LOCAL COMMUNITIES REFERENCE GROUP

Submission to the Scottish Government on the purposes of community councils

The Local Communities Reference Group is grateful to Mr. Alasdair McKinlay for the opportunity to raise points of concern about the future of community councils which is currently being considered by the Scottish Government’s Short-Life Working Group on Community Councils.

While it would be possible to comment on several aspects, we focus on one: the legal purpose(s) of community councils (CCs). We consider that the first part of section 51(2) of the Local Government (Scotland) Act, 1973, is not only causing difficulties and even harm, but is impossible to implement in most instances, even though it is a legal duty deriving from the word ‘shall’. Since this is the conceptual underpinning of CCs, we regard its rectification as important.

Our submission is in three linked parts.

A. Legislation about the purpose(s) of Community Councils
B. Being representative
C. Responding to submissions or expressions of public opinion

A. LEGISLATION ABOUT THE PURPOSE(S) OF COMMUNITY COUNCILS

The ‘purpose’ of community councils appears in the Local Government (Scotland) Act, 1973, sec. 51(2), page 27. In reality, this section contains two purposes which are considered in turn below. We follow these with a suggestion of how this section of the law might be reviewed.

1. The first current legal purpose of community councils (CCs)

The first part of section 51(2) requires CCs to do something which most of them simply cannot do with any degree of credibility – that is,

‘... to ascertain, co-ordinate and express ... the views of the community which it represents ...’

In a small village that might be possible, assuming there is consensus. For most CCs with substantial populations, obtaining public opinion on every issue is impossible because:

(a) questionnaires /referenda / public meetings usually only attract a minority of responses;
(b) questionnaires / referenda / public meetings are expensive in time and money;
(c) CCs cannot hold a public meeting or circulate questionnaires for every issue that arises;
(d) the quality of questionnaire design and administration cannot meet professional standards;
(e) there is a danger that limited responses will be taken as ‘the will of the community’;
(f) sometimes a CC feels bound by such limited responses, irrespective of contrary evidence;
(g) time constraints in responding to events (e.g. planning applications) can limit consultation;
(h) results of developers’ questionnaires, designed for maximum self-support, are sometimes accepted as representing public opinion when that claim can be open to doubt.

It seems clear to us that this part of the legislation requires modification. A suggestion about how this might be done is given in A3 below.

2. The second current legal purpose of community councils

Most CCs operate at times on the basis of the second part of the legal purpose(s). This reads:

\[
\text{and to take such action in the interests of that community as appears to it [the CC] to be expedient and practicable.}
\]

To function mainly on that basis seems sensible and is in keeping with the way in which other levels of democracy (local authorities and various parliaments) operate.

3. How might the legislation be updated?

The legislation is now four decades old. There is a case for amending it. A possible rewording might be to change section 51(2) to something along the following lines.

‘... the general purpose of a community council shall be to assess, in an informed way, any issue it considers to relate to the welfare of the local community, taking into consideration any views expressed by the public along with other data, and to convey its conclusions and, if appropriate, the reasons for them to the relevant authority. A community council may take such action in the interests of the local community which it represents, as appears to it to be expedient and practicable.

This would overcome the impossibility of ascertaining and co-ordinating ‘the views of the community’. It would enable it to take into account views sought or expressed, but in conjunction with other data such as understanding the planning system or other technical aspects. Giving reasons, if appropriate, could be a safeguard against the CC merely offering uninformed opinions.
B. BEING ‘REPRESENTATIVE’

The act of being ‘representative’ is of two kinds:

**Status**: Having been elected or nominated or co-opted to represent.

**Function**: The active process of representing the interests of the community.

All community council members have the *status* of being representatives, but there is substantial variation in the extent to which they carry out the *functions* of being representative.

The election / selection / nomination / co-option procedures should be as flexible as possible. One aspect being considered by the current Scottish Government Working Party is ‘Increasing diversity of representation on Community Councils’. That is important. Other levels of governance have salaried officials with specialist expertise to assist elected members. CCs do not have that advantage unless the local authority or some other body is prepared to provide it. One way to obtain such assistance is co-option which can be either of two types:

(i) full CC membership, or

(ii) temporary *ad hoc* membership to assist on a specific issue.

Nomination or co-option increases the credibility and effectiveness of CCs, but we suggest that such members might be non-voting and that there is value in selecting them to reflect either unrepresented areas or interests, or to provide expertise not available in the CC.

Obtaining the views of other informed *local community groups* might also be encouraged. That widens the pool of evidence and expertise.

The essential point is that, to be representative in function, CC members should be well-informed. This means more than obtaining opinions from a minority of the local community but, crucially, understanding a range of factors affecting a decision. **Specialist sub-committees** of the CC can be valuable. This is especially important for planning issues for which a grasp of the planning system, greater than that of the average citizen, is needed since CCs are statutory consultees.

C. RESPONDING TO SUBMISSIONS OR EXPRESSIONS OF PUBLIC OPINION

**Quality and relevance of arguments are more important than the number of submissions**

Holding public meetings and occasional use of questionnaires to invite public comment can be contributory tools and this paper does not argue against them. The problem is deciding how much weight to give to the views of the minority who respond, especially when there are contradictory opinions. Para. 33 of Planning Advice Note 82 states with regard to objections to planning applications:
'The number of objections cannot be the sole deciding factor as to whether the body of objections has been “substantial”, but the quality and relevance of the arguments presented will be paramount.' [Scottish Executive emphases.]

This is an important concept which relates to more than planning matters and objections. It can apply to evaluating any issue. Local knowledge and sensitivity to local culture can be part of it.

Para. 30 of Planning Advice Note 82 also has a section on representative groups and how much weight should be given by authorities to local groups (including CCs). It states:

'Where such groups regularly engage proactively in the planning process and are normally very measured in their views of future development of their areas, but on a specific proposal have raised clear objections, that in itself might reasonably be treated as a substantial body of objection.'

In January 2012 the Scottish Government was asked (in writing) if this principle applies across the planning system or is limited to matters in PAN 82 (local authority interest developments). The answer was, in effect, that it applies generally to planning issues. This ties in with section 33, quoted above. It should be noted that it includes other local community groups as well as CCs.

In our view, the concepts of (a) the quality of arguments being paramount and (b) the observed competence of community groups should be embedded into any advice given about the future of community councils.

Conclusions. We conclude that the first part of the Local Government (Scotland) Act, 1973, sec. 51 (2) should be revised and community councils should be expected to operate in the same democratic mode as local authorities and various parliaments, sometimes seeking local views and taking them into account, but regarding the quality of well-informed arguments as paramount.

NOTE
We are aware that there are other aspects concerning election procedures, core funding of CCs, non-financial support from local authorities (and other sources), areas of disadvantage, places without CCs, youth involvement, non-technical cultural elements, codes of conduct, training, free access to professional expertise, communication, and so on. However, we consider that these can be addressed at a consultation stage, whereas the question of the legal purposes of CCs is fundamental. That is why this paper is limited to that one aspect which we suggest needs to be addressed before all else. We hope that our submission is of assistance.