The Jimmy Reid Foundation

Government By The People

The Final Report of the Commission on Fair Access to Political Influence

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Foreword

This Commission has sought to explore the issue of access by citizens to the political decision-making process; it arrives at a fairly simple conclusion – at present such access is limited to the point of being almost non-existent. How can this be the case in a country which has three fully developed layers of governance – local authorities, the Scottish Parliament and the UK Parliament? And how can it be addressed? These issues are explored in this report.

All the evidence suggests that people are increasingly dissatisfied, disillusioned and disengaged from the political process. But that is not the same as lacking interest in political affairs or the consequences of political decisions. The fact that large swathes of the population have been conditioned to accept a spectator role in political matters does not mean that given the opportunity they would decline to be players.

Consider the current referendum process as a case in point. People are interested but the discourse, at present, is dominated by petty party point scoring, personalisation, scare-mongering and a failure to seize this wonderful opportunity to define the nature and values of the Scotland we wish to live in. As we approach the ballot on our future constitutional arrangement, there is constant refrain from the public of the need for more information, less rhetoric, less politicking and more genuine enquiry, debate and discussion. Politics is far too important to be left to politicians. Perhaps space might be found in the current debate for facilitating some of the access ideas suggested in this paper.

As a teacher trade unionist I have been listening for over a decade to rhetoric around the need for collegiate approaches and distributive leadership in our Education system but I have rarely seen them practised. The nub of the issue is that influence in decision-making equates to a degree of power and those currently with power are notoriously poor at sharing it with others. By ignoring the contribution that we all can make to better decision making, by ignoring the voices outside the circled wagons of defensiveness, party politics, self-interest, and, occasionally, self-delusion – our current political practice falls short of being a living, vibrant, inclusive democracy.

This report invites everyone to consider some remedies to our current malaise.

Larry Flannegan, Chair

Introduction

The Scottish Parliament was set up in a flurry of optimism that a new, more consensual and more participative form of politics was possible. And, in comparison to Westminster, it has indeed made steps towards openness and accessibility.

However, as the Parliament has settled down as an established legislature, concerns have grown that it has tended towards many of the 'closed shop' practices which have left citizens feeling remote from Westminster.

To attempt to make some form of assessment of this, the Jimmy Reid Foundation analysed the income background of the group of people who can be identified as influencing the work of the Scottish Parliament (those invited to give evidence to Parliamentary Committees, those who are appointed to public bodies and to inquiries) as a proxy for whether there is a fair spread of access to power for the wider Scottish citizens (*Not By The People*, Reid Foundation 2012). Nearly four thousand individuals were considered and put into broad income categories. The headline outcome was as follows:

- Over 70 per cent of the Scottish population lives on an income lower than the average salary of £24,000

- Of the 'influencers' group (excluding elected politicians) only about three per cent have an income lower than the national average.

In an era where there are widespread fears that financial and commercial power over society are too strong, the key source of power which can balance commercial interests with the interests of citizens is democracy. If democracy becomes captured by the commercial interests it is in part supposed to moderate, then citizens are left with only civic action and protest as agencies of power. If that becomes the case, then we can only expect the increases in disillusion and mistrust with politics we have seen over recent decades.

The Foundation therefore established the Commission on Fair Access to Political Influence to explore ways to address this problem. The purpose was straightforward; to identify ways in which politics can be opened up to allow a more representative range of views, opinions and experiences to inform policy and practice. This report is the outcome of that work.

Methodology

The Commission was established to reflect both expertise in the area of democracy and how it is influenced and also to include voices which are often excluded from these debates (young people, people from communities that face poverty, people outside the central belt, small businesses and so on). The Commission was Chaired by Larry Flanagan, the General Secretary of the Educational

Institute of Scotland. The other members of the Commission are:

- Will Dinan, an academic specialising on lobbying

- Daniel Johnson, a small business owner

- Cathy McCormack, a poverty campaigner

- Suki Sangha, a young activist

- Willie Sullivan. Scottish Director of the Electoral Reform Society Scotland

- Jean Urquhart, an MSP and activist from North of Scotland

The Commission developed this report in three ways:

- It made an open call for organisations and individuals with an interest in influencing the Scottish Parliament to submit their experiences and to tell us what changes they would make

- It carried out interviews with academic experts in the field of participative democracy

- It met to discuss its own experiences and views

The Commission received just under 30 detailed submissions and undertook over a dozen detailed interviews. However, this final report is not intended to be a summary of all the views received or to be an academic literature survey. Rather, in producing it the Commission has learned from the experiences of others and has drawn from their ideas and expertise in developing a set of proposals. These are the views and opinions of the Commission itself which we hope have captured the experiences of others. It has focussed on existing best practice from around the world and sought to describe these in the context of the Scottish Parliament.

Some guiding perspectives

At the outset the Commission had no strong view about the direction in which the final report would take. We were clear that this issue is about more than just 'lobbying', which is why it was created to look at the wider issue of political influence. However, over the course of our work we have heard views from experts, organisations with an interest and members of the public. What has struck us most about what people want from the process of political influence may best be summed up by the following quotation adapted from one submission:

> "The answer is not to look for ways in which smaller organisations can lobby to try to compete with the bigger corporations. That doesn't have a public deliberation side at all, it's a free-for-all of private interests. We must pursue the political *integration* of the citizen in decision-making, as opposed to simply improving the fairness of the mechanisms of political *influence* currently utilised."

Any step which will level the existing playing field of influence is of course welcome. However, so long as that playing field excludes the vast majority of the population, this remains a contest

of institutional voices. The goal should be set higher; a system in which democratic participation takes place years apart and the intervening period allows little or no engagement between citizens and decision-making should no longer be considered acceptable at a stage of national development where alternative approaches are both well-known and easily achievable.

As one submission made clear, the problem is not that the public has reached a state of apathy towards democracy but that senior politicians, elite decision-makers and vested interests have become apathetic about citizens, demonstrating a lack of trust in their capacity and judgement or actively seeking to prevent them interfering with the way their society is run.

We therefore wish to set out one over-arching principle to underpin any reform of the system of democratic governance in Scotland:

> The state is nothing more than an agreement between its citizens. If the state loses the consent of its citizens it loses its legitimacy. It is therefore a principle of the highest order that the state should seek to use any mechanism possible to better reflect the will of citizens and to ensure that at all times it governs with consent.

Main findings

The Commission received a wide range of views on how people experience the process of trying to influence politics and what practices, systems and structures make it difficult. These all reflect the experience of the Commission itself. We believe it is important to understand these to understand how the overall system can be adapted. The following is an attempt to organise these experiences and views under a series of headings. We do not present these as quantitative evidence – that would require a very extensive process of consultation which reached beyond the larger organised groups best able to respond to a Commission of this sort. However, the consistency with which themes were raised, the extent to which they were raised from different sources and perspectives and the extent to which they chime with our own experiences lead us to believe that they are qualitatively representative. Again and again, these themes appear to reflect the consistent experiences of people who seek to influence decision-making.

Organised versus unorganised opinion

We believe it is fundamentally important to recognised the two different kinds of opinion decision-making should reflect. These have been called 'organised opinion' and 'unorganised opinion'. Organised opinion relates to any case where a collection of people sharing a view have organised themselves in some form. At its most organised this can mean corporate and commercial lobbying on a large scale; at its least organised this can mean small local community campaigns. Even though 'organised opinion' groups may be very small and have little political influence, nevertheless they will have an identifiable contact point which makes seeking that opinion comparatively easy – if that opinion is sought. In the case of organised opinion, the problem is about balance; the more powerful organised opinion groups have the capacity to dominate decision-making processes, the least powerful tend to be excluded. However, it would be comparatively easy to include those groups where the will to do so exists.

Unorganised opinion refers to groups of people who are likely to have similar levels of shared view as a result of shared experience but which are not coordinated or articulated. Examples of unorganised opinion might include communities facing high levels of deprivation where community organisation is low, sectors of low-pay, non-unionised employment like cleaning staff or peer groups with similar life experience but no collective networking such as the young unemployed. There is a clear link between unorganised opinion and poverty and exclusion, though the link is not exclusive.

Put simply, in the case of organised opinion we believe there is a clear imbalance in favour of large and commercially-focussed groups. In the case of unorganised opinion there is, more often than not, an almost complete absence of engagement during decision-making.

Patronage and control

We believe patronage is often a powerful controlling mechanism. The unilateral capacity to place people in decision-making positions (on NDPBs and other management boards, to enquiries and committees and so on) has the potential for exerting a high degree of control outside of democratic oversight. Patronage can be used to ensure or increase the likelihood that predefined outcomes will be reached. It can be used to 'reward' people for compliance or refusal of patronage can be used to 'punish' people for lack of compliance. The prevalence of 'arms length bodies' of various sorts (NDPBs, ALEOs, mutualisation etc) has meant that increasing proportions of the work of government is carried out by appointees.

It is our opinion that, rather than being driven by politicians 'rewarding their people', actually the civil service has a high degree of control over appointments. Allied to private networks of influence, this has the potential to create a system of 'closed governance' in which elite groups appoint members of their own extended networks to unaccountable positions of power. (The same is true of 'independent advice'; see below.)

Another form of 'control through patronage' is the extent to which certain organisations (often in the third sector) rely on government funding and therefore tend to be 'compliant' in the face of the risk of losing that funding.

Much of this takes takes place in circumstances where there is virtually no awareness of what is going on among even politically-engaged groups, never mind the wide public.

'Independent' advice

As an extension to the issue of patronage, the use of 'external independent expert advice' in government has increased steadily. Where key analysis and advice used to come primarily from within the civil service itself, this is increasingly outsourced to commercial entities. The best known of these are the 'Big Four' accountancy firms which, along with a cadre of specialist commercial consultancies (covering everything from IT to HR) and commercial legal firms, have a high degree of influence in interpreting what is in the public interest. The best known example of this is at the UK level where there is a 'revolving door' of accountancy firms seconding staff to government to write tax policy which they then seek to subvert when they return into the commercial sector. However, the use of private sector advice in government is endemic in almost all policy areas, This trend is defended by arguing that 'expert independent advice' improves policy. It fails to engage with the conflicts of interests of those giving the advice who make most of their income from private commercial work with organisations which are seeking to benefit from government decisions. The use of commercial advice services is presented as a step towards greater neutrality; we believe

the reality is that this does little more than provide privileged access to commercial vested interests.

Consultation

We share an almost universal scepticism about the use of consultation to inform government policy. Consultations are routinely seen by those being consulted as ways to manage their opinion towards predefined ends rather than as a way to elicit their opinion to help shape the ends. They are viewed as being used too late in the process, as being devised not to explore opinion but to justify decisions. The analysis and use of consultations is seldom viewed as having significant impact on policy decisions. Indeed, for many the process of being consulted appears to leave them feeling less empowered rather than more empowered.

Whether these views accurately reflect the reality would require detailed study. However, the perception is so widespread that it is hard simply to dismiss it as 'false'.

The civil service and the 'black box'

One of the recurring descriptions of the civil service is that it operates like a 'black box'. People know what is 'inputed' in terms of arguments, evidence and proposals. They see what comes out the other side in terms of policy, funding decisions and legislation. But the process of converting the inputs to the outputs is viewed as being almost completely opaque. In many cases people appear to believe that there is an insufficiently explicable link between inputs and outputs – what emerges does not reflect what people think 'won the argument'. In other cases there simply seems to be a significant mismatch in volume between input and output; i.e. a piece of work begins looking at one issue and by the time it emerges it has sprawled to cover a whole range of issues with decisions and proposals that seem unlinked to the initial discussions.

There is viewed to be a lack of accountability, a lack of an identifiable 'named person responsible', no arbitration or right of appeal. From those seeking to influence public policy from the outside, the civil service becomes the point at which transparency and understanding of what is happening during policy development comes to an end and an alternative process of self-contained and minimally-accountable policy development begins. These comments reflect the impressions expressed about other forms of public sector bureaucracy such as local authority officers and NHS managers.

One other aspect of the 'black box' problem is what happens when the 'box' is opened up. Too often when individuals expose malpractice taking place inside these 'black boxes' the response is to punish the individual and 'reseal the box'. We believe there is too little protection for whistleblowers, which in turn has a clear inhibiting effect on future whistleblowers.

Moving out of the light

Over the last 30 years government has moved an increasing volume of its decision-making processes to various models of arms-length operation. Quangos (more accurately, Non Departmental Public Bodies or NDPBs), Arms Length Executive Organisations (ALEOS), mergers that have led to the centralisation of decision-making, the 'mutualisation' of formerly public roles but without democratic governance and the outsourcing of responsibilities to the private and third sectors are all modes of enacting public decision-making and allocating funding which have removed close democratic oversight. Whole sectors of Scotland are

governed by mechanisms in which unelected appointees make all the key decisions with democratic oversight limited to very loose guidance at irregular intervals. We believe strongly that the lack of democratic accountability of these structures is not a side-effect of seeking to have more 'professionalised' government but that claiming the professionalisation of government is little more than a defence of a move which is designed precisely to remove democratic accountability and to allow decisions to be made on the basis of patronage.

Centralisation

By many measures, Scotland is one of the most centralised states in the western world. Certainly there is no European comparator which has anything like the lack of local democratic structures we have in Scotland - in almost every possible indicator we come out very significantly worse than any other nation you might choose to compare us with. There has also been a process of merger and centralisation even within that highly centralised state. We believe that much of this centralisation has been driven not so much by politicians as by bureaucracies and commercial interests. Public sector bureaucracies have seen senior salaries soar and a bonus culture emerge as they claim 'greater responsibility' as a result of centralisation process which they themselves have advocated. Likewise, there is a sector of HR, IT and restructuring consultants which simultaneously advise on the merits of centralisation while also profiting greatly from the merger process.

There has been very little challenge to the benefits claimed for centralisation. We find this particularly concerning given that the only independent assessment of these claims (*Learning the Lessons of Public Body Mergers*, Audit Scotland 2012) reaches highly sceptical conclusions. In cautious, accountant's language Audit Scotland concludes: "However, it is not possible to confirm the total costs and savings of mergers accurately because reported costs are likely to be under-estimates and there was inadequate analysis of savings and efficiencies". The most authoritative assessment of public sector mergers concludes that there is little believable evidence of claimed cost savings, that savings made are almost always a result of redundancy rather than efficiency gains, that there is no identifiable improvement in performance and that the cost of the merger is inaccurately reported to disguise what may be the real cost. We consider the lack of sufficient challenge to unsubstantiated claims of the financial benefit of mergers to be a major problem which may be covering up institutional and commercial profiteering which is driven almost completely by officials, not politicians.

What centralisation has done is greatly to increase the size of the 'black box' effect identified above. There is very little local accountability for decisions and in most cases little or no way for groups or communities affected to express their will democratically. Local authorities are too distant from local communities to be effectively held to account by citizens but are too distant from the political centre to be held to account by the media. They function in a zone where the operation of local government is all but independent of the operation of local democracy, such as it is.

Scotland has seen a steady erosion of democracy and it has gone hand-in-hand with a steady rise in the power and control of bureaucracies and officials. None of this is an argument for 'shrinking' government or reducing the volume of services; it is an argument to make sure that we have extensive universal public services but that they are decentralised and subject to real local control.

Party politics rather than social politics

The nature of political parties has become increasingly closed and centrally controlled with the emergence of a political class who spend entire careers solely in the field of party politics. There is a widespread view that a small number of party managers in effect triage and veto what becomes part of public debate. We believe that at a time when political culture in its widest sense has diversified, party politics has narrowed. The emphasis on political parties as the primary 'agents' of political debate may well be harmful, especially where polarisation along party or 'tribal' lines occurs.

The increasing use of whipping and internal party patronage as tools of control is also a concern. This means that not only is the 'acceptable content' of public debate heavily controlled by party hierarchies but that the opportunity for dissent from that centralised view as part of the legislative process has been diminished.

Defining expertise

We believe that the definition of where 'expertise' lies can be problematic. In consultation and in selecting evidence, there appears to be a tendency to emphasise the views of managers over views of practitioners, even where the issue is directly related to front-line practice. Thus (for example) health sector managers are more likely to give evidence on hospital hygiene than either front-line medial staff who deal with the symptoms of poor hygiene or the agency cleaning staff who deal with the commercial compromises which may lead to declining hygiene. Politicians are therefore privy to a conversation among senior managers, senior civil servants and often commercial interests about issues where the real expertise may lie elsewhere. The assumption that 'greater seniority equals greater levels of knowledge' is manifestly incorrect when dealing with many issues where the true organisational knowledge lies at the shop floor.

Control of information

The capacity for citizens (organised or otherwise) to assess the performance of the different elements of their state is predicated on them having sufficient high-quality information to make that assessment. There are two aspects to this which are problematic. We strongly support Freedom of Information legislation but share the frustration of many that it does not go further. In particular, the commercial confidentiality exemption greatly limits knowledge in the very field in which transparency is at its lowest – the outsourcing of responsibilities to the commercial sector. But there is also concern that the control of research capacity is almost exclusively in the hands of the bureaucracies which we seek to hold to account (although both academia and think tanks have some capacity to do this). The information on which to base judgements about the decisions being taken is therefore often in the hand of the decision-maker being judged. This does not engender high degrees of trust in data and statistics used in political discourse.

Language and jargon

We believe politics is pursued in an unnecessarily jargon-rich way. We have a small class of political professionals who make entire careers inside government and political parties and they tend to use an exclusive and unfamiliar language. However, perhaps even more importantly, much of the language of governance is seen as unnecessarily opaque with excessive use of jargon, buzz-words and technocratic terminology. This can make consultations difficult

to engage with, meetings and evidence sessions impenetrable to lay observers, strategy documents and statements of intent meaningless to citizens and legislation which only lawyers feel comfortable examining. There is absolutely no reason for this; clear, plain English is perfectly achievable. A suspicion persists that the exclusive nature of the language used is not accidental but is a convenient way to maintain the exclusiveness of the debate.

Hooked on lobbying

While commercial lobbying is often the focus of debate about influence over politics, there is a consistent view that while lobbying is widespread and poorly understood it is not an immediate concern for many seeking to influence politics. There is little confidence that much can be done to 'level the playing field' since whatever is done to regulate lobbying will at best make visible the resources and access available to different interests groups. This is a necessary but insufficient step towards wider democratic reform and moving toward a more participative political culture. We identify widespread support for moves to increase transparency but for many groups it's the decision-making process that requires reform.

Lobbying is believed to be helpful to 'overworked' politicians as it offers an attractive short-cut through the complexity of policy making. Lobbyists are on hand to supply quick and simple messages politicians can use. Lobbyists use a language which politicians understand and respond to in a symbiotic relationship – politicians get political content and ready soundbites; lobbyists get willing message-carriers. We of course recognise that this is a healthy aspect of democracy when it is balanced and transparent, although we do not believe the existing balance is anywhere near right and transparency around lobbying is woefully inadequate to enable the public to hold decision-makers and lobbyists to account. But making politicians less reliant on lobbying is also a potential priority aim.

Where lobbying is seen as a much more malign process is when it is done outside of democratic scrutiny. The focus of commercial interests is often to seek to influence not elected politicians but senior unelected officials. We believe that close relationships between senior policy-making officials and commercial interests seeking to benefit from their decisions is a serious problem, particularly since there is very little transparency associated with these lobbying links. We share the view of many others that without the influence of 'service companies' (who seek to take over responsibility for formerly publicly-managed functions) the rate and pace of outsourcing and privatisation would have been greatly curtailed. Much more exploration of the relationship between senior civil servants and commercial interests is needed, particularly with the phenomenon of 'revolving doors' where officials or elected representatives leave the public sector upon receipt of lucrative offers from industry sectors they have held some public responsibility for in terms of policy-making or regulation.

'Breaking in'

The concept of making it easier to 'break in' to political agendas was popular as the Scottish Parliament was being designed with the Petitions Committee probably the best known manifestation. The Committee appears to be generally popular, although there is concern about whether it carries sufficient weight in the Parliament and whether enough of the Parliamentary agenda has been influenced by it. However, generally those not closely engaged with political processes (and even some of those who are) feel that it is difficult to 'break in' to the public agenda or to get new issues onto the agenda.

Facilities and technology

We believe that enabling people to engage with policy-making is in part an issue of facilities, resources and the use of technology. The capacity for communities to engage is influence by their access to meeting spaces, the level of support they can draw on, the ease of their access to information and so on. We doubt whether Scotland (particularly at the local level) is really equipped to support active local citizens, with the centralisation of services and facilities (for example, the closure of libraries or arts facilities that serve as meeting spaces) making it harder for people to organise.

We do no believe that new technology is being deployed effectively to enable new forms of engagement. The prevalence of social media has changed people's expectation of how they engage directly with public processes. There is some reason for caution – unmediated social media engagement can be ill-informed and unproductive. However, there is a genuine opportunity to begin to develop ways of using technology to link people to decision-making.

Finally, there was pointed comment that 'Edinburgh-ism' is a major problem in the Parliament. The Commission heard of Committees rejecting potential contributors to inquiries because they wanted to give evidence via video conferencing and instead choosing others who are available to turn up in person. There is a strong view that demanding people drive to Edinburgh in the era of broadband is like demanding they arrived by coach and horses in the era of the railways. If the hesitance to use video conferencing technologies is widespread it creates a clear bias against any voices which do not emanate from the central belt.

Media, knowledge and meaning

Democracy can become a feedback loop between a small group of opinion-formers and the national media. The extent to which this loop creates meaning about 'what is good' and 'what is bad' in politics causes significant concern. A well-known example is the way that perpetually-rising house prices were presented in the UK media as an overwhelmingly positive development, despite the economic and social harm it created. In addition, we feel strongly that the fact that people who consume certain parts of the UK media are very significantly less likely to know basic information and are much more likely to hold verifiably incorrect views is problematic. This is particularly worrying because, on average, the population as a whole holds verifiably incorrect views which almost all tend in one political direction. An ill-informed population is not a promising vehicle to promote effective democracy.

The myth of apathy

It's not the people who are apathetic about their nation, it is the senior managers who run the nation on their behalf that appear to be apathetic about the people. In much of the above there is a consistent thread of mistrust of 'the great unwashed' among a ruling class which considers itself to be the most effective way to run society and which structures its decision-making processes accordingly. Through appointing 'its own' to bodies designed to have little democratic oversight, by managing consultation processes and controlling information, by carrying out much of its key functions in ways that are entirely opaque to outsiders, by co-opting commercial interests to carry out its functions (or perhaps more accurately, to be willingly co-opted by commercial interests), through continued centralisation and by rejecting more participative modes of deliberation, there is a strong hint that this ruling class is suspicious and mistrusting of the populace it governs and does

not sufficiently care about its views. The evidence that the populace does not sufficiently care about how it is governed is much harder to sustain; disillusionment with closed party politics is perfectly rational and does not reflect a lack of interest in the society in which people live.

Five Replacement Practices

Clearly, the concerns identified above cover an extremely wide range of issues in a very wide range of sectors of public life. To seek to address all of them would make the recommendations of this report lengthy and unwieldy. From the outset the Commission has sought to produce a short series of recommendations which represent an achievable and understandable response to the exclusive nature of influence in Scotland.

During our consultations a view which has been expressed repeatedly is that this report itself is likely to be a victim of the 'black box', that it will be given to decision-makers who may say kind words but that nothing will happen. We are determined to make it as difficult as possible for the 'black box' to 'disappear' this work. We have learned lessons for the presentation of this report from the process of developing it.

So we are determined to avoid a lengthy wish-list which is cherry-picked at best and ignored at worst. We also wish to avoid proposing processes which are easy to subvert, such as 'further studies', 'additional consultation' and 'small-scale pilot programmes'. We believe that the smaller the number of proposed actions, the more chance we have of people becoming aware and familiar with them; we believe this provides the best chance for new ideas to become part of the debate.

This approach inevitably means we must prioritise certain issues but choose not to address others. This most certainly does not mean we consider these issues unimportant; only that we do not propose solutions here. Among those issues are:

- **Lobbying.** The Commission fully supported the proposals for a register of lobbyists brought forward in early 2013. We favour a maximalist interpretation of lobbying and support full disclosure by all outside interests. The Reid Foundation produced a response to the consultation on the draft private members Bill outlining what this means. We note that this Bill has now been taken over by the Scottish Government and is subject to yet another consultation process led by the Standards Committee that appears to be reopening the debate on whether a lobbying register is needed, and if there is a problem with lobbying at Holyrood. The evidence that this Commission has heard is that there is a pressing need for a lobbying register and we conclude that the Parliament should not delay in taking forward proposals that received cross-party support to introduce a mandatory lobbying register. There is a strong case for a serious investigation into the lobbying links between commercial interests and non-elected officials and to follow that line of investigation towards reform and a more transparent system.

- **Party politics.** There has been a long and not particularly productive debate about how party politics might be reformed. While greater dissent and debate in and between political parties would be very welcome and while certain moves (such as a right to

recall elections of politicians who perform unacceptably) deserve further exploration, reform of political parties is outside the scope of this report.

- **Civil service and public sector bureaucracies.** There is a strong case for a serious look at reform of the civil service and how it operates. The same is true of other aspects of the administration of public life in Scotland such as the bureaucracies of local authorities and the health service. These sectors of life, by dint of controlling much of the public agenda, appear to have evaded serious public scrutiny, never mind reform. This does not imply 'less government', only 'less concentrated government'. However, it is outside the scope of this report to consider this further.

- **Media and information.** There is an almost never-ending debate about the quality and impact of the media we have in Scotland. It is widely accepted that 'something must be done', but this is not the place to propose what. And while there is a strong assumption in favour of a strengthened Freedom of Information regime, this report will not look at that in any detail.

- **Commercial consultancy.** There is a pressing need to examine the often-hidden role of commercial consultancy companies in shaping public policy behind closed doors. This is a potential source of maladministration which is little seen or understood. This report addresses the issue from another direction – removing as far as possible the need for this type of 'advice' in the first place. However, the role of commercial consultants remains concerning.

- **'The public'.** Much of the analysis of failures in governance has a tendency to 'blame' members of the public for apathy, lack of interest or lack of knowledge. This report recognises that there is a lack of knowledge among the public resulting from its exclusion from democratic processes and decision-making. However, it rejects the implicit assumption that this means we need to 'fix the public'. The Commission does not believe that it is the public which is broken and that the best way to address any lack of capacity is through practice – give the public a chance to run its own country and allow it to learn on the job.

So we wish to concentrate on five specific calls for a change in action. We present these very carefully; each is deliberately described in terms of 'a strong presumption towards...'. This is for a specific reason. The Commission does not wish to call for pilot projects to test the 'proof of concept' of these approaches, partly because they have all been piloted and proved elsewhere and partly because there is a need for these approaches to be mainstreamed as quickly as possible. Parking them in a 'pilot programme' risks seeing them disappear. However, it is also the Commission's aim to describe these approaches as simply and as flexibly as possible. This is in part to avoid overly-prescriptive determination of practices that should vary according to context, but it is also to ensure the maximum clarity about what is trying to be achieved.

To remove ambiguity and reason for prevarication, we present a very specific suggested approach to reform:

> There should be wide-ranging reform as the normal processes of government and decision-making take place. To ensure that reform happens, specific 'trigger moments' are defined. As soon as these defined 'trigger moments' are reached, the design of the process should immediately act with a 'presumption towards' the new approach. Where a decision is made not to follow that new approach there should be a clear statement of why that decision has been made. In time confidence and expertise will grow such that these cases become the exception rather than the rule.

The following are the five replacement practices that we believe should be pursued. In each case we outline a clearly-defined 'trigger moment' at which that new practice should be integrated into the process of government. We have deliberately kept these short and specific. We are simultaneously publishing a Annex Document which contains extended information on how each of these processes work for those who wish more detail.

Replacement Practice One: Decentralisation

Trigger: when a decision must be taken about where responsibility for a function or a power should lie

The closer decisions are made to those they affect and to those with a democratic right to determine the form of the decision, the better that decision is likely to reflect the will of those whose consent is required. Scotland is extremely centralised; the lack of meaningful community-level democracy is an invitation to bad government. There must be an additional layer of local democracy which is administered close to the places where people live and which is and given consent directly and closely by those being governed.

Whatever democratic and governance structures exist at the point where powers and responsibilities have to be allocated there should be a strong presumption that they should be allocated at the lowest level of government possible. In other countries policy and budgets for everything from local transport and childcare to local hospitals are successfully managed at a level of democracy we would call Community Councils.

Further information: Annex A of Annex Document

Replacement Practice Two: Democratisation

Trigger: when a decision must be taken about governance such as the establishment of a governance mechanism or an appointment to a governing body

There must be an assumption towards democratic mandate wherever governance is being developed or managed. There is no reason to avoid giving a democratic and participative mandate to the enactment of public policy – although there is some flexibility in defining the 'community' which should give consent which need not be the entire electorate on every occasion. The following are some examples:

- Where a function is a core public function carried out on behalf of citizens with public money, it must be assumed that this is carried out with democratic governance. This means an end to unelected NDPBs, ALEOs, contracted-out services which have a policy element or other forms which have previously been used to move public services out of democratic control.

- Where a governing body exists there should be a strong presumption of a democratic mandate for appointments of individuals to that body and a strong presumption against patronage. University communities can elect their University Courts, people could be allowed to register as 'friends of Creative Scotland' or 'friends of the National Galleries' and vote for their board and so on.

- Where there are public posts such as Commissioner for Children or Science Advisor there should be candidates and an election.

Further information: Annex B of Annex Document

Replacement Practice Three: Ethical Consultation

Trigger: when it is decided that views of groups outside of the decision-making body is required

When policy-makers conclude that they require to inform themselves of external opinion, the process of acquiring and assessing that opinion should be carried out independently of the policy-makers to avoid conflicts of interest or leading consultations. An independent body should be set up with independent governance which would have the duty of carrying out the most ethical form of consultation possible. This body should follow best practice in forming open questions and supporting people to make informed responses with consultees invited to indicate whether final assessments accurately reflects their views and a right to include dissenting views where it does not. This is important in ensuring that 'organised opinion' is accurately reflected at the earliest possible stage in the development of policy. It is also essential to ensuring that 'unorganised opinion' is properly assessed and included.

Further information: Annex C of Annex Document

Replacement Practice Four: decisions made by mini-publics

Trigger: when a decision has to be made or advice given on a subject where conflicting views have to be arbitrated

At the moment, when decisions have to be made or advice given on decisions which are contested or where policy-makers want some form of arbitration, the practice is to set up an inquiry or committee of investigation, generally made up of appointments made on the basis of perceived expertise. This often just means 'half a dozen people from one sector all agreeing with each other but not reflecting wider opinion'. This would be unacceptable in determining guilt or innocence in a criminal trial irrespective of the expertise of the individuals; it should be considered equally unacceptable in public policy. Instead, as in criminal trials, a process of 'mini publics' should be followed.

Mini-publics are a means of answering the question "how would an informed cross-section of the public address this issue after balanced learning, substantial deliberation and considered judgement?". These processes do not dispose of the input of leading experts; they are called to give evidence to and inform the conclusions of the 'mini-publics'. There are a number of forms of 'mini public' including citizens' juries, planning cells, consensus conferences, deliberative polls and citizen assemblies. All of these are explained in detail in Annex D of the Annex Document which reproduces a paper commissioned by the Commission from participative democracy experts Dr Stephen Elstub and Dr Oliver Escobar. It outlines how they work, what they cost and the impact they have had. It makes a clear case that, contrary to established views that they are 'expensive and time-consuming' they are in fact less expensive to run and quicker to report than alternatives.

Further information: Annex D of Annex Document

Replacement Practice Five: participatory budgeting

Trigger: when funding has to be allocated and budgets decided

Few issues more directly impact on the aspects of public policy that matter to citizens than the allocation of resources. Currently this is done almost entirely on an exclusive basis with

consultation amounting to little more than a battle between vested interests bidding for resources. Instead, a proper process of participatory budgeting enables citizens to inform budgetary decisions on the basis of their own priorities. This practice is less developed than most of those explored under 'mini publics' but has been used in some large-scale pilots and exploratory models. However, the practice has proven to be effective and popular and approaches to participatory budgeting should be developed in Scotland.

Further information: Annex E of Annex Document

Supporting Infrastructure

To underpin this work and to help to give clear guidance on and support for approaches to participative democracy, a further two initiatives are proposed:

Facilities, technologies and capacity

To support active citizens in engaging with decision-making, a process of strengthening the provision of supportive facilities and resources should be pursued. This means many things, including ensuring that local communities have sufficient facilities to allow them to meet and discuss in an informed way issues that affect them, that learning resources are readily available, that effective communications technologies are locally available including video conferencing facilities, and that those who wish to develop their civic capacity further have routes for doing this.

It is perhaps a little early in the development of social media to preemptively integrate it into processes of government. For example, currently popular social media platforms like Twitter barely existed five years ago and dominant forms of social media have changed and along with them forms of online engagement. In addition to this, there remains work to do in making social media an enlightening mode of articulating public opinion; it will not aid democracy simply to amalgamate the uninformed views of those most willing to push views via technology. Nevertheless, serious consideration should begin now on how to use technology and social media to open up democracy. The Commission believes, for example, that it can only be a matter of time before a Committee report includes in it a selection of Tweets received during the course of its deliberations.

Code of practice

Decision-makers must know what good practice looks like. There are many sorts of guidance that might be given to promote good participative democratic practice. The following are a few starting suggestions which should be built on:

- Any form of consultation should ensure that it gathers the views of all groups affected (whether that opinion is organised or unorganised) and that it should aim to gather that information with some degree of proportionality to those affected (so if the majority of the impact falls on one group, that group should provide a majority of the evidence on which decisions are made).

- All governmental business, from the day-to-day language of Parliament to the writing of legislation, should be done in language which is readily comprehensible by an average citizen. Further, that language should seek to inspire and engage.

- Geography, social class, ethnicity and identifiable interests of those informing decisions should be recorded to ensure that it is possible to assess how representative of the population as a whole is the subset which is informing decision.

- Decision-makers must not allow geographical convenience or the 'ease of returning to past contributors' to result in those informing decisions becoming a small and exclusive pool of familiar faces able to travel to the central belt.

Making a start

If this agenda is to make progress, there are things that must happen:

- First and foremost, there must be political consensus and a political will to make this happen. There are some enlightened bureaucracies in Scotland and the Commission has had some initial and informal conversations with public organisations that are interested in innovating democratic practices. However, it is of course inevitable that these enlightened bureaucracies are the least likely to be priorities for reform and those where democratic failure is greatest are most likely to be resistant to democratic reform. As a whole, the 'administrator class' has been identified as a significant part of the problem and so cannot be relied on to 'self-reform'. The only means of ensure change will happen is if there is democratic political will to make change happen. Cross-party support for these reforms will be crucial.

- However, the Foundation is very keen to work with those enlightened public bureaucracies and to offer them any support we can to innovate practice. It is hoped that a few really good, virtuous examples of change will inspire others.

- If political consensus can be achieved, it is then for the Scottish Government to offer guidance to public organisations to pursue this change agenda, to legislate in any occasion where that is necessary and regularly to monitor progress.

- As change begins to happen there must be continuous assessment made of the institutional capacity to use new modes of decision-making. Training, support and development must be offered to all parts of public Scotland to make sure they are able to innovate effectively.

- Once change has begun, it would of course be ironic if success and failure are a matter of self-reporting on the part of bureaucracies. The wider public must be drawn into a genuine discussion about whether this is achieving a more open, transparent and consensual form of governance.

While this agenda is designed primarily to reform existing processes of government, we also believe there is an immediate opportunity to use the techniques outlined in the context of the constitutional debate. Since the proposals contained in this report are about seeking 'light' where there is currently shade, the state of the constitutional debate would appear to be ripe for

enlightenment. Using processes of 'mini publics' and 'ethical consultation' may greatly benefit the quality and indeed the direction of the debate. However, action would need to be pursued urgently.

Conclusion

One contribution to the Commission described the goal of democratising decision-making as follows:

> "Scotland needs a community-led economy underpinned by redistribution of power via substantial community participation in decision-making and agenda-setting, with a state that underwrites community solutions."

The Commission believes that this is an admirable and succinct attempt to describe the outcome that a genuinely radical democratisation of Scotland could achieve. This Commission was established prior to the development of the Reid Foundation's Common Weal Project. While it was not conceived in that context and while much of the work was completed prior to the Project's launch, we see this report as a crucial part of a Common Weal approach. It is the ability of democracy – the view of the people – to moderate and balance commercial and elite power – the view of the very rich – which will rebalance society and the economy. If we take the 'wisdom' of commercial interests at face value and give them a status much higher than that of the members of our society, we would expect to see certain outcomes. For example, increasingly inequality and poverty, massively increasing corporate profits, increasing deregulation and profiteering, declining public services which are increasingly fragmented and outsourced, reductions in social cohesion, alienation and apathy. This is a fairly accurate description of 21st century Britain. The Common Weal alternative would instead prioritise the 'wisdom of citizens'. We believe the proposals in this report are a first large step towards prioritising that wisdom. We would expect the result to be a reversal of the social and economic phenomena described above. Certainly, that is the experience of places which have adopted these approaches.

Scotland must decide whether democracy is an inconvenience or whether democracy offers us a path forward to a better society. If we decide that democracy is a reason for hope, we must stop allowing administrators to treat it as an inconvenience. That requires action. This report suggests what that actions should be.

We very much hope it survives the 'black box'.

The Jimmy Reid Foundation