



26 November 2014

Ian Adderley
Mutuals Team
Financial Conduct Authority
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Dear Mr Adderley

**FCA Consultation paper CP14-22
Guidance on the FCA's Registration function under the Co-operative and Community
Benefit Society's Act 2014**

Morecambe Bay Community Renewables is a co-operative, registered 2011. Our objects are, within the Morecambe Bay area, to:

- (a) establish sustainable renewable technologies; and
- (b) enhance the sustainability and resilience of these local communities; and
- (c) promote the prudent use of resources, efficient energy use and environmental awareness and behaviour;

We carry out these objects by installing renewable energy systems, using funds raised from community share issues. Our members are people who buy these shares. At least a quarter of the amount that we pay in share interest to members we give to local projects which help people to live more sustainably. So far we have done three community share offers, raising £180,000 for 89 kWp of solar PV and a small biomass boiler. We have 47 members. Of these 12 are members of Lancaster Cohousing, where our PV system is located, so are supplied with electricity from it: we sell all the electricity to Lancaster Cohousing, who then sell it on to their residents.

We welcome the publication of guidance on Co-operative and Community Benefit Societies but have a number of concerns about this draft.

Firstly, we are concerned that, according to this guidance, we should not be a co-operative, though we were registered as such by your predecessor organisation, the FSA. This is because we do not trade directly with our members. When, in 2011, we were considering whether we should be co-operative or a Bencom, it seemed, from everything we read or were told, that there was no requirement for co-operatives to trade with their members, and that the 'economic participation' of members, required of a co-operative, could be the investment of money through purchase of shares. Indeed the International Co-operative Alliance Statement of Values, Identity and Principles, under 'member economic participation'

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talks about members contributing to the capital of the co-operative not about them trading with it. Contributing to the capital of a co-operative is a much more significant level of economic participation than purchasing goods in a shop, for example. Additionally, co-operatives can be formed to meet members' social and cultural needs, not just their economic ones. The FCAs interpretation of economic participation seems to run counter to the understanding and practices of the co-operative movement in Britain and be an unnecessarily narrow interpretation, or even a mis-interpretation, of the International Co-operative Alliance Statement of Values, Identity and Principles.

Secondly, we are concerned that even if we converted to a Community Benefit Society, which we are considering doing, this guidance would place undue restrictions on how we could operate.

Specifically:

Paragraph 5.3: suggests that CBS's should be 'philanthropic', and that there should be 'very little hope of return' of money invested in them. We object strongly to the use of these comments from a 1938 parliamentary debate. The 2014 Act is clear on what a CBS is and there is no need for further clarification in the guidance. It is clear from the 2014 Act that a CBS is a social enterprise (to use today's terms, rather than those of 1938): a business carried out to achieve social or environmental benefits, not just the making of a profit. Though as with all businesses, the making of a profit, or surplus, is necessary if the business is to be successful. The purchase of shares in a CBS is an investment, not a charitable donation and this guidance should recognise that.

Paragraph 5.5: says is it unusual for a CBS 'to issue more than nominal share capital'. This is patently untrue, with many CBSs, particularly in the community energy sector, issuing hundreds of thousands of pounds worth of shares. Significant capital is required to purchase energy generating equipment, so to provide community benefits community energy CBSs need to raise much more than nominal capital.

Paragraph 5.11: questions whether joint ventures entered into by a CBS with a for-profit company can benefit the community, and also that a CBS should not benefit a for-profit business.

For our renewable energy installations we need partners who own buildings or land, and who use electricity. Those partners benefit from cheaper electricity and eventual ownership of the system (at the end of the lease period). If they did not get this benefit they would not work with us. We, and the community we serve, benefit from the income we receive from the installation, plus we are fulfilling our objectives of establishing renewable technologies, increasing the sustainability and resilience of the Morecambe Bay area and promoting prudent use of resources and energy efficiency. To say that we could not benefit for-profit businesses would mean we could not work with local farmers or business, but only with not-for profit organisations. This seems unduly restrictive and decreases the benefit to the community that we would be able to provide.

The government is currently saying to the commercial sector that they should offer local communities a degree of ownership of large, on-shore renewable energy projects. Some ways of structuring this are clearly joint ventures. These joint ventures aim to increase community benefit from the renewable energy project. Restrictions on joint ventures by CBSs with for-profit organisations again seems unduly restrictive, reduces benefits to the community and is contrary to government policy on shared ownership of on-shore renewables.

Paragraph 6.3.1: states that returns on loan or share capital should generally not exceed returns on savings accounts. There is a well established requirement that rates of share interest must not be more than is necessary to attract and retain the capital. However, despite the fact that investors are motivated by the environmental and social benefits of our projects, not just financial returns we think that, particularly in the current climate of very low savings rates we need to offer rates that are higher than savings account rates in order to attract and retain investment. Unlike savings accounts, the investment in a CBS or co-operative has no government guarantee: all the investors' money can be lost, or the value of the shares written down by the society. In addition the rates of share interest paid are not guaranteed – a society can decide on an annual basis the rates that it is going to pay, and if it has experienced financial difficulties, can decide not to pay any share interest, or pay at a rate less than it advertised in the share offer document. Shares in a co-operative or CBS are in this respect equity, not loans, and the returns should be compared with those of other equity investments (which in addition to dividend payments may result in capital gains, which withdrawable shares in CBSs and co-operatives do not). They should not be compared with saving account rates and we object to this suggestion in the guidance.

Paragraph 6.32.1 and 6.32.2: The guidance should distinguish between share and loan capital, whereas it currently treats them as if they were the same. In particular the idea that only 'fixed interest' should be paid. For share capital a co-operative or CBS can vary the share interest it pays from year to year: paying less if its income is insufficient, or more if there are too many requests to withdraw capital and rates need to be increased to retain it, or obtain replacement capital. The payment of interest on loan capital will obviously depend on the loan agreements made with the lenders.

Paragraph 6.34: submission of share offer documents to the FCA. Our share offer documents are available on our website and the FCA is welcome to look at them. We do not think that it is appropriate for the FCA to have to approve them before they are published. This would be a significant workload for the FCA, and could result in delays to our share offers – we have done offers within a few weeks of agreeing a project.

Paragraph 6.35: again this states that rates of share interest should be comparable to savings accounts. Our response above to paragraph 6.3.1 states why we disagree with this, and consider that returns on equity investments are a more appropriate comparison. Paying higher rates is always justified because shares do not have the government guarantees that a savings account has, regardless of the nature of the project. It may also be justified to pay rates of interest that are higher than commercial borrowing rates as paying interest on a commercial loan would have precedence over paying share interest to members. The commercial lender therefore takes less risk than members who buy shares, so it is reasonable for the latter to expect a higher rate of return.

Paragraph 6.48: These rules on interest agreed with the Charity Commission suggest that a Society can pay 6% (a good rate for a commercial loan) for a loan from a bank, but only about 1% or so (the current savings account rate) to a member. This does not seem right! We would rather have investment from members of our community than a commercial loan. The latter risks compromising our independence, whereas the former means that more benefit is retained within our community and increases the economic participation of our members in our co-operative. Again the issue is the inappropriateness of using savings accounts rates as the maximum that can be paid as share interest. Points 2. and 3 of this list are appropriate to loan agreements, but not to share interest payments. A society should be able to pay lower rates of interest on shares if its performance in the year has not been sufficient to pay the rate it expected to pay.

Paragraph 6.52: In looking a year ahead before deciding whether members can withdraw shares societies should also be able to take into account their expected income, not just their prospective liabilities.

Finally, the draft guidance draws a sharp distinction between co-operatives, who should benefit their members not their community, and CBSs, who should benefit their community but not their members. This is unhelpful and unnecessarily restrictive: both can and do benefit both their members and their community.

We trust these comments will be taken into account in revising this guidance.

Yours sincerely

A handwritten signature in black ink, reading "Anne C. Chapman". The signature is written in a cursive style with a large initial 'A'.

Anne Chapman
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