RESPONSE TO THE GOVERNMENT CALL FOR EVIDENCE ON BUSINESS SUPPORT FOR CO-OPERATIVES AND NON-FINANCIAL MUTUALS

Introduction

Anthony Collins Solicitors LLP is a law firm which is perhaps uniquely well placed to comment from a legal perspective on the issues affecting co-operatives in the UK. Although the firm is not, itself, a co-operative, over the last 20 years the firm has consistently supported, championed and helped to develop the co-operative movement.

We have been the solicitors for Co-operatives UK ("CUK"), providing their legal surgery support to members, since summer 2018, and were successfully re-appointed in 2024. We are also members and key partners with the Confederation for Co-operative Housing; we have spoken at the national CCH conference for the last two years, and we have carried out significant work with CCH at strategic level, including developing template documents for the Mutual Home Ownership (MHOS) model.

Our innovative work in developing the wider sector has included our support to the Mutual Banks Association on developing a "common good company" model, embedding co-operative governance principles into a PLC share company. We have also worked on co-operation in the context of broadband infrastructure with Co-operative Network Infrastructure (CNI) and have promoted local co-operative innovation through our support for Middleton Co-operating, and the Innovation Co-operative.

Our practical support has included regular participation in the CUK Practitioners' Forum, Co-operative Congress, involvement in the Democratic Business Summit (we were co-sponsors of the event in December 2024), and regular comment in the Co-operative News. David Alcock has been chair of the CUK Co-operative Governance Expert Reference Panel since the start of 2023, where he has led on the production of guidance on good practice in co-op elections and canvassing.

Over the last two years we have made a significant contribution to the Law Commission review of co-operative law, preparing a number of general and sector-based pieces to encourage and enable a strong response from the sector, and giving evidence to the All-Party Parliamentary Group on mutuals. We proactively made links with the Law Commission team and, working alongside other lawyers in the sector, made a substantive response to the formal consultation in November 2024. We continue to engage with the Law Commission as their review progresses.

Our involvement in the movement builds on our history. The firm was founded in Birmingham in 1973 by Anthony Collins, whose motivation was to set up a firm to serve individuals and the community. Our shared aspiration remains core to the firm today, and allows both the way we work with our colleagues and the wider contribution we make to society, to spring from values that derive from that original commitment.

The firm has a longstanding reputation for working with a broad range of organisations involved in the regeneration of local communities. We are noted for providing advice to, and long-term support of, local partnerships involving community and residents' groups, local authorities and voluntary organisations, including faith groups.

We have also worked on transfers of community centres, health facilities, leisure facilities, libraries and school buildings, as well as advising on multiple transfers and working with Locality on model guidance and documents. We have supported rural community businesses through our work with Plunkett UK, including reviewing and updating their model rules and advising on technical matters around share capital in registered societies.

We work with many established co-operatives, mutuals, community organisations and other social enterprises in a wide range of sectors, and regularly provide legal advice to those wishing to explore a co-operative or mutual approach for their business. We have nationally recognised expertise, with David Alcock and Cliff Mills both having given evidence to the All Party Parliamentary Group ("APPG") on mutuals in relation to the review of Co-operative and Community Benefit Society Law. Further, Cliff was one of the commissioners on the Greater Manchester Co-operative Commission. We see ourselves as part of the social business movement, working alongside a broad range of co-operatives, social or values-led businesses, and community organisations.

As such, our solicitors have extensive experience in advising leading co-operative retail societies, housing co-operatives, multi-constituency membership organisations and national bodies using a member-based structure. We regularly provide support to society secretaries and governance managers in dealing with democratic ownership and governance.

Q1 – key impacts of co-operative growth.

We would endorse the comprehensive review of the positive impacts that co-operatives make, as set out in the response made by CUK, which we have had the opportunity to review in advance. We would further note that our experience would suggest that:

a) Co-operatives are focused on the longer-term, rather than short terms gains for investors. Growth in the movement would provide greater economic stability and a more "people focused" economy.

b) Locally, our experience through our work with Locality UK and Plunkett UK, among others, suggests that that rural retail outlets such as community pubs or shops are more sustainable if they are co-operatively or community owned. This has a significant social impact on those communities where purely commercial interests can result in the loss of such facilities; where the benefits are shared and profit is not the primary driver, then the facilities can be protected.

c) In key sectors such as sport, the impact of co-operative ownership should be to make the sport in question more sustainable. In our work with the Football Supporters Association and supporters' trusts, we have noted that community owned clubs are less likely to seek to "buy" success, and more likely to seek to run clubs as community assets, for the long term.

d) We are aware of the debates that have taken place around the methodology of measuring or defining "growth" in the co-operative sector. We agree that measuring the contribution to GDP, and doubling that contribution from 2% to 4%, could be an appropriate measurement.

Q2 – data sources for evidencing co-operative impact

As lawyers, we are not in a position to comment in detail on this question. We would note and endorse the responses made by CUK and Plunkett UK, which we have seen in advance of submitting this response.

Q3 – how do different types of co-operatives drive economic growth differently?

We note, and would endorse, CUK's response in its sector-by-sector analysis of co-operative growth. We would add that, in our experience, there is little correlation between the types of legal structure chosen, and growth. The vast majority of employee ownership trusts ("EOTs") (a fast growing sector over the last 10 years) are based on companies limited by shares, with corporate trustees generally created as companies limited by guarantee. However, we would argue that this is a feature of the business model (and the tax advantages) and not the legal structure; there is no reason in law, for example, why the corporate trustee in an EOT should not be a co-operative society registered under the 2014 Act. This should not be taken as evidence that a company law model is "better" at producing growth. We have published commentary on this topic during 2025.

We would also note that the legal framework for registered societies, including co-operative societies, is in significant need of modernisation (and we have actively supported the Law Commission review). That framework has, on occasion, inhibited co-operative growth, particularly in industries where significant capital investment is required, and this has pushed individual organisations towards a company model. Again, this is not to endorse a company model but rather to emphasise the need to update and strengthen society law.

Q4 – demographic characteristics

We are not in a position to comment here.

Q5 – responses on start-ups.

a) Those starting a business are not aware of the model.

We strongly agree. Co-operative models are not taught as standard on business courses or in business schools. Outside of the movement, awareness of the model is limited. There is also extremely patchy awareness of mutual business models in the advisor community, and among lawyers and accountants in particular. It is not part of standard legal or accounting training, and this is a significant oversight. It is notable that the introduction of the Capital Gains Tax reduction for EOTs meant that advisors would be negligent not to mention it to their clients; there is no similar “jeopardy” for professional advisors who are not aware of co-operative models.

b) It is more difficult for co-operative models to qualify for start-up capital support schemes.

   We agree. We note and endorse the comments of CUK in their response.

c) Aspiring co-operative founders lack the skills to get started.

   We do not agree. In our experience, those starting co-operative or mutual organisations are no less skilled that other entrepreneurs.

d) Business advisors lack awareness of mutual models

   We agree, and would repeat our comment on advisors above. This is a structural and syllabus issue, not the responsibility of individual advisors.

e) Investors lack awareness of mutual models

   We agree. Experience of mutual models is confined to a small number of social investors, though many of these are supportive and helpful to the sector (Unity Trust Bank, Triodos Bank, Resonance and others). However, the mainstream finance sector is too often, in our experience, ignorant of - or indeed hostile to - mutual models.

   This issue is compounded by the legal framework and also the comparatively old-fashioned nature of the FCA Mutuals Register. Mainstream funders, being used to Companies House and company law, expect to be able to search the register for the names of individual directors. This is not possible for registered societies; practical issues such as this can act as an active disincentive for using mutual models.

f) There are insufficient visible success stories.

   It is difficult to generalise here. There are certainly fewer co-operative start ups, but there are successful new co-operatives and mutuals. There is comparatively less awareness of social economy models more generally and this may have an impact.

g) Lack of access to peer support networks

We agree. Business support for co-operative businesses is comparatively poorly funded and reliant on a small number of providers, so peer support networks are few and far between.

h) Aspiring founders do not know where to access advice.

We strongly agree. As noted above, the professional advice community is largely ignorant on the subject of mutual models and as a result, it can be very hard to know where to get informed advice. The number of lawyers or accountants with real co-operative expertise is vanishingly small.

i) The rationale for starting a co-operative is different

We strongly agree. Those starting co-operative or mutual models are not, in general, primarily motivated by personal gain but more often by meeting a perceived need or aspiration for a community, a group of workers or a group of consumers. Co-operatives are often part of a response to mainstream market failure or collapse. There is often a collaborative emphasis also.

j) The process to start-up a co-operative is complex

We agree. We note and agree with the comments of CUK here on potential simplification.

Q6 – do co-operatives face unique barriers that other businesses don't?

Yes they do. These barriers arise in a number of ways:

- Lack of informed advice and awareness – see our comments above on this point.

- Poor access to finance – again, as noted above, many mainstream funders are not aware of mutual models or would not wish to fund them given that financial return is not the primary motivation for those starting such organisations, or the primary function of the model.

- Underdeveloped legal framework – the law supporting mutual models requires updating and will also need regular review in the future, in the same way that company law is consistently updated.

- Piecemeal policy – it is noticeable in the preamble in the Call for Evidence itself that a large number of different government departments touch on the work of co-operatives across a range of areas. This has not served co-operatives well, and it remains our view that responsibility for co-operative policy should be the responsibility of a single, nominated minister within the Department for Business & Trade – a Minister for Co-operation.

- Tax – there are no tax advantages for co-operative models in the way that there are, for example, for charitable organisations in the UK or in the way that co-ops in other countries are supported.

Q7 – different types of co-operatives and different barriers.

We agree with the response from CUK.

Q8 – are there industry specific barriers?

In general, it is harder to establish co-operatives in highly capital intensive sectors. We were directly involved in efforts by the Mutual Banks Association and then Avon Mutual to set up a regional bank, structured on co-operative principles. The use of a registered society proved impossible, due to the current legal restrictions; the use of a limited company required significant adaptation and specialist support. The regulators were less familiar with the model proposed. We would endorse the comments made by CUK in relation to social care and manufacturing.

In our experience, the setting up of new community owned energy mutuals has been problematic also – the use of registered societies models has been complicated by the position of the FCA, where there have been technical issues in relation to the use of both community benefit societies (because returns to members putting in funds have been held to be excessive) and co-operative societies (because of an insufficiently direct relationship between members and the society).

Growing and sustaining

Q9 – is the rationale and process for growing a co-operative the same or different?

The **rationale** for growing a co-operative will necessarily be different, as the purpose of a co-operative business is not to maximise shareholder value, but rather to deliver goods or services for the benefit of its members. Thus, growth will have a different purpose and a different impact. This may apply in a different way in EOTs, but nonetheless even in an EOT the purpose of growth is to benefit all the workforce as a group rather than privilege individual investors.

The **process** of growth may be similar to other businesses, though we would note that investment for growth may be more difficult to secure for similar reasons to those highlighted under start-ups above. For example, we have seen in our work for football supporters' trusts that there are particular issues when supporters' groups seek investment into clubs where they are the majority owner. The FCA guidance on subsidiaries essentially treats any subsidiary of a CBS as an extension of the CBS itself (unlike, for example, a trading company owned by a charity) – so there is the same expectation about being wholly for community benefit. This is not a statutory matter but one of interpretation.

Where funders are focused purely on economic return, this will cut across the purpose of a mutual business. There are also the potential issues caused by the particular nature of share capital in a registered society, and the associated restrictions.

Q10 – responses on growing and sustaining

a) growing and sustaining is too capital intensive for many co-operatives or non-financial mutuals

   We agree to an extent. This is partly dependent on the nature of the business in which the co-operative is engaged, and the ability of that co-operative to raise funds; this will vary significantly. As a general principle, however, we would observe that in this country and in others there are very large and successful co-operative businesses, so this cannot be universally true.

b) it is too difficult for co-operatives or non-financial mutuals to meet the eligibility criteria for capital support

   Again, this may be true to an extent. Our experience would suggest that capital investment programmes – and mainstream funding – are not often designed with the needs (and characteristics) of co-operatives in mind, and we agree with the comments of CUK on this point.

c) it is too difficult to maintain co-operative and mutual principles at scale

   We disagree. There are very large co-operatives that have tackled the challenges of co-operative and mutual governance in a variety of creative and robust ways. We would accept that managing such a co-operative, and the associated choices about making member ownership meaningful, brings particular issues, but evidence from other countries and the experience of the retail societies in this country suggests that these issues can be overcome without losing the distinctive nature and purpose of co-operatives.

d) co-operatives or non-financial mutuals looking to grow and sustain lack access to peer support networks

   We agree. Most business networks (chambers of commerce, for example) neither understand nor engage with co-operatives, and there is a lack of support for co-operative business development.

e) co-operatives and non-financial mutuals do not know where to find clear, accessible guidance and advice on growing and sustaining

   We agree. We have noted above the absence of professional advisors and funders that have experience and knowledge of the particular nature of co-operatives, and the same points would apply here.

f) co-operative or non-financial mutual founders often lack the necessary skills to grow and sustain

   We do not experience this as a major issue; we are not aware of any major skills difference between co-operatives and other businesses.

Q11 Are there unique barriers to growing and sustaining a co-operative business that other businesses don't face?

We agree with the response of CUK on this question, which we have had the opportunity to review. We also note the submission from Plunkett UK on the challenges facing rural community businesses, and we endorse their comments – we would extend those remarks to community organisations more generally – the impact of the current financial climate is significant on businesses which, by their nature, trade "at the margins".

Q12. Do different types of co-operatives and non-financial mutuals face different barriers to growing and sustaining?

We agree with the responses from CUK on this question in relation to the different types of co-operatives covered.

We have argued more generally elsewhere that co-operative businesses, given the funding issues that we have described above, should have two tax advantages introduced:

a) there should be a new Social Investment Tax Relief, extended to all forms of registered society, community interest companies, and companies limited by guarantee with a broader range of eligible investments. This would assist co-operative businesses in raising funding;

b) DBT and other government departments should promote the use of EOT structures in worker co-operatives, which would allow worker co-operatives to pay tax-free bonuses to their staff. We have written extensively about the use of trust structures in worker co-operatives, which does not require any change in legislation and can be achieved now.

Q13. Are there industry-specific barriers faced by co-operatives and non-financial mutuals when trying to grow and sustain?

We agree with the response of CUK to this question.

Q16 mutualisation questions

a) there is a lack of awareness of co-operative and mutual models among business leaders

We strongly agree, though would note the growing awareness of the EOT model (which has primarily arisen, we would argue, through the CGT tax break). Other mutual models are much less well known and less well understood, though there are numerous possibilities.

b) there aren't enough visible success stories of businesses that have mutualised

We agree. There are many EOT transitions, but outside of that sector there are few tangible examples of the mutualisation of current businesses.

c) there's not enough clear information or advice on how to mutualise

We strongly agree. We have noted above the lack of specialist knowledge in the field, and the absence of co-operative models from business education, and also in the training of professional advisors. Mutualisation of an existing business is particularly complex outside of the EOT transition process, and there are few advisors who are competent in this space.

d) there are many reasons why businesses mutualise

We agree. In our experience of EOT transitions, these have been usually part of a succession strategy for selling owners, but beyond that we have seen mutualisation coming out of the commitment of individuals involved to co-operative principles, or as a response to a particular crisis or market failure.

e) the process to mutualise is complex

We agree. The process is not always straightforward, though with appropriate legal and tax advice it need not be as complex as is sometimes thought. The key issue is helping businesses choose the right model for their needs and aspirations, which requires advisors with the appropriate expertise and knowledge. We note and agree with the comments of CUK on funding for the process.

f) there is a lack of awareness of co-operative or mutual models by employees

We agree. Currently, transitions are invariably initiated by business owners, in our experience. We agree with CUK that trade unions are yet to engage meaningfully in supporting transitions to mutual ownership. There would be great value in considering how to support a workforce led mutualisation.

g) the landscape is too complicated for businesses wanting to mutualise

We agree. The EOT model is often comparatively expensive to implement and manage, and also not easily comprehensible to the layperson.

h) there are insufficient incentives to encourage businesses to mutualise

We agree. We have noted above our view that there should be a new form of SITR for co-operatives, and we would also note our view that co-operatives should have a distinct status for Corporation Tax purposes, similar to that for charities but tailored to the particular nature of co-operatives. This would encourage consideration of mutual models, and also push professional advisors to widen their advice (to avoid negligence).

Q24. Is there enough tailored support for co-operatives and non-financial mutuals?

No. We agree with the response from CUK to this question, and we would reiterate our earlier comments about the experience and knowledge of professional advisors and business support.

Q25. Is there support or advice you think is missing for co-operatives and non-financial mutuals?

We agree with the response from CUK to this question.

Q26. What do you think is working well and what is working less well when it comes to how co-operative and non-financial mutual businesses access capital in Great Britain?

The nature of co-operative capital and the particular limitations and opportunities that it brings are not well understood in the UK. We carried out research into the use of member capital by co-operative retail societies some years ago for CUK through the "Members Money" project.

By way of broader historical background, withdrawable share capital ("WSC") played a crucial part in the rapid expansion of retail co-operative societies from 1852 and well into the 20th century, and for many years provided basic financial services to individuals who did not have access to banking services. Both the availability of modern financial services and their regulatory framework mean that WSC no longer fulfils this function for members. Most societies have also now scaled back considerably on the facilities for members to effect WSC transactions.

But as explained in our report for that project, the basic legal facility for WSC remains in place, and continues to be actively used and encouraged by some societies. This project reflected a desire amongst retail societies to explore the opportunities for WSC to continue to attract members' funds today.

There are two main areas of law which need to be considered: first the legislation under which co-operative societies are registered (the Co-operative and Community Benefit Societies Act 2014 (the "2014 Act"), which needs to be considered alongside the published guidance by the Financial Conduct Authority on their registration function under that legislation; and secondly the law relating to the regulation of financial services contained in the Financial Services and Markets Act 2000 (FSMA) and the related secondary legislation.

Shares in a co-operative are fundamentally different from shares in a company, and it is important that these differences are understood. The following are the key differences:

- Co-operative capital is variable, not fixed

- Co-operative shares do not form the basis for the distribution of surplus

- Co-operative shares do not normally give the holder a share in the underlying value of the business

- Co-operative shares remain at par value (unless written down)

- Co-operative shares do not carry votes in proportion to the shares held because a co-operative is democratically controlled

These features of co-operative capital are set out and emphasised here because there can be a tendency to approach co-operative capital as if it is fundamentally similar to capital in a company, when it is not. It is important to maintain a clear distinction. The picture can be further confused by the use of language familiar in a corporate context, which is not so appropriate in a co-operative one. For example:

- "issue" or "share issue" are inappropriate because a co-operative does not issue shares like a company (there are even incorrect references in secondary legislation)

- "investor", "investment", "return on investment" are all problematic and potentially confusing words or phrases, normally associated with a corporate entity legally designed to generate an economic return for investors. They are potentially misleading if used in relation to co-operative shares which remain at par value, do not entitle the holder to a share of profits or provide a share in the underlying value, and do not bestow additional voting rights

- "offer" and "share offer". Whilst these terms are commonly used in relation to a traditional investment proposition, they may be less so in seeking to attract individuals to participate in a co-operative by (amongst other things) owning shares, which arguably is more in the nature of an invitation to participate in membership.

Language is particularly important in the context of financial services, where a principle aim of the underlying law is to ensure that people are properly informed before entering into legal arrangements, and seeks to prevent people being misled.

The main risk for a society in relation to withdrawable share capital, particularly when viewed through a contemporary company law lens, is that the ability of members to withdraw their capital leaves the society itself at risk in terms of managing its ability to meet its financial obligations; and it leaves creditors at greater risk in dealing with the society than with a company with fixed capital. The society needs to manage this risk through careful management of WSC, including maintaining appropriate liquidity, and monitoring withdrawals.

The FCA's approach and its views set out in its guidance do not (and cannot) introduce maintenance of capital requirements; but they certainly reflect a prudent approach to risk where the company law restrictions on the power to distribute surplus do not apply. They effectively encourage societies to ensure that withdrawals are carefully monitored and controlled to ensure that they do not adversely impact the society's solvency; and that a power to suspend withdrawals is part of this mechanism.

As noted above in this submission, it is our view that co-operative capital is not well understood, and this contributes to the funding difficulties that co-operatives sometimes experience. There is significant work to do in ensuring that the use of capital by co-operatives is understood more widely, and appropriately tailored to the needs of co-operative and mutual enterprises.

Q28 Is there anything else you would like to share?

We note the comments that CUK make in their submission in relation to competition, and we recognise the impact that competition law can have on discussions between co-operatives operating in the same sector. We agree with the suggestions made by them.

Anthony Collins Solicitors LLP

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