some projects that are in there, and so what –

1 if you put something in, you've got to take something out. I think that stops
2 the capital programme from simply becoming a wish list for things to be
3 done. It's more accountable now than it ever was.

4 CHAIR: I think Cllr Duncan wanted to make a supplementary point?

5 CLLR DUNCAN: That's correct, thank you for giving me the opportunity Mr Chair.

6 I presented you with a document this morning which showed you that we
7 had made efficiency savings of £700,000 in the year 2009/10. So, that's
8 further evidence to show that we are doing our very level best in a corporate
9 approach to make efficiency savings as well as reducing our budget.

10 CHAIR: Let me just check with my colleagues, are there any other points anyone
11 wishes to raise? Any final brief comments anyone wishes to make from the
12 panel?

13 CLLR ROBINSON: Chair, I will be brief, and it's just to pick up on something that
14 Dr Wills mentioned earlier on, and that was actually the meeting on the 19th
15 of February, when the settlement, well, appears to have been agreed. My
16 recollection of that day, it was ingrained in us at the beginning of this council
17 that before a council could take any action, there needed to be three things:
18 power, authority and budget. As near as we got to setting a budget that
19 day, I recall Cllr Angus saying, and just for argument's sake, I'll use the
20 figure that you used earlier, 'So we won't get much change out of £300,000
21 then?' That was as close as we got to ever setting a budget. Now, bearing
22 that in mind, I expected this to come back to us, because we were told that
23 nothing would be agreed without our consent, basically. Bearing that in
24 mind, I emailed the convenor earlier in the week following the 19th,
25 suggesting that given the gravity and the expense being talked about, that
26 we should perhaps engage in the opinion of counsel to make absolutely

1 sure whether or not we did indeed need to pay that money. The response I
2 got was basically, 'Great idea, but too late'. I was a bit perplexed by that,
3 and then it transpired that the settlement was going ahead without any
4 reference back to councillors, which I understood was happening.

5 I think it was Rory Mair that made that statement, so I emailed him,
6 and effectively asked – well said, 'I understood this was coming back to us
7 and it hasn't, why not', and it's one of those emails I haven't got a response
8 to, I'm sorry to say. Bearing that in mind, in terms of the complaint that we
9 submitted: I think it's significant that the complaint was never dismissed.
10 The complaint was made on the 9th of December; the complaint was not
11 dismissed until 24th of February this year, which I believe was the day that
12 the settlement was made, so it was in limbo until then.

13 BILL MCQUEEN: Can I just pursue you and your colleagues on that point of what
14 happened on the 19th. I think I asked a question this morning about that,
15 and was – I've now forgotten whether the answer came this morning or the
16 legal advisor this afternoon, but my understanding, and I thought I saw nods
17 around the table, was that the council (a) saw written advice and (b) saw
18 the quantum that was being discussed and (c) on that date, the 19th of
19 February, was content after much discussion to, with regret, accept the
20 advice of Mr Mair and the Anderson Strathern legal advisors that that was
21 the deal that needed to be done. That was what I had taken. Have you
22 discussed with many of your colleagues this different interpretation that
23 you've just given us here, and do others in the wider group of colleagues
24 have your understanding or a different understanding?

25 CLLR ROBINSON: I haven't taken a straw poll, but I do understand that there are
26 other members who were of the same opinion as me.

1 DOUGLAS SINCLAIR: You were actually recorded as being at that meeting,
2 Cllr Robinson. Are you saying that the decision of the meeting is not a
3 correct record?

4 CLLR ROBINSON: Well, like I say, there was no budget set; there was no budget,
5 and when the press started bandying around figures that the settlement
6 could be in the order of £400,000 or £500,000, that was not what I'd signed
7 up for, and when Dr Wills went to actually see the document, then I don't
8 consider it bore any relation, any resemblance that I had agreed to.

9 DOUGLAS SINCLAIR: Just let me be clear about this: is your suggestion that the
10 council made a decision without the necessary information in front of every
11 councillor as to the implications of that decision? Is that what you're saying
12 to the Commission?

13 CLLR ROBINSON: There was no clarity as to how much that deal was going to
14 cost. The only clarity was in terms of the legal advice which had been, I
15 think, capped at a set amount for Mr Clark, but beyond that, there was not –
16 it effectively could've been a blank cheque.

17 DOUGLAS SINCLAIR: You didn't move an amendment at the council meeting;
18 the meeting accepted unanimously the recommendation?

19 CLLR ROBINSON: Like I say, it was my understanding that it had to come back
20 because there was no budget; there was no finite amount, even indicative
21 amount set for how much it would be.

22 DOUGLAS SINCLAIR: Just reading from the minute, 'Mr A Cooper seconded, in
23 the absence of any amendment, this was declared the finding of the
24 meeting'. There's no ambiguity about that.

1 CLLR ANGUS: I can perhaps assist you on that: what the meeting agreed was,
2 as I said this morning, was a heads of agreement and a sum of money of
3 the order of – there was no specifics.

4 DOUGLAS SINCLAIR: Well, the minute actually says that, ‘The council’s
5 contractual relationship with the current chief executive be ended by mutual
6 consent in the terms outlined in the report and that a joint public
7 announcement would be made’

8 CLLR ANGUS: The minute is not incorrect, it just is – it could mislead, obviously,
9 depending on – you’ve read something different to what I’ve read into it.

10 DOUGLAS SINCLAIR: It’s yet another example of governance not being fit for
11 purpose, that your decision making processes are not as clear and as
12 transparent as they should be?

13 CLLR ANGUS: It may well be part of the systemic failure, but it was also my
14 understanding that the detail would come back to us for approval.

15 CLLR SMITH: I think that the only point I would say, I think that things have gone
16 fairly wrong on us this last while, and we can point fingers at individuals,
17 and so we maybe should, but I was the member that did, I suppose,
18 approach the convenor first with my concerns regarding what was
19 happening regarding the council. I had a long conversation with him, and
20 suggested that we should maybe be thinking about getting COSLA
21 involved. He agreed with that, and I think that the day that Cllr Robinson
22 gave in the letter of complaint was the day that he actually phoned COSLA
23 and said, ‘Yes, we’re needing you to help us’. Now, I think that, during the
24 whole process, the convenor found himself very isolated. He was told you
25 can’t get involved in this; you’ve got to stay out of it. He kept telling me that.
26 I’m isolated, so I think that we can’t really and shouldn’t possibly point the

1 finger at the convenor and say that it's his fault only. I think he was told,
2 'You've got to stay away from this', and leave it.

3 CHAIR: Thank you, and I think the final word from Cllr Hughson?

4 CLLR HUGHSON: For clarification really, because I did sit and look through the
5 submissions one night, and I noticed a submission made by David Clark – I
6 got the impression that he wasn't particularly happy with me, and he said he
7 was happy with most of the rest of them. I'd just like to clarify that on
8 Mr Clark's appointment, within – I couldn't say exactly, but in a very short
9 time, the Central Ward, that's Betty Fullerton, Iris Hawkins and myself
10 asked for a meeting with David Clark. We had a very agreeable meeting
11 and discussed the issues in our ward, just to make him aware of what was
12 going on in the ward. Shortly after that, he was visiting NAFC in Scalloway,
13 and we managed to secure another meeting with David Clark, where we
14 discussed among other things NAFC, dredging, footpaths, East Voe, central
15 ward issues again, and then I took it upon myself as Chair of the Shetland
16 College to ask that the director, George Smith and I would meet with David
17 Clark to discuss the plans we had for an extension at the College. What I'm
18 trying to point out here is that I think by my actions I proved that when David
19 Clark was appointed as chief executive, I was more than willing to work with
20 him in this council, and at the end, things have gone very wrong, but I feel I
21 am not responsible in any way for what went wrong. The blame lies with
22 David Clark himself.

23 CHAIR: Well, he will have chance to respond to that tomorrow. I think I'm going
24 to call a halt to this session and indeed, to today's proceedings. Can I first
25 of all thank the six councillors we see here for their time and trouble coming
26 forward to speak, as a group but a disparate group with different views on a

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lot of matters? Thank you very much for that. Thank you ladies and gentlemen for both your attendance and your attention. We reconvene tomorrow morning at 10 o'clock, and we hope to see you then. Thank you.

[The Inquiry Adjourned]