



**Commercial and Common Law Team (Coops)  
Law Commission**

**By email only to:**

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**4 December 2024**

Your ref:  
Our ref:

**Your contact: Darren Hooker**

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Dear Sirs,

**Proposals to reform the Co-operative and Community Benefit Societies Act 2014**

We write in response to the Law Commission Consultation Paper No 264 relating to the Review of the Co-operative and Community Benefit Societies Act 2014 (**CCBS Act**).

We are a leading social housing firm, who represent over 200 registered providers of social housing (**RPs**). As the Law Commission may be aware, the majority of RPs are structured as community benefit societies and they make up a significant and important sub-sector of organisations which would be impacted by these proposals.

We held a roundtable event with a number of our RP clients to obtain their views on the proposed reforms to the CCBS Act. We are submitting our response to the consultation in light of the representations made by our clients.

Our full response to a number of the consultation questions is the table enclosed below. We have not sought to respond to every proposal put forward by the Law Commission, only those which would be directly relevant to our RP clients.

To summarise our response, there are concerns amongst our RP clients with the proposed definition of community benefit societies including an "open to all" element. Additionally, there are concerns around the practicalities of the exempt charity status being removed and the Charity Commission taking on the principal regulatory function.

If you require any further information or wish to discuss, please contact Darren Hooker of these offices.

Yours faithfully

A handwritten signature in black ink that reads "Capsticks LLP".

**Capsticks Solicitors LLP**

**Response to Law Commission Consultation on proposals to reform the Co-operative and Community Benefit Societies Act 2014**

*Abbreviations used in the Consultation Paper shall have the same meaning in this response.*

| Topic      | Question Number | Consultation Question  | Capsticks' Response   |
|------------|-----------------|--|---|
| Membership | 6               | <p><i>We provisionally propose the following ingredients for a new statutory definition of a community benefit society.</i></p> <p><i>A community benefit society is:</i></p> <p><i>(1) A society for carrying on any business;</i></p> <p><i>(2) For the sole benefit of the community;</i></p> <p><i>(3) Membership is voluntary;</i></p> <p><i>(4) Membership is open to all;</i></p> <p><i>(5) One vote per member.</i></p> <p><i>Do you agree with these elements? Are there any that you do not agree with?</i></p> <p><i>In particular, do you think it accurate to describe the membership of any community benefit society as "open to all", and if so why?</i></p> | <p>We have concerns around limb (2) of the proposed definition, in relation to the wording "sole benefit" of the community. Whilst we agree that all community benefit societies (<b>CBS</b>) should be acting for the benefit of the community in their activities, the addition of the wording "sole benefit" would cause some issues in relation to membership benefits that may arise.</p> <p>In relation to limb (4) of the proposed definition, we do not agree with this additional limb to the definition of a community benefit society. The overwhelming response we received from our RP clients was that open membership would not be a welcome change. A number of RPs adopt a closed governance model, where their only members are their board. We would make the following specific points:</p> <p>(1) Administration and cost – open membership is likely to mean a vast increase in administration and cost for CBSs. If membership was open to all, this could lead to a very large number of members of an organisation. This would cause a large administrative and financial burden for societies, such as to send out notices or to hire venues to accommodate potential numbers at annual general meetings. This is one of the reasons that a number of RPs have moved to the closed governance model, rather than an open membership model. We are aware that this is also a trend in the wider charity sector, as a number of former membership based charities have moved to a closed membership structure.</p> <p>(2) Engagement – at the same time, we are aware that large membership organisations often suffer with very low levels of active member engagement. Low engagement effectively works against the principle of being democratic, since it confers powers on a small concentration of individuals who do engage. This therefore brings into question whether the additional cost and administration of managing an open membership is actually helpful in trying to achieve a democratic</p> |

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|   |   | <p>and engaging model. It is worth noting that RPs in particular are required to comply with the Transparency, Influence and Accountability Standard as part of their regulatory requirements. That standard requires that RPs have to provide meaningful engagement structures for their residents that are evidenced as genuinely influencing board decision making. In response, RPs have developed very comprehensive engagement strategies and structures which we would suggest are a much more effective means of engaging residents than conferring the limited rights that go along with membership.</p> <p>(3) Power – as we have already touched on, membership of a community benefit society confers certain limited, but important, rights. For example, this includes the right to vote on amalgamations and transfers of engagement as forms of merger between community benefit societies. Within the RP sector there are currently high levels of merger activity, in a large part driven by difficult economic conditions in the housing and construction market and wider economy. In some situations, RP mergers have in effect been required by the Regulator of Social Housing to avoid potential insolvency situations. In this type of case, it would seem to us to be undesirable to give members, who would be unlikely to have the benefit of knowledge of the inner workings of the RP business or communication with the Regulator of Social Housing, the final say on a merger.</p> <p>We do note that being “open for all” does not necessarily mean that everyone has to be accepted as a member and that community benefit societies could adopt a criteria for potential members. This would be beneficial to our RP clients.</p> |
| 7 | <i>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?</i> | <p>If the new statutory definition is put into place for all community benefit societies, this would mean changes in structure and rules changes for many societies already in existence. Consent could also be required from lenders under existing financing agreements already in place, which is a particularly important consideration for RPs who often have significant loan portfolios. We therefore do not agree with this proposal.</p>  |
| 8 | <i>We provisionally propose a transition period of 18 months for existing community benefit societies to comply with any new definition. Do you agree?</i>  | <p>As mentioned in our response to question 7 above, if the proposed definition was implemented, some organisations would be impacted by a change in structure and rules changes and may require lenders consents under existing agreements, all of</p>  |

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|                                     |          |  | <p>which will take time and resources to put into effect. This could cause issues and time delays with being able to comply with the requirements of the legislation within an 18 month period and as well as potentially costly implications for the organisation. It should also be considered that all CBS would be in the transition period at the same time, leading to an influx of requests from lender and any other stakeholders required for rule and structure changes. As explained in our response to questions 6 and 7, we are not in favour of the proposed changes to the definition of a CBS but, if implemented, we would like to see a longer transition period to allow CBS the time to implement changes properly.</p>   |
| <p><b>Exempt Charity Status</b></p> | <p>9</p> | <p><i>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?</i></p> | <p>The removal of exempt charity status and registration with the Charity Commission would have a significant impact on RPs. Most notably, if RPs were to become registered charities then they would be required to comply with the requirements in the Charities Act 2011 regarding the disposal of property. The disposal rules cater to a wider range of charities where often disposal of a property is a significant event for them. The rules are simply not appropriate for organisations whose business specialises in property and can be involved in property disposals on a daily basis. Following the Housing and Planning Act 2016, RPs that were structured as registered charities were brought within the Charities Act disposals regime for the first time. A number of them subsequently undertook the significant step of converting to a community benefit society and exempt charity status specifically to avoid the cost and administration of complying with the Charities Act disposals regime. To bring them back within the regime would, in effect, be a costly and burdensome step backwards for them and could potentially undermine their business. We would therefore argue that community benefit societies, or at least RPs, should not lose their exempt charity status. If this proposal was to be taken forward then we would suggest that there should be specific exemptions for RPs from the requirements of the Charities Act disposals processes.</p> <p>We understand that there may be some concern around making sure that all charities, including exempt charities, are properly regulated and scrutinised. We would though highlight that our RP clients are already very heavily regulated between having to comply with the requirements of charity law, the FCA as registrar of community benefit societies and the Regulator of Social Housing. We would</p> |

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|                 |           |   | query whether there is sufficient benefit to additional registration with the Charity Commission.   |
|                 | <b>10</b> | <i>Do you think that the lead regulator for charitable community benefit societies should be the Charity Commission or the FCA?</i>             | <p>We would have two principal concerns with the Charity Commission being the principal regulator for charity law purposes. Firstly, we would query whether the Charity Commission would have the resources to actively regulate these additional charities. Secondly, the Charity Commission has to regulate an incredibly broad spectrum of charities and our and our RP client's experience is that often, understandably, the Charity Commission does not have a detailed understanding of the housing sector. This leads to difficulties and inefficiencies that sometimes act as barriers to our RP clients undertaking their activities.</p> <p>Similarly, we would query whether the FCA has the technical understanding of charity law and of the RP sector.</p> <p>We note that the Regulator of Social Housing has not publicly commented in relation to the consultation proposals. We would though suggest that for our RP clients the Regulator of Social Housing might be the most appropriate lead regulator for charity law purposes since it already proactively regulates these RPs and in some aspects the regulation of social housing and charity law overlap. This would help to ensure that the lead regulator understands the sector it is regulating and avoids the unnecessary duplication of regulation and regulators.</p> |
| <b>Officers</b> | <b>29</b> | <i>We provisionally propose that officers of a society should be listed on the Mutuals Public Register. Do you agree?</i>                       | <p>We agree with this proposal which would provide transparency of organisations and its officers. It would bring the FCA more in line Companies House and is a proportionate change to modernise the sector.</p> <p>The feedback we received on this point from our clients was positive, in particular noting that this would provide the ability to identify any errors on the Mutuals Public Register and rectify these which currently cannot be done by organisations.</p>  |
|                 | <b>30</b> | <i>We provisionally propose that a society should notify the registrar of any changes concerning its officers within 14 days. Do you agree?</i> | We agree that this is reasonable. We believe that the 14 day period is reasonable and proportionate and brings consistency with companies who have 14 days to notify Companies House of their changes.  |
|                 | <b>36</b> | <i>We provisionally propose that the CCBS Act should adopt the director duties set out in the Companies Act 2006. Do you agree?</i>             | We agree with the Law Commission that this proposal is in effect codifying the fiduciary duties which already exist rather than creating additional duties. Our charitable RP clients would be considering the duties listed in any event. In this  |

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|  |           |   | <p>sense, the statutory duties do not materially alter the position and we can see that it would be desirable to put the duties on a statutory footing and achieve consistency between companies and societies.</p> <p>The other side of this argument is that codifying the duties is an unnecessary step because of the existing fiduciary duties that apply. We did receive some feedback on this proposal from our RP clients of concern of there being too many regulators and too many sets of duties for them to comply with that could lead to regulatory confusion.</p> |
| <b>Asset lock regulations</b>          | <b>49</b> | <i>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?</i> | We agree with the Law Commission's proposal here and its reasoning.  |
| <b>Partial transfers of engagement</b> | <b>55</b> | <i>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?</i>   | We agree that this would be a helpful clarification.   |
| <b>Executing Documents</b>             | <b>71</b> | <i>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?</i>   | We agree with this proposal. Bringing execution for societies in line with the Companies Act which would be beneficial to our RP clients for administrative purposes and ease of execution of documents.   |
|  | <b>72</b> | <i>We provisionally propose that, subject to its rules, a society should be able appoint, by deed, an attorney to execute documents on its behalf. Do you agree?</i>  | We agree. This would provide helpful clarification for societies. We agree with the reasoning that society law should not be any more restrictive than company law and we welcome the proposed change here.  |
| <b>Online Meetings</b>                 | <b>75</b> | <i>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?</i>  | We agree that this would be a helpful clarification that would remove the need to specifically cater for this in a society's governing document.   |