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Social Enterprise

By Timothy Edmonds
Jeanne Delebarre

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There are a huge number of enterprises which are not companies. They share an ethos that their principal purpose is to promote some social good rather than profit maximise – but share little else.

They come in a range of organisational forms mutuals, co-operatives, Community Interest Companies etc, however, the outward differences between them can appear to be rather small and some resemble more closely major corporations rather than anything distinctively 'social'. Collectively they are referred to as 'social enterprises', or the 'third sector'.

Over many years, successive governments have shown their support for the third sector generally and institutions like credit unions in particular.

Collective interest in this sector has been heightened in recent years as the financial crash and economic recession have promoted non-corporate solutions.

One definition of social enterprises is that they are businesses that trade in the market with a social purpose. They use business tools and techniques to achieve social aims and include an incredibly wide range of organisations, for example co-operatives, development trusts, community enterprises, housing associations, social firms, and leisure trusts.[1]

Examples of well-known social enterprises include Welsh Water, Café Direct, The Big Issue, the Co-operative Group and the Loch Fyne group. The Nationwide Building Society is a mutually owned organisation as is the John Lewis partnership.

The commonest form of social enterprise are the community interest companies. There are currently over 12,000 CICs on the public register operating in every sector from the environment to transport, education to sport and in health to social care and creative industries to recreational activity.

Mutual companies (including cooperatives) are less numerous (7,500) but have significantly more economic power with an income of nearly £115 billion and almost a million employees.

In terms of reach and engagement across the country the credit unions are a growing force with going on to two million members.

[1] Social Enterprise website

1. Social enterprise or the 'third sector': introduction

There are a huge number of enterprises which are not companies. They share an ethos that their principal purpose is to promote some social good rather than profit maximise – but share little else.

They come in a range of organisational forms - mutuals, co-operatives, Community Interest Companies etc, however, the outward differences between them can appear to be rather small and some resemble more closely major corporations rather than something distinctively 'social'. Collectively they are referred to as 'social enterprises', or the 'third sector'.

Collective interest in this sector has been heightened in recent years. Problems with the mainstream financial service providers in 2008, gave building societies a fillip. Elements of the 'Big Society' struck a chord with social enterprise (broadly defined). Recession, or simply hard economic times, exemplified by the growth of food banks, highlighted the need for community action and local social economic initiatives. Campaigns against 'payday lending' looked to credit unions as part of the antidote.

Over many years, successive governments have shown their support for the third sector generally and institutions like credit unions in particular. The Treasury published a *Third Sector Review* in July 2007 entitled; The future role of the third sector in social and economic regeneration.[2] This provided the stimulus for many legislative and financial incentives for the sector in recent years.

At this point one can struggle with the definitions. The 'third sector' includes mutuals, co-operatives, credit unions, social enterprises, community interest companies and charities. Several of these groups break down into different constituencies, for example mutuals includes Industrial and Provident Societies (now renamed Community Benefit Societies) and Friendly Societies. The following sections will try to outline the key features and development of these sectors.

1.1 Social enterprise

This is the broadest definition of third sector operations. Social enterprises (SE) come in a variety of forms and cover a wide range of activities. Common understanding of what an SE is and what it can do, and where enterprises end and charities or companies begin, is often very 'fuzzy'. Some definitions may help.

The SE sector is well established in the UK and is represented by the Social Enterprise Coalition (SEC) which has a considerable amount of material about the sector on its website. SEC defines social enterprises as:

2 The future role of the third sector in social and economic regeneration; HM Treasury Cm 7189, July 2007

> Social enterprises are businesses that trade in the market with a social purpose. They use business tools and techniques to achieve social aims and include an incredibly wide range of organisations, for example co-operatives, development trusts, community enterprises, housing associations, social firms, and leisure trusts.[3]

The more easily remembered definition is 'businesses trading for a social purpose'. The BERR Small Business Service (SBS) has its own variants on this theme. The Global Entrepreneurship Monitor (GEM) offers:

> Social entrepreneurship is any attempt at new social enterprise activity or new enterprise creation…by an individual, teams of individuals or established social enterprise, with social or community goals as its base and where the profit is invested in the activity or venture itself rather than returned to investors.[4]

Examples of well-known social enterprises include Welsh Water, Café Direct, The Big Issue, the Co-Operative Group and Loch Fyne Oysters.

The Government published its Social Enterprise Action Plan: scaling new heights in November 2006. This, and the subsequent Treasury Review mentioned above, set out how subsequent government support for the sector would be carried forward. A considerable amount of detailed information about the sector can be found on the Gov.UK website.

1.2 Community Interest Companies

Community Interest Companies (CICs) have received considerable attention. It is hoped that they provide an operationally beneficial, alternative form of corporate identity for SEs. Information specifically on CICs can be had from the CIC website. It summarises CICs as being:

> Community Interest Companies (CICS) are limited companies with special additional features created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a "community interest test" and "asset lock", which ensure that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator who also has a continuing monitoring and enforcement role.
>
> CICs were established by the *Companies (Audit Investigations and Community Enterprise) Act 2004.* Although a comparatively new form of company organisation (since 2005), so there is not yet much of a track record to determine whether they have been a success or not, according to the website there are now nearly 2,500 CICs so there would appear to be considerable interest in this type of corporate form.

3 Social Enterprise website
4 London Business School, *Social Entrepreneurship Monitor UK 2006, p 5*

More information on CICs can be found in another Library note Community Interest Companies.

There are currently over 12,000 CICs on the public register operating in every sector from the environment to transport, education to sport and in health to social care and creative industries to recreational activity. Interestingly, of the 238 registered in year one of the CIC Office opening over 110 are still trading. Many of the CICs perform public interest (as opposed to purely community functions. According to the CIC Association "the Community Health Services budget of approx £900 million was spun out to 40 organisations, 36 of which were CICs".

Information on CIC activities can be found in the Annual Report of the CIC Regulator. Figures from the 2014/15 Report show the growth and distribution of CICS.

Community Interest Company Formation

Financial	CICs			
year end	Approved	Dissolved	Increase	Total
2006	208	-	208	208
2007	637	-	637	845
2008	814	35	779	1,624
2009	1,120	86	1,034	2,658
2010	1,296	372	924	3,582
2011	1,824	483	1,341	4,923
2012	2,087	590	1,497	6,420
2013	2,055	765	1,290	7,710
2014	2,494	976	1,518	9,228
2015	2,589	1,104	1,485	10,713

Source: Community Interest Company Regulator Annual Report 2015

CICS by Region

Region	Number	Percentage
East Midlands	605	6
East of England	804	8
London	1,636	15
North East	582	5
North West	1,489	14
South East	1,384	13
South West	1,262	12
West Midlands	1,200	11
Yorks & Humber	632	6
Total England	9,594	92
N. Ireland	187	2
Scotland	516	5
Wales	342	3

Source: Community Interest Company Regulator Annual Report 2015

1.3 Mutual societies

The first point one might make about the mutual sector is that although it is financially dominated by building societies it remains a diverse sector.

A Treasury paper – which preceded changes to building society law – noted "mutual societies are, broadly speaking, societies registered under the Building Societies, Friendly Societies and Industrial & Provident Societies Acts."

They are:

- Owned/controlled by their members;
- Run democratically on the basis of one member one vote;
- Set up to meet the mutual needs of their members;
- Not set up to make profits for external shareholders or primarily provide a return on capital;
- Share any surplus or profits (the dividend) with their members.[5]

In addition, the sector is of a considerable size, as "together [it has] over 30 million members and combined total assets in excess of £400 billion. The sector is increasingly important in delivering on Government objectives in relation to financial inclusion and social cohesion."[6] Estimates of the size of the sector are published regularly by the group Mutuo:[7]

UK Mutuals 2013

Sector	Number	Jobs	Income £bns
Co-operative Business			
Co-operatives	4,458	154,359	26.4
Employee Owned	250	150,000	30.0
Financial Services Mutuals			
Friendly Societies and Mutual Insurers	53	20,000	9.9
Building Societies	46	40,000	3.7
Credit Unions	390	1,500	0.9
Public Service Mutuals			
Health	145	480,000	31.0
Education	629		
Housing	1,500	123,000	13.0
Total	7,471	968,859	114.9

Source: Mutuo, 2013 Mutuals Yearbook

5 HM Treasury, *The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007: a consultation*, September 2008 para 1.3

6 HM Treasury, *Explanatory memorandum to the Mutual Societies (Transfers) Order 2009 no. [draft]*, January 2009 para 7.3

7 Mutuo, Mutuals Yearbook 2013 p3

The diversity of the sector would lead one to think one could not generalise about governance issues facing all mutuals, though the then Economic Secretary, Ed Balls, in a speech in November 2006, addressed this directly, when he asked "what are the characteristics of building societies and mutuals that make them such a valued addition to our financial services market and society more widely?":

> Firstly, as mutual institutions, building societies are owned collectively by their members - investors and borrowers - without external shareholders in the conventional sense. The benefits of efficiency and innovation are passed directly to members. And many operate with lower cost ratios than PLCs.
>
> Secondly, some mutuals serve markets that are often ignored by PLCs. Many specialist markets are served solely by mutuals, with little or no interest from their proprietary competitors … Thirdly, mutuals are well placed to build local loyalty by making a special contribution to local community life and the delivery of public services. They are committed to supporting the communities in which they operate and are often based in the regions, bringing them closer to their customers …
>
> The fourth element, and the crucial ingredient for me [is] the unique combination of trust and reputation that mutuals often develop. Members know that across the vast range of mutual societies that exist they can expect public service and local commitment. And with the increasing transparency of operation they can be confident that there is a relationship of trust and real mutual benefit.
>
> In our modern financial services world, where many financial products are inherently complex, and where competition, technological advances and product innovation is bringing greater complexity still, this trust is an increasingly valuable commodity. There are around 7,000 different mortgages on the market, for example, and over 2,000 different retail investment funds. At a time when we are asking people to do more, to take on more responsibility with inherently difficult products, financial mutuals from building societies to credit unions are playing, and will continue to play, a valuable role as trusted product providers. As more financial responsibility is expected of individuals, I believe that the mutuals sector can continue to grow in size and capability.[8]

1.4 Co-operatives

Co-operatives are businesses that are set up, owned and democratically controlled by members whose first goal is to serve specific needs they have in common before maximizing profits. Co-operatives are designed above all to enhance their members' capacity to produce or consume goods or services. This can be done via various mechanisms including purchasing inputs collectively at lower market prices, attracting

8 HM Treasury press notice, Speech by Economic Secretary to The Treasury, Ed Balls MP, to the Building Societies Association's annual lunch, London, 9 November 2006

financing, pooling collective negotiating power, allowing access to credit or guaranteeing higher returns.[9]

The co-operative sector covers a large variety of activities including retail, banking, food and farming, design and renewable energy.

There are no agreed estimates of the total number and membership of UK co-operatives. This reflects the decentralised, overlapping and interlinking nature of the SE sector as a whole. Data on co-ops are collated by a variety of membership organisations or trade representatives. This entails a lot of coverage limitations as these organisations do not necessarily represent all co-operatives and do not have access to all necessary information on the ones they do not represent.

The most comprehensive set of data on UK co-operatives is currently published by the membership organisation Co-operatives UK.[10] All the data below come from this source.

As acknowledged by the organisation itself, the dataset still suffers from coverage and quality limitations. Not least of all: it does not match the latest UK Civil Society Almanac's data for 2011/12. This suggests that Co-operatives UK's estimates may be an overestimation of actual figures. However, it is the only existing comprehensive dataset for UK co-operatives at the moment.

The data show the variety of the sector in terms of membership, number and turnover. The biggest co-operative turnover comes from retail and agriculture; whereas in terms of their number, sport, leisure and social clubs are the largest.

Co-operatives by sector, UK

	Number	Turnover £
Retail	505	24.3bn
Agriculture	416	5.8bn
Education	242	1.1bn
Sports, Leisure and Social Clubs	2,890	941.1m
Housing	671	725.1m
Finance	583	305.1m
Manufacturing	73	279.7m
Other	709	258.1m
Professional and Legal Services	126	214.4m
Health and Social Care	88	95.2m
Creative Industries	200	26.5m
Food Services, Accomodation and Pubs	39	22.9m
Transport	31	10m
Energy and Environment	224	8.9m

Source: Coop, *The Co-operative Economy 2016 report*

9 Adriana Mata-Greenwood, 19th International Conference of Labour Statisticians, Statistics on co-operatives, International Labour Office, p.5
10 Co-operatives UK, The co-operative economy report 2016

The number of both customer- and worker-owned co-operatives has declined since 2012, alongside with customer-owned co-operatives' turnover.

Customer-owned co-operatives, UK

	Number	Turnover *£bn*	Employees	Members *million*
2012	3,421	16.9	138,929	14.09
2013	3,277	16.8	138,129	15.16
2014	3,196	15	121,545	15.48
2015	3,176	14.1	114,969	16.11
2016	3,126	13.9	109,497	16.2

Source: Coop, *The Co-operative Economy 2016 report*

However, worker-owned co-operatives' turnover and membership has been on the rise over the same period. This could be due to the fact that these estimates do not account for the fact that people can be members of several co-operatives at once.

Worker-owned co-operatives, UK

	Number	Turnover *£bn*	Employees
2012	473	8.5	82,186
2013	478	9.2	88,426
2014	480	9.7	89,237
2015	467	10.4	94,698
2016	444	10.5	94,049

Source: Coop, *The Co-operative Economy 2016 report*

Co-operatives also vary geographically: they are far more popular in England and Scotland than in the rest of the UK. England is where most of their turnover is done and members are.

Co-operatives by geography

	Number	Turnover *£bn*	Employees	Members *million*
England	5514	29	197,348	13.37
Scotland	564	3.3	15,954	1.76
Northern Ireland	255	1.4	4,921	1.51
Wales	464	0.9	4,562	0.8

Source: Coop, *The Co-operative Economy 2016 report*

The movement is keen to highlight its contribution to public finances, as compared to some high profile 'tax efficient' companies. It claims that five largest UK co-operatives paid £82 million in tax contributions in 2014/15 compared to £52 million paid collectively by Amazon, Facebook, Apple, eBay and Starbucks.[11]

[11] Co-operatives UK, The co-operative economy report 2016

Top 10 Co-operatives in the UK

	Turnover £	Rank
John Lewis Partnership PLC	9.7bn	1
Co-operative Group Limited	9.3bn	2
National Merchant Buying Society Limited	1.2bn	3
Arla Foods (AML/AMCo)	985m	4
The Midcounties Co-operative Limited	926.7m	5
Central England Co-operative Limited	806.9m	6
Openfield Group Limited	743.8m	7
United Merchants Public Limited Company	660.4m	8
Fane Valley Co-operative Society Limited	553.9m	9
First Milk Limited	460.1m	10

Source: Coop, *The Co-operative Economy 2016 report*

The Co-operative Group

It is worth saying a little about the Co-operative Group since it dominates this sector. The group is the biggest element in SE in the UK, but has suffered from problems emanating from its banking division due to its disastrous takeover of the Britannia Building Society. As a consequence the bank is now only partly owned by the Group.

Writing about the events of 2014 the Group wrote in its *News* publication:

> But we cannot gloss over the scale of the disaster that we have lived through during 2014. Not only did the Co-operative Bank collapse, it now trades under a misleading name – as does Co-operative Pharmacy and most of the Co-operative Travel brand. Very serious strategic errors by past executives and boards of the Group and the Bank meant that drastic action had to be taken to keep the two organisations trading. That has led to the Bank being owned by investors and the Group selling off Sunwin and its Pharmacy and Farms businesses – and being less accountable to its members than it was before.
>
> Meanwhile, the 'joint venture' with Thomas Cook – into which the Co-operative Group's version of Co-operative Travel was inserted – has its own problems. A boardroom conflict at Thomas Cook led to the departure of the highly regarded chief executive Harriet Green.
>
> The collapse of the Bank came at a particularly bad time for the Group. It had been saddled with unaffordable debt through the thoroughly ill-advised acquisition of Somerfield. And the value of past deals was written down just when competition in the grocery trade had reached an all-time high.[12]

The Group has six main divisions – food, insurance, funeral care, legal services, electrical goods and property. The problems with the bank division affected the rest of the Group significantly. In response the Group has a three year 'rebuild' strategy to get itself back on track.

12 Co-operative News, December 2014

Information on this and details of the Groups recent financial performance can be found in its latest (January 2016) Annual Report.

The Co-op reflects the wider difficulty in defining the SE sector.

Few people would feel that the Smile Internet Bank was anything other than another bank (albeit one with a strong ethical stance) and its new diluted ownership makes this even more so. Furthermore, the Group has made much play of its decision to re-introduce the 'divi' card as a way of returning profits to its members. Although the website[13] stresses the amount that has been paid to charities and community groups and gives ordinary members the chance to do the same, there is an obvious source of confusion between shareholders and members. If all members just pocketed their profit share the group would be significantly less distributive than it has been in the past. Also the announcement that the Co-Op had bought Somerfield and then closed down its HQ made it appear to the outside very much like any other profit driven organisation. And yet, the Group is clear that it works on the basis of values and principles that continue to differentiate it from ordinary companies.

1.5 Building societies

The building society movement is either a failed relic of a previous age or a valuable antidote to all that is wrong with the banking system. Or something in between.

For anyone under 30 it is difficult to understand just how big and omnipresent building societies were in UK high streets before everything changed from the mid-1980s. Since then, with one large, and a few local, exceptions the building society model of business failed to compete against the banking sector in either its core business of lending for home purchase, or in providing newer, mainstream banking and insurance services. One after another building societies lost faith in the mutuality principle and decided to become banks, much to the delight of most members – who collected 'windfalls' and their management who substantially increased their salaries.

In turn, these small banks were swallowed up by bigger banking competitors. The one exception, and a huge exception at that, is the Nationwide Building Society which has managed to become an effective provider of general banking services and mortgages by the expedient of a series of mergers with other smaller, but mid-sized, societies. It is almost as if to prove that the movement could survive it had to 'eat itself' to do so. The table below shows that this is still a significant movement and a major provider of mortgage finance. Customer attachment is often very strong and surveys suggest that societies provide some better services than banks.[14] But the overall landscape for the societies has changed beyond recognition.

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13 http://www.co-operative.co.uk/en/beingamember/sharentheprofits
14 Daily Telegraph, Bank or building society: which gives the best returns on savings; 22 January 2015

Building Society: operational facts

	Authorised societies	Branches	Full time staff	Mortgage assets
		number		£ millions
1970	481	2,016	24,116	8,752
1980	273	5,684	46,418	42,437
1990	101	6,051	61,254	175,745
2000	67	2,361	32,334	134,100
2010	49	1,672	39,285 1	238,698
2014	44	1,563	40,220	265,417

Note: 1 includes all staff from 2010

Source: Buidling Society Yearbook 2015/16

The change was either a response to or was encouraged by, successive pieces of permissive legislation which allowed the societies to move away from their traditional focus on consumer savings and housing related loans.

It started with the *Building Societies Act* 1986 which allowed them to diversify into what were called class 3 assets. These assets could include unsecured personal loans up to £5,000, overdrafts and investments in shares and land. Class 3 assets could not exceed 5% of total assets. This opened up new business streams which, it was argued, required new capital and a new model of business to exploit. The demutualisation movement began.

The Treasury Committee took an interest in the demutualisation process in its Ninth Report of 1998/99.[15] In it the Committee had to tread a fine line between nostalgic support for the mutuals, the fact that they were being undercut by the banks and that demutualisation was many people's first experience of owning shares. Many of the Northern Rock shareholders were original account holders with the building society before they lost them when it went bust in 2007.

The question of whether the sector can survive never goes away.

Before the financial crisis the, then, Building Society and Financial Mutuals All Party Parliamentary Group[16] produced two reports which were very positive. The first, in 2004, was a short enquiry into the general state of the sector.[17] It found that "Mutuals are capable of operating as efficiently as companies with no evidence that they have higher cost ratios". A second report *'Windfalls or Shortfall? The true cost of Demutualisation'* was published in 2009.[18] It concluded that "On the balance of evidence mutual performed better than their plc rivals in a variety of financial performance indicators."

15 De-Mutualisation, Treasury Committee HC 605 1998-99
16 Now APG for Mutuals
17 Available at: http://www.mutuo.co.uk/pdf/all_party_mutuals_report.pdf
18 Available at http://www.mutuo.co.uk/pdf/windfallsorshortfallsfinal.pdf

Immediately post – financial crisis they did rather well, advertising as a virtue the benefits of being stable and 'boring'. But fundamental issues like the business process and the advantages the bigger banks have and now all other types of lenders, won't go away.

Apart from the Nationwide none of the remaining societies appear to have ambitions to be part of the national 'challenger bank' movement. A few societies have strong regional or area niches, but, by definition, it is difficult for niche operators to expand beyond their niche and, every now and then, one or two will fold in the face of some local or national difficulty, for example the closure of the Barnsley Building society following the collapse of the Icelandic banks. The episode with the Icelandic banks exposed how capital-exposed some of the smaller societies were. It also illustrated some of the limitations of capital-poor institutions when they did not have the option to simply issue more shares which, ultimately, banks can do.

There is though, a clear role for the sector, as the Chief Executive of the Building Societies Association, writing in the 2015/16 Yearbook could point out:

> In terms of mortgage lending, in the first half of 2015, building societies approved 189,000 mortgages. We accounted for 57% of net new lending. From 2012 to mid-2015 building societies were almost entirely responsible for all of the net new lending in the UK mortgage market. We accounted for £51.7 billion of mortgage advances net of redemptions, compared with just £7.2billion from other lenders.
>
> To say that we are "punching above our weight" is probably an understatement. We have been vastly exceeding our 20% natural market share since mid- 2012, offering better value for society members and helping them achieve their home ownership aspirations.[19]

1.6 Credit Unions

The Association of British Credit Union Lenders (ABCUL) gives a brief historical introduction to the start of the movement:

> The ideas and values which are central to how credit unions work were developed in the 19th century; in Britain by pioneer co-operators such as Robert Owen; in Germany by innovators such as Herman Schulze-Delitzsch; and in North America, where Alphonse Desjardin was mapping his vision of co-operative credit. The credit union movement grew quickly throughout America and Canada and quickly became an influence for the rest of the world.[20]

A table showing the physical assets of the movement is shown below.

19 Building Societies Association Yearbook 2015/16
20 http://www.abcul.org/page/about/history.cfm

UK Credit union quarterly statistics	
Calendar year end 2015 (not seasonally adjusted)	
Number of CU's (returns submitted)	500
Total membership (number)	1,903,984
Total assets (£'000's)	2,847,807
Loans outstanding to members at year end:	1,297,640

Source: Bank of England

By international standards credit union penetration in Great Britain, despite some recent growth, is fairly low. Ireland Australia and the US have far higher levels of participation. The percentage of the population which is a member of a credit union is about half in the Republic of Ireland, 30 per cent in North America and 20 per cent in Australia.[21] Northern Ireland has a separate registry and is more closely linked to credit unions in the Republic than the rest of the United Kingdom. It has more members of credit unions in than in the rest of Great Britain: 267,000.[22]

The last 20 years has seen a series of publications and reports calling for changes to the law restricting the work of credit unions, all of which have been targeted at easing restrictions and thus allowing credit unions to become bigger and more 'mainstream'. These have been matched by successive pieces of legislation with the same aim, backed up by successive programmes of public subsidy to support growth.

More details of this and aspects of credit union activity in more detail can be found in a separate Library standard note – Credit Unions (SN/BT/1034).

1.7 Industrial & Provident Societies/Community Benefit Companies

An industrial and provident society is an organisation conducting an industry, business or trade, either as a co-operative or for the benefit of the community, registered under the previous *Industrial and Provident Societies Act 1965*.

By virtue of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 they are now called community benefit companies (CBs). The 1965 Act was repealed by the Co-operative and Community Benefit Societies and Credit Unions Act 2014. The 2014 Act came into force on 1 August 2014. All societies registered under the Industrial and Provident Societies Act 1965 (or its predecessors) before then were legally referred to as 'industrial and

21 Credit unions of the future: Taskforce report, *Para 20*
22 Ibid., Para 18

provident societies', whatever they called themselves. From 1 August 2014 they will be referred to as 'registered societies'.

Any new societies registered on or after1 August 2014 are referred to as a co-operative society or a community benefit society.

CBs, are not companies, though they may convert themselves into ones. They can only be used by co-operatives societies who have as their object the improvement of the conditions of members of the working classes or otherwise of their community.[23] There are currently over 9,000 such societies. Many of them are regulated by the Financial Conduct Authority (FCA) though only because they undertake authorised activities, such as deposit taking or make loans. Organisations that had been registered under the 1965 Act cover a wide range of activities. The Treasury 2007 consultation document highlighted the number (140) of football supporters' trusts who own some part of their club.[24]

A recurring feature of the regulation of such companies is how to ensure, in return for favourable treatment, the companies retain their community or charitable focus and, importantly how the profits and assets employed by the organisations remain locked into the community network. This was a feature of both the 2010 and 2014 Acts.

Co-operative or community benefit?

As this note has hinted at already it is not always obvious to the lay person what the differences are between some of the legal forms. This is particularly true with the Co-operative or community benefit split. It is noteworthy that the FCA guidance includes questions such as "what do we write on our letterhead". Clearly even some of the groups are unclear.

The FCA produced the following indications of the difference between Co-operative and community benefit companies.

Co-operatives should exhibit the following characteristics:

- **Community of interest** - There should be a common economic, social or cultural need or interest among all members of the co-operative.
- **Conduct of business** - The business will be run for the mutual benefit of the members, so that the benefit members obtain will stem principally from their participation in the business.

23 Section 1 Industrial & Provident Societies Act 1965

24 http://www.cabinetoffice.gov.uk/media/cabinetoffice/third_sector/assets/the_future_role_of_the_third_sector_in_economic_and_social_regeneration.pdf p47

Participation may vary according to the nature of the business and may consist of:

buying from or selling to the society;

using the services or amenities provided by it; or

supplying services to carry out its business.

- **Control** - Control of the society lies with all members. It is exercised by them equally and should not be based, for example, on the amount of money each member has put into the society. In general, the principle of 'one member, one vote' should apply. Officers of the society should generally be elected by the members who may also vote to remove them from office.

- **Interest on share and loan capital** - Where part of the business capital is the common property of the co-operative, members should receive only limited compensation (if any) on any share or loan capital which they subscribe. Interest on share and loan capital must not be more than a rate necessary to obtain and retain enough capital to run the business. Section 2(3) of the 2014 Act states that a society may not be a bona fide co-operative if it carries on business with the object of making profits mainly for paying interest, dividends or bonuses on money invested with or lent to it, or to any other person.

- **Profits** - If the rules of the society allow profits to be distributed, they must be distributed among the members in line with those rules. Each member should receive an amount that reflects the extent to which they have traded with the society or taken part in its business. For example, in a retail trading society or an agricultural marketing society, profits might be distributed among members as a dividend or bonus on purchases from or sales to the society. In other societies (for example, social clubs) profits are not usually distributed among individual members but members benefit through cheaper prices or improvements in the amenities available.

- **Restriction on membership** - There should normally be open membership. This should not be restricted artificially to increase the value of the rights and interests of current members, but there may be grounds for restricting membership in certain circumstances, which do not offend co-operative principles. For example, the membership of a club might be limited by the size of its premises, or the membership of a self-build housing society by the number of houses that could be built on a particular site.

Community benefit companies should exhibit the following characteristics:

- **Conduct of business** - The business must be run primarily for the benefit of people who are not members of the society, and must also be in the interests of the community at large. It will usually be charitable or philanthropic in character.

- **Interest on share and loan capital** - It is unusual for a community benefit society to issue more than nominal share capital (for example, one £1 share per member). Where it does issue more than nominal share capital or where members make loans to the society, or both, any interest paid must not be more than a reasonable rate necessary to obtain and retain enough capital to run the business.

- **Profits and assets** - The society's rules must not allow either profits or the society's assets to be distributed to the members. Profits must generally be used to further the objects of the society by being ploughed back into the business. Where profits are used in part for another purpose, that purpose should be similar to the main object of the society, for example for philanthropic or charitable purposes. The rules must specify the beneficiary or beneficiaries, if any. Where the rules of the society allow assets to be sold, the proceeds of the sale should be used to further the society's business activities only.

- **Dissolution** - The society's rules must not allow its assets to be distributed to its members on dissolution. The rules should state that on dissolution the assets should be transferred, for example, to some other body with similar objects. If no such body exists, the rules should state that the assets must then be used for similar charitable or philanthropic purposes.