



# An explanation of the Governance Arrangements of Scottish Rugby

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## INTRODUCTION

In January 2022, I was tasked with producing “A set of proposals and recommendations as to the ways in which governance and operational structures of Scottish Rugby Union and its then operating company – Scottish Rugby Union Limited might be revised and improved in the interest of Scottish Rugby as a whole”.

A key issue in forming proposals was the “Governance problem” which had been a long standing issue for the owners of Scottish Rugby (the Member Clubs). A very well regarded report (the Dunlop Report 2005) discussed the then problem as:

“Much of the recent unrest amongst Clubs and others, stems from a feeling that they have not been allowed to participate in or have been properly consulted about important decisions. Whether this is true or not it is what is felt”.

In 2022 in my published Governance Review proposals, I concluded “It is clear to me from all the diligence I have carried out that the “Governance problem” remains unresolved and indeed is significantly worse than previously thought. Often in evidence across the stakeholder group the words “mistrust”, “lack of trust” or even “bitterness” were frequently used”.

Since 2005 there have been numerous reviews that did not find support from the owners (the Member Clubs). Almost unanimously following an AGM and SGM of the owners in early Summer and Autumn 2022 the proposals of the “Crerar Review” came into being on 1 November 2022.

## WHAT ARE THE NEW GOVERNANCE ARRANGEMENTS?

A new Company called Scottish Rugby Union Limited, a Company Limited by Guarantee, was created and is called Scottish Rugby Union (SRU). SRU has three principal purposes:

- 1) To hold all the assets of Scottish Rugby, now and in perpetuity.
- 2) To exercise effective oversight of the activities of its subsidiary trading company called Scottish Rugby Limited (SRL) and
- 3) To report to the owners (the Member Clubs) further to the exercise of its oversight activities.

In addition, the Club Rugby Board (CRB), which is responsible for the formulation and implementation of the strategic vision, mission and development of the Club game in Scotland, also reports to and is accountable to SRU.

## **SCOTTISH RUGBY UNION LIMITED (SRL)**

The SRU has delegated the running of the business of Scottish Rugby, including the management of its assets and the administration of Scottish Rugby to SRL.

## **HOW DOES THE RELATIONSHIP BETWEEN SRU AND SRL WORK?**

While delegating the running of the business of Scottish Rugby to SRL there are some key matters reserved to SRU. It follows that the Board of SRU requires to give formal approval for:

- 1) SRL's Annual Budget.
- 2) The annual and/or longer-term strategy, and
- 3) The appointment and/or re-appointment of the Chair of SRL.

SRU and SRL have entered into a "Relationship Management Agreement" (RMA). The underpinning principle of the RMA is the recognition that for the professional executive and Board of SRL to succeed the tacit and active support of their owners is required.

## **WHAT ARE THE FUNDAMENTALS OF THE RMA?**

The RMA sets out the expectations of SRU as representatives of the owners. The key provisions are:

- i) meetings will take place between SRU and the Chair of SRL not less than quarterly or more frequently as required.
- ii) these meetings are the principal forum through which SRU will manage and protect the owners' interests, monitor business performance and exchange ideas.
- iii) at each meeting the Chair of SRL provides an update on the performance and progress of the business of Scottish Rugby including material matters in relation to Finance, Strategy and Risk.
- iv) the Chair of SRL will present the Strategic Plan for Scottish Rugby annually. Any material alteration to the Strategic Plan requires to be advised to SRU at the next occurring quarterly meeting.
- v) during the course of each financial year and on a rotating basis the Chairs of the Standing Committees of SRL namely; Audit and Risk, Investment, Nominations, Remuneration and Safeguarding, Wellbeing, Diversity and Inclusion will provide a report upon their activities and outcomes.
- vi) any material and exceptional deviation from the Annual Budget or Strategic Plan requires approval of SRU.

The concluded RMA which manages the relationship between SRU and SRL is included as Attachment A.

## WHAT ARE THE CRITERIA FOR APPOINTMENT TO BE A MEMBER OF THE BOARD OF SRU?

The Board has eight members. Each member is, as a matter of law, classified as a Director with all the consequent statutory duties and classifications. Each member is called a “Custodian” reflecting their role as Custodians of the brand, assets and wellbeing of Scottish Rugby. The Custodians to properly fulfil this role require effective understanding of the activities and operations of SRL.

The skills matrix for all the Custodians, including the “Independent Chair” is:

- (i) individuals of standing in Scottish Rugby, and
- (ii) having the skills relevant to the capacity to have insightful overview and exercise constructive challenge in respect of the operations of SRL.

The Custodians, including the Chair, are unremunerated appointments.

## WHO ARE THE CURRENT CUSTODIANS?

- 1 The Independent Chair, Professor Lorne D Crerar, CBE.
- 2-4 The President, Vice President and immediate past President of SRU; Colin Rigby, Keith Wallace and Ian Barr.
- 5&6 Two custodians elected by the owners at the AGM; Alison Milne, MBE and Maxine Manditsch.
- 7&8 Two Custodians selected with assistance from recruitment consultants; Cheryl Black and David Grevemberg, CBE.

The Chief Executive and Chief Financial Officer of SRL are standing invitees to the quarterly meetings of SRU with the Chair of SRL.

## WHAT IS THE ROLE AND FUNCTION OF SRL?

SRU has delegated the running of the business of Scottish Rugby except in relation to some reserved matters to SRL and in accordance with the RMA.

SRL is an ordinary commercial company with its purpose being the running of the business of Scottish Rugby.

The Chair and Directors of SRL are remunerated appointments:

- The Chair is John McGuigan
- The other non-executive Directors are: Hazel Swankie; Alex Whelan; Mike Soutar; and Ruth Davidson.

## **HOW DO THE NEW GOVERNANCE ARRANGEMENTS ENSURE ONGOING REVIEW OF THE RMA WITH A VIEW TO IMPROVING THE STANDARDS OF CORPORATE GOVERNANCE WITHIN THE GROUP (SRU AND ITS SUBSIDIARY SRL)?**

In terms of the Articles of Association of SRU a “Standing Committee on Governance” has been created with the purpose of reviewing the RMA after 2 years (November 2024) and every three years thereafter.

*The “Crerar Review” is included in Attachment B.*



**Professor Lorne D Crerar CBE**  
February 2024

PM/ COMMENTS/ 26.08.22

# APPENDIX A

- (1) SCOTTISH RUGBY UNION
- (2) SCOTTISH RUGBY LIMITED

RELATIONSHIP MANAGEMENT AGREEMENT



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# RELATIONSHIP MANAGEMENT AGREEMENT

**THIS AGREEMENT** is made between:

- 1 SCOTTISH RUGBY UNION (company number [ ]), a company limited by guarantee and having its registered address at Murrayfield Stadium, Edinburgh EH12 5PJ (the "Union"); and
- 2 SCOTTISH RUGBY LIMITED (company number SC132061), a company limited by shares and having its registered address at Murrayfield Stadium, Edinburgh EH12 SPJ ("SRL").

**WHEREAS:**

- (a) The Union has recently adopted a set of proposals and recommendations from the Scottish Rugby Council Standing Committee on Governance in which the governance and operational structures of the Union and SRL might be revised and improved in the interests of Scottish Rugby as a whole. A summary of those proposals and recommendations is set out in Part 1 of the Schedule (the "Recommendations").
- (b) The members of the Union have approved the Recommendations and their implementation pursuant to general meetings of the Former Association held on 6 June 2022 and [ ] 2022.
- (c) The Union is now a company limited by guarantee following the transfer of membership, rights, and assets to it pursuant to the implementation of certain of the Recommendations.
- (d) SRL is now a wholly owned subsidiary of the Union and remains the principal operating entity for Scottish Rugby.
- (e) The Union and the SRL are entering into this Agreement, the MOU and other constitutional documents in order to codify the terms under which the Recommendations are to be further Implemented and to govern their relationship.

**IT IS AGREED** as follows:

## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following terms shall, unless the context otherwise requires, have the following meanings:

<b>“Annual Budget”</b>	means a detailed operating plan and supporting budget with an explanatory narrative in respect of the next succeeding financial year in respect of the Group, the first financial year to which this applies being 2023/24;
<b>“Business Days”</b>	any day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh and Glasgow are open for business:
<b>“Club Rugby Board”</b>	means the committee of the Union responsible for oversight of the strategic vision, mission, and development of the rugby union club and domestic game in Scotland which is constituted pursuant to the Articles of Association of the Union with elected representatives from the members of the Union and which shall operate pursuant to the terms of the Memorandum of Understanding;
<b>“Custodian Consent”</b>	means the prior written approval of the Custodian Directors in accordance with the terms of Part 4 of the Schedule;
<b>“Custodian Directors”</b>	means the board of directors of the Union;
<b>“Former Association”</b>	means the unincorporated association known as the Scottish Rugby Union:
<b>“Group”</b>	means the Union and any group undertaking of the Union from time to time (including SRL), and <b>“Group Company”</b> will be construed accordingly;
<b>“Group Costs”</b>	means any costs reasonably and properly incurred by any member of the Group in connection with the operation of its business and approved in the Annual Budget;
<b>“Memorandum of Understanding”</b>	means the memorandum of understanding to be entered into between the Union and SRL on or around the date of this Agreement:
<b>“President”</b>	has the meaning given in the Union Articles;
<b>“Reserved Matters”</b>	means the matters requiring Custodian Consent listed in Part 4 of the Schedule to this Agreement:



**“Revenue“**

means the average turnover of SRL over a period of 4 financial years as derived from the annual accounts of SRL for such time period, the first such 4 year period being from and including financial year [ ]:

**“Reporting Obligations“**

has the meaning given to it in clause 5.2;

**“Scottish Rugby“**

means the organisation, administration, operation and participation in the game of rugby union in Scotland in its entirety and on an amateur and professional basis, including participation in all international competitions and organisations;

**“SRL Articles“**

means the articles of association of SRL, as adopted or amended from time to time;

**“SRL Audit & Risk Committee“**

means the audit and risk committee (or its equivalent) of the SRL as established pursuant to the SRL Articles;

**“SRL Board“**

means the board of directors of SRL;

**“SRL Board Committees“**

sub-committees set up by the SRL Board from time to time, and which will include inter alia the SRL Standing Committees;

**“SRL Chair“**

means the chairperson of the SRL appointed pursuant to the SRL Articles;

**“SRL Chief Executive Officer“**

means the chief executive officer (or equivalent) of SRL;

**“SRL Chief Financial Officer“**

means the chief financial officer (or equivalent) of SRL;

**“SRL ESG Committee“**

means the environmental, social and governance committee (or equivalent) of the SRL Board as established pursuant to the SRL Articles;

**“SRL Nominations Committee”** means the nominations committee (or equivalent) of the SRL Board as established pursuant to the SRL Articles;

**“SRL Remuneration Committee”** means the remuneration committee (or equivalent) of the SRL Board as established pursuant to the SRL Articles;

**“Standing Committees”** means the SRL Audit & Risk Committee; the SRL ESG Committee, the SRL Remuneration Committee, the SRL Nominations Committee and any other like committees properly established pursuant to the SRL Articles;

**“Standing Committee on Governance”** means an independent standing committee on governance to be set up pursuant to the Union Articles:

**“Standing Invitees”** means those individuals who are invited by the Union Chair to attend meetings of the Union Board but including, without limitation, the SRL Chief Executive Officer and the SRL Chief Financial Officer:

**“Strategic Planning”** means the strategic plan for the Group prepared by SRL as more fully described in Part 3 of the Schedule;

**“Union Articles”** means the articles of association of the Union (as adopted or amended from time to time):

**“Union Board”** means the Custodian Directors: and

**“Union Chair”** means the chair of the Union Board

1.2 In this Agreement, unless the context otherwise requires:

- (a) references to this Agreement shall include the Schedule, which forms part of this Agreement;
- (b) a reference to one gender includes a reference to the other genders: and
- (c) words in the singular include the plural and in the plural include the singular.

## **2 SRL BOARD OF DIRECTORS**

- 2.1 The parties agree that (save as otherwise provided in this Agreement, the Memorandum of Understanding and the SRL Articles, and subject always to the general oversight of the Union) all administrative powers in relation to Scottish Rugby will remain with SRL, and the SRL Board shall be responsible for the promotion, supervision and management of Scottish Rugby including (without limitation) those matters set out in Part 2 of the Schedule.
- 2.2 Appointment and removal of directors of the SRL Board shall be governed by the SRL Articles. Prior to making any decision as to whether or not to exercise its right pursuant to Article [21.6] of the SRL Articles to appoint up to two replacement non-executive directors to the SRL Board, the Union shall consult with and take into consideration any reasonable representations made by SRL as to whether those non-executive director roles had been valuable to the discharge by SRL of its functions.
- 2.3 The parties agree that oversight of amateur club rugby in Scotland shall be undertaken by the Club Rugby Board pursuant to the terms of the Memorandum of Understanding, Union Articles and SRL Articles.

## **3 CUSTODIAN DIRECTORS**

- 3.1 The parties acknowledge and agree that the Custodian Directors shall be responsible for the management of the Union's business, for which purpose they may exercise all the powers of the Union set out in the Union Articles, including the power to delegate that responsibility in whole or in part, including as provided for in Clauses 2.1 and 3.1 of this Agreement and Clause 2.1 of the Memorandum of Understanding.
- 3.2 Notwithstanding Clause 3.1, the Union acknowledges that the role of the Custodian Directors in relation to SRL is one of oversight and the Union shall procure that the Custodian Directors are not to be involved in the management of SRL or to direct the activities of the SRL Board save as provided for in this Agreement and the Memorandum of Understanding.

## **4 RESERVED MATTERS**

- 4.1 No action or decision on a Reserved Matter, or which results or is likely to result in a material change to a previous decision on a Reserved Matter, shall be taken by SRL without Custodian Consent.

## 5 SRL OBLIGATIONS

- 5.1 In order for the Union Board to fulfil its duties of oversight, the SRL Chair together with the Standing Invitees shall report to the Union Board at meetings convened by the Union Board not less than quarterly at mutually agreed dates and times.
- 5.2 SRL's reporting obligations to the Union Board are as set out at Part 3 of the Schedule (the "Reporting Obligations").
- 5.3 The Custodian Directors shall be entitled (subject to matters which SRL and the Custodian Directors agree are commercially confidential or which should otherwise not be reported, as provided for in a policy to be approved by the Union Board and the SRL Board) to report to the members of the Union on all material matters arising from the meetings referred to in Clause 5.1.
- 5.4 The parties acknowledge and agree that SRL's secretariat may provide secretarial services support to the Union Board and members' meetings of the Union as requested by the Custodian Directors and at SRL's cost.
- 5.5 The parties acknowledge and agree that the Custodian Directors and any committee of the Union Board shall, upon 10 Business Days' notice being given by the Union Board to the SRL Board, be entitled to obtain appropriate (secretarial support and]1 independent professional advice in respect of the proper discharge of their duties, and that [the cost thereof (if any) of] all reasonably and properly incurred professional fees incurred by the Custodian Directors or any committee of the Union Board (as the case may be) shall be settled in the first instance by SRL (and may then be recharged to the Union).
- 5.6 It is acknowledged that after the date of this Agreement the Custodian Directors may develop revised or new financial objectives in relation to Scottish Rugby. Such revised objectives shall be communicated to SRL at Reporting Meetings and SRL shall consider such objectives in any subsequent updates or, revisions to or renewals of the Strategic Plan and Annual Budget. The parties acknowledge and agree that it is in both their commercial interests and those of the members of the Union that the Group is financially stable and that any proposed amendments to the Strategic Plan and Annual Budget shall be considered accordingly.
- 5.7 The parties acknowledge and agree that:
- 5.7.1 appropriate provisions shall be made in each Annual Budget for any amounts expected to be due by one Group Company to the other (including, without limitation, any management / monitoring fee due by SRL to the Union and any amounts to be recharged by SRL to the Union including any costs of secretarial services provided by SRL) and for any inter-company balance arising from any prior period (in respect of which the Annual Budget for the current period shall make appropriate provisions designed to clear such prior period inter-company balance (whether by means of an increased management / monitoring fee or by means of a dividend / distribution or otherwise)); and

- 5.7.2 SRL shall be responsible, in the first instance, for settling all Group Costs as may arise from time to time provided always that such costs have been reasonably and properly incurred, and that SRL may (subject to the provisions of Clause 5.7.1) make an inter-company recharge for any Group Costs of the Union which are settled by SRL.

## 6 NOTICES

- 6.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid registered post, commercial courier or electronically to each party required to receive the notice as set out below:

- (a) the Union: the Chair, whom failing the President; and
- (b) SRL: the Company Secretary,

or as otherwise specified by the relevant party by notice in writing to the other.

- 6.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid registered post, in the ordinary course of post;
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- (d) if delivered electronically (e.g. by email), on receipt of a written acknowledgement of the message (electronic or otherwise) from the addressee.

- 6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 7 DISPUTES

- 7.1 In the event of a disagreement on the application or interpretation of the provisions of this Agreement any such disagreement shall be referred to the Union Chair and the SRL Chair.

- 7.2 If the Union Chair and the SRL Chair are unable to reach agreement within 10 Business Days then such disagreement shall be referred to a Queen's Counsel (of at least 5 years' standing) agreed by the Union Chair and the SRL Chair (or in the event that the parties are unable to agree on the identity of such Queen's Counsel within 10 Business Days, a Queen's Counsel shall be nominated by the Dean of the Faculty of Advocates on application by either party) who shall mediate discussions between the Union Chair and the SRL Chair.
- 7.3 The Queen's Counsel shall only act as mediator and shall not opine or offer any decision on the disagreement.
- 7.4 The costs of such Queen's Counsel are to be borne by SRL.

## **8 SUPPLEMENTARY PROVISIONS**

- 8.1 The rights and powers of the Union under this Agreement shall (save insofar as they are expressly conferred on some other body or officer of the Union) be exercised by the Custodian Directors or any authorised committee thereof acting by majority.
- 8.2 Unless agreed otherwise by a majority of the Custodian Directors, meetings of the Union Board shall be the principal forum through which the Union Board manages its oversight of Scottish Rugby and SRL.
- 8.3 The rights and powers of SRL under this Agreement shall (save insofar as they are expressly conferred on some other body or officer of the Union) be exercised by the SRL Board or any authorised committee thereof acting by majority or as delegated to the executive directors of SRL or otherwise as permitted by the SRL Articles.
- 8.4 If any provision in the SRL Articles or of the Union Articles conflicts with any provision of this Agreement, this Agreement shall prevail as between the parties. The parties shall cause the relevant articles of association to be amended to make the provisions of such articles consistent with the provisions of this Agreement.
- 8.5 So far as it is legally able, each party will exercise all powers available to it in relation to any person to permit SRL and the Union to be administered as provided in this Agreement. Each party shall do all things necessary and desirable to give effect to the spirit and intention of this Agreement.
- 8.6 The terms of this Agreement shall be reviewed by the Union Board, the Standing Committee on Governance and the SRL Board in the first two years from the date of this Agreement and shall co-operate in good faith with a view to improving the standards of corporate governance within the Group. Thereafter the SRL and the Union will review arrangements every three years.
- 8.7 The parties to this Agreement are not in partnership with each other and there is no relationship of principal and agent between them.



8.8 This Agreement shall be governed by and construed in accordance with the laws of Scotland.

**IN WITNESS WHEREOF** this Agreement consisting of this and the preceding four pages, together with the Schedule annexed hereto, is executed in duplicate at [Edinburgh] on [ ] as follows:

**SUBSCRIBED for and on behalf of [SCOTTISH RUGBY UNION] by:**

.....Director

..... Full Name

**before this witness:**

..... Witness

..... Full Name

..... Address

**SUBSCRIBED for and on behalf of [SCOTTISH RUGBY LIMITED] by:**

.....Director

..... Full Name

**before this witness:**

..... Witness

..... Full Name

..... Address

## This Is the Schedule referred to In the foregoing Agreement between Scottish Rugby Union and Scottish Rugby Limited

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# PART 1

## Recommendations

### 1 CRERAR REPORT

- 1.1 Recommendations fall into two parts:
- 1.1.1 Part 1 deals with the structure and governance of Scottish Rugby Union ("Union") and its operating company Scottish Rugby Union Limited ("SRL").
  - 1.1.2 Part 2 deals with the proposals for the management and development of the domestic game, whereby a Club Rugby Board ("CRB") is created to implement the effective management of the development of all aspects of the domestic game for the benefit of member clubs.
- 1.2 The proposals made in Part 1 and Part 2 represent a long-term solution to the "governance problem" within Scottish Rugby. The recommendations made set the right way forward for the governance structures and methodology that will enhance the ability of Scottish Rugby to make the most of the opportunities which will lie ahead as well as deal effectively with the many challenges and ongoing changes in the world of rugby.
- 1.3 As approved at an SGM held on Monday 6 June 2022 this Agreement forms part of the detailed documentation intended to bring about the necessary changes to implement the Recommendations.

### PART1

- 2 Part 1 sets out recommendations and explanations for changes to the governance arrangements for the Union, the SRU Trust and SRL.

### 2.1 RECOMMENDATION 1

The creation of a new company, a company limited by guarantee, to take over from and wholly replace the unincorporated association known as Scottish Rugby Union together with all the assets of the SRU Trust 1911 (including the shares of SRL).

Further to the Consultation Document 2, the question was posed –  
"Should the unincorporated SRU be replaced by a Company Limited by Guarantee which will be owned by the member clubs and which in turn will own the trading company SRL?"

The responses to this question had particular importance as it would change the foundation building block for governance of Scottish rugby. The responses were an almost unanimous "yes" to this question. The proposition for this proposal was concisely and well put in one particular response.



A Company Limited by Guarantee is a well-established vehicle for sports governing bodies and which addresses many of the issues which led to the need for the creation of the SRU Trust and the then Scottish Rugby Union Limited.

Although there are undoubtedly alternatives which could be made to work, because SRL is an existing vehicle which holds all the assets, conducts the ongoing trading and already has shares in issue (held by the Trustees), we see the creation of a NewCo as a Company Limited by Guarantee and It holding all the shares as the most straightforward, cost effective and quickest way of delivering an appropriate structural framework for members who can meet the objectives for Scottish rugby.

It also keeps the membership based ethos of SRU and does not disrupt the continued trading activities of SRL".

## **2.2 RECOMMENDATION 2**

That the new company to be created further to Recommendation 1 be called: Scottish Rugby Union (the "Union")

(a company limited by guarantee)

Such classes of corporate entity do not require to bear the title limited in their names. As a consequence of this recommendation, SRL will require to change its name (see Recommendation 7 below).

## **2.3 RECOMMENDATION 3**

The Union will have 3 principal purposes:

- (i) to hold all the assets of Scottish rugby (Recommendation 1) now, and in perpetuity.
- (ii) to exercise effective oversight of the activities of SRL and CRB and,
- (iii) to report to the members of the Union (hereinafter referred to as "the Owners") further to the exercise of the oversight role described in (ii) above.

## **2.4 RECOMMENDATION 4**

2.4.1 the Union shall authorise and delegate to SRL the running of the business of Scottish rugby in its entirety (other than provided elsewhere in these proposals), the whole of its commercial affairs and interests, including the management of assets and the administration of professional rugby (including matters relating to and arising from the Union's commitment to International rugby).

- 2.4.2 A Relationship Management Agreement ("RMA") between the Union and SRL will be created defining the relationship between the Union and SRL and will inter alia provide for "Reserved Matters" for the Board of the Union.
- 2.4.3 The matters reserved to the Board of the Union for formal approval in relation to the operations of SRL will be:
1. Annual budget.
  2. Annual and/or longer term Strategy.
  3. Appointment (Re-appointment) of Chair of SRL.

## **2.5 RECOMMENDATION 5**

- 2.5.1 The Union and SRL will enter into a formal Relationship Management Agreement {"RMA"}.

RMA is an established corporate methodology, bringing together owners of private companies with their professional executive and board to whom they have delegated responsibility of running the business in their Interests. Such agreements recognise that for the professional executive and board to succeed in furtherance of its business strategy the tacit and active support of their owners is required.

- 2.5.2 The members of the Board of the Union will act in a constructive and informed manner in the exercise its oversight function of the SRL operations.
- 2.5.3 The RMA will set out the Union's expectations in their capacity as representatives of the Owners. It is anticipated that in addition to the Reserved Matters (Recommendation 2.4.3) the RMA will include inter alia provisions in relation to:
- (iv) The provision for meetings between the Custodians and SRL which shall take place not less than quarterly and additionally as may be required.
  - (v) These meetings will be the principal forum through which the Custodians will manage and protect the Owners' interests, monitor business performance of SRL and allow exchange and discussion of ideas.
  - (vi) At each meeting the Chairman of SRL shall provide an update on the performance and progress of the business of Scottish Rugby including material matters in relation to finance, strategy and risk.
  - (vii) The Chairman of SRL will present the Strategic plan for Scottish rugby annually and usually before the end of each financial year. Any envisaged material deviations or alterations to the Strategic plan will be advised to the Custodians at the next occurring quarterly meeting.
  - (viii) During the course of each year the Chairs of the standing committees of SRL namely: Audit and Risk, Investment, Nominations, Remuneration and

Safeguarding Wellbeing, Diversity and Inclusion will provide a report upon their activities and outcomes.

- (ix) Any proposed material and exceptional deviation from the Annual Budget or Strategic plan will require approval of the Custodians. This will include for example, disposal or other arrangements of importance for Murrayfield or major asset acquisitions.
- (x) The Independent Chair of the Custodians shall ensure the effectiveness of the running and outcomes of the quarterly meetings and assist the Chair of SRL in ensuring the Custodians have all the information required to enable a regular informed progress and activities report to be made available to the Owners.

## 2.6 RECOMMENDATION 6

- 2.6.2 The Board of the Union will have 8 members. Each member is as a matter of law, classified as a Director with all the consequent statutory duties and obligations. Each member will be called a "Custodian" which properly defines and reflects their role as Custodians of the brand, assets and wellbeing of Scottish rugby. To properly fulfil this role effective understanding of the operations and activities of SRL will be required.
- 2.6.3 One of the eight Custodian Directors will be an "Independent Chair". Independent
- 2.6.4 means that the individual is not an employee or officer holder in the structures of SRU, SRL or the proposed Club Rugby Board. The interim Chair - for an initial period of 12 months - will be appointed by the Council and thereafter by the Union once formed.
- 2.6.5 The skills matrix for all Custodians including the Chair, will be:
  - (i) Individuals of standing in Scottish rugby, and
  - (ii) Skill(s) relevant to having capacity to have insightful overview and constructive challenge of the business activities of SRL further to the RMA.
- 2.6.6 Personnel appointments made by the Union to its Board and to any committee/ sub-group it may form shall be made with reference to current best practices, specifically recognising that diversity and inclusion issues are business critical, not a compliance necessity.
- 2.6.7 The Custodians will be unremunerated appointments.
- 2.6.8 Who will be the Custodians in addition to the Independent Chair?
  - i. The President. Vice President and Immediate Past President (IPP). The IPP will demit office as a Custodian when the current President leaves office to become the new IPP.
  - ii. Two Custodians will be elected by the member clubs further to nominations for these positions.

- iii. Two Custodians will be selected with assistance from Recruitment Consultants and appointed by Council or its successor body.
- iv. The maximum term office of Custodians under (ii) and (iii) above will be a maximum of 2 times 3 year periods and no more than 6 in any 12- year period
- v. The Chief Executive and Chief Financial Officer (of SRL) will be Standing Invitees to Union Meeting meetings. Standing Invitees will have access to all information and will be fully involved in all discussions. They will not however have a vote which is reserved to the Custodians.

## **2.7 RECOMMENDATION 7**

The role and function of SRL:

- 2.7.1 The functions, role and authorities of SRL, remain without alteration but, subject to matters specifically remitted to the Union and CRB, see Part 2 below (Recommendation 4 & 5).
- 2.7.2 In addition, SRL will fulfil the obligations contained in the proposed RMA.
- 2.7.3 SRL will change its name to Scottish Rugby Limited or such other preferred name as agreed between SRL and the Council or its successor body.
- 2.7.4 The President and Vice President of SRU will cease to be Directors of SRL upon the new arrangements coming into effect between Union and SRL.
- 2.7.5 When the two current Council members terms of office as Directors of SRL cease, it will be decided and agreed between the Union and SRL as to whether further such nominees be proposed or ceased.

The interests of the Owners are recognised and protected by the role and position of the Union in the exercise of its oversight role. The President and Vice President will assume Custodian roles and cease to be Directors of SRL. The remaining two appointees, current Council Members, will demit office when their terms of appointment expire. It will be at this juncture the Union will determine, in consultation with SRL, as to whether these roles are valuable to the discharge of the functions of SRL or will cease.

### **PART 2**

- 3 This Part 2 outlines recommendations for changes to the oversight of domestic rugby resulting from the replacement of Council by the Board of the Union and CRB. The following proposals were approved by the membership of SRU.

### **3.1 RECOMMENDATION 1**

CRB's mission statement shall be:

***The CRB will be directly involved with the Union and the Executive team of SRL in the formulation and implementation of the strategic vision, mission, and development of the domestic game in Scotland, including the allocation of resources to member clubs and other domestic rugby bodies. The responsibility for the successful implementation and monitoring of the agreed strategy lies with CRB in conjunction with the Rugby Development Department of SRL.***

### **3.2 RECOMMENDATION 2**

CRB shall be comprised of 14 members elected by SRU member clubs via existing Fora together with the SRL Director of Rugby Development, all under the Chair of the duly elected SRU/Union Vice-President, as follows:

<b>Vice President (as Chair)</b>	<b>Edinburgh Forum Rep</b>
<b>Women's Forum Rep</b>	<b>Glasgow North Forum Rep</b>
<b>Prem Forum Rep</b>	<b>Glasgow South Forum Rep</b>
<b>Nat 1 Forum Rep</b>	<b>Midlands Forum Rep</b>
<b>Nat 2 Forum Rep</b>	<b>North Forum Rep</b>
<b>Nat 3 Forum Rep</b>	<b>Borders Forum Rep</b>
<b>Match Officials Forum Rep</b>	<b>Schools &amp; Youth Forum Rep</b>
<b>Director of Rugby Development</b>	

The SRU President, and a representative of the CFO's office shall attend as Standing invitees at all CRB meetings at the invitation of the Chair. Additionally, should expansion of the game in any particular area demand it (e.g., the Woman's game at regional level), CRB be given the responsibility to consider and if thought appropriate expand stakeholder representation at CRB level. Additionally, and as may be requested, staff from SRL may attend to address particular agenda items or provide requested updates / reports.

### 3.3 RECOMMENDATION 3

CRB's remit shall be focussed on the domestic game and the delivery of support to it. In particular, it shall focus on:

<b>Strategy (community game) for Union/ SRL sign off</b>	<b>Budget allocation &amp; implementation</b>
<b>Competition Regulations</b>	<b>Training &amp; Education programmes</b>
<b>Disciplinary Panel membership (all areas out with performance rugby}</b>	<b>Match Officials - and Competitions Dept</b>
<b>Domestic Season Structure</b>	<b>Regulatory matters (Community game)</b>
<b>Club Support Programmes / MoS etc</b>	<b>Player Pathways</b>
<b>Club name / status changes</b>	<b>Domestic 7's rugby</b>

### 3.4 RECOMMENDATION 4

CRB shall be constituted within the Articles of Association of the Union as a sub-committee / group of the Union, reporting directly to the Union to an agreed remit. It shall however liaise with SRL and its Rugby Development Department with regard to the implementation and deployment of agreed strategy for the domestic game, within set (and annually agreed) budgets.

SRU Rugby Development staff shall remain employees of SRL.

The RMA to be entered into between the Union and SRL will set out the responsibilities delegated to CRB for undertaking the oversight, management and development of the domestic game on behalf of members. In addition, the Union, SRL and members of the CRB will enter into a Memorandum of Understanding in which the Union will set out its expectations of CRB, and CRB's operational obligations.

### 3.5 RECOMMENDATION 5

It is anticipated that the remit agreed between the Union and CRB will cover the following issues:

- Number of meetings (minimum 4 pa);
- Format of meetings;

- Ability to request attendance of any individual involved in Scottish rugby to attend CRB meetings or to any sub-committee thereof;
- Ability to seek external counsel on any matter relevant to its remit;
- Requirement to publish minutes of meetings (to a redaction policy determined by the Union);
- Ability to appoint a suitably qualified person(s) from out with CRB to sit as a member of/ contribute to any Standing Committee or Sub-group.
- Ability to appointment Standing Committees/ Sub-groups on matters such as:
  - Match Officials (regional and national), Laws and N.C.R.s;
  - Schools/ Youth & Universities;
  - Men's Regional Rugby & Women's Regional Rugby;
  - Men's & Women's Premiership and National Rugby;
  - Non-First XV rugby including 2nd XV, Development, Age restricted (U21) etc.;
  - Coaching, Education, Diversity, Inclusion, Child Protection;
  - Facilities and Access to Specialist support;
  - 7's rugby (domestic); and
  - Player Pathways;

all after discussion and consultation with the Director of Rugby Development and any other member of the SRL Executive team that CRB consider appropriate / necessary.

### **3.6 RECOMMENDATION 6**

Other than the Vice-President, Fora representatives appointed to represent their constituencies on CRB shall be appointed for an initial period of 3 years. No member may sit for more than 2 consecutive 3-year periods, and no more than 6 years can be served in a 12-year period.

For the avoidance of doubt, any person serving on Council will have their time of tenure on Council considered as part of the total of 6 years holding office once CRB is established.

### 3.7 RECOMMENDATION 7

The CRB will engage with all Fora with a view to developing a commonality of purpose e.g., frequency of meetings, on meeting agenda items, reporting etc, though in a way and manner that does not impinge upon the unique characteristics and challenges faced by individual forums.

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## PART 2

### Matters reserved to the SRL Board

The following is a non-exhaustive list of matters specifically reserved to the SRL Board:

- 1 Terms and Conditions for directors (and senior executives) and wider employee remuneration policy, provided that in relation to the terms and conditions of the SRL Chair, the SRL Board will submit its recommendation to the Custodian Directors prior to any material change in the terms and conditions of that appointment and in any remuneration or fee accompanying it.
- 2 Composition of the SRL Board (subject to the terms of the SRL Articles)
- 3 Terms of reference for, and membership of SRL Board Committees.
- 4 Directors and Officers liability insurance, and other insurance, for the Group
- 5 Preparation of the Strategic Plan and Annual Budget (subject to Custodian Consent).
- 6 Implementation of the Annual Budget and Strategic Plans.
- 7 Preparation of Group interim and final financial statements.
- 8 Approval of Group accounting policies/practices, and tax elections and any changes in them.
- 9 Approval of material contracts of the Group including all bank borrowings and granting of security over any of the assets of the Group, acquisition/disposal of fixed assets or intellectual property.
- 10 Risk management strategy for the Group, and internal control arrangements.
- 11 Recommendation for appointment/removal of SRL and Group auditors, their remuneration and entry into/variation of any auditor liability limitation agreement.
- 12 Health and safety policy for the Group.
- 13 Environmental policy for Group
- 14 Diversity & Inclusion policy for Group.



- 15 Safeguarding policy for Group.
- 16 Prosecution, defence or settlement of litigation or arbitration involving any member of the Group.
- 17 Provision of professional advisory and support service to the Group, other than as may be requested directly by the Union Board.
- 18 Appointments to external bodies.
- 19 Significant regulatory policies relating to the sport generally including anti-doping, anti-corruption, player welfare and gender participation.

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## PART 3

### Reporting obligations

- 1 The parties agree that the Union shall have oversight of the operation of the business of Scottish Rugby, through meetings of the Union Board convened by the Union Chair, and that such reporting meetings ("Reporting Meetings") shall also allow for the exchange and discussion of ideas.
- 2 At each Reporting Meeting the SRL Chair shall provide an update on the performance and progress of the business, including any material aspects relating to investment, finance, strategy or risk and any matter listed in paragraph 9 below.
- 3 The SRL Chair shall be supported at such meeting by the Standing Invitees and such other employees or officers of SRL as the SRL Chair considers necessary to assist in the discharge of his or her obligations.
- 4 The SRL Chair shall also invite the chair of each of the Standing Committees to attend and report to the Custodian Directors on the activities of the relevant Standing Committee at least annually.
- 5 The SRL Chair shall present the proposed Strategic Plan and Annual Budget at the Reporting Meeting immediately preceding the Group's financial year end.
- 6 The Strategic Plan shall outline:-
  - 6.1 the Group's strategy;

- 6.2 significant capital investment programmes where the amount exceeds £100,000;
- 6.3 proposed investment in the club rugby game;
- 6.4 potential acquisitions/disposals; and
- 6.5 key and/or material risks to the Group's business and expected performance.
- 7 Any material deviations or alterations to the Strategic Plan, and in particular any changes to circumstances which fall within the matters referred to in this Part 3 of the Schedule, shall be raised at the next occurring Reporting Meeting.
- 8 Whether or not the matters listed in paragraph 9 require formal Custodian Consent under Part 4 of the Schedule (and without prejudice to the requirements for obtaining such consent), it is acknowledged that, prior to their implementation, the matters listed in paragraph 9 and involving any member of the Group, should they arise, are considered to be important and deserving of specific attention and discussion at Reporting Meetings.
- 9 SRL shall provide such information on the matters listed below, if they should arise, as the Custodian Directors may reasonably request, at a time and in a manner which enables the Custodian Directors to consider them, take external advice (where considered by the Custodian Directors appropriate), and provide feedback to the Reporting Meeting:-
  - 9.1 any material change to the Annual Budget;
  - 9.2 any reduction or anticipated reduction in revenue , which results in the budget available to the domestic game (and overseen by the CRB) reducing to less than 15% of Revenue
  - 9.3 the acquisition or disposal of any interest in any real estate including but not limited to Murrayfield stadium and its surrounding grounds (other than any such interest which is immaterial in the context of the Group's business as a whole and the acquisition or disposal of which is in the ordinary course of business);
  - 9.4 the acquisition or disposal of any interest. in equity or debt securities in any company (or any analogous transaction such as the acquisition of an interest in a limited partnership) (other than any such interest which is immaterial in the context of the Group's business as a whole and the acquisition or disposal of which is in the ordinary course of business);
  - 9.5 the entry into of any partnership, consortium, joint venture or profit share arrangement (other than any such matter which is immaterial in the context of the Group's business as a whole);
  - 9.6 the acquisition or disposal of any business as a going concern {other than any business which is immaterial in the context of the Group's business as a whole and the acquisition or disposal of which is in the ordinary course of business);
  - 9.7 any material change in Group remuneration policy or incentive schemes or arrangements;
  - 9.8 any material change in policy, liability or commitment in relation to any of the Group's pension schemes or arrangements;
  - 9.9 any litigation or arbitration or other like proceedings being commenced or threatened by or against any Group Company where the amount of the claim exceeds £125,000 or otherwise is likely to be material to the Group, whether in relation to its reputation or otherwise;
  - 9.10 any other transactions or events which are or are likely to be material to the business and affairs of the Group; and

- 9.11 appointments to regulatory, representative, regional or international body(ies) or game boards outside Scotland e.g. World Rugby, URC, 6 Nations etc.
- 10 Where any matter has arisen that requires Custodian Consent as detailed in Part 4 of the Schedule, the SRL Chair shall raise this initially with the Custodian Directors through the Reporting Meeting at the earliest opportunity and where formal consent is required shall comply with the terms set out in Part 4 of the Schedule.
- 11 The Union and SRL shall be entitled to invite advisers to be present at each meeting and the Chief Financial Officer or his or her deputy shall be present at each meeting.
- 12 The Union Board shall appoint its own secretarial support (as necessary) who shall ensure that an agenda and papers are circulated to all attendees five Business Days before all and any meetings including Reporting Meetings, and that minutes thereof are kept and circulated for approval, with redaction as appropriate in accordance with the Union Board's policy, and subsequent publication after meetings
- 13 One Reporting Meeting shall be timed to take place in advance of the Group AGM at which the SRL Chair and the Standing Invitees shall, if requested, provide a briefing on the Group's annual results.
- 14 In addition to any other obligations to provide information which are set out in this Agreement, SRL shall provide, on a timeous basis, such information on a regular basis at the Reporting Meetings. as the Union Chair and the SRL Chair may agree from time to time as being necessary and relevant.

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## PART4

### Custodian Consent

- 1 Where Custodian Consent is required for any matter the parties shall raise the issue at the relevant Reporting Meeting.
- 2 So far as practicable and where the Custodian Directors decide to consent, such consent shall be given at the relevant Reporting Meeting, provided that not less than 20 Business Days' notice has been provided to the Custodian Directors of the matter requiring consent together with any supporting information (including but not limited to any papers considered by the Union Board in relation to the matter) requested by the Custodian Directors.
- 3 In exceptional circumstances and where business requirements demand it the Custodian Directors will consider requests for consent in a shorter timeframe, provided always that a minimum of [3] Business Days' notice is given.

- 4 Where consent is given at a Reporting Meeting it shall be formally recorded in the minutes of the meeting.
- 5 If a matter requires Custodian Consent and it is not practical for that consent to be sought at the next Reporting Meeting then the SRL Board shall notify the Custodian Directors in writing by providing full details of the matter requiring consent and the timescale in which consent is required. The Custodian Directors shall use their reasonable endeavours to confirm their consent or not within the specified timescale, including through electronic means.
- 6 Custodian Consent may be given unconditionally or subject to such conditions as the Custodian Directors shall specify, acting reasonably.
- 7 The following matters will require Custodian Consent:
  - 7.1 the appointment or removal of the SRL Chair and the entering into or the variation or] termination of any service contract with the SRL Chair;
  - 7.2 approval of the Strategic Plan and any material alterations to or material deviations from that Plan; and
  - 7.3 approval of the Annual Budget, and any material alterations to or material deviations from that Annual Budget.
  - 7.4 Except where already identified within the Strategic Plan already approved by the Union Board, the following, should they arise, will be deemed to be material alterations to or deviations from the Strategic Plan and therefore require Custodian Consent in their own right:
    - 7.4.1 making or permitting any material alteration (including cessation) to the general nature of the business of the Group, or taking steps to wind up a material subsidiary;
    - 7.4.2 the making of any approach or application or the submission of any business plan to any potential investor with a view to attracting additional or substitute investment for any member of the Group (but excluding the submission of business plans or financial information as part of an application or approach to a recognised bank or financial institution for debt finance or normal bank facilities);
    - 7.4.3 the entry into by the SRL Board of any negotiations concerning the sale or disposal to a third party of all or a material part of the Group's business including shares in any member

# APPENDIX B

**“A set of proposals and recommendations as to the ways in which governance and operational structures of Scottish Rugby Union and Scottish Rugby Union Limited might be revised and improved in the interests of Scottish Rugby as a whole”.**

*(Terms of Reference of the Scottish Rugby Council Standing Committee on Governance para 5.1)*



**Professor Lorne D Crerar CBE**

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# INTRODUCTION

- 1.1 I accepted the appointment as Independent Chair of the Scottish Rugby Council Standing Committee on Governance (“SCOG”) in early January 2022 following the stepping down of Gavin MacColl QC from the role. The Consultation Document (no.2) was already in circulation with the membership of Scottish Rugby Union (SRU) proposing potential solutions to the perceived governance problems in relation to the higher structures of the game of rugby in Scotland.
- 1.2 There was considerable written information available to me to assist in forming the proposals of this document, namely:
- 1.2.1 The Consultation Document (no.2), the responses and a detailed analysis of them.
  - 1.2.2 The recent and historical minutes of SCOG, Scottish Rugby Union Limited (SRUL) and the Council of the SRU (“the Council”).
  - 1.2.3 The Dunlop Report (2005).
  - 1.2.4 The Gammell/Murray Review (2019) and
  - 1.2.5 Philip Simpson QC, Opinion of senior Counsel for SRU – an opinion which considered the SRU Trust 1911 and that the ultimate owners of the assets were the SRU membership as represented by the Council.

In addition the following information gathering meetings were held with:-

- i. Each individual member of SCOG
  - ii. Former Chair of SCOG, Gavin MacColl QC
  - iii. The Chair of SRUL (John Jeffrey)
  - iv. The Chief Executive of SRUL (Mark Dodson)
  - v. Robert Howat, Senior In-house Counsel of SRUL (3 occasions)
  - vi. Legal Advisers Pinsent Masons (Kevin Beattie, Kevin Devanney) (3 occasions)
- 1.3 The overarching “Governance” problem.
- 1.3.1 The Dunlop Report and the Gammell/Murray Review contain interrogative and detailed proposals in relation to a future governance framework for Scottish Rugby to enable and equip the organisational structure to foster growth and prosperity for the game of rugby in Scotland. The Gammell/Murray Review describes the Dunlop Report as “setting a vision and structure for Scottish Rugby ahead of its time”. Indeed in my many conversations with stakeholders I was often referred to the ongoing appropriateness of the principles underpinning the Dunlop Report.
  - 1.3.2 The key principles set out in the Dunlop Report (p2) for the governance structure of Scottish Rugby are:

- Autonomy and discretion for the decision making body (now SRUL) to enable it to effectively run the affairs of SRU.
- Accountability of the decision making body to stakeholders.
- Participation so that all stakeholders are represented when decisions are taken.
- Responsiveness of the decision making body to stakeholders, and
- Transparency about the information on which decisions have been based, the decisions themselves and the way these decisions are implemented.

1.3.3 The “governance problem” was outlined concisely by the Dunlop Report (p9).

“Much of the recent unrest amongst Clubs and others, stems from a feeling that they have not been allowed to participate in or been properly consulted about important decisions. Whether this is true or not it is what is felt”.

It is clear to me from all the diligence I have carried out that the “governance problem” remains unresolved and indeed is significantly worse than previously. Often in evidence across the stakeholder group the words “mistrust”, “lack of trust” or even “bitterness” were frequently used.

I am also acutely aware of “governance fatigue” of all stakeholders and a pressing need to resolve long standing governance issues.

1.4 The recommendations to follow are aligned and founded upon the Dunlop principles. The recommendations comply with all legal, financial and other regulatory compliance frameworks as well as models of best practice in governance arrangements including for Sports governing bodies and their operating companies. This proposal document in making recommendations is essentially split into two parts:

Part I deals with the structure and governance of Scottish Rugby Union (SRU) and its operating company Scottish Rugby Union Limited (SRUL).

Part I has been my main focus and although it is hoped both Part I and Part II will proceed together it is recognised that the proposals of Part I could proceed immediately with Part II to follow.

Part II deals with the proposals for the management and development of the domestic game, whereby a Club Rugby Board (CRB) is created to implement the effective management of the development of all aspects of the domestic game for the benefit of member clubs.

Part II for proposals arise from the deliberations of a working sub-group of SCOG, chaired by Bobby Frazer.

- 1.4.1 I believe, supported by unanimity of view from the members of SCOG, that the proposals we make in Part I and Part II of this document represent a long term solution to the “governance problem”. The recommendations made in this proposal set, we believe, the right way forward for the governance structures and methodology that will enhance the ability of Scottish rugby to make the most of the opportunities which will lie ahead as well as deal effectively with the many challenges and ongoing changes in the world of rugby.
- 1.4.2 In making these recommendations I would like to acknowledge the support and commitment of the members of SCOG. Since my appointment we have met 7 times with a further “brainstorming” session at Murrayfield on a Sunday (27 February 2022). The sub-group of SCOG has met an additional 4 times. For conflict of interest reasons administrative and secretarial support for SCOG was withdrawn by SRU and our particular thanks to Mark Walker who fulfilled the onerous Secretariat function. My Law Firm Harper Macleod LLP, has seconded to me a trainee lawyer, Findlay Crofts for support in engathering and analysing the very considerable written material, other information and evidence for which thanks.
- 1.5 This document is designed to be a brief overview of progress made, recommendations and their rationale. To supplement the proposals of this document I will make an oral presentation to Council and separately SRUL to explain the background and reasoning for each conclusion and recommendation.

At a later date following hoped for approval by Council and SRUL a further more detailed document will be prepared to support Motions at the proposed SGM and the AGM in August 2022.

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## PART I

Part I seeks to provide recommendations and explanations for changes to the governance arrangements for Scottish Rugby Union (SRU), the SRU Trust and Scottish Rugby Union Limited (SRUL).

### 7.5 **RECOMMENDATION 1**

We recommend the creation of a new company, a company limited by guarantee, to take over from and wholly replace the unincorporated association known as SRU together with all the assets of the SRU Trust 1911 (including the shares of SRUL).

Further to the Consultation Document 2, the question was posed -

“Should the unincorporated SRU be replaced by a Company Limited by Guarantee which will be owned by the member clubs and which in turn will own the trading company SRUL?”

The responses to this question had particular importance as it would change the foundation building block for governance of Scottish rugby. The responses were an almost unanimous “yes” to this question. The proposition for this proposal was concisely and well put in one particular response.



“A Company Limited by Guarantee is a well-established vehicle for sports governing bodies and which addresses many of the issues which led to the need for the creation of the SRU Trust and the then Scottish Rugby Union Limited.

Although there are undoubtedly alternatives which could be made to work, because SRUL is an existing vehicle which holds all the assets, conducts the ongoing trading and already has shares in issue (held by the Trustees), we see the creation of a NewCo as a Company Limited by Guarantee and it holding all the shares as the most straightforward, cost effective and quickest way of delivering an appropriate structural framework for members who can meet the objectives for Scottish rugby.

It also keeps the membership based ethos of SRU and does not disrupt the continued trading activities of SRUL”.

## 7.6 **RECOMMENDATION 2**

That the new company to be created further to Recommendation 1 be called:

Scottish Rugby Union

(a company limited by guarantee)

(“Hereinafter referred to in these proposals as CLG”).

Such classes of corporate entity do not require to bear the title limited in their names. As a consequence of this recommendation, SRUL will require to change its name (see Recommendation 7 below).

## 7.7 **RECOMMENDATION 3**

CLG will have 3 principal purposes:

- (i) to hold all the assets of Scottish rugby (Recommendation 1) now, and in perpetuity.
- (ii) to exercise effective oversight of the activities of SRUL and,
- (iii) to report to the members of CLG (hereinafter referred to as “the Owners”) further to the exercise of the oversight role described in (ii) above.

## 7.8 **RECOMMENDATION 4**

7.8.1 CLG shall authorise and delegate to SRUL the running of the business of Scottish rugby in its entirety (other than provided elsewhere in these proposals), the whole of its commercial affairs and interests, including the management of assets and the administration of professional rugby (including matters relating to and arising from CLG’s commitment to International rugby).

7.8.2 A Shareholders Agreement between CLG and SRUL will be created defining the relationship between CLG and SRUL and will inter alia provide for “Reserved Matters” for the Board of CLG.

2.1.1 The matters reserved to the Board of CLG for formal approval in relation to the operations of SRUL will be:

1. Annual budget.
2. Annual and/or longer term Strategy.
3. Appointment (Re-appointment) of Chair of SRUL.

## 7.9 **RECOMMENDATION 5**

7.9.1 CLG and SRUL will enter into a formal Relationship Management Agreement (“RMA”).

RMA is an established corporate methodology, bringing together owners of private companies with their professional executive and board to whom they have delegated responsibility of running the business in their interests. Such agreements recognise that for the professional executive and board to succeed in furtherance of its business strategy the tacit and active support of their owners is required.

7.9.2 The members of the Board of CLG will act in a constructive and informed manner in the exercise its oversight function of the SRUL operations.

2.1.2 The RMA will set out CLG’s expectations in their capacity as representatives of the Owners. It is anticipated that in addition to the Reserved Matters (Recommendation 2.4.3) the RMA will include inter alia provisions in relation to:

- (i) The provision for meetings between the Custodians and SRUL which shall take place not less than quarterly and additionally as may be required.
- (ii) These meetings will be the principal forum through which the Custodians will manage and protect the Owners’ interests, monitor business performance of SRUL and allow exchange and discussion of ideas.
- (iii) At each meeting the Chairman of SRUL shall provide an update on the performance and progress of the business of Scottish Rugby including material matters in relation to finance, strategy and risk.
- (iv) The Chairman of SRUL will present the Strategic plan for Scottish rugby annually and usually before the end of each financial year. Any envisaged material deviations or alterations to the Strategic plan will be advised to the Custodians at the next occurring quarterly meeting.
- (v) During the course of each year the Chairs of the standing committees of SRUL namely: Audit and Risk, Investment, Nominations, Remuneration

and Safeguarding Wellbeing, Diversity and Inclusion will provide a report upon their activities and outcomes.

- (vi) Any proposed material and exceptional deviation from the Annual Budget or Strategic plan will require approval of the Custodians. This will include for example, disposal or other arrangements of importance for Murrayfield or major asset acquisitions.

The Independent Chair of the Custodians shall ensure the effectiveness of the running and outcomes of the quarterly meetings and assist the Chair of SRUL in ensuring the Custodians have all the information required to enable a regular informed progress and activities report to be made available to the Owners.

## 7.10 **RECOMMENDATION 6**

### 7.10.1

7.10.2 The Board of CLG will have 8 members. Each member is as a matter of law, classified as a Director with all the consequent statutory duties and obligations. Each member will be called a “Custodian” which properly defines and reflects their role as Custodians of the brand, assets and wellbeing of Scottish rugby. To properly fulfil this role effective understanding of the operations and activities of SRUL will be required.

7.10.3 One of the eight Custodians of CLG will be an “Independent Chair”. Independent means that the individual is not an employee or officer holder in the structures of SRU, SRUL or the proposed Club Rugby Board. The Chair will be appointed by the Council or its successor body.

2.1.3 The skills matrix for all Custodians including the Chair, will be:

- (i) Individuals of standing in Scottish rugby, and
- (ii) Skill(s) relevant to having capacity to have insightful overview and constructive challenge of the business activities of SRUL further to the RMA.

7.10.4 The Custodians will be unremunerated appointments.

7.10.5 Who will be the Custodians in addition to the Independent Chair?

- (i) The President, Vice President and Immediate Past President (IPP). The IPP will demit office as a Custodian when the current President leaves office to become the new IPP.
- (ii) Two Custodians will be elected by the Owners at an AGM or SGM further to nominations for these positions.
- (iii) Two Custodians will be selected with assistance from Recruitment Consultants and appointed by Council or its successor body. (The

maximum term office of Custodians under (ii) and (iii) above will be 2 times 3 year periods)

- (iv) The Chief Executive and Chief Financial Officer (of SRUL) will be Standing Invitees to CLG meetings. Standing Invitees will have access to all information and will be fully involved in all discussions. They will not however have a vote which is reserved to the Custodians.

## 8 **RECOMMENDATION 7**

The role and function of SRUL:

- 8.1 The functions, role and authorities of SRUL, remain without alteration (Recommendation 4).
- 8.2 In addition, SRUL will fulfil the obligations contained in the proposed RMA (Recommendation 5).
  - 2.2 An agreement will be entered into between CLG and SRUL which will include the Reserved Matters and some aspects of the proposed RMA.
- 8.3 SRUL will change its name to Scottish Rugby Limited or such other preferred name as agreed between SRUL and the Council or its successor body.
- 8.4 The President and Vice President of SRU will cease to be Directors of SRUL upon the new arrangements coming into effect between CLG and SRUL.
  - 2.3 When the two current Council members terms of office as Directors of SRUL cease, it will be decided and agreed between CLG and SRUL as to whether further such nominees be proposed or ceased.

We reached this view as the interests of the Owners will be recognised and protected by the role and actions of CLG in the exercise of its oversight role. The President and Vice President will assume Custodian roles and cease to be Directors of SRUL. The remaining two appointees, current Council Members, will demit office when their terms of appointment expire. It will be at this juncture CLG will determine, in consultation with SRUL, as to whether these roles are valuable to the discharge of the functions of SRUL or will cease.

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## CONCLUSION OF PART 1

We would commend these Recommendations to you.

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## PART 2

This part of SCOG's recommendations has been prepared by the Sub-Group of SCOG chaired by Bobby Frazer. What follows is:

- a narrative of the proposals
- a set of Recommendations

CRB Mission Statement: *The CRB will be directly involved with Scottish Rugby (CLG) and the Executive team of SRUL in the formulation and implementation of the strategic vision, mission, and development of the Club game in Scotland, including the allocation of resources to the Clubs. The responsibility for the successful implementation and monitoring of the agreed strategy lies with CRB in conjunction with Rugby Development.*

### 1 PROPOSED MEMBERSHIP OF THE CRB (15):

<b>Vice President (as Chair)</b>	<b>Edinburgh Forum Rep</b>
<b>Women's Forum Rep</b>	<b>Glasgow North Forum Rep</b>
<b>Prem Forum Rep</b>	<b>Glasgow South Forum Rep</b>
<b>Nat 1 Forum Rep</b>	<b>Midlands Forum Rep</b>
<b>Nat 2 Forum Rep</b>	<b>North Forum Rep</b>
<b>Nat 3 Forum Rep</b>	<b>Borders Forum Rep</b>
<b>Match Officials Forum Rep</b>	<b>Schools &amp; Youth Forum Rep</b>
<b>Director of Rugby Development</b>	
<b>Standing Attendees:</b>	
<b>President</b>	<b>Financial Controller (SRUL)</b>
<b>Secretary (from SRUL Rugby Development)</b>	

Additionally, and as may be requested, staff from SRUL Rugby Development may attend to address particular agenda items or provide requested updates / reports.

## 2 **REMIT:**

<b>Strategy (community game) for Scottish Rugby / SRUL sign off</b>	<b>Budget allocation &amp; implementation</b>
<b>Competition Regulations</b>	<b>Training &amp; Education programmes</b>
<b>Disciplinary Panel membership (all areas out with performance rugby) Season Structure</b>	<b>Match Officials – and Competitions Dept</b>
<b>Club Support Programmes / MoS etc.</b>	<b>Regulatory matters (Community game)</b>
<b>Club name / status changes</b>	<b>Murrayfield Injured Players Foundation</b>
	<b>Player Pathways</b>

## 3 **REPORTING LINES**

In a “northerly” direction, CRB will report directly to Scottish Rugby (CLG) per, and according to the terms of, a Relationship Management Agreement (see below).

In a “southerly” direction, CRB will report to member clubs via their elected CRB representatives, and at AGM through presentation on strategy, spend, KPI’s, past activity and short/medium term plans.

## 4 **SCOTTISH RUGBY (CLG) / CRB RELATIONSHIP MANAGEMENT AGREEMENT (RMA)**

Though yet to be drafted, it is proposed that this RMA will be a document outlining:

- The composition of CRB (see 1 above).
- The principal areas of responsibility (see 2 above);
- The operational obligations and expectations of CRB on issues such as:
  - (a) Number of meetings (minimum 4 pa);
  - (b) Format of meetings;
  - (c) Ability to request attendance of any individual involved in Scottish rugby;
  - (d) Ability to seek external counsel on any matter relevant to its remit;
  - (e) Requirement to publish minutes of meetings (to a redaction policy determined by Scottish Rugby (CLG));
- Ability to appointment Standing Committees / Sub-groups on matters such as:
  - Match Officials (regional and national), Laws and N.C.R.s;
  - Schools / Youth & Universities;
  - Men’s Regional Rugby & Women’s Regional Rugby;
  - Men’s & Women’s Premiership and National Rugby;
  - Non-First XV rugby including 2nd XV, Development, Age restricted (U21) etc.;

- Coaching, Education, Diversity, Inclusion, Child Protection;
- Facilities and Access to Specialist support;
- 7's rugby (domestic); and
- Player Pathways;
- all after discussion and consultation with the Director of Rugby Development and any other member of the SRUL Executive team that CRB consider appropriate / necessary.
- Ability to appoint a suitably qualified person(s) from outwith CRB to sit as a member of/ contribute to any Standing Committee or Sub-group.
- CRB's reporting obligations to Scottish Rugby (CLG) and to member clubs.

## 5 LENGTH OF TERM OF CRB MEMBERS:

Other than the Vice-President, fora representatives appointed to represent their constituencies on CRB shall be appointed for an initial period of 3 years. No member may sit for more than 2 consecutive 3-year periods, and no more than 6 years can be served in a 12-year period.

Any person serving on Council will have their time of tenure on Council considered as part of the total of 6 years holding office once CRB is established. No person shall hold membership of Council and CRB for a period longer than 6 years and cannot be reappointed until a period of 6 years thereafter has elapsed.

## 6 FREQUENCY OF CRB MEETINGS:

We would envisage the CRB would meet at least 4 times per year, chaired by the VP. Each Representative on the CRB shall ordinarily attend and may Chair their Forum, of which there are 13:

1. **Edinburgh Area Rugby Forum**
2. **Midlands Area Rugby Forum**
3. **Glasgow North Area Rugby Forum**
4. **Glasgow South Area Rugby Forum**
5. **North Area Rugby Forum**
6. **Borders Area rugby Forum**
7. **Women's Rugby Forum**
8. **Premier Forum**
9. **Nat 1 Forum**
10. **Nat 2 Forum**
11. **Nat 3 Forum**
12. **Match Officials Forum**
13. **Schools & Youth Forum**

Should growth in the women's game continue and it be deemed appropriate / desirable, the potential for separate forums representing Women's Premiership / National clubs and Women's Regional clubs is recognised.

## 7 FORA PURPOSE:

Each area forum, in conjunction with Rugby Development staff, has an overarching responsibility for the maintenance, running and development of the game of rugby union in

its area of operation by providing a two-way communication conduit between each Forum's representatives and those clubs within the relevant constituencies.

The Forum is advisory in nature and its primary role would be to support the CRB elected representative.

The CRB representative will be required to attend and present at each Fora meeting on a standard format covering projects, budgeting and wider fora feedback.

As approved by CRB (which approval shall not be unreasonably withheld) for the purposes of meeting(s), fora may combine together e.g. Nat 2 & Nat 3. In such instances, both fora shall have separate CRB elected representatives but a single elected chair / secretary.

## 8 FORA MEMBERSHIP:

- Each Forum will invite all appropriate member clubs, and any person or persons the Chairperson and /or CRB representative deems appropriate to present information if required.
- Each Forum shall elect a representative to represent them on the CRB for a period of 3-years, said appointment commencing at the AGM following election. If a CRB representative demits office during his / her term (for whatever reason), a replacement will be elected to serve the remainder of that term.
- An elected CRB fora member may be removed from office by a vote at any quorate fora meeting if 75% of those attending and entitled to vote do so in favour of a competent motion to remove said member. Thereafter, an election will be called in accordance with the election rules to elect a replacement.
- Rugby Development shall provide secretarial staff to support the Forum.
- The President and Vice President of Scottish Rugby may attend the meetings but cannot vote.
- Each Club is entitled to be represented by 1 member who has the authority to make decisions and vote on all matters relating to the club. It is the club's responsibility to ensure that the correct person represents their club.
- Each club is entitled to 1 vote only.
- For the avoidance of doubt, any Scottish Rugby staff, the President, Vice-President attending a Forum meeting do not have a vote.
- A quorum for Forum meetings shall be 50% for member clubs plus 1 club; If the CRB representative is unavailable he/she can be replaced by the President or Vice President.
- Club attendance may be by electronic means.
- Voting shall be on a simple majority of clubs in attendance (including online attendance).
- Minutes of meeting to be published on SRU website within 20 working days.



## 9 FORA MEETINGS:

Each Forum would be required to meet at least 4 times per year, with responsibility to ensure all views are then fed back, via compulsory quarterly reports to CRB by the elected representative.

It is the responsibility of the CRB representative to call and hold these Forum meetings. These meetings can be in person, remotely or in a hybrid of the two. If the CRB representative is not the Chairperson of the fora, an annual election by fora members will be required to appoint the Chairperson.

The Forum shall discuss all matters relating to its league and the competitions in which its clubs / societies participate. These will include matters relating to the second-team leagues and age-grade and women's competitions where the clubs have these teams. These discussions should foster understanding of each club's views, form a consensus view when required, and generally ensure that its CRB Representative is fully aware of all relevant issues. The Chairperson or CRB representative may invite any person or persons to a fora meeting to present on a specific agenda item.

A sample Agenda will include the following heads of discussion:

- a. Approval of previous minutes
- b. CRB Update by elected representative, who shall attend all fora meetings, unless excused by the Vice President/President, on CRB strategy, goal achievement and national overview etc.
- c. Performance of the area or league in achieving strategic goals as per KPIs in the Strategic Plan e.g. participation numbers, game completion etc.
- d. Matters arising relevant to club or schools/youth rugby
- e. Non- First XV rugby including development or 2nd teams etc.
- f. Facilities
- g. Women's
- h. Youth Rugby (age grade) & Child Protection
- i. Match Officials
- j. Coaching & Course Attendance by club staff/office bearers
- k. Inclusion and Diversity
- l. Well-being
- m. AOCB

The Chair of the Forum or CRB representative may call additional meetings as necessary to ensure appropriate consultation and communication with member clubs forming the constituency.

## 10 MATTERS OF MUTUAL INTEREST

Once per year there is a "club day" at BT Murrayfield where the Fora will report to the CRB on activities and achievements completed over the past year and will provide an update on their strategy going forward. There will be an opportunity to discuss national strategy for the club game, competition rules and initiatives that benefit the game.

The President shall convene meetings in each region on an annual basis, which can be in hybrid form, to receive direct feedback from member clubs and other stakeholders. The President can update to these meetings on the general health of Scottish rugby, its direction of travel and the challenges facing the organisation.

In summary the Recommendations in relation to the proposed CRB are:

## 11 MEMBERSHIP

- 15 members, made up by 13 members from the Forums (i.e. member club elected reps), the SRUL Director of Rugby Development, and the VP (sitting as Chair).
- Standing invitees proposed are the President plus the SRUL CFO's deputy.
- Additionally, CRB may request attendance from members of the Rugby Development team.

## 12 REMIT

- Spelt out in more detail in this paper but specifically includes:
- Development of strategy for the domestic game for CLG sign off; and
- Budget allocation and implementation.

On budget, the current proposal is that the CRB should have a budget figure representing not less than a rolling 4-year average of 15% of SRUL reported turnover.

## 13 REPORTING LINES

- Upwards, CRB will report to CLG;
- Downwards, CRB will report to member clubs through their elected fora reps;
- Through attendance of the Director of Rugby and the CFO's deputy, SRUL can be appraised of progress made.

## 14 CLG / CRB RELATIONSHIP

- Will be managed via a (second) formal Relationship Management Agreement.
- In many respects the RMA parallels obligations Council is currently held to by existing byelaws, but it will be different because of the new structures and new responsibilities delegated.
- RMA will cover issues such as meeting frequency, agenda, performance expectations, ability to consult (internally and externally as may be required), and

the ability to set up specific workstreams and / or working groups on a wide variety of issues – examples of which are given in the accompanying paper.

- Whilst it is anticipated that such working groups will meet as often as is deemed necessary, the main CRB shall meet at least 4 times per year.

## 15 TERM

- Appointments from Fora will be for 3-year terms, with no more than 2 terms being served consecutively by any single individual, and no more than 6 years in total in any 12-year period.
- The VP's appointment as chair will be for the length of his appointment – normally 2 years. The Director of Rugby Developments appointment will last for so long as he / she remains in that post.

## 16 FORA

- CRB members (other than the VP – who would be elected in the normal way – and the Director of Rugby Development) are each elected by the members of their respective constituencies, as at present.
- Given the comments received from respondees to Consult 2, it is proposed to leave the current fora structure in place and NOT restructure along regional lines.

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## SOME ANCILLARY MATTERS

Transition arrangements.

In the event of the Council agreeing these proposals it is envisaged that:

- 1 A draft SGM motion be prepared based upon the Recommendations.
- 2 Should the motion be approved and passed by the member clubs, Council and SCOG would commence works in preparation for the governance changes including inter alia:
  - Through the auspices of the in house legal team of SRU instruct the legal advisors in all the necessary legal arrangements including the creation of CLG and the transfer of assets.
  - Organise a suitable mechanism for all member clubs to become members of CLG.

- Work with the Council to organise the initial population of both the Board of CLG and the members of the proposed CRB.
- Liaise with the Executive team and SRUL to realise the outcomes arising from the proposed motion, seamlessly and harmoniously.
- Lay all final proposals, including the proposed RMA's before AGM 2022 for approval, and
- Provide a mechanism for all questions and comments of member clubs to be attended to prior to any SGM and AGM.

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## CONCLUSION

Further to our terms of reference the members of SCOG believe that these detailed proposals and recommendations provide the framework in which the governance and operational structures of SRU and SRUL should be revised and improved in the interest of Scottish Rugby as a whole.



**Professor Lorne D Crerar CBE FRSE**

25 March 2022

Prepared by

