
CHANGE OF COMMUNITY PLANNING STRATEGIC BOARD TO BECOME AN UNINCORPORATED ASSOCIATION

Report by Director- Resilient Communities

7 March 2024

1 PURPOSE AND SUMMARY

- 1.1 The purpose of this report is to present how the Community Planning Partnership (CPP) will change if the Strategic Board moves away from the Council's committee structure and becomes an unincorporated association.**
- 1.2 The Community Planning family in the Scottish Borders is represented by the Strategic Board, which is a formal committee of Scottish Borders Council, and a Joint Programme Board which is not. Although the Strategic Board is a formal committee of the Council that is not a requirement of the legislation.
- 1.3 Community Planning sits outwith the formal committee structure of the local authority in Dumfries & Galloway, Aberdeenshire, Orkney, Shetland, East Lothian and Stirling, all part of the same Local Government Benchmarking Framework family groups as Scottish Borders. This is the case for at least 50% of CPPs across the country.
- 1.4 Scottish Borders Council agreed in August 2022 that the Community Planning Strategic Board could remove itself from the Council committee structure should it wish to become independent of SBC.
- 1.5 The Joint Programme Board held workshops on 6 November 2023 and 23 January 2024 prior to discussing the governance arrangements of the CPP at their meeting on 14 February 2024. These discussions included establishing the CPP as an unincorporated body. Any potential risks of doing so are explored in this report.

2 RECOMMENDATIONS

- 2.1 I recommend that the Strategic Board agrees that:**

- a) the Community Planning Strategic Board is removed as a formal committee of Council,**
- b) the Community Planning Strategic Board becomes an unincorporated association,**
- c) Integrated Impact Assessments continue to be undertaken for all reports submitted to the Strategic Board, and**
- d) that an Operating Framework for the CPP is put in place.**

3 BACKGROUND

- 3.1 Community Planning Partnerships were established under the Local Government (Scotland) Act 2003 with the responsibility for delivering community planning sitting with local authorities. This responsibility changed with the enactment of the Community Empowerment (Scotland) Act 2015 (the Act) which conferred joint responsibility to five organisations: local authority (Scottish Borders Council), health board (NHS Borders), Police Scotland, Scottish Fire & Rescue Service and Scottish Enterprise (South of Scotland Enterprise). The Act sets out additional membership and confers community planning partnerships the authority to invite other appropriate organisations/groups to join the Partnership.
- 3.2 The Act does not prescribe the organisational structure or governance arrangements that Community Planning Partnerships must adhere, it is very much what best suits the local situation. Although the Act changed the responsibility for delivering community planning, there were no changes made to the governance arrangements and the CPP Strategic Board remained a committee of the Council covered by the Council's Scheme of Administration.
- 3.3 At workshops held on 6 November 2023 and 23 January 2024 the Programme Board discussed the pros, cons and risks of the CPP (Strategic Board) becoming an unincorporated association, agreeing a that a report be brought to the meeting on 14 February in order for a way forward to be agreed, for consideration by the Strategic Board.

4 CURRENT POSITION

- 4.1 The Community Planning family in the Scottish Borders is represented by the Strategic Board, which is a formal committee of Scottish Borders Council, and a Joint Programme Board which is not. As a formal committee of Scottish Borders Council, the Chair of the Strategic Board must be an Elected Member of Scottish Borders Council, this is currently the Elected Member for Community Engagement. The Board's functions are covered in Scottish Borders Council's Scheme of Administration and are set out in Appendix B.
- 4.2 Currently, decisions of the Strategic Board are reached on a consensual basis. Should consensus not be reached on a decision, then the matter must be raised within the appropriate governance arrangements of each individual partner organisation and then reverted back to the Strategic Board for a final decision. Any budgets being disbursed are done so by the individual partner organisation.
- 4.3 Although the Strategic Board is a formal committee of the Council that is not a requirement of the legislation. Indeed, with the responsibility for delivering community planning now shared among five statutory partners, it could be viewed that the partnership should be an independent body. The status of the Board being a formal Council Committee confers no special

rights on the Council at meetings, has no legal or other implications for other partners and is simply a convenient mechanism for the Council to ensure that the decisions of the Strategic Board are in fact formal decisions of the Council. This means that in areas where Community Planning Partnerships are unincorporated bodies, they have no separate legal existence but remain as a group of people/organisations who have decided to work together to accomplish a common agreed non-commercial purpose. In reality, this means that any decisions of those Partnerships need to be finally agreed within the parameters of each partner's own formal decision-making processes. This is by either ensuring any representatives have full delegated decision-making powers on behalf of their individual organisations when attending a Partnership meeting, or by representatives making recommendations for agreement to their own organisation.

- 4.4 Were the Board not to be a formal committee of the Council then some decisions, made by the Board, may require to be considered by the Council's Executive Committee or full Council in order to be made formal decisions of the Council. Such decisions are not formal decisions of any other members of the partnership unless they are progressed through the governance arrangements of each individual partner organisation as previously highlighted.
- 4.5 In Dumfries & Galloway, Aberdeenshire, the Orkney and Shetland Islands, East Lothian and Stirling, all part of the same LGBF family groups as Scottish Borders, community planning sits outwith the formal committee structure of the local authority. This is the case for at least 50% of CPPs across the country.
- 4.6 Scottish Borders Council agreed in August 2022 that the Community Planning Strategic Board could remove itself from the Council committee structure should it wish to become independent of SBC.

5 UNINCORPORATED ASSOCIATIONS

- 5.1 An 'unincorporated association' is a membership organisation set up through an agreement between a group of people who come together for a reason other than to make a profit. It can be whatever its members want it to be and carry out whatever activity the members choose. Members of an unincorporated association are personally liable for the group's actions. Unincorporated associations cannot enter into contracts in their own right. Instead, a member organisation must enter the contract in their own name and members are personally liable for the group's actions.
- 5.2 An unincorporated structured is most appropriate for bodies that have low/no incomes, do not employ staff and do not intend to acquire property. Although it has done so in the past the CPP does not have a budget. Should this change arrangements should be made for one of the five partners, responsible for delivering community planning, to hold and administer the budget on behalf of the CPP. Similarly, the CPP does not employ staff, the

support role is provided by staff of partner organisations; nor does the CPP enter into contracts or own property.

- 5.3 Unincorporated associations are common in Scots Law and frequently historically held charitable status. However, with the introduction of Scottish Charitable Incorporated Organisations (SCIOs) in 2011 unincorporated charitable associations have become less common.

6 RISKS OF BECOMING AN UNINCORPORATED ASSOCIATION

- 6.1 An unincorporated association will often have a constitution but not a legally recognised structure such as a Limited Liability Partnership, Company, Trust or SCIO. This means that these bodies do not have “legal personality” separate from their members.
- 6.2 As previously stated, with not having a legally recognised structure the body could not be sued but instead, it would be its office holders who would be sued. However, it is pertinent to ask the question ‘what activity is the CPP going to undertake that it would be likely to be sued for?’ While it can not be ruled out as impossible, it is difficult to envisage a scenario where the CPP (or its office holders) is likely to find itself being sued.
- 6.3 As an unincorporated association the CPP could not hold property, employ staff or enter into any contracts. Again any such contracts or property would require to be owned or entered into by its office holders. In practice, however, all work carried out on behalf of the Partnership, to improve outcomes and reduced inequality, would be done by partner organisations and their employees. This very fact means that lack of ability to own property or enter into contracts is not a matter of great significance to how the CPP would operate.
- 6.4 Therefore, while becoming an unincorporated association would result in some legal incapacity and a level of risk for office holders, it is considered that the risk is small and the impact of that legal incapacity is of little practical significance.

7 BENEFITS OF BECOMING AN UNINCORPORATED ASSOCIATION

- 7.1 The CPP could realise the following benefits if it were to remove itself from the Council’s committee structure:
- a) Under the current arrangements the Chair of the Board must be an Elected Member of Scottish Borders Council, currently the Elected Member for Community Engagement. This would change and could be shared among partners on a rotational basis. D&G CPP has two co-Chairs – Leader of D&G Council and Chair of NHS D&G.
 - b) Decisions relating to the operating rules, including membership and quorum (to better reflect the membership), would be decided by the Partnership without requiring approval from Council.

8 WHAT WOULD CHANGE?

8.1 The following key changes would take place as a result of the CPP becoming an unincorporated association, in addition to those covered in 7.1

- a) Members of the CPP are representing their organisation and acting on its behalf when making decisions. Decisions taken by the CPP must therefore be followed through by reports being submitted to the relevant partner organisations. Should the CPP decide to remove itself from the Council's committee structure the only organisation impacted in this respect would be SBC which would need to put in place appropriate reporting mechanisms. All other partners currently need to do this.
- b) Strategic Board papers may no longer be published in the 'Meetings' section of the SBC website. Instead reports could be published in the CPP section of the Council's website or on a standalone site if this is progressed.
- c) Integrated Impact Assessments would no longer be a requirement for reports being submitted to the Strategic Board. However, this is good practice that the CPP could adopt should it wish to do so.
- d) Should the Partnership become an unincorporated association it is recommended that an operating framework be put in place that clearly sets out what is expected of partners. Such a framework would include a facility for the Partnership to change its legal structure should it be felt that what was in place was no longer acceptable, and something else was required. For example, this could be for the Partnership to become part of a partner organisation's operating structure. Included with this report, for reference, is the Governance and Operating Framework developed by Dumfries & Galloway CPP.

9 WHAT WOULDN'T CHANGE?

9.1 The key aspects wouldn't change because of the CPP becoming an unincorporated association are:

- a) As a statutory partner, with responsibility for delivering community planning, administration support will continue to be delivered by SBC although will be reviewed at a later date. The provision of admin support for any new groups that may be established, as part of the CPP structure going forward, will need to be considered by the Partnership.
- b) SBC will also continue to provide officer support to assist the CPP in delivering its duty as set out in Part 2 of the Community Empowerment (Scotland) Act 2015.

10 IMPLICATIONS

10.1 Financial

There are no costs attached to any of the recommendations contained in this report.

10.2 Risk and Mitigations

The risks to the Community Planning Strategic Board of becoming an unincorporated association are set out in section six of this report.

10.3 Integrated Impact Assessment

A full impact assessment is not required at this stage as it is anticipated that the Community Planning Strategic Board becoming an unincorporated association would affect the legal status of the association only and would not change its purpose, aims, vision or outcomes contained within the Community Plan. It is proposed that Integrated Impact Assessments continue to be completed for reports submitted to the Board to ensure that the work of the Board will continue to be assessed for potential impact on demographics set out in the Equality Act 2010 and Fairer Scotland Duty.

10.4 Sustainable Development Goals

It is not anticipated that the proposals contained in this report will have an impact of the UNSDG.

10.5 Climate Change

It is not anticipated that the proposals contained in this report will have an impact on Climate Change.

10.6 Rural Proofing

N/a

10.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

10.8 Changes to Scheme of Administration or Scheme of Delegation

The Community Planning Strategic Board should be removed from the Scheme of Administration if it agrees to remove itself as a Council committee. No changes to the Scheme of Delegation would be required as a result of the recommendations contained in this report.

11 CONSULTATION

The Director (Finance & Procurement), the Director (Corporate Governance), the Chief Officer Audit and Risk, the Director (People Performance & Change), the Clerk to the Council and Corporate Communications have been consulted and any comments received have been incorporated into the report.

Approved by

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Background Papers: None

Previous Minute Reference: Improvement Plan Update, Strategic Board 7 September 2023; Initial amendments to the Interim Scheme of Administration and changes to Standing Orders, Scottish Borders Council 25 August 2022.

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