

Final (hopefully!) Update on the FCA challenges to BDCR

Report by Secretary, Sonia Kuznetsov, for the AGM 21/5/2016

I reported last year on the complex and bewildering challenges that BDCR, along with other co-operatives, was facing from our regulator, the Financial Conduct Authority (FCA).

As at May 2015 the FCA had accepted that BDCR did not exist mainly to provide share interest to members; members benefit from the meeting of their shared environmental and social aspirations through the work of the co-op. However, questions regarding 'member economic participation' were still to be addressed via our Annual Report form to the FCA in July 2015.

What has happened since then is:

1) The FCA conducted a further round of consultation last summer which focused on 2 key areas:

(a) the definition of a 'bona fide co-operative'

(b) interest rates

In both cases the FCA was moving away from its original extremely prescriptive, and, in our view, at times misguided, stance to a regime of 'indicators' which would suggest compliance, or non-compliance, with the requirements of the Co-operatives and Community Benefit Societies Act 2014 (C&CBS Act). BDCR responded to this consultation.

2) The **Final Guidance on the FCA's regulatory role under the C&CBS Act** was issued in December 2015

Overall, common sense seems to have prevailed, with:

- Agreement to the use of the 'indicators' of compliance, and a recognition that co-ops are very varied and some things may need to be considered on a case-by-case basis.
- A sensible understanding of a bona fide co-operative using the relevant aspects of the International Co-operative Alliance *Statement on the Identity, Principles and Values of a Co-operative*.
- Back-tracking on the insistence that Members MUST have either a trading or an employment relationship with the co-op.

Some residual points we need to be aware of:

- As our Rules are not as clear about our social and environmental purpose as our Share Offer documentations were, we shall, in due course, improve the 'Overall Purpose' clause in the BDCR Rules.
- FCA regard NOT setting a maximum rate of interest in advance as likely to be an indicator of NON-compliance. From now on BDCR

Directors will declare a maximum interest rate for the following year when the current year's interest cheques are sent out.

- FCA regard high interest rates one year, to compensate for previous years' poor performance and poor returns, as likely to be an indicator of NON-compliance. The co-operative sector as a whole isn't happy about this: the long-term commitments of many Members to a co-operative project means that they support the project through lean years, but they do expect the AVERAGE interest, over time, to provide a satisfactory return.
- Although the FCA has back-tracked regarding the trading / employment relationship, it DOES expect that Members will have some ongoing participation in the co-op. It was not clear what that means for a co-op such as ours where (a) we cannot (currently) trade directly with Members and (b) we are capital intensive with only a small amount of highly-specialised technological labour needed, so opportunities for large numbers of Members to work or volunteer are extremely limited. 'Participation' is regarded by the FCA as separately to 'democratic control'. I had answered the new 'participation' questions on the Annual Return Form as best I could back in July ... and we were still waiting to see if it was accepted.

3) Despite a considerable time lag (till February 2016), the FCA have accepted BDCR's 2015 Annual Return without further queries, and this acceptance now appears on the FCA website.

So our understanding of 'member economic participation' is no longer being challenged. We hope this is the end of the matter. We shall continue to supply evidence of BDCR's compliance with the C&CBS Act each year in our Annual Return to the FCA.