

## FG15/12: Summary of feedback received

November 2015

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| <b>Consultation title</b>           | CP14/22 and GC15/4 Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014   |
| <b>Dates of consultations</b>       | <a href="#">CP14/22</a> : 1 October 2014 to 28 November 2014<br><a href="#">GC15/4</a> : 18 June 2015 to 14 August 2015  |
| <b>Summary of feedback received</b> | <p>In October 2014 we started a consultation process on guidance on our registration function under the Co-operative and Community Benefit Societies Act 2014. The consultation process began with CP14/22, and was followed-up with a further consultation document in June 2015 (GC15/4) on three specific topics. The consultation process ended on 14 August 2015.</p> <p>This document provides a summary of the feedback we received from this consultation process, and our responses.</p> <p>Our publication of draft guidance in October 2014 marked the first time all of our existing guidance (much of which was published throughout numerous information notes and on our website) was brought together into a single document. This followed repeated calls by stakeholders for us to publish updated guidance.</p> <p>We welcomed the high level of constructive engagement of the sector during the process, and appreciate the time societies, members and their representatives spent formulating and sending in responses. We know that many respondents ran consultations with their own members before submitting their response to us, helpfully further extending the reach of this consultation process.</p> <p>We received 512 responses to CP14/22, and an additional 163 responses to GC15/4. In addition to this we have engaged further with respondents on specific points as relevant.</p> <p>Of the 512 responses received to CP14/22, 408 commented on our position on 'energy co-operatives' specifically. We received 88 responses providing detailed comments on the guidance in its entirety, and 16 responses supporting the submissions made by others.</p> <p>Comments on CP14/22 focused on the following areas:</p> <ul style="list-style-type: none"> <li>• energy co-operatives</li> <li>• the chapter, 'defining co-operative society' – in particular,</li> </ul> |

the paragraph 4.6 'What is not a co-operative'; and on use of the International Co-operative Alliance Statement of Identity, Values and Principles ('the ICA Statement')

- our text on capital – in particular, on wording about share interest
- legislative interpretation
- the chapter, 'defining community benefit society' – including our distinction between co-operative societies and community benefit societies; and on the definition of 'social enterprise'
- usability of the guidance
- subsidiaries and
- names

As a result of these responses we revised our draft guidance. In some areas we amended the guidance as suggested. In other areas we were unable to accept the suggestions. We provide more detail in the 'Detailed Feedback' section below.

There were three specific areas on which we sought further feedback. In GC15/4 we consulted on the following: 1) share interest; 2) how we define a bona fide co-operative society; and 3) names.

We received 163 responses to GC15/4. Of these responses, 104 focused on the impact on energy societies; 47 respondents provided detailed comments on some or all of the policy areas; and we received 12 responses supporting the submissions made by others. Most comments focused on share interest and our proposed indicators. We also received a large number of detailed proposals for how we apply the 'bona fide co-operative' legislative test, and a small number of comments on names.

In GC15/4 we asked the following 4 questions:

1. Do you agree with the indicators set out above relating to interest rates, and in particular: what do we need to add, remove or amend?
2. Do you agree with our approach to the ICA Statement in our application of the 'bona fide co-operative society' statutory test?
3. Do you agree with our approach to society names, in particular in our aim to align the naming regimes for companies and societies where possible?
4. Do any words need adding to or removing from the list at Appendix 1?

Most respondents to GC15/4 provided substantive answers to these four questions. There were a wide range of responses, which are summarised below.

We have made further changes to our guidance as a result of the

feedback received to GC15/4. Specifically, we have changed the indicators on the appropriate use of share interest, amended the wording about how we apply the bona fide co-operative society legislative test, and adopted the suggestion to align our names policy with that currently used by Companies House, where that is suitable.

We have now published our Finalised Guidance, along with this feedback statement. The Finalised Guidance is general guidance, meaning it sets out one way (but not the only way) of complying with the Co-operative and Community Benefit Societies Act 2014.

We provide detailed feedback to the consultation responses in the text below.

In this section we summarise the feedback we received, both to CP14/22 and GC15/4, and then set out our response to that feedback. We deal with one topic at a time, broadly speaking in order of the volume of responses received.

### **Energy societies:**

**Summary of feedback:** we received a substantial number of responses about energy societies. The majority of responses were from people concerned that our guidance was being used to block the registration of energy co-operatives.

Some respondents were concerned that our definition of a bona fide co-operative society was imposing requirements on all co-operative societies to trade directly with their members.

Additionally, some respondents helpfully set out the motivations they have for investing in energy societies. These focused on:

- supporting the co-operative sector to gain capital to create or grow its business and
- seeing the creation of more renewable energy

Others told us that they invest in the stock market as well as in energy societies, and felt that we were placing restrictions on energy societies' activities that were not placed on public limited companies, drawing direct comparisons between their two investments. Some felt that if shares in public limited companies could be held by anyone, then the same should apply to shares in energy co-operatives.

Other respondents said they were concerned at the way they think energy societies are operating, with some believing they ran the risk of putting retail investors at a disadvantage. Others were concerned that energy societies were investment vehicles, formed as societies purely to avoid regulation.

Some respondents who work with firms subject to our Financial

## Detailed feedback and FCA response

Promotion rules felt that energy societies' offers enjoyed an unfair competitive advantage because many society share offers do not have to meet the same requirements and so benefit from lower launch costs.

**FCA response:** in Summer 2014 we decided not to register a small number of energy societies as co-operatives. We made these decisions on a case by case basis. We rejected applications if we concluded that the conditions for registration were not met. In these cases the relevant condition for registration was that the society must be a bona fide co-operative society. The legislative condition for registration states that co-operative societies cannot exist primarily to pay interest on money invested in the society. We have explained how we apply the bona fide co-operative society test in the information note published on our website since 2000 (and by our predecessor, the Registry of Friendly Societies, before that).

We rejected some of these applications for registration before we published our guidance. As a result, we do not agree with the suggestion that our guidance was used to block the registration of energy co-operatives. The guidance reflects the existing position in the earlier information notes, that societies must meet the legislative test of being a bona fide co-operative.

We met with the energy society sector on a number of occasions, and had discussions with promoting bodies and the relevant Government Department, the Department for Energy and Climate Change.

The consultation responses showed how many respondents felt about the issue and the motivations of many people for investing in societies. It is clear that many people invest in energy societies for social as well as financial gain. However, many of the responses reflected a misunderstanding about the purpose of societies.

A number of respondents made direct comparisons between a society and a public limited company. Shares in a public limited company are often sold on the basis of being an investment which does not require any further connection to the company's business. This is very different from the requirements that we, the ICA Statement, and the Act, expect co-operative societies to meet. Co-operative societies are entities which offer membership and the opportunity to acquire shares to people who expect to have some kind of relationship with the business of the society – whether through the provision of labour, services, or trade with the society.

It was our view in Summer 2014, and remains our view, that the applications we rejected in the Summer of 2014 did not meet the bona fide co-operative society legislative test. Many of the examples of energy co-operatives we have seen do not meet the definition of a co-operative set out in the ICA Statement on Co-operative Identity.

We do not have, and did not propose, a specific policy for energy

co-operatives. Our guidance applies equally to all types of co-operative society. Our longstanding policy allowed for the registration of energy co-operatives that meet the legislative test. Our guidance did not propose to change this position and nor does our Finalised Guidance. It is the legislative test that societies must meet, not the guidance. The role of our guidance is to make clear how we apply the test. An application to register an energy co-operative that we find meets the legislative test will be registered.

### Defining a co-operative society (1) – ‘ICA Statement’

**Summary of feedback:** most respondents disagreed with the guidance we set out in CP14/22 on this topic. The majority of respondents called for our guidance to be a ‘direct translation’ of the International Co-operative Alliance (ICA) Statement of Co-operative Identity. In support of their argument some respondents highlighted that Recommendation 193 of the International Labour Organisation (ILO) on the promotion of co-operatives is based on the ICA Statement. The UK Government has signed up to ILO Recommendation 193.

We received varied responses to CP14/22 on the use of the constituent parts of the ICA Statement. Some felt we should use the Statement in full. Others felt we should use only the definition; others preferred the definition and values. Some respondents strongly opposed any incorporation of the ICA Principles.

We redrafted our chapter on how we apply the bona fide co-operative society legislative test and consulted further on this issue in GC15/4. In response to GC15/4, most respondents welcomed the redrafting – but wanted to see further changes; however, a number of respondents gave unqualified support for our redrafted guidance.

Many respondents felt that we had wrongly drawn a distinction between Principles 1-4 and Principles 5-7, and had relegated Principles 5-7 as a result. However, a few respondents were supportive of a distinction, urging us not to make Principles 5-7 part of a formal assessment process for registration. They felt that individual societies should be left to comply with Principles 5-7 as they saw fit.

There was still no consensus amongst respondents as to the extent to which the ICA Statement should be applied. Some respondents suggested we adopt a test of ‘purpose, ownership, and control’.

Some respondents suggested we use an amended form of the ICA Definition. Some suggested that ‘...to meet their common economic, social **and** cultural needs and aspirations’ should instead be read ‘...to meet their common economic, social **or** cultural needs and aspirations’ – essentially changing the purpose of a co-operative.

Other respondents suggested the purpose of a co-operative could be 'economic, social or environmental' – again suggesting changing the 'and' to an 'or'.

Respondents gave mixed views about the use of the Values in the ICA Statement. While some felt it would be inappropriate to include them in the application of a legislative test, other respondents thought it important that we include them.

Some respondents were against the use of the ICA Statement. Some had concerns with reliance on an external statement, as we had no control over it being changed.

**FCA response:** overall, and unsurprisingly, respondents to the consultation differed in their views of how we should apply the bona fide co-operative legislative test and how far the ICA Statement is reflected in our guidance.

We appreciate that this issue is an important one for the co-operative movement, and this was reflected in the detailed and considered responses we received.

In our Finalised Guidance we have reflected the ICA Statement (as quoted in our guidance) in the way we apply the bona fide co-operative legislative test. But, importantly, we have also made clear that there are limitations to the extent to which we can verify and validate compliance with that Statement.

One respondent asked what will happen if the ICA Statement were to change. We believe that that our guidance would not necessarily change, as it is aligned with certain key principles, but we will keep it under review.

We have rejected the suggestion of using an amended version of the ICA Definition because we do not agree that 'economic, social and cultural' should be read as 'economic, social or cultural'. It does not read like this on a plain language reading of the sentence and this reading is inconsistent with the intentions expressed in the preparatory documents to the Statement or ICA General Assembly which approved that text in 1995. Additionally, the definition used in our Finalised Guidance is identical to that used in ILO Recommendation 193. We cannot see a good reason for changing this.

We think our approach is flexible and reflects the fact that the co-operative movement is varied, diverse, and constantly evolving.

### **Defining co-operative society (2) – 'not a co-operative'**

**Summary of feedback:** paragraph 4.6 of the draft guidance in CP14/22 sets out 'what is not a co-operative'. Responses to this paragraph were overwhelmingly negative.

Respondents also expressed concerns about the impact of this

paragraph on worker co-operatives.

While the vast majority of respondents want to see this paragraph deleted, we did receive a response suggesting support with a slight re-wording of the paragraph to give it a cumulative effect.

**FCA response:** we recognise that the wording of paragraph 4.6 caused concern within the co-operative movement and was open to misinterpretation. We did not believe the paragraph would have any impact on worker co-operatives because we consider the service provided by a worker co-operative to be providing employment, which is generally only provided to members. However, we accept that the wording in the paragraph did not accurately reflect our full policy intentions.

We also recognise that the statement that most of a co-operative society's trade should be with its members was particularly challenging for some retail co-operatives. While they are rightly striving for greater member-participation in their business, the majority of their trade is not currently with their own members. At best it could be said that the position in the guidance for co-operative societies was aspirational.

Following this feedback we substantially redrafted our chapter on 'defining co-operative society' and consulted further on this topic in GC15/4. The wording of paragraph 4.6 of CP14/22 was not included in the revised guidance in GC15/4 and does not appear in the Finalised Guidance.

### **Capital (1) – interest rates**

**Summary of feedback:** most of the respondents commenting on our text on capital in CP14/22 objected to our wording on share interest rates.

Respondents found the text in CP14/22 too prescriptive and felt it was 'over-regulation'. Other respondents felt the guidance was unclear and that it proposed too many different tests on what level of interest can be paid on shares.

In GC15/4 we proposed a different approach in our guidance on interest rates, moving instead to a set of indicators. Respondents generally welcomed this change in approach. Some respondents gave unqualified support to the indicators, but the majority suggested changes or deletions for specific indicators.

### **Indicators**

Below we summarise the feedback we received for each indicator.

#### **Indicators suggesting a society is likely to be complying with the conditions for registration**

*'The realisation of the society's objectives is the main*



### ***'motivating factor for membership'***

Most respondents objected to this indicator on the basis that it was outside a society's direct control.

Others encouraged us to acknowledge that members may have mixed motivations, and that furthering the society's objects may be only one motivation, alongside others such as financial return.

### ***'The method and content of communications inviting members to subscribe capital focus on the benefits of helping the society achieve its purpose'***

We received mixed feedback to this indicator. Some respondents were concerned with what appeared to them to be the application of 'community shares' best practice to all societies.

Other respondents felt that in setting out this indicator we had moved beyond our registration function into the regulation of share offer documents. Conversely, others wanted us to provide more detail on what should and should not appear in a share offer document.

We also received feedback suggesting that this indicator would be inappropriate for co-operative societies offering non-user investor shares. Agricultural co-operatives also expressed concerns that the indicator was fundamentally at odds with their business practice, where investment is proportionate to use.

### ***'The rate of interest paid on shares is set in advance'***

Respondents again gave mixed feedback. There was some support for this indicator. However, others sought clarification about what this indicator actually meant.

They had concerns that the word 'set' may suggest that a society cannot reduce the amount of interest it pays, and that 'maximum' should be used instead.

A large number of respondents were concerned that our indicator would require them to set the rate of interest for the lifetime of a project at the start of it.

Some respondents also urged us to look positively at the averaging of interest across a period of time, rather than on an annual basis.

Other respondents were unclear about what this indicator meant for them, given they use a formula for interest rates in their rules (e.g. pinning maximum interest at a certain percentage rate above the bank rate).

### ***'Where a society sets a rate of interest in advance and cannot afford to pay that rate of interest, it pays a lower than indicated rate of interest, or no interest at all'***



We received some unqualified support for this indicator. However, some respondents felt this indicator is unreasonable and unsound.

***'The set rate of interest is the lowest rate sufficient to obtain the necessary funds from members who are committed to furthering the society's objects'***

We received mixed responses, with some respondents stating that given the risks it is improbable that anyone other than someone committed to the objects of the society would subscribe capital.

Others challenged whether this indicator was in fact an indicator, given aspects of it may be outside the society's control. Some respondents felt it was impossible to calculate a rate to comply with this indicator, and that instead the lowest rate should be one comparable to other similar ventures.

Respondents encouraged us to use an indicator based on a society's need to 'obtain and retain' necessary funds.

***'Societies can justify a decision to pay interest at a particular rate, and be able to demonstrate the basis for that decision'***

We received broad support for this indicator.

**Indicators suggesting a society is likely to be not complying with the conditions for registration**

***'The rate of interest offered is too high'***

While respondents did not challenge the suggestion that interest should not be too high, some respondents did challenge the usability of such an indicator. Respondents found the indicator to be too vague.

***'The method and content of communications inviting members to subscribe capital is likely to encourage membership from people primarily motivated by a return on investment'***

Some respondents offered unqualified support this indicator. Others gave qualified support on the basis that they did not want this indicator to prevent societies highlighting the risks associated with investment, nor strip share offer documents of all investment-related content.

***'The rate of interest paid to members for shares subscribed over the previous year is increased at the end of that year due to better than forecast profitability'***

This indicator provoked a strong negative reaction from respondents.

Though respondents generally understood and supported the view

that higher profits should not result in windfall payments to members, they felt that variable performance is an expected and predicted aspect of a project.

Other respondents argued that occasionally a higher interest rate needs to be paid in order to retain the member capital.

***'Interest is accrued, or a greater rate of interest is paid one year because the society was unable to pay interest (or the rate of interest indicated) the previous year'***

Some argued that a society does not have to manage its payment of interest in time intervals of 12 months, and can choose to manage it over a longer period of time. They therefore did not see having interest payments 'catch up' one year where they had been lower in a previous year as an issue, providing there was some kind of protection to ensure the interest was only paid to members who were members when the society could not afford to pay interest.

Other respondents argued outputs can vary from one year to the next for wind energy. As a result, they needed to pay less interest in a low wind year and more in a high wind year, as long as the average interest paid taken over a number of years was not greater than the overriding set maximum.

### ***Additional indicators***

We received responses suggesting we use additional indicators. Some respondents proposed that we set out as a positive indicator something to the effect of: where a society invites those taking up the share offer to accept a lower rate of interest than stated, or waive their right to interest at all.

We received a proposal explaining that in the case of energy societies, regulation means a patronage dividend cannot be paid, so we should allow interest to vary in line with performance instead.

We included the example of share tendering in GC15/4. While some co-operatives have practised this, there was overwhelming opposition to our including this example.

A number of respondents encouraged us to include questions about interest rate payments in our annual return form.

### **FCA response on all indicators:**

Legislation has never defined an appropriate rate of interest on society shares. The position that the rate of interest should be 'sufficient to obtain and maintain capital' was a matter of policy, expressed in our information notes.

How a society uses capital can go to the heart of whether they are

complying with their condition for registration.

We acknowledge that the capital section of CP14/22 may have created some ambiguity for societies, and appeared over-prescriptive. We changed our approach for GC15/4 to work on the basis of indicators that suggest a society is likely to be complying with the conditions for registration, or not. This approach has been adopted in the Finalised Guidance.

Many of the suggestions provided in response to GC15/4 have been taken on board in the redrafting.

Our intention was never to require societies to set an interest rate in advance for the lifespan of the project. It was to see a maximum rate of interest declared in advance of the period for which it is intended to be paid. We also see no issue with societies adopting a formula for this calculation in their rules (e.g. x% above the bank rate). We see that as a positive indicator that a society is complying with the conditions for registration. We have made this clear in the drafting of the Finalised Guidance.

We agree with those respondents who suggested a society cannot be expected to ensure compliance with matters outside their direct control. We have therefore amended indicators to focus on matters directly within the society's control instead.

However, we disagree with respondents on the point of compensatory interest rates. In particular, where lower than declared interest paid one year is compensated for by greater interest payments in a subsequent year. The interest rate is a declared maximum, and capital is invested at risk that the return may not be achieved and that the money could be lost entirely. If a society pays more than the declared rate of interest because it has made more money than expected, this appears to us to be a form of profit distribution. Interest on shares is meant to be a cost of capital. A co-operative society can distribute profits through a dividend on e.g. trade. It is generally not consistent with the condition for registration for a community benefit society to distribute profits to members.

We strongly disagree with the suggestion that share interest should be linked to a society's performance as an alternative to paying a patronage dividend. Any society operating in this way is likely to be breaching its condition for registration. Share interest is not, and cannot, be a form of profit distribution because it is linked to the shareholding. It is a cost of capital and must be treated as such; the fact a society is unable to pay a patronage dividend because of regulatory barriers does not change this. As an alternative, where a co-operative society cannot create an equitable formula to distribute profits, they could be distributed equally to members on the basis they are joint owners of the society.

We have removed reference to tendering for shares. But as was explained in GC15/4, this was an example, not a requirement.

We have also taken on board comments about non-user investor shares, and the unique business nature of agricultural co-operatives, where share purchase is linked to production. In only these two cases we recognise that the indicators may not be appropriate. We have made this clear in the Finalised Guidance, but also emphasise again here that the Finalised Guidance is general guidance. General guidance represents one way, but not the only way, of achieving compliance with the legislation.

### **Capital (2) – share offers**

**Summary of feedback:** our suggestion that we might review share offer documents was generally not well received. Concerns focused on whether this was practical given our resources, or expressed a desire for self-regulation instead.

However, we did receive comments in support of our suggestion to review share offer documents, and some respondents raised concerns about the quality of share offer documents.

**FCA response:** in light of the responses we received we are not proposing to require societies to submit share offer documents to us as a matter of routine; nor are we proposing that our approval of share offers is required.

The offer of withdrawable, non-transferable, shares to members and prospective members is not a regulated activity. The Financial Promotions regime does not apply to these offers. We do not intend to replicate the Financial Promotions regime in any way by any other means.

However, we may ask a society to provide us with a copy of their share offer, or demand a copy of it, if we have concerns about whether the society is still meeting the conditions for registration.

We note that many respondents are involved in improving the quality of share offer documents by setting out clear standards and expectations. We welcome the setting out of standards generally. However we do not endorse any particular standard or quality mark.

We have amended the wording in our Finalised Guidance to remove the suggestion that we review share offer documents.

### **Capital (3) – transferable shares**

**Summary of feedback:** we received a number of responses expressing concern at what was interpreted as a matter of policy requiring share transfers to be subject to the consent of the society's committee.

**FCA response:** this is a legal requirement, not a matter of policy. Paragraph 9 of section 14 of the Co-operative and Community Benefit Societies Act 2014 requires the transfer of shares to be subject to the consent of the committee, along with requiring

registration of the transfer. We have reworded our revised guidance to make this clear. Societies must comply with this legislative provision, it is not optional.

### **Capital (4) – redeemable shares**

**Summary of feedback:** respondents to CP14/22 commented on our statement that shares in a society are not redeemable and cannot be bought back by the society. Responses were polarised on the subject.

**FCA response:** in our guidance we expressed the view that society shares are not redeemable.

It seems that respondents are using the term 'redeemable' in different ways. We do not see a 'withdrawal' of a withdrawable share as 'redemption'. In these circumstances a society does not buy back the share. The funds are simply withdrawn and the number of allotted shares reduces accordingly. Unlike in companies, the number of shares in a society readily fluctuates, with shares being linked to membership.

In the case of transferable shares, some society rules allow the option to convert these shares into withdrawable shares. Again, we do not see that subsequent withdrawal as 'redemption' of a share.

It is the members of a society who hold shares in the society. A society, as a distinct legal entity, cannot be a member of itself. To that extent it seems clear that a society cannot buy its own shares.

In this context we repeat our view that shares are not redeemable or capable of being bought by the issuing society.

### **Defining community benefit society (1) 'community'**

**Summary of feedback:** we received a number of comments on our chapter in CP14/22 defining 'community benefit'. Some of the responses generally supported the wording in this chapter.

We received comment in relation to the nature of the 'community' required for a community benefit society. Respondents argued that there need not be a particular identified community; instead it can and should be the community at large i.e. public benefit. Respondents argued the point of the Act is to distinguish from private benefit.

We also received challenge to the inclusion of the words 'charitable' and 'philanthropic'. In particular, we received overwhelming opposition to our quoting of Hansard record of a debate on the Prevention of Fraud (Investments) Act 1939, with respondents arguing it is an outdated notion and not specifically stated in law.

Some respondents want us to modernise the definition of community benefit by adopting definitions similar to those of social enterprises (such as the Cabinet Office definition), which include

'primary' benefit.

**FCA response:** we agree that the 'community' in a community benefit society is the community at large. We have amended the wording in our revised draft guidance to reflect this. Societies can specify a defined community, such as a locality. In serving the needs of any defined community the society should not inhibit the benefit to the community at large.

Our role is to apply the legislation. We do not accept the use of the Government's definition of 'social enterprise' for this purpose. The definition of 'social enterprise' refers to the 'primary' benefit being social. However the Co-operative and Community Benefit Societies Act 2014 requires the benefit to be for the community. This is to be read as 'entirely' for the benefit of the community, not merely 'primarily' for the benefit of the community.

We still believe that the section of Hansard we refer to is relevant. However we do not need to include that reference in our Finalised Guidance.

### **Defining community benefit society (2) – profit distribution**

**Summary of feedback:** some respondents challenged our position that a community benefit society cannot distribute its profits to its members, arguing that the Act does not prohibit this.

However, others said that the community benefit society legal form is attractive for social businesses because of their inability to pay dividends or distribute surplus assets.

**FCA response:** as noted in our response immediately before this, a community benefit society must conduct its business for the benefit of the community. It is not sufficient to be primarily benefitting the community while secondarily benefitting members. The Act requires that the business of the society must be conducted entirely for the benefit of the community. Profits should only be used for the purpose of delivering the community benefit. It is inconsistent with the Act to do otherwise. Therefore we do not propose to alter our position on this matter.

Societies which want to conduct their business for the benefit of their members should consider a different legal form instead, such as the co-operative society.

### **Defining community benefit society (3) – democracy**

**Summary of feedback:** in our guidance we stated that: 'Societies should be run democratically, generally on the principle of one member one vote.'

We received challenges to this on the basis that the legislation does not make this provision. Respondents argued that as long as they can demonstrate that their arrangement furthers the society's

objects it should be permitted.

**FCA response:** The Co-operative and Community Benefit Societies Act 2014 requires some votes to be taken on the basis of one member one vote, such as special resolutions to convert to a company. Apart from this, the Act does not say anything about the voting arrangements for community benefit societies. As the society must be conducted for the benefit of the community it would generally be inappropriate for a society to give greater rights or benefits to any particular class of member. As a result, we would expect to see voting take place on the basis of one member one vote. However, we have accepted that there are circumstances that can justify deviation from this principle. Where such a deviation takes place, societies need to be able to satisfy us that this arrangement helps it fulfil its purpose of benefiting the community. We have revised the wording in the draft guidance to reflect this.

### **Defining community benefit society (4) – not a co-operative**

**Summary of feedback:** our guidance expressed our view that we do not consider co-operatives to be community benefit societies. While some respondents supported this view, the overwhelming majority opposed it.

**FCA response:** we consider that the Co-operative and Community Benefit Societies Act 2014 (and its predecessors) presented a choice between two conditions for registration (bona fide co-operative society, or a society conducting its business for the benefit of the community). This distinction was underlined by the Co-operative and Community Benefit Societies and Credit Unions Act 2010 which created the two new legal forms of Co-operative Society and Community Benefit Society. There is no legislative provision to allow one type of society to convert to another.

We acknowledge that many co-operative societies also choose to benefit the community; and that many community benefit societies have active and engaged memberships who control the society democratically. However, a community benefit society must fundamentally exist entirely for the benefit of the community, not for benefits that depend on membership. Our view is that the purposes of a co-operative society and a community benefit society are fundamentally different.

We do not believe that the Act supports the registration of co-operatives as community benefit societies, and vice versa. For this reason, our position on this matter remains unchanged.

### **Subsidiaries**

**Summary of feedback:** we received a number of comments on the topic of subsidiaries – for both co-operative societies and community benefit societies. In general, respondents wanted more guidance on this matter.

**FCA response:** we acknowledge that our guidance needed greater



clarity in this area and have provided this in the Finalised Guidance.

### Names

**Summary of feedback:** in response to CP14/22 we received a suggestion that we align our names policy with that of Companies House. We included this in a revised draft of the guidance and consulted on it in GC15/4.

The proposal in GC15/4 was generally well received. We received suggestions to add the following words to our list of words requiring further guidance:

- community benefit
- community shares
- co-op
- charity
- charitable
- mutual
- fully mutual
- common ownership
- workers co-operative
- housing co-operative
- community interest

Some respondents also encouraged us to encourage societies to include the name of their local community in their name.

As previously noted, we also received strong opposition to not allowing community benefit societies to use the word 'co-operative' in their name.

Some respondents also asked us to provide some clarity about business or 'trading names' – and specifically to explain our role in relation to these.

We have also been encouraged to relax our approach if a name includes the trade mark or brand name of another legal entity, in particular in the case of sports clubs.

**FCA response:** we agree that there are benefits in bringing greater parity in names policy between societies and companies. There are some legal differences that mean we cannot bring exact parity (for instance, unlike in company law there is no power for someone to challenge a society's name and no express power for us to order a society to change its name). We consulted on this in GC15/4. We have used the approach set out in GC15/4 for the Finalised Guidance.

We can see that it would be helpful to be able to add a location to society names. However, while this may be helpful, the absence of this location does not make the name, in our view, undesirable. The legislative test we have to apply is whether a name is 'undesirable' or not. Therefore we do not propose adopting this change, though we do welcome people adopting this stance

voluntarily.

For the reasons outlined earlier, we do not consider community benefit societies to be co-operatives. We therefore consider it undesirable for a community benefit society to include the word co-operative in its name, unless the use of the word is describing its activity, rather than describing the society itself.

On the list of words suggested, we accept that we should provide further guidance on the following words:

- co-op
- charity
- charitable
- mutual

We treat derivations and variations on words as if they were the full word itself. So where we include 'co-operative' we treat this as covering 'co-operatives' 'coop' 'co-op' etc.

It is in the public interest that words such as 'charity' and 'charitable' are protected from misuse. Likewise, 'mutual' is a sensitive word for the purposes of company names, and we think it is helpful to include it here.

However we do not believe the following words should be included for further guidance:

- community benefit
- community shares
- fully mutual
- common ownership
- workers co-operative
- housing co-operative
- community interest

'Community shares' is used by different people to mean different things. It has no precise legal meaning. We do not see any advantage in protecting the term.

If a consumer co-operative wanted to apply to register a name describing itself as a 'housing co-operative' we are likely to decide that this is misleading and reject it. We do not see that there is any other body to consult or any need to include this phrase on our list of words requiring further guidance. The same applies for 'common ownership', 'fully mutual', and 'workers co-operative'.

We feel we have sufficient ground to reject a name application including the words 'community benefit' or 'community interest' from an organisation that does not exist for the community benefit or interest. So we do not need to include these words in our list of words requiring further guidance.

## Legislative interpretation (1) – charges

**Summary of feedback:** we received a number of comments in relation to our wording in CP14/22 on charges. We had stated that *'For the charge to be fully effective and to give appropriate priority to the lender or other party in whose favour it operates, it must be recorded with us.'*

Respondents argued that a charge only need be recorded if it would otherwise be considered a Bill of Sale.

**FCA response:** it is in the interests of societies and their positions with potential creditors that we provide clarity about what charges should be recorded with us. It is our view that the recording of a charge is not a requirement. Charges may be recorded with us. In particular, societies may want to record charges with us where a failure to do so would result in the charge being deemed a Bill of Sale. We also accept that there is no legislative basis on which to claim that the recording of charges gives effect to the priority of the charge. Wording in the Finalised Guidance has been clarified to remove any ambiguity.

## Legislative interpretation (2) – miscellaneous

**Summary of feedback:** we received a number of comments about omissions and for greater clarity in some of the areas which explain how we apply the legislation. These included:

- clarity on society amalgamations with companies
- clearer wording on statutory asset locks
- inclusion of details on conversion from a Community Interest Company (CIC) to a community benefit society
- adding wording to highlight if consent from regulators (e.g. housing regulators) may be required

**FCA response:** we have taken note of the comments received and have amended the wording in our revised draft guidance.

## Usability

**Summary of feedback:** we received a number of very helpful comments on the usability of our guidance generally. These included:

- providing greater clarity of purpose for the guidance
- providing a clearer delineation between the Act and FCA policy
- not repeating information contained in other information notes
- assuming the audience is professionals and experts working on behalf of societies
- adding a glossary

## Summary of feedback received

CP14/22 and GC15/4: Guidance our Co-operative and Community Benefit Societies Act 2014 registration function

We also received a number of helpful suggestions that provide greater clarity to particular sentences in the guidance. We do not repeat those suggestions here.

**FCA response:** the guidance brings together all of our existing policy for the first time. We have been able to incorporate most of the usability suggestions in our Finalised Guidance. The guidance deliberately incorporates information in our information notes as this is where most of the guidance comes from. We will replace the existing information notes over the coming weeks as part of a wider overhaul of our webpages.

However, we do not believe we should target the guidance solely at professional advisers. Our aim is for our guidance to be understandable to the general public, so that members of societies and those running societies can easily access our information. As respondents have noted, this does present numerous challenges, particularly given the technical nature of some of the subject matter. We have rewritten the guidance to meet the Plain Language standard as nearly as we can.

### Changes made to the guidance as a result of feedback received

Following feedback received to CP14/22 we made changes to the guidance as detailed above, and consulted further on a number of issues in GC15/4. In response to feedback received to GC15/4 we made further revisions to the guidance. Details of our response to this feedback can also be found above. We have published Finalised Guidance along with this Summary of Feedback.

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You can access the full text of the guidance consulted on [here](#) for CP14/22 and [here](#) for GC15/4

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