

LASAAC

Accounting for the Common Good Fund: A Guidance note for Practitioners Consultation Draft September 2007

Response by Andy Wightman

PREAMBLE

I welcome this opportunity to provide comments on the paper produced by LASAAC entitled *Accounting for the Common Good: A Guidance Note for Practitioners Consultation Draft 2007*. This paper represents an excellent opportunity to improve accounting standards for Common Good Funds and to stimulate debate on their role and function.

I am the co-author of *Common Good Land in Scotland A Review and Critique* published by the Caledonia Centre for Social Development in November 2005 and available to download at www.andywightman.com/commonweal.

INTRODUCTION

Common Good Funds have been subject to varying degrees of rigour in the way that they have been presented in the Annual Accounts of Local Authorities since 1975 and proposals which at the very least attempt to standardise practice are welcome. However, standardisation is in fact the last of the challenges facing those charged with accounting for the common good.

At this stage it is worth analysing the meaning of the word accounting.

Collins Dictionary defines accounting as

the skill or practice of maintaining and auditing accounts and preparing reports on the assets, liabilities etc of a business.

Thus accounting for the Common Good should involve the processes of maintaining accounts and reports of the assets of Common Good Funds. This process has been conspicuously lacking in Local Government in Scotland since 1975. It is this process - ***an accurate account of what the Common Good Fund consists of*** - which is in dire need of reform. Instead, what is presented in this LASAAC report is basically a proposal for how ***annual reports of the financial accounts should be presented.***

This observation represents my main criticism of the scope and recommendations of the LASAAC report. I would add in support of this that the communities to whom Common Good Funds belong should really be determining the standard of accounting which they wish to see implemented. As in so many matters regarding the Common Good Fund, the beneficiaries have no role in their management or administration.

WHY DO COMMON GOOD FUNDS MATTER?

Common Good Funds matter because: -

1. They are the collective inheritance of people who, with varying degrees of enthusiasm, passion and commitment recognise them as the heritage of their community which, in many cases goes back centuries.
2. In the majority of cases of the 196 Scottish burghs whose Town Councils were wound up in 1975, there is no accurate asset register and thus (because one follows on from the other), no proper accounts. In the vast majority of cases this is due to both the complete neglect of moveable assets and in many cases to the inadequate reporting of fixed assets
3. Contrary to popular belief, Common Good Funds are of considerable value - certainly many times more than reported in the accounts of local Authorities - since in a number of cases tens of millions of pounds of assets have failed to be properly accounted for.

Common Good Funds matter for these (and other) reasons. Thus accounting for them is part of the process of accountability to those to whom the Common Good Funds belong (even although title rests with the Local Authority)

OBSERVATIONS ON THE BACKGROUND TO COMMON GOOD FUNDS

In the Discussion Paper it is stated that;

2.3 The Common Good (as these revenues were, and still are termed) is therefore of great antiquity.

It is worth noting here that as far as the **existence** of Common Good Funds is concerned, nothing changed after 1975. The Funds continued to exist. They were not abolished, they were not amalgamated, and their purpose did not alter. All that changed was that the title, held formerly by the Town Council (in the name of, for example, the Corporation or the Provost, Magistrates & Baillies) transferred by virtue of The Local Authorities (Property etc) (Scotland) Order 1975 to the new District Councils. In addition, statutory controls were placed on disposal of Common Good land and the new Councils had an additional duty to *"have regard to have regard to the interests of the inhabitants of the area to which the common good related prior to 16th May 1975"* (Section 15(4) Local Government (Scotland) Act 1973 & Section 15 of the Local Government etc. (Scotland) Act 1994).

Since the Funds were not abolished as argued above, the terms of the 1973 Act should be construed as additional responsibilities to those inherited by District Councils when they became title holders and stewards (quasi-trustees) of the Common Good. Instead, it appears that over the past 30 years, many Local Authorities have interpreted the Common Good provisions of the 1973 Act as being the **sole** legal obligations placed upon them instead of as being **supplementary** to all the obligations that case law makes clear are and continue to be placed upon them.

In Section 2.6 a remarkable claim is made.

2.6 The intention of the statutory provisions (*Section 15 of the Local Government etc. (Scotland) Act 1994*) was that, generally, all the Common Goods of the Burghs in any new council should be combined to benefit the population of the new authority as a whole. Certain

properties, forming part of the Common Good in some areas by their nature were intended and could be used only for the benefit of the people in a restricted area and, as it was not intended to oblige these to be sold to provide funds to benefit the new authority as a whole, it was decided to include in statute a provision requiring the new authorities to have regard to the interests of the former Burgh in administering physical property.

I fail to see the relevance of this and I challenge the claims made. Where is the evidence that the intention of the statutory provisions was that all Funds should be combined for the benefit of the new authority as a whole? Moreover, even if that was the intention of the drafters, they clearly failed to give effect to it. The provision that local authorities should

have regard to the interests of the inhabitants of the area to which the Common Good related prior to 16 May 1975

means precisely that. The Common Good Funds of burghs survived (clearly - they were never abolished). As a consequence of surviving they inherit all the statutory and case law that went before and all that changes is the plain words of Section 15 - which changes little in fact since the obligations of local authorities in the administration of common good funds are the same obligations as were possessed by the Town Councils.

A statutory duty to

have regard to the interests of the inhabitants of the area to which the Common Good related prior to 16 May 1975

does not imply that all of the responsibilities that previous statutes and case law have determined shall exist simply disappear. The enactment of this clause merely **adds** to surviving statutory provisions and case law and does not replace them in their entirety.

ACCOUNTING FOR THE COMMON GOOD

In Section 1.6 of the Discussion paper, it is stated that,

The principal focus of this guidance however is on accounting and it is further recognised that the complexities of the Common Good may mean that accounting guidance cannot readily address all issues or interests of stakeholders.

I acknowledge this and agree but for reasons outlined above, accounting for the common good is (or should be) about much more than simply providing the minimum data for the purposes of the Annual Financial Report, SORP or any other accounting convention. For that reason, despite the apparently limited remit of LASAAC, it is inevitable that accounting officers must take on board a wider conception of accounting which involves

- a proper asset register;
- a proper valuation;
- a clear policy on depreciation and capital accounting;
- a financial performance plan in place to measure results against.

Public demand is for full, up to date and accurate accounts of the moveable and heritable assets held in their Common Good Fund and a clear account of what changes have taken place year on year.

That straightforward need is not met by the rather limited scope of the LASAAC proposals.

SPECIFIC COMMENTS

You state,

- 1.1 The level of interest, in many cases, extends beyond, and is disproportionate to, the financial value of the funds themselves.

This is misleading and something of a circular argument. For a start, one cannot really relate the level of interest in Common Good Funds (how have you measured this?) with the financial value of the funds. Moreover, a high level of interest may be precisely because the Fund appears to have such little value when in fact it should be worth a lot more. There is currently a lot of debate around the use of the Inverness Common Good Fund for example but it is quite wealthy. By contrast there is little or no debate about some smaller Funds because people are unaware they exist or they are not reported on in Local Authority accounts.

- 1.2 In the case of the Common Good, that wider interest almost certainly includes a need for transparent and consistent reporting on the use of fund monies.

It does indeed include such a need but before one can begin to address the need for transparent and consistent reporting on the **use** of fund monies there needs to be transparent and consistent reporting on the **existence** of such Funds (some communities appear to have no such Funds at all), the actual **value** of the Funds and on the strategic goals for a **financial return** on the Funds. Only then can proper attention be paid to how such Funds are used.

- 3.2 Common Good funds may be applied for any lawful purpose for the benefit of the inhabitants.

This sentence should include at the end, the additional text “of the burgh concerned”.

ACCOUNTING PROPOSALS

In some senses I agree with LASAAC’s proposals in 4.9, that Option 3 outlined in para. 4.6 is the preferred option for the treatment of Common Good Funds. Such Funds do appear to closely resemble Managed Funds. On a year to year basis, such treatment may be acceptable but there is one major problem and that is that the starting point or Opening Balance if you like for so many Funds is inadequate. Only once the bullet points raised in **Accounting for the Common Good** above are addressed will such treatment be appropriate.

In paras. 4.10 - 4.12 there is discussion of the application of FRS 15. I am not an accountant (so please excuse any interpretations here that may be inaccurate) but understand that this means that capital accounting need not be applied. I strongly disagree with this argument for the following reasons.

- The categorisation of assets into the different asset classes as outlined in 4.13 is by no means consistent across Funds and is by no means understandable to the lay public.
- The argument that “*all funds and monies of the Common Good should be capable of being distributed*” flies in the face of the clear recognition that some assets are inalienable, that such Funds are held in a form of quasi-trust, that the proper financial goals should be to grow the value of the Fund and that specific restrictions apply to at least one Fund (Edinburgh) restricting the use to which capital receipts can be put.
- It is my view that Common Good Funds consist of moveable and heritable assets together with cash, securities and investments which, taken together, represent the capital of the Fund. This capital should, generally speaking, and in accordance with sound investment principles, be maintained and grown over time.

In terms of how LASAAC proposes that Common Good Funds be presented, I am in general agreement with much of paragraphs 4.14 onwards. However, for reasons outlined above, I do not agree that, as suggested in para. 4.17, local authorities who manage more than one Fund (in practice **all** do with the exception of Aberdeen City, Dundee City, and East Renfrewshire), should be allowed to aggregate the accounts of all the Funds under their stewardship. This reduces transparency and fails to meet the (possibly) very different aspirations of burgh inhabitants towards their respective Funds.

OTHER MATTERS

There are a number of other issues that require to be clarified by Local Authorities in the formulation of Common Good Accounts.

- What should be the accounting treatment of land (the solum) held in a Common Good Fund where infrastructure (buildings) etc have been constructed. What are the guidelines on the payment of a ground rent?
- The issue of Local Authorities paying a rent to Common Good Funds for property which they use to discharge their functions is subject to widely varying treatment across Scotland from some authorities paying a transparent rent to the other extreme where the authority does not even know that it is occupying property with a Common Good title and thus paying no rent.
- The lack of strategic financial planning to maintain and grow Common Good Funds is worrying. In most cases they appear to be treated as simply a historic relic worth a few hundred pounds. In reality they represent the basis for investment and growth (which is partly why I have advocated that former burghs should be given a statutory right to take back title at no cost). In many cases communities could be making far better use of the assets in the Common Good Funds.

YOUR FOUR QUESTIONS

- 1. Do you agree that the legislative distinction of the Common Good should be reflected with a separate disclosure of common good statements?**

Yes

- 2. Do you agree that the Common Good should not be subsumed into the local authority single entity accounts?**

Yes

- 3. Do you agree that the Common Good is not a single entity?**

As this is a technical accounting question, I pass!

- 4. Are there any other comments you would like to contribute to the development of the guidance?**

See all that preceeds.

CONCLUSION

I welcome this Discussion Paper by LASAAC which represents an important contribution to raising awareness of Common Good Funds and to devising new approaches to better account for them.

I am happy to comment further on any of the points I have raised here.

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3 October 2007