

## **Update on the FCA challenges to BDCR**

Report by Secretary, Sonia Kuznetsov, for the AGM 16/5/2015

The BDCR Directors wrote to members in January to alert them to the challenging questions that the co-operative was facing from our regulator, the Financial Conduct Authority (FCA). These questioned whether BDCR is in fact a 'bona fide co-operative'. A recap of the background is included overleaf.

### **The current situation (May 2015) is as follows:**

The main points concerning BDCR's relationship with the FCA are:

- The FCA has accepted the evidence the Directors provided that BDCR does not exist merely to provide share interest to members. Members regard as benefits and shared aspirations both the reduction in carbon emissions and the reduced use of fossil fuels that are consequences of the generation of electricity from renewable sources. These aspirations are indeed the primary purpose of the co-operative, and possibly need to be more explicitly stated in our Rules.
- The FCA's questions regarding 'member economic participation' are still unaddressed. These questions also appear on the new Annual Report form (AR30), and the FCA has agreed that BDCR should address the issue via that form which needs to be submitted to the FCA by 31<sup>st</sup> July.

It has become clear over the last few months that:

- The FCA is taking its role as Regulator very seriously as it has become aware of instances of the 'co-operative' legal form of business being used purely as an investment vehicle. All who are involved in the genuine co-operative sector need to be concerned about the misuse of the form.
- The FCA seems to have misunderstood just how wide a range of different types of co-operatives there are. They have a limited view that the members must either work for the co-op or trade directly with it. There are many co-ops which do not fit this model.
- The FCA is open to discussion. They have announced that over the summer there will be a further round of consultation on key issues in their policy 'Guidance'. The results are expected to be published in the autumn.

## Background

The BDCR Directors wrote to members in January to alert them to the challenging questions that the co-operative was facing from our regulator, the Financial Conduct Authority (FCA). We had submitted our Rules change (as agreed at our AGM in June) to the FCA in July last year and this had been formally accepted by the FCA in October. However, when informing us of this acceptance the FCA had also asked a series of bewildering questions with a concern that BDCR might not be operating as a 'bona fide co-operative'.

The way that BDCR operates in relation to its business, its members and its regulator (FCA, formerly the FSA) has not changed during the 13 years of its existence, and the Directors were initially at a loss to understand the questions or the concerns underlying them.

The plethora of different legislation ruling co-operatives was rationalised in August 2014 into *The Co-operatives and Community Benefit Societies Act 2014*. It is known that since spring 2014 the FCA has been refusing to let new renewable energy co-operative register as 'bona fide co-operatives', but is allowing them to register as 'community benefit societies'. Therefore the FCA concerns pre-date the new Act.

In October the FCA published its consultation paper '*Guidance on the FCA's registration function under the Co-operatives and Community Benefit Societies Act 2014*'. This paper has thrown up a lot of questions for all parties. The FCA is not helped by the fact that a co-operative is not explicitly defined in UK legislation. All legal understanding to date has been based on the International Co-operative Alliance (ICA) *Statement of Co-operative Identity*. For some reason the FCA has now chosen (a) to base its definition of a co-operative on only a limited subset of the ICA Statement and (b) to include in the Guidance what is, in many people's view, a misunderstanding of what the ICA means by 'member economic participation'. The FCA is currently insisting that members must have a working or a trading relationship with their co-operative, but there are many co-operative, including BDCR, which do not fit this particular picture. In our understanding 'member economic participation' originally referred to member capital investment. BDCR responded, along with 600 other people/organisations, to the FCA Guidance consultation in November.

In January, having taken legal advice and liaised at length with key players in the community energy sector, the Directors responded to the most understandable of the FCA's challenging questions, that we seemed to exist only to pay share interest to members.

As a 13-year-old well-established co-operative BDCR is to some extent a test case for the whole renewable energy sector.