



## Briefing on Shetland College Merger and Privatisation June 2021

The EIS has an ongoing campaign to oppose the privatisation of Shetland College. Two previous MSP briefings on this matter are enclosed as Appendices.

The proposed College vesting date is 1<sup>st</sup> August 2021. Contrary to previous advice from the Scottish Funding Council (SFC), the College will vest prior to any Ministerial or Parliamentary scrutiny i.e. the College will pass from public ownership and control into private hands, despite remaining publicly funded.

The EIS has written to the SFC questioning its role in the decision-making process which is leading to college privatisation on the Shetland Islands. Correspondence is enclosed as Appendices. A number of documents which evidence and outline our significant concerns are embedded within the letter's appendix, including the SFC's initial advice that the College should be privatised.

A history of the EIS campaign to date is [here](#) and a reminder that this will be **the first a Further Education college in Scotland has transferred from public ownership and control into a private company.**

The SFC intends to channel funds to the new private limited company via another UHI College for at least six months prior to the new college seeking assignation to UHI (the regional strategic body) because the UHI cannot lawfully fund the new (private) college prior to assignation. This is not a transparent process and we question the channelling of public funds in this manner.

TUPE consultation is ongoing with existing staff and union representatives. Members have been informed it is likely there will be an "economic, technical or organisational reason" for restructure, with potential redundancies, following their transfer into the new private college.

The SFC is a creature of statute and is subject to Ministerial and Parliamentary oversight as a non-departmental Government body. We are alarmed at the manner in which SFC has exercised its functions of 'corporate governance, including openness and transparency in decision-making' throughout this merger process.

Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities of the SFC and its use of resources. We urge the responsible Minister to investigate these issues with SFC Chairperson and Chief Executive. We further urge the Education and Skills Committee to consider these matters seriously and do what they can to investigate.

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### **Appendices**

Appendix 1 – MSP Briefing, December 2020, page 3

Appendix 2 - Letter to Karen Watt, Chief Executive and Accountable Officer of SFC, from Larry Flanagan, EIS General Secretary, March 2021, page 5

Appendix 3 – MSP Briefing, March 2021, page 11

Appendix 4 – Reply to Larry Flanagan from Karen Watt, April 2021, page 12

Appendix 5 – Letter to Karen Watt from Larry Flanagan, May 2021, page 15



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### Appendix 1

EIS are calling on you to support our campaign to oppose the privatisation of Shetland College. A history of the EIS campaign to date is [here](#).

The College is currently part of Shetland Islands Council (SIC). It is being merged with Train Shetland (also part of SIC) and the North Atlantic Fisheries College Marine Centre UHI (NAFC), which is an unincorporated college governed by a Board of Trustees. The EIS are not opposed to this merger.

The EIS are opposed to the recommended business plan, approved by SIC, that the new Further Education college (Shetland College UHI) is to be unincorporated and is registered as a private company limited by guarantee. Although the NAFC is already a private entity, **this would be the first time in Scottish history when a Further Education college has been transferred from public ownership and control into a private company.**

Privatisation will mean:

- The new college is not subject to the same level of Scottish Government oversight as the vast majority of other colleges throughout Scotland.
- It is not a public body, accountable in law to the democratically elected Scottish Parliament.
- Board members are only liable up to the financial ceiling set when the company is formed (recommended to be as little as £1 per member).
- The private limited company can build up unlimited financial reserves, unlike incorporated public colleges, meaning money does not have to be re-invested into teaching and learning. This is despite the majority of funding continuing to come from the Scottish Funding Council (SFC) i.e. tax-payers' money.
- The new college is not subject to full reporting by Audit Scotland on their financial stability.
- It could not have the Board of Management withdrawn by Scottish Ministers if necessary.

The College Transition Board has been appointed with vesting date envisaged as August 2021. The SFC has completed its consultation exercise. The EIS response is [here](#). The Scottish Government has yet to open its public and statutory consultation prior to the decision being made by the Cabinet Secretary in accordance with the Further Education (Scotland) Act 1992. The Order (likely to be a negative SSI) will face scrutiny and accountability at the Education and Skills Committee at a date to be determined. It is unclear what the proposed dates for consultation are. EIS want to make MSPs and other interested parties aware, now, about the proposed changes in order that due accountability and scrutiny takes place.

We believe there needs to be a look beyond current economic trends to provide long-term quality education for students in Shetland and across Scotland. The National



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Taskforce on Human Rights Leadership is currently working to establish a statutory framework for human rights that will incorporate internationally recognised economic, social, cultural and environmental rights into Scots law. As you will be aware, the right to education is a key human right and privatisation is a clear threat to human rights.<sup>1</sup> Failure to address well-founded concerns around this merger in the knowledge of privatisation plans and the human rights issues this presents is in direct conflict with the message that Scotland is a human rights leader; a message that comes from the First Minister herself.

EIS understand that the timescales for this scrutiny may be quite narrow. As such, our EIS-FELA members invite you to a virtual briefing session on **TUESDAY 15<sup>TH</sup> DECEMBER AT 6:30PM**. Our members will be able to provide you with evidence directly on why they believe Shetland's Further Education should be kept in public hands.

If you are able to attend, please RSVP to Margaret Brown [glasgow@eis.org.uk](mailto:glasgow@eis.org.uk) before Monday 14<sup>th</sup> December, 5pm and a virtual link will be sent to you.  
#KeepShetlandCollegePublic

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<sup>1</sup> Alston, Philip "Report on Privatisation of the UN Special Rapporteur on extreme poverty and human rights" September 2018 <http://undocs.org/A/73/396>



## Briefing on Shetland College Merger and Privatisation June 2021

### Appendix 2

Ref: SC/SHE4/GAO

11<sup>th</sup> March 2021

K. Watt  
SFC Chief Executive & Accountable Officer

By email only

Dear Ms Watt

### Shetland College Merger

I am writing to you on behalf of the EIS in your role as Accountable Officer and Chief Executive of the Scottish Funding Council.

It is the EIS's understanding that the SFC Board will meet tomorrow, Friday 12<sup>th</sup> March 2021, to consider the case for merger and creation of a new Shetland College and may decide to 'endorse' the merger, accepting the case in the Ministerial Merger Business Case (appendix 1) which includes governance arrangements of the new college to be non-incorporated as a private limited company.

We note that despite several requests we have not yet had sight of the SFC report on the merger which was originally due to go to the Board on 4<sup>th</sup> March 2021, a failure in transparent governance from our perspective.

SFC began discussions on this merger process with other stakeholders in April 2018 and published the process to be followed, in terms of stakeholder engagement and Parliamentary process; advising stakeholders of indicative and established timelines.

Based on previous SFC advice to Shadow Board and all stakeholders, including Shetland Islands Council, our understanding was, following 'endorsement' by SFC, the SFC would provide advice on the merger and its arrangements to Ministers and there would be a process of Parliamentary scrutiny prior to vesting date. Indeed, appendices 1,3,4,7,9,10 below state this position – including the Ministerial Merger Business Case and the timeline to vesting date which is published on UHI's website.

We now understand, however, that SFC is advising that vesting will take place on 1<sup>st</sup> July 2021 without any prior Ministerial approval or Parliamentary scrutiny. Instead, it seems (contrary to previous SFC advice) that the sole Parliamentary scrutiny is for



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assignment to UHI for purposes in terms of section 7C of the 2005 Act, six months after vesting.

The College will vest, with the governance arrangements outlined in the Ministerial Merger Business Case, without any Ministerial, Scottish Government or Parliamentary approval. This is entirely contrary to advice which SFC gave previously and makes a mockery of the title of the Ministerial Business Case itself if there is no longer any 'Ministerial' element.

If the SFC Board endorses the creation of new College, then it will have authorised the creation of the College with a governance structure of a private entity and no further effective scrutiny of the merger process can take place thereafter. It is not clear to the EIS as to how the Scottish Parliament is accountable for this decision.

Furthermore, we understand that SFC rush to endorse the creation of the new College without the Parliamentary process of assigning it to the Regional Strategic Body UHI Court of the Highlands and Islands FE Region, means that it cannot be funded by the SFC or by the Regional Strategi Body. We understand, however, that the SFC has a fix for this and that, in the interim, the College will be funded via a separate UHI College. This is not a transparent funding arrangement and seems to be contrary to the spirit of accountable funding and the Public Finance Manual.

Regardless of whether a further education college is incorporated or not, it is perverse that public finances can flow into the hands of any entity in such an opaque manner and, it would seem, contrary to your original and currently publicised advice.

There is clearly a lacuna in the legislation if further education in Shetland can transfer from public ownership and control, into ownership and control of a private limited company, whilst remaining publicly funded via the national and regional funding bodies, albeit diverted to a separate further education college for distribution, without any Ministerial approval or any Parliamentary scrutiny or accountability.

It is the SFC's responsibility, outlined in the Governance Framework of 2018, to have effective stewardship of public finances. Regardless of the EIS view on incorporation, we are extremely concerned about the effectiveness of your stewardship in this case.

Indeed, we question the standard of 'corporate governance, including openness and transparency in decision-making' which is displayed throughout the merger process. This is evidenced in previous correspondence to you in relation to SFC's advice to the Shadow Board to opt for the model of non-incorporation (appendices 5,6,8) despite legal due diligence points around incorporation (appendix 2); and in relation to your original consultation timescale with stakeholders (appendix 11).



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We question, further, your interest in Shetland College being non-incorporated (as outlined in appendices 5,6,8) and whether this interest aligns with your commitment to 'fulfil human rights' in accordance with your Strategic Framework.

The National Taskforce on Human Rights Leadership is currently working to establish a statutory framework for human rights that will incorporate internationally recognised economic, social, cultural and environmental rights into Scots law. As you will be aware, the right to education is a key human right and privatisation is a clear threat to human rights.<sup>2</sup> Failure to address well-founded concerns around this merger in the knowledge of privatisation plans and the human rights issues this presents is in direct conflict with the message that Scotland is a human rights leader; a message that comes from the First Minister herself.

I would be obliged if you could share this letter with the SFC Board before any decision is made regarding the creation of a new Shetland Islands College.

I would also be grateful if you could outline SFC's current position on the 'endorsement' of the Ministerial Merger Business Case and the process to be followed thereafter, taking the points above into consideration.

Please be advised that the manner in which this College creation is proceeding is a matter of concern that we have corresponded with the Scottish Government and political parties on. We also plan to raise this matter with the Scottish Parliament's Education & Skills Committee.

Yours sincerely

A handwritten signature in black ink that reads 'Larry Flanagan'.

Larry Flanagan  
General Secretary

Encl. Appendix 1

CC. Mike Cantlay Chair SFC Board,  
Richard Lochhead MSP, Minister for Further and Higher Education  
John Swinney MSP, Deputy First Minister

### Appendices

Please double click the document icons to open embedded documents,

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<sup>2</sup> Alston, Philip "Report on Privatisation of the UN Special Rapporteur on extreme poverty and human rights" September 2018 <http://undocs.org/A/73/396>







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Item	Document	Relevant Page(s)	Issue / Quotes
1. Ministerial Merger Business Case (MMBC)	<a href="http://uhi.ac.uk">Microsoft Word - Approved Shetland MMBC April 2020.docx (uhi.ac.uk)</a>	7  75	<p>The MMBC has been referred throughout process of merger to date as "the case for consideration by Scottish Ministers."</p> <p>"Following approval of the Ministerial business case by the Shadow Board it will need to be approved by the Shetland Fisheries Training Centre Trust, the Shetland College Board and the Shetland Islands Council. It will then be submitted to the University of the Highlands and Islands, the Scottish Funding Council and the Scottish Government (Cabinet Secretary for Education and Skills). There follows a consultation period with staff, students and stakeholders which will inform an evaluation visit to Shetland. From this, advice will be provided to the Scottish Government who will carry out a further period of consultation before making a decision as whether to approve the merger. Finally, if approved, legislation will be required to dissolve the current colleges and create the new entity. The full timeline is provided at Appendix iii."</p>
2. Legal Diligence Report	<a href="http://uhi.ac.uk">MBC- Appendix-ii- Legal-Due-Diligence.pdf (uhi.ac.uk)</a>	Page 4/5	Models and Legal Process outlined including incorporated and non-incorporated models; noting the control held by Scottish Ministers over the corporate policy within incorporated Colleges.









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3. MMBC Timeline as approved to date	<a href="#">MBC-Appendix-iii-Timeline-Merger.pdf (uhi.ac.uk)</a>		Outlines Parliamentary process including SSI approval prior to vesting date.
4. Shadow Board Meeting 4 <sup>th</sup> April 2019	 Programme Board - Meeting 2 - 040419.p	Page 30	Minutes confirm that SFC developed the timeline for merger, by advising that Scottish Government consultation, Ministerial approval and Parliamentary process came prior to vesting date stating "Scottish Government and Scottish Parliamentary timescales are set out in guidance and legislation" and includes initial timeline
5. Shadow Board Minute 26 <sup>th</sup> June 2019	 SB 190626.docx	6	"Mr Kemp advised that the Scottish Funding Council's preferred option would be for the new college to be un-incorporated, thus allowing more flexibility in its financial arrangements, and thereby creating a financial viability that incorporated colleges could not."
6. Shadow Board Minute 31 July 2019	 2019-07-31-Minute.pdf	4	Shadow Board Chair states SFC advise was to be non-incorporated
7. Shadow Board Minutes 30 <sup>th</sup> October 2019	 SB 191030.docx	5	"Ms Drysdale advised that she would have to look at the legislative timelines as to the impact a delay on vesting would have, including the impacts of the UK Parliamentary General Election on 12 December."

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<p>8. Letter to SFC from EIS 28 Feb 2020</p>	 Letter to Karen Watt Martin Fairbairn SFC !		<p>Outlining SFC advice given to Shadow Board that new college should be non-incorporated</p>
<p>9. Reply from SFC to EIS</p>	 Letter to EIS re corporate nature of n		<p>Outlining that SFC are reserving position on governance arrangements and "we would examine very carefully the rationale for a form other than 'incorporated college', and that consideration would be reflected in our formal advice to Ministers."</p>
<p>10. Shadow Board Minute 20<sup>th</sup> May 2020</p>	 2020-05-20-Paper-P B2020-10.pdf		<p>Merger Timeline put to Shadow Board by SFC</p>
<p>11. Letter to SFC from EIS requesting consultation period extended from 45 minutes 2<sup>nd</sup> October 2020</p>	 Letter to SFC re evaluation_021020.doc		<p>Asked SFC to reconsider reduced timescales for consultation</p>



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### Appendix 3

The EIS and other stakeholders had been advised that a 12-week consultation period would be carried out by the Scottish Government prior to the new College's vesting day. The EIS sought to update MSPs and interested parties, in December 2020, prior to that consultation period.

It is no longer the case that there will be a consultation period prior to the merger and vesting of the College i.e. prior to privatisation.

The proposed College vesting date is now 1<sup>st</sup> August 2021. **Contrary to previous advice from the Scottish Funding Council (SFC)**, it now appears to the EIS that the College will vest prior to any Ministerial or Parliamentary scrutiny i.e. the College will pass from public ownership and control into private hands, despite remaining publicly funded.

This new process appears to be based on updated advice from the SFC. It is the SFC's responsibility, outlined in their Governance Framework of 2018, to have effective stewardship of public finances. Regardless of the EIS view on incorporation or privatisation, we are extremely concerned about the effectiveness of SFC stewardship in this case.

The SFC is a creature of statute and are subject to Ministerial and Parliamentary oversight as a non-departmental Government body, yet we are alarmed at the SFC's exercise of 'corporate governance, including openness and transparency in decision-making' throughout this merger process.

The EIS have written to the SFC questioning its role and how it has exercised its decision-making process which is leading to college privatisation on the Shetland Islands. A copy of the letter to the SFC, dated 11<sup>th</sup> March 2021, is attached. A number of documents which evidence and outline our significant concerns are embedded within the letter's appendix. To date, the EIS has not received a response to this letter.

A history of the EIS campaign to date is [here](#) and a reminder that this will be **the first time in Scottish history when a Further Education college has been transferred from public ownership and control into a private company.**

If there remains any occasion for parliamentary scrutiny of this college merger process or of the SFC's altered advice we would be obliged if you could take this opportunity on behalf of the lecturers and the future of Scotland's public further education sector.

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### Appendix 4

Our ref: 254373201  
8 April 2021

#### By email

Dear Larry,

Thank you for your letter of 11 March concerning the merger of Shetland College. I can confirm that the Council Board was made aware of your concerns.

There have been many iterations of the timeline since the decision to move forward with merging the current college with NAFC Marine Centre several years ago. Following the decision by the Transition Board to establish the new college as a charitable not-for-profit entity (and not as a college incorporated under the Further and Higher Education (Scotland) Act 1992) the process, timeline and key milestones changed again.

The vesting date for the new college remains 1 August 2021, but because the college will not be incorporated under the 1992 Act no primary or secondary legislative process is required, nor any endorsement of structure or legal standing. Any parliamentary process will not be required until the newly established college seeks to become an assigned college to the Regional Strategic Body (RSB), which is the University of the Highlands and Islands (UHI), under the Further and Higher Education (Scotland Act 2005).

The new college will need to comply with the main governance requirements of all colleges, as laid out in the terms of a Financial Memorandum with UHI (which is similar to SFC's Financial Memorandum with the bodies funded by SFC) and also the



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Code of Good Governance for Scotland's Colleges. As a charitable body, the college will also need to comply with the requirements of the Office of the Scottish Charity Regulator (OSCR) and I am aware the college is working with OSCR to progress its registration.



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It will take several months following the vesting date for the college to be assigned to UHI, so that there can be an assessment of governance in practical application and to allow for the necessary parliamentary and legislative processes to be completed. I understand this is consistent with the response provided to you by the Deputy First Minister in December 2019.

At the beginning of the process it had been assumed that Ministerial approval would be necessary and so the business case was titled the "Ministerial Merger Business Case (MMBC)". However, this should now be referred to simply as the Merger Business Case and SFC's involvement in this has now been limited to advising on the practicalities of the merger process. Accordingly, the Council board did not require or receive a paper seeking endorsement of a MMBC at its meeting on 12 March. It was, however, briefed on the progress of the merger.

Should you require any further information, please let me know.

Yours sincerely,  
**Karen Watt**  
Chief Executive



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### Appendix 5

Ref: SC/SHE4/GAO

20<sup>th</sup> May 2021

K. Watt  
SFC Chief Executive & Accountable Officer

By email only

Dear Ms Watt

### Shetland College Merger

Further to our previous correspondence, most recently your reply on 8<sup>th</sup> April 2021, I note your position that no parliamentary process will be required “until the newly established college seeks to become an assigned college to the Regional Strategic Body (RSB), which is the University of the Highlands and Islands (UHI), under the Further and Higher Education (Scotland Act 2005.”

I reiterate, however, that SFC’s advice to Shetland Islands Council, the College Shadow Board and the Transition Board has always been that the *Ministerial* Merger Business Case would undergo parliamentary scrutiny, including a period of open consultation, and required Ministerial approval prior to the vesting date. Indeed, this remains the timeline which is published on the New Shetland College website<sup>3</sup> and I note your recent letter states “it had been assumed that Ministerial approval would be necessary”. As such, can you explain why the advice given, which was wholly relied on by stakeholders, was incorrect in the first instance when you became aware that this ‘assumption’ was inaccurate?

The fact that the SFC Board did not need now require to endorse the MMBC, following the SFC period of consultation seems, again, wholly inappropriate and irregular given the previous advice and given the SFC’s duties and responsibilities in terms of stewardship of public finances.

I note that you have not responded to the point raised in relation to SFC’s advice to the Shadow Board to opt for the model of non-incorporation i.e. privatisation.

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<sup>3</sup> [MBC-Appendix-iii-Timeline-Merger.pdf \(uhi.ac.uk\)](#)



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We will continue to correspond with the Scottish Government and political parties on this matter and will raise it with the Scottish Parliament's new Education & Skills Committee.

Yours sincerely

A handwritten signature in black ink that reads 'Larry Flanagan'.

Larry Flanagan  
General Secretary

Encl. Previous correspondence

CC. Mike Cantlay Chair SFC Board,  
Jamie Hepburn MSP, Minister for Further and Higher Education  
Shirley-Anne Somerville MSP, Cabinet Secretary for Education