CO-OPERATIVES UK

Review of the Co-operative and Community Benefit Societies Act 2014: Co-operatives UK Response

December 2024

About this response

Co-operatives UK is the internationally-recognised lead representative body for co-operatives in the UK. This sector response has been developed through deep collaboration and consultation with our members, large and small, in every sector. We have sought to capture the needs, aspirations and views of a broad range of societies, in our proposals or in the issues we have flagged.

Over 40 organisations and individuals have fed into our submission. Of these, 15 have explicitly requested to be listed as supporters of our submission. These are listed at the end of this document. We are aware that more are making submission of their own that align with this response, either wholly or in part.

We have sought to facilitate broad alignment in responses on key issues. However, we respect that some respondents will take divergent positions from our sector response on some questions. We hope that once the Law Commission has read and considered all responses, we can support further work to refine proposals that can then attract broader support.

Co-operative growth

The UK government has a policy ambition to double the size of the co-operative and mutual sector. In our view, modern and enabling society law would be a vital enabler of co-operative growth. The recommendations of the Law Commission should therefore be seen as a critical contribution to this policy agenda. This is especially the case in the areas of finance raising and common capital. We urge the Law Commission to be bold and growth-oriented in its analysis and final recommendations.

Thank you

We would like to thank the Law Commission team for their detailed and diligent work, and for the open, engaging and approachable way they have conducted this review so far.

We would also like to thank and acknowledge everyone who has taken the time to contribute to our response.

Consultation Question 1. We provisionally propose that there should be a new statutory definition of a cooperative. Do you agree in principle (subject to the formulation of a suitable definition)?

Our starting point is that reform must avoid undue disruption, or unnecessary exclusion of legitimate and impactful activities, for no commensurate gain in terms of enabling co-operative innovation, growth and impact.

Ahead of the Law Commission's consultation, no members told us that creating statutory definitions should be a priority. Indeed, some warned that a focus on definitions could be an unwelcome distraction from other priority areas, such as capital raising and reducing complexity.

That said, through our work advising societies, we have occasionally found that the lack of legal clarity, and the significant discretion the registrar has in this area, causes problems. We have also shared the frustrations of many in the sector with how the CCBSA, or at least the registrar's interpretation of it, forces a choice between two mutually exclusive types of society: community benefit society and co-operative society.

Combining mutual and community benefit

We know that in practice most co-operatives in the UK and around the world combine the provision of mutual benefit for members and the delivery of broader community benefit. Enabling this combination through the CCBSA would enable a new wave of beneficial innovation, growth and impact in co-operative and community business and is a priority reform for the sector.

This combination is clearly active in most co-operative societies. It is also often desired, but currently frustrated, in many community benefit societies. Founders who ideally would like to pursue this combination are often forced to make a suboptimal choice. Some choose a community benefit society, because it offers a way to legally register a community benefit purpose and adopt a statutory asset lock, at the expense of being able to harness the power of mutual benefit. Others choose a co-operative society to harness that mutuality but have to forgo registration of community benefit and the option of a statutory asset lock.

The combination of mutual and communal benefit can be extremely powerful and must be enabled by UK law. So, we fundamentally disagree with the Law Commission's assertion that the law should force a choice between operating for member benefit, or solely for community benefit. It does nothing to reflect or enable valuable real-world practice.

Registrar discretion

The current situation, in which the register has near-full discretion to determine what the concepts of 'co-operative' and 'business for the benefit of the community' encompass, results in a sometimes inconsistent and unpredictable registration process. This adds complexity, burden and risk for new and existing societies. The problems are most pronounced where something more innovative is being attempted, such as: business models new to the society space; new combinations of community, mutual and incidental private benefit; new capital raising models; and new multi-stakeholder arrangements.

Lack of clarity about fundamental features

It is also clear that third parties, including policymakers, funders, investors, business advisors and potential founders, are sometimes unsure as to the fundamental features of

societies. This is especially true for co-operative societies, with mutual benefit wrongly being perceived as no different from private benefit in any for-profit company.

Proposal of the CCBSA Lawyers Group

Since the beginning of this consultation period we have worked with our members on refinements to the Law Commission's proposed definitions of a co-operative society and a community benefit society. We are confident that our proposed refinements would meet the needs and aspirations of the broad majority of societies and stakeholders.

However, during the consultation process both we and our members have also considered the proposals developed by the CCBSA Lawyers Group. Subject to refinement and detail, we believe the CCBSA Lawyers Group's high-level proposals have significant merit. They would avoid the need for potentially disruptive, and unnecessarily exclusive definitional criteria, while also offering the level of flexibility sought by many existing societies and potential founders of societies.

In line with the response submitted by CCBSA Lawyers Group, our first preference would be for the CCBSA be reformed, to provide a single form of incorporation as a 'registered society', with a small number of clear, testable criteria for registration. The CCBSA should then provide societies with additional optional functionality that enable combinations of mutual and community purpose.

The criteria for registering as a society would be two-part:

- **Common purpose:** The society must exist mainly for one or more of the following 'common purposes' of its members:
  - to meet the mutual needs and aspirations for one or more classes of member
  - to benefit the community
  - a combination of mutual and communal purpose
  - but not mainly to for the generation of profit or capital gain for distribution to members, with any distributions to members consistent with the defined common purpose, and with societies ensuring that payments to shareholders are no more than the necessary rate to obtain and retain capital
- **Member control:** the society must operate one of the following voting patterns whenever members vote:
  - One vote per member who is eligible to vote, or
  - One vote per member who is eligible to vote within classes, and an equitable weighting of votes between classes appropriate to the purpose of the society, or,
  - Some other equitable voting pattern appropriate to the purpose of the society, but not including votes in proportion to members' shareholding in, or funds lent to, the society
  - With any criteria for making a member eligible to vote equitable and appropriate to the purpose of the society

In our view, it is essential that these 'common purpose' and 'member control' tests are robust, and perceived to be robust by third parties including policymakers, funders and investors. The CCBSA and the registration framework must provide such stakeholders with strong guarantees relating to purpose and flow of value in societies. This is essential if

societies are to be eligible for the types of funding, investment, tax treatment and policy support that could be critical to enabling co-operative growth.

Alongside a robust registration framework, the CCBSA should establish a clearer, stronger role for members and directors in pursuing and safeguarding common purpose. This should be achieved through duties of directors and mechanisms of accountability to members.

The CCBSA should then offer optional functionality to all registered societies, to further guarantee common purpose where appropriate. These would be the statutory 'common capital' provisions that are also a priority for the sector:

- statutory non-profit-distributing asset lock
- statutory non-distributable capital surplus
- statutory indivisible reserve.

If the Law Commission is minded not to adopt our preferred option, then we urge that it's recommendations take full account of the proposed refinements we set out in Questions 2 and 5. We would also urge that the common capital provisions listed above be made available to co-operative societies.

Consultation Question 2. We provisionally propose a definition of a co-operative with the following ingredients. A co-operative is:

(1) A society for carrying on any business;

(2) Mainly for the benefit of its members…

(3) …through transactions with its members;

(4) Membership is voluntary;

(5) Membership is open to all;

(6) One vote per member.

Do you agree with these elements? Are there any that you do not agree with?

In particular, do you think it accurate to describe the membership of any cooperative as "open to all", and if so why?

Subject to refinement we agree with some elements but disagree with others. As proposed, the above would force significant disruption on the co-operative sector and limit or exclude many legitimate and impactful uses of the model, for no commensurate gain in terms of enabling innovation, growth and impact.

The statutory criteria for registering a co-operative society should be drawn directly from the ICA Definition. While the exact wording of the Definition may be unsuitable for UK statute, we strongly assert that it can and must serve as the conceptual basis for any statutory criteria.

We propose breaking down the essential components of the Definition into testable criteria. The criteria should be easily testable by the registrar in a clear and predictable process. And they should not unnecessarily disrupt, limit or exclude legitimate co-operative practice.

(1) A society carrying on a business

The word 'enterprise' in the ICA Definition should be interpreted very broadly. We question whether 'business' is the most appropriate term here for encompassing full range of

legitimate co-operative activity the CCBSA must enable, including service provision, work, monetised and non-monetised exchange, and the shared control and use of assets and resources. In practice co-operative activity is often miscategorised and undermined by official definitions and interpretations of 'business' and 'trade' that are be too narrow and reductive. This must be avoided.

Crucially, the CCBSA should enable co-operative activity that includes democratically owning and controlling assets (physical, digital, intellectual) to enable members (and possibly non-members) to use and benefit from them.

We stress that requirement (1) must also allow for parent co-operative societies that conduct most of their business with members (and non-members) through subsidiaries. Many large co-operative societies operate this way.

Requirement (1) must also be drafted in a way that allows for co-operative societies formed by members to acquire another corporate entity that they engage with, or plan to engage with, in order to make that entity work for their mutual benefit. For example, where employees in a company form a co-operative society to acquire their employer in a worker buyout.

We propose that (1) be changed to: *A society carrying on a business or undertaking an activity, directly or through subsidiaries.*

(2) Mainly for the benefit of members

We agree there should be a 'purpose test' for registering co-operative societies. But the ICA Definition specifies the provision of *mutual* benefit, through the meeting of common needs and aspirations, as the purpose of any co-operative. There is a critical distinction to make here between individual private benefit of the kind generated for shareholders in most companies, and mutual benefit. Mutual benefit involves members receiving individual and collective benefits on a fair and equitable basis, *directly related to their common shared needs and aspirations*. The concept of enlightened self interest is critical to this.

This stands in contrast to individual private benefit in companies that is exclusively generated for shareholders and other privileged stakeholders.

The ICA Definition also establishes a broad scope for mutual member benefit, including common aspirations as well as needs, and encompassing non-economic motivations and interests ('social', 'cultural'). No co-operative test in the UK should narrow the scope in a way that excludes legitimate co-operative activity or forces unnecessary divergence with the global movement.

We propose the following 'purpose test' for co-operative societies: *2) mainly to meet the mutual needs and aspirations of members.*

(3) Through transactions with its members

We disagree with the proposed definition that narrows the focus to transactional benefit alone. The ICA Definition is not this prescriptive and there are impactful co-operatives in the UK and globally that deliver member benefit that is not transactional in nature. Again, we do not believe UK law should force divergence in this regard.

From our conversations with the Law Commission we appreciate that 'transactions' could be interpreted very broadly, for example to include the relationship a worker-member has with their worker co-operative. However, having spoken to a range of members and experts, we

still have concerns that some legitimate mutual benefits could too-easily be excluded from a reasonable interpretation of 'transaction'. These include:

- non-monetised exchanges of time or services facilitated through a co-operative society, for example unpaid solidarity-based carer time
- non-monetised use of shared assets and resources in a co-operative society, for example the 'free' use of studio space in some artists' collectives, or green space
- mutual benefit that relates as much to common aspiration as to common need

We recognise that in order for the 'mutual benefit' in (2) to be a criterion in a statutory test, it has to contain something testable, and that this is why the Law Commission proposes 'transactional' benefit. But we believe this is one area where the registrar should have discretion, so it has the option to accept non-transactional benefit, where this can evidenced.

We suggest that the current negative definition of a co-operative society in CCBSA2.3 guards against the registration of spurious mutual benefit. Thus we believe a negative definition, such as '*(3) and not mainly for the purposes of paying financial returns to members or other investors in the society'* should be retained to serve in place of (3).

(4) Membership is voluntary

We fully agree. This is specified in the ICA Definition and aligns with UK and international practice.

(5) Membership is open to all

We are concerned that including (5) as an essential criteria without the caveats provided by ICA Principle One, will create undue uncertainty and risk for co-operative societies. ICA Principle One says membership is open to *"all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination."*

Our interpretation of this Principle, informed by the ICA Guidance Note, suggests that:

- eligibility for membership could be based on the ability to receive mutual benefit, for example eligibility for membership of a worker co-operative could be restricted to employees of the business
- eligibility for membership could also be based on willingness to accept responsibilities, such as contributing time, effort, resources and custom
- eligibility for membership could also be based on commitment to mutual purpose and co-operative values, and it should be possible to refuse membership where there is evidence an applicant will not act in accordance with these
- co-operatives should be able to restrict membership numbers, where this is necessary to optimise mutual value

Given this complexity, and the fact that open membership is not part of the ICA Definition, we suggest there should be no statutory criterion on open membership at all.

(6) One vote per member

Law Commission's proposal lacks essential nuance. We warn that oversimplistic prescriptive and inflexible law in this area will damage the sector.

While one vote per member is the most common voting pattern in co-operatives in the UK and around the world, and is the most appropriate in most cases, we disagree that all co-operative societies should be required to operate their democratic governance on this basis.

There are many legitimate co-operatives globally using varied voting patterns, such as multi-stakeholder co-operatives that weight voting between different member classes, or agricultural co-operatives that weight voting based on farmers' trade with the business. We do not believe UK law should force divergence in this regard.

We must also flag that some co-operatives will set additional criteria that members must meet in order to have a vote in the society. For example a number of consumer co-operatives enable members to vote once their transactions with the society pass a certain threshold. This is considered critical to ensuring that the society is governed by *active* members. We believe this is equitable, in keeping with co-operative values and needs to be enabled by the CCBSA.

As proposed, (6) lacks the nuance needed to enable multi-stakeholder co-operatives, which are an increasingly impactful part of the UK sector. Many multi-stakeholder co-operatives will operate one-member-one-vote *within* member classes (e.g. worker, service user) to elect directors and voting in general meetings. But in general meetings, it is often necessary to weight voting between classes of member, to ensure a balance that serves the multi-stakeholder mutuality of the co-operative. For example, weighting can be necessary to ensure 10 worker members can still exercise a reasonable degree of control alongside 200 service users. On the question of straightforward one-member-one vote, the ICA Guidance Note makes clear: *"In multi-stakeholder or hybrid primary co-operatives different voting systems may, for good reason, need to apply."*

Furthermore, (6) would prevent some agricultural co-operatives from weighting some votes based on members' trade with the business. This is a well-established and successful practice in agricultural co-operatives, in the UK co-operatives and around the world.

Furthermore, ICA Principle One only specifies one member one vote in 'primary' co-operatives. The ICA Guidance Note recognises that *"in many secondary and tertiary co-operatives, systems for proportional voting have been adopted to reflect the diversity of interest, the size of memberships in associated member co-operatives and the commitment among the co-operatives involved in them."*

While democratic governance is very diverse, no legitimate co-operative in the UK gives individual members votes relative to their financial investment in the business and this is an essential and powerful differentiator between co-operative societies and other businesses.

To conclude, the democratic principle is enacted with too much diversity to be captured by the four-word criterion being proposed. Yet it would still be preferable for the CCBSA to include a criterion relating to member-led governance, as this should be a distinctive characteristic of societies.

So we propose that (6) be replaced with a criterion stating that the society must operate one of the following voting patterns, or some combination of these patterns, whenever members vote:

- One vote per member who is eligible to vote , or
- One vote per member who is eligible to vote within classes, and an equitable weighting of votes between classes appropriate to the purpose of the society, or

- Some other equitable voting pattern appropriate to the purpose of the society, but not including votes in proportion to members' shareholding in, or funds lent to, the society
- With any criteria for making a member eligible to vote equitable and appropriate to the purpose of the society

Right of appeal

Question 38 asks if there should be right to appeal decisions of the registrar. We agree with a right to appeal, partly as a way to add proportionality, flexibility and recourse to the statutory registration process.

Consultation Question 3. We provisionally propose that any new statutory definition of a co-operative should apply to all co-operatives and not only those registering after the introduction of the new definition. Do you agree?

The reform process must provide more accommodation for societies that could be unreasonably disrupted. Depending on how inclusive or exclusionary any new definition is, the need for such accommodation could be very great. We would argue that the Law Commission's proposals risk disruption to many societies. Our proposed refined definition would apply to the vast majority, if not all, existing co-operative societies, and so would be less disruptive, therefore requiring less accommodation.

It is not clear to us whether the introduction of a statutory definition would be a pre-requisite for the introduction of other vital reforms, in areas such as capital raising and common capital. But we note that in its analysis the Law Commission has suggested there could be some independency between reforms. These other reforms are critical to unlocking co-operative growth. Any new functionality must be made available to existing societies, as well as to new ones. Furthermore, we must avoid the need for lengthy delays before this functionality is available. This would suggest to us that any new statutory definition should apply to all co-operative societies, and not only those registering after the introduction of the new definition.

However, representatives of community energy co-operative societies are concerned that application of a definition that excludes any of these societies would be unnecessarily disruptive and unjust. Community energy co-operative societies were incorporated in good faith under the registry policy of the time. There is a concern that if a new statutory definition is too exclusionary, application would force some of these societies to convert into companies. This would be disruptive and could undermine confidence in the community energy sector, just at the moment that government policy intends it to grow rapidly.

If the Law Commission recommends its proposed definition, then we argue the disruption would be severe enough to warrant applying it only to post-reform societies. In this scenario, pre-reform societies that can meet the new registration requirements should be able to register under them, if they decide it is in their interests to do so. We recognise that creating two groups with different registration regimes (pre and post reform societies), would add complication and could potentially undermine the positive affects of having a statutory definition. But we do not see how this could reasonably be avoided.

If the Law Commission recommends a suitably refined definition, then we believe it could reasonably be applied to all societies. But we would like to suggest the law offers

forbearance for societies that need a longer transition period (see our answer to question 4).

Consultation Question 4. We provisionally propose a transition period of 18 months for existing co-operatives to comply with any new definition. Do you agree?

We disagree, as we believe the reform process must provide more accommodation for societies that could be unreasonably disrupted.

Depending on how inclusive or exclusionary any new definition is, the need for such accommodation could be very great. We would argue that the Law Commission's proposals risk disruption to many societies. Naturally, we would argue that our proposed refinements would be much less disruptive.

Any change could require a society to secure lawyers to draft appropriate rule changes. Societies will also need time to pass any necessary rule changes through their governance processes. They will then need to register changes with the FCA.

Our proposed solution is for the legislation to provide an 18 month transition period, but with the option for societies to apply to the registrar for forbearance, which should not be unreasonably withheld, for a period of 5 years.

Consultation Question 5. We provisionally propose that there should be a new statutory definition of a community benefit society. Do you agree in principle (subject to the formulation of a suitable definition)?

See our answer to Question 1. Our first preference is for the CCBSA to provide a single and robust 'common purpose' registration. However if that proposal is not adopted, then in principle, it could be useful for the CCBSA to set some fundamental criteria for registering as a community benefit society. For the following reasons:

- it would reduce the registrar's discretion, increase consistency and predictability, and thus reduce complexity and burden, in the registration of community benefit societies
- it could help to clarify the fundamental distinctive features of community benefit societies, which could enable more impactful use of the form and better targeting of support for societies (e.g. tax treatment, eligibility for funding streams)

Question 38 asks if there should be right to appeal decisions of the registrar. We agree with a right to appeal, partly as a way to add proportionality, flexibility and recourse to the statutory registration process.

Consultation Question 6. We provisionally propose the following ingredients for a new statutory definition of a community benefit society.

A community benefit society is:

(1) A society for carrying on any business;

(2) For the sole benefit of the community;

(3) Membership is voluntary;

(4) Membership is open to all;

(5) One vote per member.

Do you agree with these elements? Are there any that you do not agree with?

In particular, do you think it accurate to describe the membership of any community benefit society as "open to all", and if so why

Subject to refinement we agree with some elements but disagree with others. As proposed, the above would force significant disruption on the community business sector and limit or exclude many legitimate and impactful uses of the model, for no commensurate gain in terms of enabling innovation, growth and impact.

(1) A society for carrying on any business

See our response to Question 2, which applies equally to community benefit societies. We suggest the following refinement: *(1) A society carrying on a business or undertaking an activity, directly or through subsidiaries.*

(2) For the sole benefit of the community

We disagree that these societies should always be for the 'sole' benefit of the community. The CCBSA should enable societies that exist *primarily* for community benefit but also *partly* for mutual member benefit. In practice there are many societies that combine delivery of community benefit and the provision of some mutual benefit for members. This combination can be extremely powerful and must be enabled by UK law. We would urge the Law Commission to fully adopt the PECOL conceptual model of a 'general interest co-operative' it references in its analysis, which clearly allows for this combination.

At the same time, we recognise that some community benefit societies are, or will want to be, solely for community benefit. This would include charitable community benefit societies.

We propose the following amendment: *(2) Solely for the benefit of the community OR Mainly for the benefit of the community and partly for the mutual benefit of members.*

Incidental private benefit

At present there this unhelpful uncertainty about how community benefit societies can generate incidental private benefit, with the registrar making some controversial and potentially problematic decisions. For example, there is uncertainty as to the extent to which they can operate as commercial businesses that deliver a great service to paying customers. Or whether they can enable local businesses to benefit from renewable energy generated on their premises. It is essential that reform results in balanced and enabling registration policy that allows for a wide range of incidental private benefits, regardless of whether a society is solely or manly for the benefit of the community.

(3) Membership is voluntary

We agree.

(4) Membership is open to all

We disagree, for similar reasons to those set out in our answer to Question 2 on this point. We believe a community benefit societies will generally have a need to limit membership, to ensure:

- members are supportive of, and perhaps have a stake in, the communal benefit being pursued
- membership does not grow beyond the means of the society to engage with

We believe it would be preferable not to have statutory criterion on this point

(5) One vote per member

We disagree, for similar reasons to those set out in our answer to Question 2 on this point. As a champion of economic democracy, we would prefer it all community benefit societies had some form of member-controlled governance, to empower those with a stake in the community benefit being pursued. But the Law Commission's proposal is overly-prescriptive and we suggest the test set out in out answer to Question 2.

Consultation Question 7. We provisionally propose that any new statutory definition of a community benefit society should apply to all community benefit societies and not only those registering after the introduction of the new definition. Do you agree?

Our response to question 3 applies equally to community benefit societies.

Consultation Question 8. We provisionally propose a transition period of 18 months for existing community benefit societies to comply with any new definition. Do you agree?

Our response to question 4 applies equally to community benefit societies.

Consultation Question 9. We provisionally propose that charitable community benefit societies should cease to be exempt charities, so that they will be required to register with the Charity Commission. Do you agree?

Yes, this will remove existing barriers charitable CBSs face to accessing some grant funding and other policy benefits designed for charities because they don't have a charity number. Furthermore, this change would allow greater confidence in different types of charities.

This would bring England and Wales in line with Scotland, where OSCR already registers charitable community benefit societies with no adverse effects.

Consultation Question 10. Do you think that the lead regulator for charitable community benefit societies should be the Charity Commission or the FCA?

The lead regulator for charitable community benefit societies should be the Charity Commission. The Charity Commission has long experience of regulating charities, whereas the FCA lacks that experience and is only the registrar of societies than a full regulator.

Consultation Question 11. We provisionally propose that the CCBS Act should be amended to state explicitly as follows.

(1) Society shares can be withdrawable or non-withdrawable, and transferable or non-transferable.

(2) It is for societies by their rules to determine which of their shares are withdrawable or non-withdrawable, and transferable or non-transferable.

Do you agree?

Yes we agree. Ambiguities in the CCBSA relating to shares and capital raising currently prevent societies from raising larger amounts of capital from members and external

investors. Providing greater clarity on the possible types of share will be useful, but will not on its own address all issues of ambiguity.

Cooling off period, expulsion and deceased members

Many societies require members to subscribe to more than a nominal value of share capital in order to join. This has always been, and remains, an effective way to ensure the society is capitalised to service members.

In line with modern consumer fairness, some societies offer a 28 day 'cooling off period' that allows a member to cancel their membership and receive their capital back. This needs to be enabled by the CCBSA. Societies also retain the right to expel members in some circumstances. In some cases, their rules may provide for mandatory shareholdings to be repaid upon expulsion. Some societies will also return the shareholdings of deceased members to nominated beneficiaries (e.g. next of kin).

We are certain that withdrawable shares would enable the above, but it is unclear whether, under the Law Commissions proposals, a society could return non-withdrawable shares in these cases without complication. We would like clarification on this point.

Consultation Question 12. We provisionally propose that the CCBS Act should provide a definition of a withdrawable share. Do you agree?

Yes, we agree. Common understanding and shared good practice already enable widespread and successful use of withdrawable shares (not least Community Shares and member investment in consumer co-operatives). But ambiguity about the fundamental nature of these shares can be limiting, particularly where societies seek greater control over the movement of capital out of the business.

Consultation Question 13. We provisionally propose the following ingredients of a definition of a withdrawable share.

(1) A withdrawable share can be cashed in, such that a society pays the value of the share, to the holder of the share, in return for the share being cancelled.

(2) A withdrawable share can be withdrawn at the option of the member or the society, depending on the society's rules.

Do you agree with each of these elements?

(1) A withdrawable share can be cashed in…

We agree with (1) subject to the following clarification. While withdrawal up to par value is the norm, and is most appropriate in most cases, it is sometimes appropriate for these shares to be withdrawn at a more that par value. Examples where this is appropriate might include: Mutual Home Ownership Societies (as the Law Commission references); founder shares where the award of some 'sweat equity' is considered fair and reasonable; and investor shares where investors were attracted by the prospect of a risk premium.

It should be made clearer that the CCBSA enables this. Crucially, as this appreciation can be part of a return on investment, it should be subject to the same maxim on returns as share interest: any appreciation in withdrawable shares is no more than necessary to obtain and retail capital. If appreciation is for some purpose other than attracting investment, directors should ensure it serves the common purpose of the society.

Societies should also only increase the value of a class of withdrawable shares to the extent that they can pay their debts, and with regard for the long-term capital position of the business.

(2) A withdrawable share can be withdrawn at the option…

We agree with (2) subject to the following clarification. To fully meet the needs of growing, large and otherwise capital-hungry societies, the law should clearly allow for shares that can *only* be withdrawn at the option of the business.

Uncertainty as to whether societies can issues shares that are withdrawable only at their option, has limited some societies from making more significant use of this tool. Withdrawability at the option of shareholders creates uncertainty in capital planning. Some societies would welcome the ability to issue shares that can only ever be withdrawn at their option, similar to how companies can issue shares that can only be redeemed at their option.

Uncertainty as to whether societies have this option, combined with the £100,000 individual holding limit in withdrawable shares in CCBSA Section 24 (see our answer to question 85), led to our capital working group proposing legislation that provided for 'repayable non-withdrawable' shares.

It should be possible to have some shares that are withdrawable at the option of the shareholder, while issuing others that are only withdrawable at the option of the society.

If this is not what is being proposed, then some societies will need the ability to repay non-withdrawable shares at their option.

Consultation Question 14. We provisionally propose that the CCBS Act should set out the minimum conditions for withdrawing shares. Do you agree?

Yes, we agree. Ambiguity and some overly-restrictive interpretations of the law have limited the utility of withdrawable shares in some critical contexts, such as when trying to raise larger amounts from a smaller number of investors.

Consultation Question 15. We provisionally propose that the CCBS Act should provide that society rules can set extra conditions for withdrawing shares. Do you agree?

Yes, we agree. Beyond the minimum conditions, societies should be free to set conditions that suit their purpose, business and membership.

For example, some societies may require members to subscribe to a certain value of shares as a condition of membership and then limit the possibility for these shares to be 'withdrawn' to a small number of prescribed circumstances. Such circumstances include cancellation of membership, expulsion from the society, or when shares have passed to a nominated beneficiary after death. The CCBSA must clearly enable societies to impose such restrictions on withdrawal.

Consultation Question 16. We provisionally propose that the minimum conditions for withdrawing shares should be as follows.

A society should pay for withdrawable shares only to the extent that the officers of the society think that the society can also pay its debts at that time and as they fall due over the following year.

Do you agree?

In particular, we think that a society considering requests for withdrawal should be able to pay a proportion of the sought withdrawals, rather than all or nothing, if that is what it can afford. Do you agree?

We fully agree that societies should have the flexibility to fund share withdrawals to the extent that they are able to pay their debts, rather than just out of trading surplus as the FCA Guidance currently requires. The additional flexibility as to how withdrawal can be funded will be particularly enabling for ambitious societies raising growth capital. However we do believe this should be alongside the director's duties to consider longer-term capital position of the society, as well as short-term solvency.

We fully agree that societies should not be required to issue a solvency statement when paying for withdrawable shares. Such a requirement would be overly burdensome to the point of preventing the economical use of withdrawable shares.

We propose that it should be a duty of directors to ensure withdrawals are only actioned to the extent would allow the society to pay its debts. In practice this should be a requirement for directors to ensure there is robust system for managing liquidity and liabilities, and not a duty for them to conduct a full assessment with undue frequency.

We recognise the proposed reform would also create a duty on directors to limit or suspend withdrawals if the finances of the society required it. We are comfortable with this, as in practice well-run societies already operate in this way. What is more the FCA Guidance also already requires this.

We agree that societies should have full discretion to pay a proportion of any requested withdrawal, or to refuse withdrawals altogether, if it has a business reason for doing so. This is already established practice and is critical to withdrawable shares being considered as a form of equity in UK and international accounting standards.

Consultation Question 17. We provisionally propose that the CCBS Act should provide a definition of a transferable share. Do you agree?

We fully agree. Ambiguity and overly-restrictive FCA Guidance in this area has effectively closed off vital capital raising options that are available to co-operatives in many countries. In particular, it has prevented larger or fast-growing societies from raising equity in significant amounts from 'external' investors ('non-user investor members' in FCA terms).

To address this, our capital working group has proposed that the CCBSA and/or the Guidance provide certainty that:

- some transferable shares can be traded, including on exchanges
- rules can allow vendors to profit from trades of some share classes, with appropriate safeguards, though it should also be possible for rules to preclude capital gains if this is thought appropriate

Consultation Question 18. We provisionally propose that a transferable share be defined as one that can be passed from one person to another such that the transferee holds the share in place of the transferor. Do you agree?

This would be welcome clarity but on its own, would not be sufficient to enable the tradability that is required to open vital new capital raising options.

Consultation Question 19. We provisionally conclude that the form of transfer should be left to the sector to determine rather than prescribed in legislation. Do you agree? If you do not agree, please detail what form you consider should be prescribed.

We agree, subject to the law being clearly enabling of tradability, including on exchanges.

Consultation Question 20. As for transferable shares, we provisionally propose that the CCBS Act should be amended to state as follows.

(1) The consent of officers of a society is needed to transfer shares.

(2) Officers can in their discretion refuse a transfer of shares.

(3) Their discretion must be exercised consistently with their duties as officers.

(4) The rules of a society can set further conditions on the transfer of shares.

(5) The rules of a society must provide for the form of any transfer of shares.

Do you agree with each proposition?

We agree with (2) to (5)

> *(1) The consent of officers of a society is needed to transfer shares.*

Without further clarification, (1) will render transferable shares no more useful than they are now. This is because (1) will be read as requiring the consent of society officers for every individual transfer, thus making trades in a secondary market practically impossible.

We urge that (1) be amended or augmented, to allow officers to give a generalised consent to transfers and trades of particular classes of shares via a secondary market.

For the avoidance of doubt, we believe the CCBSA should clearly enable societies to stipulate that some classes of transferable share require Board consent for each transfer, while others could carry generalised consent to trading on a secondary market.

Capital gain

The FCA Guidance currently interprets the existing CCBSA as requiring all individual transfers to be consented to by the 'committee', with an explicit aim of preventing tradability for capital gain, which it wrongly sees as incompatible with co-operative business, even seemingly where external investors are concerned. We fully agree with the Law Commission's countervailing analysis on this point in 5.195 to 5.197 of its consultation document.

We recognise that some in the sector are wary of, or indeed outright opposed to, allowing any capital gains on society securities, on the basis that this undermines common purpose. We would counter that there are examples around the world where tradability, and other forms of capital appreciation, such as repaying some capital at more than par value, are established co-operative practice. The key insight is that safeguards to protect common

purpose when issuing tradable shares to external investors, are both essential and eminently possible.

If steps are taken to prevent the holders of tradable shares from gaining control of the society, then we do not believe tradability for capital gain in and of itself, risks undermining common purpose.

Furthermore, a combination of robust measures to limit interest to a necessary market rate, perhaps alongside common capital provisions that prevent shareholders from having a claim on underlying assets, and limited influence in the society, would all suppress capital appreciation, even in very profitable societies.

Crucially, in some contexts the ability to sell shares will be key to attracting external investment in the first place. For disposal to be a realistic and attractive exit route, the possibility of some appreciation is considered necessary in some cases.

If the Law Commission's recommendations are to result in more enabling law for capital raising, then they must provide clarity beyond doubt that the CCBSA permits tradability of some classes of transferable share, for capital gain.

Consultation Question 21. We provisionally propose that the CCBS Act should state as follows.

(1) A society can have different classes of membership with different rights.

(2) A society can issue different classes of shares with different rights.

(3) A society can issue shares to non-user investors.

Do you agree?

(1) <u>Different classes of member</u>

We fully agree with (1) as modern societies must clearly be enabled to have different classes of member with different rights. This could include one or more class of mutual beneficiary members (e.g. service users and workers in a multi-stakeholder co-operative), members drawn from a beneficiary community, other supporters of the society and employees of the society. It should be possible to vary the rights of these classes in order to protect and enhance common purpose, while encouraging their participation.

Crucially, the CCBSA must allow for the rights of these 'common purpose' members to be different to the rights of external investors. The former should always exercise democratic control over the society and safeguards must be put in place to ensure the latter cannot. At the same time, as per ICA Principle 3, financial returns on capital invested by common purpose members may be lower than returns to external investors.

(2) <u>Different classes of share</u>

We fully agree with (2) and with the distinction between member classes and share classes. In order to enable effective capital raising at all stages of development (e.g. start-up, scale-up, diversification) and across a wide range of sectors (e.g. energy, housing, agriculture), the CCBSA must clearly enable societies to issue a range of shares to a range of membership classes. Large or growing societies will particularly benefit from having greater scope to tailor share issues to different providers if capital, reflecting varied motivations and risks.

(3) <u>Non-user investors</u>

We agree with (3) subject to refinement. To emulate the largest and most impactful co-operative economies around the world, societies in the UK need to be able to raise more significant amounts of equity from a wider range of investors. This would include individuals and institutions that are not primarily motivated by the common purpose (e.g. mutual benefit, community benefit) of the society and its members. We refer to all these collectively as 'external investors'.

Raising equity from external investors, including co-operative investment institutions, pension funds and individuals, as well as from beneficiary members, is a critical part of capital raising in many advanced co-operative economies. It is particularly important for financing large or growth-oriented co-operatives in sectors such as agriculture, housing, manufacture, energy and technology.

We do however find the concept of 'non-user investor' somewhat problematic. As already set out in our responses on definitions, we believe legitimate mutual and communal purposes ('common purposes') encompass more than 'use' and 'transaction' as generally understood. The key distinction that the CCBSA must enable societies to make, is between 'members' who are primarily motivated by the common purpose of the society (the mutual benefit and/or the communal benefit being delivered) and 'investors' who are primarily motivated by a financial interest in the society.

Furthermore, we believe the CCBSA should enable societies to separate external investors from any classes of 'member'. In many parts of the CCBSA, provisions relating to 'members' should not *automatically* relate to external investors. For example, provisions in Part 9 of the CCBSA require high thresholds for member approval for amalgamation and conversion into a company. It is clear to us that these should empower the members primarily motivated by the purpose of the society and should not extend *automatically* to external investors. The same should also apply to any additional proposed rights and duties that aim to empower and/or provide accountability to members. It should be for societies to decide the extent to which they extend the rights of 'membership' to external investors, within the parameters we propose.

We broadly agree with the submission by Radical Routes on this topic. Enabling societies to issue investor shares that do not carry 'membership' rights (e.g. voting and representational rights, rights to requisition a general meeting) would be extremely enabling, not least for 'fully mutual housing co-operatives, which under the Housing Act 1985, must restrict 'membership' to tenants.

We disagree with the Law Commission's assertion that restricting the voting rights of external investors goes against Principle 2 (member democratic control). In our view, this principle only applies to the members who share in the common purpose of the society. It is standard practice in many countries for co-operatives to limit the voting rights of external investors and we see no reason why UK law should force our sector to operate differently.

Furthermore, we believe the CCBSA should require and enable societies to put in place measures to safeguard common purpose and member control when issuing equity to external investors.

The CCBSA should explicitly:

- limit each external investor to no more than one vote, no matter the size of their investment, while also enabling societies to issue investor shares that carry no voting rights at all, if they deem it appropriate to do so

- prevent external investors from voting on a motion to change the registered purposes of the society, make 'common capital' distributable to shareholders, or convert the society into a company

Beyond this, we do not believe the CCBSA should be prescriptive in how societies safeguard common purpose and member control. But the CCBSA should clearly enable the following measures:

- Preventing investor shares from providing a claim to the underlying assets of the society
- Further limitations on the rights of investors relative to common purpose members, including further limitation on voting rights
- Restricting Boad representation so that investor-elected directors are always in a minority, if they are able to elect directors at all
- Limiting any external investors with votes to a minority of all voting members in the society. We do not propose that the CCBSA mandate a percentage limit in this regard, though in practice the maximum limit would have to be less than 50% of votes. It should be for the members of societies to determine the appropriate limit. Because under our proposals, investor shares will never carry more than one vote, it is very unlikely that voting investors would get close to a majority of votes in all but the smallest societies

Providing legal certainty that societies can issue equity to what we will refer to as 'external investors', on different terms to common purpose members, will be enabling. But while absolutely necessary, this will not in itself be sufficient to unlock vital capital raising options. Having enabling legislation and FCA Guidance on returns to external investors will also be essential (see our response to questions 25).

Consultation Question 22. We provisionally propose, in the context of changes to class rights of shares or members, that the CCBS Act should provide as follows.

(1) Class rights should only be changed if the change is approved by at least 75% of affected shareholders or members.

(2) Society rules could set a higher threshold.

(3) If shares are changed from non-withdrawable to withdrawable, that should require a solvency statement by the officers of the society, confirmed by an auditor. Do you agree with each element?

(1) Class rights should only be changed if…

We need more clarity and nuance on what 'class rights' would encompass. We accept that to protect the rights of investors and ensure investor confidence in the society form, the critical features of a shareholding (e.g. whether and how it can be withdrawn; whether and how it can be transferred; whether and how it can attract interest; whether it carries a vote and on what matters) should be treated as 'class rights' and subject to the proposed protections.

But there is a danger that the Law Commission's proposals inadvertently make it all but impossible for large societies to amend their rules, even when doing so would clearly further the purpose of the society, because the required member turnout rate will be infeasible.

Many large consumer co-operatives have hundreds of thousands of disengaged members who are extremely unlikely to particate in any vote. If societies are forced to secure the

votes of 75% of all their members to change their rules, they will never be able to change their rules at all.

(2) Society rules could set a higher threshold

We agree.

(3) If shares are changed from non-withdrawable to withdrawable…

On (3) our position depends on how vital functionality sought by capital-hungry societies is to be delivered. As discussed in our response to question 13, these businesses would benefit greatly from the ability to offer investors the prospect of an exit via repayment of capital, with that repayment actioned by the society, rather than being a withdrawal actioned by the shareholder.

Because the £100,000 holding limit on withdrawable shares makes them useless for the larger investors some societies want to work with, our capital working group proposes the CCBSA confirm that non-withdrawable shares can be repaid at the option of the society. We note the Law Commission does not believe this is needed and has instead proposed that societies seeking this functionality issue non-withdrawable shares, and then convert these into withdrawable shares later on. Notwithstanding the obstacle the £100,000 holding limit would present, (3) would make this an implausible investment proposition for the market. Such an approach would contain too much uncertainty and risk for investors and too much administration for the society.

Thus we can only support (3) if:

a) the £100,000 holding limit for withdrawable shares is removed and the CCBSA confirms that 'withdrawal' can be only at the option of the society, or

b) CCBSA confirms that non-withdrawable shares can be repaid at the option of the society

Share interest

In 5.124 of its analysis, the Law Commission suggests that changes in share interest could be considered a change in class rights. This is potentially problematic, as a critical feature of interest on equity shares is that the society reserves the right to vary the rate, pay a lower than target rate, or not pay interest at all, if the needs of the society require it. It is essential that the CCBSA does not require societies to comply with the proposed changes in class rights provisions in order to exercise this discretion.

Where the society has legally contracted to pay interest at a certain rate and does not reserve the right to exercise the discretion set out above, we believe the class rights provisions should generally apply.

Credit Unions

The Credit Union Act enables credit unions to issue interest bearing shares that do not carry a dividend. However that Act specifies circumstances in which the credit union must convert an interest bearing share into being a dividend bearing share, such as when the credit union holds less than £500,000 in reserves. It is not clear to us how this reform of the CCBSA would interact with the Credit Union Act. We are concerned that requiring a 75% of affected interest bearing shareholders to approve their shares becoming dividend bearing, could impede the credit union's ability to comply with the Credit Union Act. Therefore, we propose credit unions be explicitly exempt from this section.

Consultation Question 23. We think that there should be some protection for shareholders who still object to any change in their class rights. Which of the following protections do you think is suitable? You can select more than one, or indicate your preferred option.

(1) A complainant could petition the court to wind up a society on the basis that it would be just and equitable to do so.

(2) A complainant could petition the court on the basis that any change to class rights would be unfairly prejudicial.

(3) A society would have to buy out an objecting shareholder.

(4) Any change would not take effect against a shareholder who objects in writing.

If you think that there should be a different protection, please explain.

We believe (2) and (3) would be the most optimal options. We believe it is correct objecting shareholders should have right to petition the courts to intervene, but we imagine this would most likely lead to the society buying out the objecting shareholder. We do not believe though that (3) should be only option, as forcing a society to buyout every single shareholder who objects could cause liquidity problems within smaller societies. Therefore while in many cases agreeing to buy out the shareholder will be the optimal solution, we still believe that shareholder should be able to petition the courts that a change in class rights is unfairly and prejudicial.

We disagree with (1) and (4). We do not believe that shareholders should be able to petition the court to wind up the society, especially when a change in class rights would have had 75% approval in the first place, allowing a single objecting shareholder the power to potentially wind up a society in court, would run counter to member democracy. Furthermore, allowing each individual objecting shareholder to be able to block a change in their share class rights could have a serious impact upon the society being able to take decisions it believes are needed for the long term viability of the society. Additionally it could lead to confusion over different class rights of shares within a society.

Consultation Question 24. We provisionally propose that, when a society seeks to write down its shares, that should require a solvency statement by officers of the society, and a special resolution. Do you agree?

We provisionally propose that the special resolution should require the approval of at least 75% of voters at a general meeting. Do you agree?

We agree with this proposal:

- It would remove ambiguities and make clear that societies can write down shares
- It would protect shareholders in a society
- Bring society practice closer to that found in company law
- We also believe the law should clearly enable societies to revise-up the value of shares it has previously written down

Consultation Question 25. We provisionally propose that there should be the following restrictions on interest rates paid by co-operatives on investments, deposits and loans.

(1) Any interest rate should be no more than is needed to obtain necessary funding.

(2) Any interest rate should be no more than a reasonable rate.

(3) Interest on investments and deposits should be paid only to the extent that the officers of the society think that the society can also pay its debts at that time and as they fall due over the following year. Do you agree?

In particular, we think that a co-operative considering interest payments should be able to pay a lesser rate, rather than all or nothing, if that is what it can afford. Do you agree?

The CCBSA and FCA Guidance need to achieve the right balance between the primacy of common purpose and the ability to attract and retain capital. At present ambiguity in the CCBSA, and a combination of ambiguity and over-restriction in FCA Guidance, mean that balance is not available for too many societies.

ICA Principle 3 and the ICA accompanying guidance, make clear that in order to attract and retain sufficient capital from members and external investors, co-operatives need to offer 'market' rates of return. These sources also make clear that the 'market rate' for a member, motivated by the common purpose of the society (e.g. the mutual benefits the co-operative provides) may reasonably be lower than the market rate for more financially-motivated external investors. We fully agree with these sources, which call for more nuance and differentiation than the status quo in the UK allows.

So we very much welcome reference in 5.176 of the Law Commission's analysis to market rates and its assertion that the law should allow higher returns on investor shares. It is vital that the CCBSA is drafted in a way that results in pragmatic and enabling FCA Guidance on rates of return, for both members and external investors.

1) *Any interest rate should be no more than is needed to obtain necessary funding*

We are comfortable that (1) enables market rates of return, as a key function of a market is to discover the necessary price. To provide the enabling certainty societies and investors need, we believe (1) should include a clause confirming that the necessary rate can vary between members and external investors.

We believe the CCBSA should primarily make it a duty of directors to ensure interest is no more than the necessary rate. However, the FCA should be able to act, if it believes these duties are not being fulfilled, and the approach to paying interest suggests the common purpose of the society has been subordinated to paying funds to investors.

(2) Any interest rate should be no more than a reasonable rate

We have concerns (2) has the potential to undermine the effect of (1), by creating uncertainty in interpretation, and by inviting the FCA to be overly restrictive in its interpretations. We are particularly concerned with how (2) could limit the raising of capital from external investors.

(3) Interest on investments and deposits should be paid only to the extent…

We fully agree with (3) in so far as it applies to equity share interest. This is already established practice. Retaining discretion as to whether or not to pay interest, and at what level, is also key to society shares being considered as a form of equity in UK and international accounting standards.

However, we question whether (3) should be applied to interest on all debt instruments (e.g. bonds), where societies often contract to pay interest. We must avoid a situation in which the CCBSA prevents societies from contracting to pay interest on debt in the ways financiers often require.

Disposable profits and interest rates

We agree with the Law Commission's analysis and assertions in 5.190 and 5.202 of its consultation document, that co-operative societies should be allowed to set and pay share interest with *some relation* to disposable profits. The attempt by the FCA to enforce a complete separation between decisions about interest payments and available profits, has created undue complexity and uncertainty for societies. The ability to offer 'external investors' the prospect of *partially* performance-linked returns, within bounds to ensure this does not exceed the necessary rate, in return for taking a risk, will help some co-operatives attract growth capital.

Consultation Question 26. We provisionally propose that there should be the following restrictions on rates of interest paid by community benefit societies on investments, deposits and loans.

(1) Any interest rate should be no more than is needed to obtain necessary funding.

(2) Any interest rate should be no more than a reasonable rate.

(3) Interest on investments and deposits should be paid only to the extent that the officers of the society think that the society can also pay its debts at that time and as they fall due over the following year. Do you agree?

In particular, we think that a community benefit society considering interest payments should be able to pay a lesser rate, rather than all or nothing, if that is what it can afford. Do you agree?

(1) Any interest rate should be no more than is needed to obtain necessary funding..

As with our answer to question 25, we support (1).

We believe (1) should enable community benefit societies to issue investor shares, which could attract a higher market rate than shares issued to members drawn from the beneficiary community, or to other supporters of the society. Our proposed safeguards for common purpose and member control in Question 25 would apply to community benefit societies.

(2) Any interest rate should be no more than a reasonable rate

See our response on this point to Question 25.

3) Interest on investments and deposits...

Our views on (3) are the same for community benefit societies as for co-operative societies. See our response to question 25.

Consultation Question 27. Do you think that societies need a new type of share? If so, what would be its characteristics?

Some large or fast-growing societies would benefit from raising more significant amounts in equity, external investors as well as from members. In some cases, they would benefit from being able to raise larger amounts from a smaller number of investors, rather than crowdfunding small amounts from lots of investors, because the latter can be uneconomical.

To date, withdrawable shares have proven of limited utility in these cases because:

- The potential for shareholders to withdraw capital brings too much uncertainty, with the only recourse for societies being to limit or suspend withdrawals, which is generally viewed as a drastic action that signals financial strife
- The £100,000 holding limit prevents large investments (e.g. from institutional investors)

As a result, our capital working group has developed proposals for how non-withdrawable shares could be made more useful:

- confirm tradability, as this would offer investors and members an exit in place of withdrawal (see our answer to question 20)
- confirm that non-withdrawable shares can be 'repaid' at the option of the society, similar to how a company can redeem shares at their own, offering an additional exit for investors, but one firmly under the control of the business

Some experts contend that Trevor vs Whitworth caselaw, which effectively made share redemption and buyback illegal, could be used to question the legality of a society repaying non-withdrawable shares. These experts suggest that statute confirming societies *can* repay these shares is needed to remove this risk, just as company law has for company redemptions.

If the £100,000 holding limit for withdrawable shares is left in place, then societies will need legal certainty that they can repay non-withdrawable shares at their option.

We don't know whether this would amount to a 'new share', but it would certainly clarify and confirm vital functionality that ambiguity currently prevents.

Consultation Question 28. We provisionally propose that an officer be defined in section 149 of the CCBS Act as including a director. Do you agree?

We disagree. In our view the concepts of 'officer' and 'committee' in the CCBSA are anachronisms. The modern concepts of a 'director' and a 'board' are more useful in practice.

In particular, we highlight the challenge in Law Commission's analysis in 6.7, which seems to suggest that secretaries (who in many societies are full time employees of the society), and even managers, are 'officers'. We must not create a situation in which the duties of directors are imposed on employee managers and secretaries in societies.

Consultation Question 29. We provisionally propose that officers of a society should be listed on the Mutuals Public Register. Do you agree?

Yes, we fully agree with this. It will remove barriers and hindrances many societies face compared to companies, when interacting with third parties, caused by the lack of up-to-date and easily accessible director information on their corporate register.

In particular, we expect this will have the following benefits for societies:

- improve the accuracy of credit reference agency data on societies
- improve access to business banking and other financial and professional services
- enabler easier due diligence on societies

Consultation Question 30. We provisionally propose that a society should notify the registrar of any changes concerning its officers within 14 days. Do you agree?

We believe there should be a requirement to notify within a short time scale, because:

- it will align the requirements for companies, charitable incorporated organisations and societies in this area
- it will ensure public data on societies is as robust and accurate as data for other corporate forms, ensuring the benefits of listing officers on the register in the first place
- it will enhance transparency for the members of societies

However, we believe a 21 day period would better-suit societies, many of which will be run by members in a voluntary capacity, without professional administrative support.

We note that some societies who undertake regulated activities are also registered on the FCA Financial Services Register and that is includes director information. We believe the FCA should work towards the goal of director information from the Financial Services Register automatically updating the Mutuals Register.

Consultation Question 31. We provisionally propose that a society's register of members and officers, available for inspection, should include their name and a contact address. Do you agree?

We partially agree with this proposal. The names and contact addresses for officers and members should be the only details required to be available for inspection.

The CCBSA should explicitly allow the duplicate register for inspection to be a electronic register, bringing society law in line with company law.

But, for the reasons set out below, we also believe that members of the society should be able to request a copy of the register of members, including an electronic copy, as exists in company law.

Hasting Pier

Hasting Pier was previously owned and operated by a Community Benefit Society, however when the society went insolvent, the asset was sold and lost to a private operator. This raised concerns about how to save community assets during cases of insolvency. One of the reasons found for the inability of the community to effectively organise to save the asset, was members of the Community Benefit Society were forced to act as individuals and couldn't collectively work together, as they couldn't access a copy of the register of members. Therefore, we believe allowing members to separately request a copy of register (including an electronic copy) of the register of members would effectively support communities to collectively save assets of community value.

Preventing breach of director duties

We also believe that directors breaching their duties could cause significant issues in a society and possible increase possibility of a society becoming insolvent. We have proposed elsewhere in this consultation that societies should be required provide a means for members to seek removal of directors. We believe that for such a change to be effective, members would need to be able to collectively work, therefore we propose that being able to request a copy of the register would better enable this.

Preventing inappropriate or vexatious requests

We believe that protections would need to be put in place to prevent inappropriate or vexatious attempts by members to obtain personal contact details of fellow members of the society. Additionally, we believe there should be additional safeguards for any legal minors who are registered members or directors of a society.

To reflect the different dynamics of membership in societies, we propose the following:

- the request should be made by at least three members acting together as a group
- a request should be in writing and should set out the purpose of the request
- the society should be able to charge a proportionate fee for processing any request
- the society should be required to respond to a paid-up request within 21 days
- members should be able to opt out of appearing on the copy of the register of members
- the society should have the right to reject the request on the grounds that the request is not for a proper purpose
- the members making the request should have the right to challenge a refusal by the society in court
- we believe it should be a specific criminal offence for a member to use the copy of the register of members and any data within in it, for any purpose other than the reasonable purpose agreed with the society
- societies should be able to offer members the option to use the society's address, or a society-hosted electronic address, for the purposes of any version of the membership register shared with other members. This would necessitate a corresponding duty on the society to forward any communications it received for that member via the society address onto the member in question

Consultation Question 32. We provisionally propose that the contact address for members and officers might be an electronic address. Do you agree?

We partially agree with this proposal. While we believe an electronic address in most cases will be suitable, we believe the CCBS Act should explicitly allow for society rules to make further provisions, such as what form of electronic address is appropriate, or alternatively requiring a physical address if the society felt that was more appropriate.

Societies should take reasonable efforts to verify any email address supplied for the register, to ensure they are capable of sending and receiving emails. Societies should be able to set rules requiring members to maintain an accurate and up to date email address. Societies should have a clear ability to cancel membership where it loses any ability to contact the member.

Consultation Question 33. We provisionally propose that any contact address for members and officers which is a postal address need not be the residential address. Do you agree?

We agree with this proposal. There seems no reason why members and officers should be treated differently to members and directors of companies who may choose to use a non-residential address.

This would better allow members and officers of a society to keep their residential address private if they so choose. As company law has protections in place to protect company directors from activists, we see no reason why members and officers of a society shouldn't get similar protections.

Additionally, many societies have members which are bodies corporate, it seems unreasonable that the addresses they use have to be residential in nature.

Consultation Question 34. We provisionally propose that the residential address of an officer should be notified to the FCA. This would be confidential, but the FCA may use it to make contact with the officer. Do you agree?

We agree with this proposal. While it is reasonable for an officer to want to seek to keep their residential address private from the general public for many different reasons, there is no reason why the FCA shouldn't have access to this address for their own legitimate uses.

Consultation Question 35. We provisionally propose that duties owed by officers to their society should be addressed by the CCBS Act. Do you agree?

We agree, as putting the duties of officers, or directors as we would reframe it, within the CCBSA will make the law more robust, and more user friendly by reducing ambiguity and promoting consistency and minimum standards across societies.

Furthermore, we note the Companies Act creates duties for directors and see no reason society legislation should be different.

Consultation Question 36. We provisionally propose that the CCBS Act should adopt the director duties set out in the Companies Act 2006. Do you agree?

We partially agree with this proposal. The Companies Act gives a clear set of duties for directors which have worked well, and we see no reason why comparable standards should not apply to those who seek to discharge the duties of a director. However, the Companies Act provisions must be adapted to cater to the distinctive purpose of societies.

Purpose

However, the Companies Act provisions must be adapted to cater to the distinctive purpose of societies. Whereas the primary duty of a company director is to *"promote the success of the company for the benefit of its members as a whole"* we propose the primary duty of a director in a society should be to: '*promote the success of the society* ***in fulfilling its primary purposes'.*** This would further cement societies as legally 'common purpose' entities, with these purposes being mutual member benefit, community benefit, or more often as not, some combination of both.

Capital

We also believe the CCBSA should create the following duties on directors not included in the Companies Act:

- duty to ensure interest paid on shares is no more than is necessary to obtain and retain capital and no more than is reasonable

- duty to ensure invitations to contribute capital and/or to invest are fair, clear and not misleading
- duty to ensure the society takes steps to ensure share withdrawals are only permitted to the extent that it can still pay its debts and with regard for its long-term capital position

Consultation Question 37. We provisionally propose that the CCBS Act should follow company law and state that the consequences of a breach of duty by an officer would be those provided by common law or equity. Do you agree?

We agree with this proposal to an extent, as a range of remedies may be created or exist within the rules of a society so there is no need the Act itself to outline every possible remedy, rather societies should be free to create them themselves and common law will evolve over time a way of dealing with officers of societies that will possibly come to somewhat mirror those that exist for company directors. This gives good flexibility to the law.

Removal of directors

It is vital that directors in societies are ultimately accountable to the membership for fulfilling their duties. So we believe that the CCBSA should provide members with a democratic process for removing directors on the grounds that they have not fulfilled their duties.

We believe s168 of the Companies Act be adapted, enabling for members to remove a director by special resolution at a general meeting. We believe that the thresholds and process for members to requisition a general meeting and then bring and pass a motion to remove a director must be balanced and proportionate.

We do not propose the creation of any statutory derivative claim, such that a member can sue an officer in the name of the society. Do you agree?

We agree, as there are no minority shareholder interests to be protected in societies.

Consultation Question 38. We provisionally propose that there should be a right to appeal decisions by the registrar on whether a society meets the definition of a co-operative or community benefit society. Do you agree?

We wholly agree with this proposal. The registrar has broad discretion and this needs to be balanced by a right to appeal.

Allowing for a right to appeal will build up a body of common law, which will in the long run give greater assistance to the FCA in the registration process and make the whole process more predictable.

We also note that charities have the ability to appeal against registration decisions taken by the Charity Commission, so we see no reason why societies shouldn't be able to appeal against the FCA's registration decisions.

Consultation Question 39. Do you think that an appeal against a decision by the registrar should be heard by the court (as is currently the case) or by a tribunal?

We believe an appeal to court would be the best place for an appeal to be heard.

While tribunals are a more accessible and lower cost option, the history of tribunal-based appeals against Charity Commission decisions, suggests to us that this approach may favour the public authority. These appeals tend to come on the back of internal reviews conducted by the Charity Commission of its own decisions. The same clear process doesn't exist for the FCA, meaning the informal evidence style used by tribunals to help reach agreement would be unsatisfactory for societies.

In order for any right to appeal a decision by the registrar to be workable for societies it must:

- Be accessible to societies
- make binding case law decisions
- support balance and predictability in the registration process

For these reasons we believe that while a tribunal may be more accessible for societies, courts would still be more appropriate.

We would hope over time that appeals against the FCA would build up a body of case law to make the process of registration far more predictable for all parties. A tribunal is not bound to follow case law in the same format, its decisions can be rather more unpredictable for all parties.

Consultation Question 40. We provisionally propose that the power of the registrar to suspend a society's registration be repealed. Do you agree?

We agree with this proposal, we note that company law carries no comparable rule for suspension outside of those that are carrying out activities that subject them to money laundering regulations. As this is a highly focused rule that is not applicable to societies, we see no reason why societies need this unclear process. Given that the FCA rarely uses this power anyway, it doesn't act as warning and provided that the FCA is given a requirement to issue a warning to society before issuing a cancellation order as proposed in Question 43, we see no reason for this legally vague power to 'suspend'.

Consultation Question 41. We provisionally propose that only after the notice period for cancellation has passed should the registrar be able to give directions to wind up the affairs of the society. Do you agree?

We fully agree with this proposal. It offers only a minor change to the legislation but prevents any ambiguity in law as to when the FCA can cancel or direct the winding up of the society, ensuring there are no contraindications within the act.

We see no reason why the FCA should be able to direct the winding up of society prior to its cancellation. Societies should have two months to make representations to the FCA (or appeal if proposals of Question 38 are implemented) before they can be directed to be wound up. Therefore, we agree with reducing ambiguity and ensuring a standard two month notice is required before cancellation.

Consultation Question 42. We provisionally propose that the notice period for cancellation be fixed at two months. Do you agree?

We agree with this proposal, a fixed two-month period is standard for a strike-off order for companies, therefore we believe that it makes sense to maintain this for societies.

We believe that fixing it in statute will reduce ambiguity and make the process for cancellation of societies clearer for all parties.

Consultation Question 43. We provisionally propose that the CCBS Act should require the registrar to give a society reasonable warning before issuing any notice of proposed cancellation. Do you agree?

We agree with this proposal. Cancellation is still a very serious and final step to take for noncompliance. We agree in most cases it is appropriate for society to be given a warning to bring themselves into compliance.

As is noted in the consultation paper, this is already something the FCA tries to do, so we agree with formalising this. While we believe two months would generally a reasonable notice period, in some cases longer or shorter notice periods could be appropriate. We believe the CCBSA should afford the registrar with flexibility in this matter.

Consultation Question 44. We provisionally propose that societies be given a statutory power to entrench their rules. Do you agree?

We agree. Giving members greater ability to entrench provisions in their rules that they care about and deem fundamental to their common purpose will:

- enable them to provide stronger guarantees to third parties, including funders and investors, that they are committed to their common purpose
- enable them to protect common purpose long-term, even as members and employees come and go
- protect common purpose when raising debt and equity from external sources
- add to existing protections against demutualisation

Consultation Question 45. We provisionally propose that it should be for the rules of a society to decide the voting threshold needed to change an entrenched rule. Do you agree?

Yes, this would give greater flexibility for societies to decide for themselves democratically how they may wish to prevent certain events like demutualisation taking place.

Consultation Question 46. We provisionally propose that a society's rules should be capable of being entrenched on registration or later by special resolution. Do you agree?

Yes, this gives societies much greater flexibility to determine when they wish to protect certain provisions in their rules, it will allow societies to adapt to times and circumstances. If societies cannot choose to entrench their rules at anytime then there is little point having

the ability to entrench them in the first place as it would put existing societies at a disadvantage.

We also agree the change should be by special resolution. But requiring a unanimous vote for entrenchment, as is required in company law, would make it practically impossible for all but the smallest societies to entrench their rules.

Consultation Question 47. We provisionally propose that the special resolution threshold which must be exceeded in order to entrench a rule should be the same as the threshold required for adopting an asset lock, that is:

(1) a first meeting where at least 75% of voters are in favour and at least 50% of members vote, followed by

(2) a second meeting where over half of voters are in favour (see section 113 of the CCBS Act). Do you agree?

We disagree with requirement in (1) for at least 50% of members to vote. This would make it nearly impossible for the larger societies to ever entrench their rules, due to the infeasible turnout requirements.

Instead we propose that the threshold required to entrench a rule should be a new voting threshold than those found within the Act, namely being that a special resolution is passed with 75% of those voting in favour followed by a second meeting where over half of the votes cast are in favour.

We also question whether the threshold for entrenchment needs to be equal to that for adopting an 'asset lock' or other similar common capital provision. The proposed 'common capital locks' (asset lock etc) would limit the rights of members to share in the capital of the society and could never be undone. Fairness requires a high threshold. In contrast, members would be able to alter entrenched provisions and could set lower thresholds for doing so. And entrenchment could cover something less critical than the financial interests of members. Here, fairness could permit a lower threshold.

It seems an unnecessary burden for entrenchment to have the same threshold as permanent common capital locks. We agree societies should long consider the implications of entrenchment, but it need not require the same level of consideration as an asset lock requires.

Consultation Question 48. We provisionally propose that a society should be able to set voting thresholds in its own rules which are stricter than those in the CCBS Act in the following circumstances.

(1) Ratifying action by members of the committee which would otherwise be beyond the capacity of the society.

(2) Amalgamating societies or transferring engagements to another society.

(3) Converting to, amalgamating with, or transferring engagements to a company.

(4) Approving an instrument of dissolution.

(5) Disapplying the duty to appoint auditors. Do you agree?

We strongly agree all these proposals. Companies are given freedom to craft higher thresholds for special resolutions so there seems no reason why the same can't exist for societies.

Consultation Question 49. We provisionally propose that the restrictions on the use of the assets of a community benefit society, and the enforcement powers in that regard, as set out in the Asset Lock Regulations, be included in the CCBS Act as applicable to all community benefit societies. Do you agree?

We disagree. As we set out in our answer to Question 1, our preferred reform would be to replace the two subtypes of society with just one 'registered society', with common capital provisions such as asset locks being optional functionality.

If the Law Commission decides not to recommend that reform route, and to retain two sub-types of society, then we strongly urge that reforms enable community benefit societies to be mainly for community benefit but also partly for mutual benefit. See our response to Question 5. On this basis, any blanket regulations on the use of assets would need to allow for 'use and dealing in assets' for the mutual benefit of members, where this furthers the community benefit purpose of the society.

We would also only support a blanket approach if dysfunctions in the asset lock drafting (e.g. relating to interest in non-withdrawable shares and adopting a charitable asset lock) were rectified.

Consultation Question 50. We provisionally propose that the CCBS Act should expressly allow for asset-locked community benefit societies to pay interest on non-withdrawable shares. Do you agree?

We agree. As far as we are aware, the current wording of the asset lock regulations on this point is poor drafting, rather than any intent to treat interest on non-withdrawable shares differently.

Consultation Question 51. We provisionally propose that it should be possible for a community benefit society with a statutory asset lock to become a charity. Do you agree?

We strongly agree with this proposal. It is a source of unnecessary cost and complexity that societies who register with a statutory asset lock, and later wish to become charities, are prevented by asset lock regulations from strengthening their asset lock to be charitable.

Consultation Question 52. We provisionally propose that the asset lock provisions of the Co-operatives, Mutuals and Friendly Societies Act 2023, as far as they apply to co-operatives, should be consolidated into the CCBS Act. Do you agree?

We agree, it would help improve clarity and consolidate different pieces of legislation into one Act, which would make the legislation more user-friendly.

Consultation Question 53. We provisionally propose that the Asset Lock Regulations which apply to community benefit societies should also apply to co-operatives which choose a statutory asset lock. Do you agree?

We partially agree.

In our view all registered societies, including co-operative societies, should have the option of adopting the following statutory common capital provisions:

- statutory non-distributable capital surplus
- statutory indivisible reserve
- statutory non-profit-distributing asset lock

Non-distributable capital surplus

All societies should have the option of adopting a statutory 'non-distributable capital surplus' (NDCS) provision. This would be a permanent legal guarantee that some or all of the co-operative's capital surplus (residual assets, minus shareholdings) are 'non-distributable' to members upon solvent dissolution or conversion into a company, and must instead be transferred to another entity with a comparable lock on distribution (e.g. another co-operative society with NDCS, an asset locked CBS, a CIC, a charity).

Where a co-operative society adopts a partial NDCS provision, the CCBSA should provide for distributable reserves and non-distributable (i.e. 'indivisible') reserves. In doing so, the CCBSA would enable co-operative societies to legally guarantee that their indivisible reserves would always remain thus. Our developed proposal on NDCS, informed with member input can be read here.

Obtaining NDCS and a statutory indivisible reserve were the objectives of the sector when it supported the Co-operatives, Mutuals and Friendly Societies Act 2023.

If our preferred option set out in Question 1 is not recommended by the Law Commission, then we strongly urge that co-operative societies be given the option of adopting this provision.

Indivisible reserve

All societies should have the option of adopting a statutory indivisible reserve that:

- comprises common capital that cannot be distributed to members at any point, including upon solvent dissolution or conversion into a company
- cannot be made divisible by future members

If our preferred option set out in Question 1 is not recommended by the Law Commission, then we strongly urge that co-operative societies be given the option of adopting this provision.

Non-profit distributing asset lock

All societies should also have the option of adopting a statutory non-profit-distributing 'asset lock' that is similar to the one available to community benefit societies. This would enable co-operative societies to combine mutual benefit with strong guarantees for third parties on common purpose and flow of value.

It would also enable community benefit societies to convert into co-operative societies, allowing greater flexibility within the law. However, shortcomings with the community

benefit society asset lock should be corrected before being made available to co-operative societies.

If our preferred option set out in Question 1 is not recommended by the Law Commission, then we strongly urge that co-operative societies be given the option of adopting this provision.

Consultation Question 54. We provisionally propose that section 115 of the CCBS Act should be amended so that, when a company converts to a society, it must appoint either three members, or two members if both are registered societies. Do you agree?

We agree with this proposal, while it seems unlikely that a company seeking to convert into a society would already have two registered societies as members, we see no reason why there should be a restriction on a company with two registered societies as members seamlessly converting into a society, given section 2(2)(b) of the CCBS act allows a new society to be created if it has two members that are both registered societies, so there is no policy reason for preventing a company from converting to a society under the same conditions.

Consultation Question 55. We provisionally propose that the CCBS Act should provide expressly that partial transfers of engagements are possible, to companies or to other registered societies. Do you agree?

We agree. Partial transfers of engagements can be a very useful tool.

Consultation Question 56. We provisionally propose that, where a society converts to, amalgamates with, or transfers its engagements to a company, any transfer of the society's property should vest without conveyance. Do you agree?

We agree with this proposal, as we see no reason why this isn't already explicitly within the law and clearing up ambiguity is welcome.

Consultation Question 57. We provisionally propose that section 112 (conversion of a society to a company) be amended to remove reference to a society's registration being void. Do you agree?

We agree with this proposal, it avoids ambiguities within the law and would make clear what is already outlined in section 126, that a society is not cancelled until any amalgamation and transfer of property is complete.

Consultation Question 58. Do you think that the registrar should advertise the cancellation of a society's registration or its dissolution in a local newspaper as well as in the Gazette?

We partly agree, we agree that the Gazette alone would not reflect the sometimes large voluntary and local membership of societies as many members of a society are unlikely to read the Gazette. We note however that local newspapers are a declining industry in the UK as are newspapers as a whole, therefore we don't believe the 'newspaper' will be the most appropriate in all cases.

We believe instead that the registrar should advertise the registration and cancellation of a society in the Gazette and a media outlet appropriate for the nature of the society and it's members. This might include social media or a sector publication, like Co-operative News, or Farmers' Weekly in the case of an agricultural co-operative.

Consultation Question 59. We provisionally propose that the CCBS Act should enable HM Treasury by regulation to disapply duties under the CCBS Act temporarily for special reason (such as a pandemic). Do you agree?

We agree with this proposal, following on from the lessons of the pandemic, it is always a good idea for Government to give itself powers to be more lenient on regulations when reasons arise.

Consultation Question 60. Do you think that the CCBS Act should empower the registrar to require electronically filing of documents?

While we want to see returns easily searchable online and would encourage societies to make submissions online and welcome any updates that make electronic filing easier, we nevertheless are concerned about making it a requirement. Digital exclusion is an issue that should be taken seriously, especially for organisations like some social clubs, which tend to have directors who are older. While we acknowledge that Companies House is moving to electronic filing, we have not seen the full implications of this and are wary of imposing such a system on societies at present.

If a provision requiring mandatory electronic filing were to be introduced, we suggest that it include a period of years before commencement, to give digitally excluded societies time to prepare.

Consultation Question 61. We provisionally propose repealing the need for signatures on a society's filed accounts. Do you agree?

We agree with this proposal, this requirement would bring society law into line with company law and would make any electronic submission of documents easier. We also share the FCA's concerns about signatures appearing publicly and thus being copied. We see no reason why signatures act as a check on fraud, it is already a criminal offence to file fraudulent accounts and action can be taken if this occurs with or without the need for signatures.

Consultation Question 62 Do you think that the registrar should have the power to impose a civil penalty in the form of a fine on a society which is late in filing their annual return (in line with equivalent penalties under company law)?

We agree with this proposal because:

- societies are required to file their annual returns on time
- timely filing of accurate returns is critical to having a reliable and robust corporate register, which in turn is essential for those seeking to do business with societies, and for combatting crime and unethical behaviour

- civic fines would add a more proportionate step before recourse to criminal prosecution, as a means of encouraging compliance

However, we believe that any fines the FCA may wish to make should only be made for breaches of the Act that occur after the change in law, they should not be retrospective for breaches of the Act that occurred prior to a change in the law.

Consultation Question 63. We provisionally propose as follows.

(1) The registrar should be able to direct a society to change its name after registration if the name has since become undesirable in the opinion of the registrar.

(2) There should be a right to appeal such a direction. Do you agree?

We have concerns that the registrar could have too-broad discretion to determine what is and is not 'desirable'. We are aware of cases where the registrar has intervened on names in a way that stakeholders considered unjustified. Thus we strongly agree that societies should have the right to appeal.

Consultation Question 64. We provisionally propose that the Mutuals Public Register be identified explicitly in the CCBS Act as the sole register which the registrar of societies is to maintain. Do you agree?

We agree with this proposal as it seems like a sensible clarification of the registrar's duties.

Consultation Question 65. Do you think that the seal of the registrar of co-operative and community benefit societies be provided for under the CCBS Act?

We cannot object to this proposal.

Consultation Question 66. We provisionally propose that the registrar should be able to use their available powers of intervention where the registrar believes that intervention is appropriate in the circumstances (rather than "only to the extent necessary to maintain confidence" in societies). Do you agree?

We partially agree with this proposal, subject to refinement. While instances of misconduct in societies are relatively rare, we do believe societies should not be a legal form open to abuse, and therefore we believe the FCA's powers of intervention should be made clearer and more useful.

But we are concerned the proposed threshold for intervention is too open-ended. We propose the registrar should be able to use their powers of intervention in the following circumstances:

- where the registrar believes intervention is appropriate to ensure a society operates mainly for a common purpose
- where the registrar believes intervention is appropriate to ensure a society operates a permitted and equitable voting pattern
- where the registrar believes intervention is appropriate to ensure a society complies with its rules, including any governed by statutory provisions, such as an 'asset lock'

- where the registrar believes intervention is appropriate to protect the rights of members or creditors

We also believe that societies must be able to appeal against interventions made by the registrar.

Consultation Question 67. We provisionally propose that the CCBS Act should provide the following regime for society audits.

(1) Any person appointed to audit the accounts should be a qualified auditor.

(2) A society should be able to opt out of the duty to audit accounts when the society is below a certain size.

(a) There should be a single threshold (above which a society cannot opt out of the requirement to audit).

(b) That threshold should be both that turnover is not in excess of £10.2m and assets are not in excess of £5.1m.

(c) That threshold should be capable of revision by statutory instrument.

(3) The registrar should continue to be able to insist upon an audit.

Do you agree?

We agree with all of the above points. It has long been a sector priority to do away with anachronistic and unduly burdensome audit requirements for small societies, particularly:

- the requirement for a 'lay audit' for societies with turnover under £5,000
- the requirement for an auditor's report for societies with turnover between £90,000 and £10.2 million

Having one audit requirement would simplify legislation and remove unnecessary complexity and cost.

Charitable societies

At present the CCBSA sets a much lower, and therefore more burdensome, threshold at which charitable societies must have audited accounts compared with registered charities. We would like to clarify for the avoidance of doubt that the disproportionate audit requirements for charitable societies should be updated to bring them into line with other charities.

Societies with subsidiaries

We urge that small societies with subsidiaries should also be allowed to disapply the full audit requirement. Having a subsidiary should not in itself require a more costly audit process. However, if a subsidiary had turnover or assets that exceeded the threshold for disapplying the audit, then the parent society should be required to provide audited group accounts.

Consultation Question 68. Do you think that co-operatives should be required by legislation to report on how their activities pursue their objectives?

Do you think that community benefit societies should be required by legislation to report on how their activities pursue their objectives?

As per our preferred reform route (see Question 1) we believe the key test for registration as a society should be common purpose. Given that we believe this should be a robust test at incorporation and after, we would support a legal requirement in the CCBSA for societies to report on how their activities have furthered their purposes.

If the Law Commission is minded to retain two subtypes of society, then we would support both types being asked to report on the same.

We note that the registrar already requires societies to make such reports as part of the annual return. We also note that community interest companies have to make a similar report. So, in our view, so long as the legislation and its implementation do not add unnecessary administrative burdens beyond current practice, this would simply put what is already required of societies onto a firmer legal footing.

Consultation Question 69. Do you think that the CCBS Act should allow a society's financial year to end up to seven days earlier or later than the previous year (as with company law)?

We agree with this change, this helps bring societies into line with companies and makes the society legal form more useful in forming a modern business.

Consultation Question 70. We provisionally propose that section 81 of the CCBS Act be repealed (to remove the duty to display a balance sheet at a society's registered office). Do you agree?

We strongly agree for several reasons:

- This is an outdated and unnecessary burden on societies
- Balance sheets are already available to members of the society during the AGM
- For smaller worker co-operatives, members will be directly involved in management so this unnecessary
- Companies have no corresponding duty placed on them and we question why societies should have such an additional burden
- Societies would still be able to make regulations requiring this in their own rules, if they wish

Consultation Question 71. We provisionally propose that, subject to its rules, a society should additionally be able to execute a document by one authorised signatory attested by a witness. Do you agree?

We agree, the present that rules create unnecessary administrative burdens on societies that companies don't have to follow. Given the proposal to put the duties of society directors into the CCBSA, we see no reason why societies shouldn't be given the same leeway that companies are given. We also agree that societies should within their rules put stricter conditions in place if they so wish, but there is no reason why society law should be more restrictive than company law.

Consultation Question 72. We provisionally propose that, subject to its rules, a society should be able to appoint, by deed, an attorney to execute documents on its behalf. Do you agree?

We strongly agree with this proposal, again it modernises society law brining it into greater alignment with company law. Allowing societies access to the same suite of functionality that any modern corporate legal form should have.

Consultation Question 73. We provisionally propose that "cooperative", "co-op" and "coop" should be included alongside "co-operative" on the list of sensitive (protected) business names. Do you agree?

We agree with this proposal, we believe it modernises the protection for the co-operative identity, ensuring that grammatically muted forms of the word should be recognised, this is important as 'coop' and 'cooperative' become increasingly common variations of 'co-operative'.

We do however believe the FCA is too strict on when it allows the use of the word 'co-operative' or similar words to that effect. We believe community benefit societies should be able to use 'co-op' or 'co-operative' in their legal names if they are operating as 'general interest co-operatives', in according to co-operative values and principles. For example, we at Co-operatives UK register a range of community benefit societies that put co-operative purpose, values and principles into their rules and operate accordingly. Indeed, we regard the community benefit model useful for the 'general interest co-operative'. We believe they should be allowed to use a name that reflects this fact.

We also note that for decades, co-operatives incorporated as companies have been able to use the word 'co-operative' and variations therefore, without this causing any problems. This suggests to us that there would be no adverse consequences from general interest co-operatives incorporated as community benefit societies from using these words either.

Consultation Question 74. We provisionally propose that the requirement to display a society's registered name outside every place where it carries on business be repealed. Do you agree?

We agree, this rule seems to be another antiqued rule with there being no corresponding duty in company law. Furthermore, private rental housing co-operatives this rule is outdated and hard to implement. As is already noted, this rule as long since fallen out of practice so its repeal would be nothing more than bringing the law into line with what is already common practice.

Consultation Question 75. We provisionally propose that, subject to the rules of a society, the CCBS Act should expressly allow meetings to be virtual or hybrid. Do you agree?

We agree, given the number of societies who are already doing so it is essential to remove any ambiguities in the law and ensure societies have flexibility.

Consultation Question 76. We provisionally propose that, when a society notifies the FCA of an amendment to the society's rules, the society need send only one copy of the amendment if this is sent by electronic means. Do you agree?

We agree with this proposal, it removes inconsistencies in the legislation that have no practical reason for existing and will help improve the ability of societies to file returns electronically, which is important if the registrar was to move to a system of electronic only filing in the future.

Consultation Question 77. Do you think that the CCBS Act should explicitly provide that society rules may provide for an indivisible reserve?

The issue is not whether the CCBSA explicitly provides for an indivisible reserve. Many societies already have such reserves and there is no ambiguity as to their legality. Rather, there is a critical need to the Act to provide the option for societies have *legally guaranteed and permanent* indivisible reserves, that can never be made divisible by future members.

We note that countries that provide statutory indivisible reserves often have stronger co-operative sectors, with more effective accumulation and pooling of capital within and among co-operatives, and with lower rates of demutualisation.

While providing for a statutory indivisible reserve would not itself be sufficient to fully address some society's concerns 'hostile demutualisation' of their legacy assets, it would be a deterrent. It would also provide a strong 'hook' for future policy initiatives to support co-operative re-investment and growth.

Consultation Question 78. Do you think that there is a need to reform the law relating to co-operative banks? If so, what reforms do you think are needed? Do any of the proposed changes to the CCBS Act have particular consequences for co-operative banks that we need to consider?

It is possible that enabling a wider range of capital raising options could support the capitalisation of new co-operative banks. In order to raise the required Community Equity Tier 1, a society would need to raise very large amounts in share capital that is either non-withdrawable but tradable, or repayable only at the option of the society, while also offering returns that reflect risk and attract more financially-motivated investors.

Consultation Question 79. Do you think that there is a need to reform the law relating to credit unions? If so, what reforms do you think are needed?

We agree with the Building Societies Association submission on this front. The Credit Union Act remains an outdated legislation and in order for the Government to meet its' ambitions to double the size of the co-operative economy the Credit Union Act needs to be reviewed to become more enabling and less restrictive.

Do any of the proposed changes to the CCBS Act have particular consequences for credit unions that we need to consider?

Consultation Question 80. As regards the topics set out in Chapter 8, we have provisionally concluded against reform. Do you think that any of those topics needs revisiting, and if so why?

Re-registration

We believe it should be possible to 're-register' a society that had its registration cancelled but has not dissolved. As noted in the Law Commission consultation, case law holds than unless the society has ceased to exist, the entity continues as an unincorporated association. We believe this would be extremely beneficial for smaller societies who may have their registration cancelled for late filing of their annual returns. We know of social clubs who have been de-registered for late filing of annual returns, but continued to trade afterwards as an unincorporated association. This is not ideal for the society in question, so we believe so long as the association continues to exist and corrects the errors that led to de-registration, it should be possible for FCA to re-register the society through a streamlined process.

Consultation Question 81. How would reform affect you? Please provide a general answer here. When answering other questions, please tell us, where possible, how that specific reform might affect you.

Consultation Question 82. Are there any factors unique to Scotland which you think we should know about?

Consultation Question 83. Are there any factors unique to the Channel Islands which you think we should know about?

At Present the 2014 Act doesn't apply to the Channel Islands, because an Order in Council was not made at the appropriate time. This has effectively left the Channel Islands Co-operative Society - one of the most important economic and social institutions in the Channel Islands - without a single and clear body of corporate law. It is required to follow the old Industrial and Provident Societies Act, which is still in force in the Channel Islands, while also having to meet some requirements of the CCBSA. This has had serious implications in areas such as the regulatory treatment of its withdrawable shares.

Therefore, it is essential that any reformed CCBSA is applied to Channel Islands. The lawmaking process must repeal and replace the old Industrial and Provident Societies legislation, to ensure consistency, reduce legal uncertainly and enable this vital enterprise.

The Channel Islands Co-operative is a single society across both islands with membership in both Jersey and Guernsey. The relevant Gazettes would be in the local press in Jersey and Guernsey. Reference should then be made to this, as otherwise a notice made in the UK Gazette would not necessarily be seen by the members or relevant communities.

Consultation Question 84. Are there any other ways in which the CCBS Act might be improved to support the formation and development of new societies?

Combining mutual and community benefit

We know that in practice most co-operatives in the UK and around the world combine the provision of mutual benefit for members and the delivery of broader community benefit. Indeed, in many cases, the delivery of mutual benefit it a component of how a broader communal benefit is generated. Enabling this combination through the CCBSA would enable a new wave of beneficial innovation, growth and impact in co-operative and community business.

This combination is clearly active in most co-operative societies. It is also often desired, but currently frustrated, in many community benefit societies. Founders who ideally would like to pursue this combination are often forced to make a suboptimal choice of forming a community benefit society, because it offers a way to legally register a community benefit purpose and adopt a statutory asset lock.

This combination can be extremely powerful and must be enabled by UK law. So, we fundamentally disagree with the Law Commission's assertion that the law should force a choice between operating for member benefit, or solely for community benefit. It does nothing to reflect or enable valuable real-world practice.

See our first preference proposal in Question 1 and second preference proposals in Questions 2 and 5, which aim to enable this.

Crucially, enabling co-operative societies to have statutory common capital provisions (non-profit-distributing asset lock, non-distributable capital surplus, indivisible reserve), would enable the combination mutual benefit with strong guarantees to third parties on common purpose and the flow of value.

Converting a community benefit society into a co-operative society

We propose that, if the two subtypes of society are to remain, a community benefit society should able to convert into co-operative society, where the members believe that greater mutual member benefit alongside community benefit, will further their shared purpose. This will likely require providing for a co-operative society to adopt a similar 'asset lock' to that available for a community benefit society. So long as the asset lock protections are compatible, ensuring that there is no risk of the prescribed assets being applied for private member benefit, then there is no reason why such a conversion shouldn't be explicitly allowed for within the CCBSA.

This would be particularly important for community energy societies, who may in the future have better options for directly providing the energy they generate to their members. This would successfully build new wave of beneficial innovation in co-operative and community energy.

Dormant societies

Sometimes, members form a society but then are unable to undertake any activity for one or more years, because the conditions are not right for them to do so. In these cases the society is to all intents and purposes dormant. A common example here would be the formation of a housing co-operative that then remains dormant until the opportunity presents itself to purchase a property. A period of dormancy, especially in the formation phase, is sometimes the only pragmatic course of action. However, the CCBSA does not provide for a light touch reporting regime for dormant entities in the same way that company law does. We purpose that the CCBSA enables societies to register a period of dormancy with the same light touch requirements as are provided in company law.

Consultation Question 85. Does the CCBS Act raise barriers to growth and innovation, such that there are other reforms which are needed to support growth and innovation for societies?

Individual holding limit for withdrawable shares

Section 24 of the CCBSA currently limits individual holdings in withdrawable shares to £100,000. This limit has proven problematic where a society would benefit from raising larger amounts from fewer investors. In particular the limit prevents external investors such as institutions from investing optimally. If withdrawable shares are to be useful in raising capital in larger amounts from a wider range of investors than the single £100,000 holding limit should be removed.

This would also have the benefit of enabling other potentially beneficial innovations, such as employee share schemes, where withdrawable shares are held in a trust.

Opinion varies on the rationale for the holding limit. It is said the limit prevents those with significant shareholdings from using the threat of withdrawal to have undemocratic *de facto* influence in the society. It's also said that a holding limit reduces the effect of having one large shareholder taking all the capital available for withdrawal in a given period. Some cite retail investor protection, and the logical link to financial promotion exemptions for non-transferable shares.

In our view, law that limits shareholding to a fixed value will always be an arbitrary and suboptimal way to achieve any of these things. Individual societies are better-placed to determine whether and to what extent a holding limit is needed to mitigate risks and manage imbalances. They could do so through their rules. We note that when government decided to increase the holding limit from £20,000 to £100,000 in 2014, it came to the same conclusion:

"On the points raised by some respondents about risks around cash-flow and domination of an IPS by an individual investor, the Government believes these risks are best managed by individual [societies] via their own rule-books."

The key investor protections in non-transferable shares in societies actually arise from:

- the common purpose of the entity and the lack of actors motivated primarily by financial return
- the straightforward nature of the 'exit' on offer in non-transferable withdrawable shares
- transparent democratic governance

We note that the financial promotions exemptions relate to *non-transferable shares*, which are not necessarily the same thing as *withdrawable* shares. It is possible to issue non-withdrawable non-transferable shares, exempt from the financial promotions regime, and with no holding limit. We note that when government decided to increase the limit from £20,000 to £100,000 in 2014, it did not reference investor protection at all.

Any possible benefits from the limit relating to the above are, in our view, far outweighed by the negative impacts of under-capitalisation and limits on innovation and growth.

Enablers beyond legislative reform

We recognise that the Law Commission can only make formal recommendations relating to legislative change. But we must flag that while the legislative reforms being proposed are necessary for enabling co-operative innovation and growth, they will not be sufficient.

On capital raising in particular, the proposed reforms need to be seen as part of a wider strategy to ensure co-operatives have good finance options for start-up, resilience and onward development. We believe the UK should emulate the following practices and approaches found in the largest and most impactful co-operative economies around the world:

- **Common capital**: More effective accumulation, pooling and reinvestment of 'common capital' within and between co-operatives.
- **Institutional finance**: A greater role for institutional finance in the co-operative economy, including specialist institutions in the co-operative ecosystem, pension funds, impact investment funds, philanthropic funders and more.
- **Investors:** Raising equity, quasi-equity and debt in larger amounts from members and from 'external investors', especially institutions

We should also look to build on recent successes in the UK, including Community Shares, Community Shares Booster, blended finance, guarantees, revenue share and grants.

Consultation Question 86. Does the CCBS Act cause societies to incur unnecessary costs and burdens, such that there are other reforms which are needed to reduce those burdens and support the more efficient operation of societies?

Electronic communications

The default requirement for societies is that documentation relating to their governance be printed and sent to members by post, unless a member specifically consents to receiving such documents electronically. This is bad for the environment and a considerable cost for co-operatives. We propose, the CCBSA should make electronic communication the default, with members having the right to require communication to continue to be by post, if they so prefer.

Director compensation

At present the legislation creates ambiguity on whether a community benefit society can pay its directors a fee for serving on the board. This has caused uncertainty in the registration and compliance of some community benefit societies.

Given that community interest companies and charities are explicitly able to pay reasonable fees to directors in order attract talent, community benefit societies should be explicitly allowed in their rules to make provision for the payment of fees to directors. We believe so long as the fee paid was no more than necessary to retain a skilled board, that the payment would not be anything more than incidental private benefit and should therefore be allowed.

Converting a company into a society: share value

When one company converted into a society and set the nominal value of the society's shares to match the new (higher) value of asset price, it had legal advice that the members were required to pay additional cash to make up the difference. The advice was that this was required to avoid members' share value from effectively depreciating via the process of conversion. We are flagging this as an issue to be considered.

Status of subsidiaries during conversion

We have heard of instances where a company which owns a subsidiary has converted into a society and it was unclear if the subsidiary ownerships transferred seamlessly to the new society. We see no reason why this should not do so. Nevertheless, we propose the CCBSA makes it explicitly clear that when a company converts into a society, all it's subsidiaries become subsidiaries of the new society. This would reduce uncertainly and remove burdensome costs on societies.

Non-legislative issues

We recognise that the Law Commission can only make recommendations for legislative reform. But we must flag that societies experience many unnecessary costs, complexities and burdens, because policies and processes in the public and private sphere that do not countenance or adequately cater to this less-common corporate form. We ask that in its report to government, the Law Commission flags the issues set out below.

Mutuals Public Register and Companies House

Societies of all sizes frequently experience unnecessary costs and difficulties in their deals with third parties, because of issues around the Mutuals Public Register and the society entries on Companies House:

- lack of accessibility, utility and machine-readability of key corporate and financial data on the Mutuals Public Register, relative to company data, which reduces the accuracy of credit ratings and more automated due diligence on societies, and creates challenges in more automated financial service processes such as bank account on-boarding and loan applications
- lack of easily accessible and up-to-date director information and clear information on ultimate ownership and control for societies, which causes problems when third parties such as financial institutions, digital service providers and public and private tenderers, do due diligence / know your customer checks
- lack of machine readability of society accounts, which has meant they are excluded from beneficial Making Tax Digital developments, such as single account filing and automated registration with HMRC
- misleading labelling on Companies House of the status of societies that have converted from companies, as 'Closed/Converted', which third parties frequently incorrectly interpret as signifying that they are no longer in business
- lack of automated process and lag time in registered Societies being given a 'company number', which sometimes holds back societies from being recognised by HMRC, delays eligibility for tax reliefs, creates difficulties in opening business bank accounts and in using digital services

HMRC

HMRC provides a very poor service to societies relative to companies. Generally, this is because its processes have been designed with companies and LLPs in mind and do not countenance the existence of societies. For example:

- Newly registered societies do not automatically receive a Unique Tax Reference (UTR) and HMRC processes can make it very difficult for new societies to obtain one, because HMRC's digital processes do not cater to societies and the workarounds

sometimes break down. Not having a UTR can have serious consequences, including being unable to pay tax in a timely manner and being unable to claim vital tax relief

- HMRC digital interfaces for registration and paying tax do not countenance the existence of societies, and while workarounds are sometimes possible (e.g. societies have sometimes been able to get around some obstacles by inaccurately stating they are a company), online processes for societies are unclear, confusing and frustrating
- When a society updates its registered address with the FCA, HMRC's system does not update, and the online process HMRC provides for updating a business address does not countenance the existence of societies with a separate corporate register to Companies House
- The free digital filing solution HMRC provides for small businesses (CATO) does not cater to societies
- The single account filing service, whereby a company can file accounts to their registrar and HMRC in one go, is not available to societies

Policies and processes of private organisations and local authorities

Societies regularly experience difficulties caused by flawed policies and processes in private businesses and local authorities that do not countenance the existence of their legal form. This includes:

- Months of delay and frustrating phone calls just to open a bank account
- Accounts frozen because societies are incorrectly recorded as 'closed down' after converting from a company
- Unable to sign-up for vital online services and/or frozen out of accounts
- Refused access to an approved supplier list because of issues with due diligence processes
- Inaccurate credit rating
- Difficulties bidding for public and private contracts
- Unable to apply for liquor or other licences from local councils as tick box options often don't include the society legal form.
- Not recognised by some public bodies and private financiers as 'not-for-profit' while still recognising Community Interest Companies and other organisations as having a not-for-profit purpose
- Some Accountants don't recognise companies that convert into societies as the same legal entity, leading to confusion over if subsidiaries and shareholdings are transferred to the society.

These problems often arise because private organisations will only refer to and use information on the Companies Register, will only accept a Companies Registration Number, or require things that societies simply cannot provide, such as:

- Articles of association
- Certificate of Incorporation
- Persons of Significant Control statement
- Up to date details of directors on register

As more processes become digitised and automated, the bigger this problem becomes. It makes being a society harder than it needs to be. Societies are disadvantaged and the perception that choosing a co-operative model is complicated and burdensome grows. The scale of these issues affecting societies is a strategic concern for Co-operatives UK.

Consultation Question 87. Are there any other reforms to the CCBS Act needed to support an effective registrar?

We believe the FCA should produce a properly searchable database of complaints, and applications for interventions.

Supporting organisations

The following have explicitly requested to be listed as supporters of our response:

Allendale Co-operative Society

Catalyst Collective

Channel Islands Co-operative Society

Co-operative & Community Finance

Equal Care Co-operative

Exeter and Devon Co-operative Party

First Milk

Joe Joseph, Convenor of Somerset Co-operative Party

Illuminity

Maid Energy

Responsible Finance

South West Peninsula Co-operative Party

Solidarity Economy Alliance

Southern Co-operative Society

Unicorn Grocery

Consulted organisations

The following organisations and individuals provided input to our response, through surveys, written feedback, meetings and video calls. Where possible, we have sought to incorporate their contributions into coherent aligned positions. In listing them here, we do not claim that our response fully-aligns with their views on every point. Where they have divergent views, we have advised them to submit these to the Law Commission. We would like to put on record our thanks and acknowledgment to all those who helped us produce our response:

Adrian Ashton

Anthony Collins Solicitors

Allendale Co-operative Society
Bell Inn (Bath) Ltd
Brightwayz
Building Societies Association
Carbon Co-op
Central Co-op
Channel Islands Co-operative Society
Community Shares Company
Co-operative and Community Finance
Co-op Exchange
Co-op Culture
Co-operative and Mutual Solutions
Co-operatives and Mutuals Wales
The Co-op
The Cochabamba Project
Christina Dankwa
Developer Society
East of England Co-operative Society
Equal Care Co-operative
Energy4All
First Milk
Football Supporters Association
Greater Manchester Community Renewables
Heathview Tenants Co-operative
Honeysuckle Whole Foods
Kin Co-operative
Lincolnshire Co-operative
Locality
Maid Energy
Midcounties Co-operative
Mutuo
Nick Burton
Newark Sports Association
Olan Homes Limited
Radical Routes

Responsible Finance

Richard Bickle

Scottish Communities Finance

Solidarity Economy Alliance

Stuart Field

Suma

South West Co-operative Development

Southern Co-operative

Unicorn Grocery

Union:Coops.UK

VME Co-op

Vivian Woodell

Vyvyan Salmon

West Granton Housing Co-operative

The Wine Society

Workers.Coop