

## Consultation Response

### Guidance on the Financial Conduct Authority's registration function under the Co-operative and Community Benefit Societies Act 2014

#### Response from the Scottish Charity Regulator

## 1. Background

### 1.1 The Scottish Charity Regulator

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,600 charities registered in Scotland, and this includes a small proportion of registered societies as defined by the Co-operative and Community Benefit Societies Act 2014. Underpinning all we do (and therefore our response to this consultation) is our overall vision of **“charities you can trust and that provide public benefit”**.

OSCR welcomes this opportunity to comment on the Financial Conduct Authority's (FCA) draft guidance. We have been liaising with FCA on these matters, and are in the process of updating our Memorandum of Understanding with FCA in respect of this new legislation. Our response covers two areas. It re-iterates our position in respect of Community Benefit Societies that pay interest on shares and their ability to apply for charitable status, and also provides comment on proposals in respect to society names.

If you have any questions about our response, please contact Nicola McBain, Engagement Manager (Policy and Partnerships) on [nicola.mcbain@oscr.org.uk](mailto:nicola.mcbain@oscr.org.uk)

## 2. Consultation response

### 2.1 Interest on shares

Firstly we would like to state again our position in respect of Community Benefit Societies that pay interest on shares applying for charitable status. This is an area we have worked previously on with the FCA and Charity Commission for England and Wales, and would like to confirm that this is compatible with charitable status as long as the following is stated within the society's rules

1. *The rate of interest must be limited to the lower of:*

- *The lowest rate of interest the society would have to pay to borrow an equivalent amount of loan capital on commercial terms broadly comparable with the terms of the society's offer.*
- *The highest rate of interest a member would be able to earn from a savings account with a bank or building society or by lending to a third party an equivalent amount of loan capital in circumstances where:*
  - a) *repayment of the loan could be demanded by the lender in the same circumstances as those in which the share capital may be withdrawn*

- b) *the ability of the borrower to repay the loan and to pay the interest on it was not in doubt, and*
- c) *the number of lenders and borrowers willing to enter into such loan transactions are approximately equal*

2. *Payments of interest must be provided for on a prudent basis in the society's revenue budget.*
3. *The rates must be declared in advance of the period for which they will become payable, as for a bank or building society account, and never retrospectively.*
4. *Payment may not be increased in the event that the society achieves a higher than expected surplus, HOWEVER there must be a power to suspend or reduce interest payments in the interests of the society and to suspend the right of withdrawal of shares, either temporarily or indefinitely.*

## **2.2 Names**

### **2.2.1 General**

The position in Scottish charity law on charity names is outlined in section 10 of the 2005 Act (Objectionable names). A body's name is 'objectionable' if it is:

- (a) the same as, or too like, the name of a charity
- (b) likely to mislead the public as to the true nature of the purposes of the body or of the activities which it carries on, or intends to carry on, in pursuit of these purposes
- (c) likely to give the impression that the body is connected in some way to the Scottish Administration, Her Majesty's Government in the UK or local authority, or with any other person, when it is not so connected, or
- (d) offensive.

OSCR has no basis to act on a charity's name unless its legal name is objectionable in one of these ways. The position on charity names therefore differs somewhat from what is proposed by the FCA, and similarly to FCA this position does not align with that of Companies House. For example, there is no 'sensitive word' list which both Companies House and FCA have.

Therefore it is worth highlighting that decisions taken in this area may not always be consistent with each other, and is perhaps an area for further policy discussion in the future.

### **2.2.2 Charity and charitable**

The draft guidance sets out that a society name can be rejected if the FCA finds it undesirable, and an approach to defining 'undesirable' is outlined in the draft guidance. As part of this approach is a list of sensitive words, which the FCA may consider undesirable, if permission to use them has not been sought. We would ask that the words 'charitable' and 'charity' be included in this list similar to what is contained in Company Law<sup>1</sup>. Companies House will not allow the use of these words in a name unless there is a letter or email of non-objection from the charity regulator.

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<sup>1</sup> The Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014 SI 2009/3140)

Part of OSCR's role is to increase public confidence in Scottish charities, so it is reasonable that it should have some input into the use of society names which include the word 'charity' or 'charitable'. This provides some degree of 'quality control' over use of these words. Similarly, sections 13 and 14 of the 2005 Act set out restrictions on what kinds of bodies can use these words to describe themselves and OSCR has powers under section 28 of the 2005 Act to undertake an inquiry where we believe a non-charity is representing itself as a charity in this manner. Having these two words on the list would aid us in respect of this.

It is important that OSCR is consulted prior to approval of use of these words, possibly similar to what has been agreed with Companies House, and this can be explored as part of our Memorandum of Understanding with the FCA.