

Introduction

Thame Community Land Trust Limited (**Thame**) is a charitable community benefit society (**CBS**) registered with the Financial Conduct Authority (**FCA**) on 4 March 2019 with registered society number 8070. It exists to provide affordable housing to those in charitable need in the area of Thame. It is governed by a set of rules (the **Rules**) which can be found here: <https://mutuals.fca.org.uk/Search/Society/30331>.

The key piece of legislation governing CBSs is the Co-operative and Community Benefit Societies Act 2014. As Thame is also charitable, it is also governed by charity law (principally the Charities Act 2011).

The FCA is the registering authority for CBSs, as set out in the 2014 Act. It has published useful guidance on the requirements that CBSs must comply with. The guidance is available here.

1. Community Benefit Societies – key principles

CBSs are based on a number of key principles.

Purpose

- 1.1 The purpose of a CBS is to serve the broader interests of its community. Under the 2014 Act, every CBS is required to “carry on a business, industry or trade” that is “being, or intended to be, conducted for the benefit of the community”.
- 1.2 As well as being a CBS, Thame is also charitable. This means that, as a matter of law, in serving the broader interests of its community, all of its activities must be charitable and for the public benefit.
- 1.3 The objects of Thame, which are consistent with these principles, are set out in rule 3 of the Rules.

Application of Profits

- 1.4 Any profit (or surplus) generated by a charitable CBS must be used for the benefit of its community in a way that is charitable and for the public benefit. Profits cannot be distributed to the members of a CBS. Whilst interest can be paid to members on the share capital that they hold, this is seen as a cost of capital rather than as a distribution of profit. As a charitable CBS, Thame is subject to these rules.

Use of assets and asset lock

- 1.5 Charitable CBSs must only use their assets for the benefit of the community in a way that is charitable and for the public benefit. If a CBS is transferred to, converted into, or amalgamated (merged) with, another legal entity, its assets must continue to be used for the benefit of the community in a way that is charitable and for the public benefit and must not be distributed to its members. As a charitable CBS, Thame is subject to these rules.

2 Membership of a CBS

- 2.1 CBSs usually have members who hold shares and are afforded democratic rights based on a one-member-one-vote principle. As a result, the FCA makes clear that it is not usually appropriate for a CBS to convey greater governance rights or benefits upon a certain member, or group of members. The FCA's expectation is that CBSs are run democratically based on one-member-one vote. In departing from this position, the FCA would need to be convinced that the reason for a society doing so would benefit the CBS' community.
- 2.2 As with most CBSs, each member of Thame holds a £1 share. As such, each member's financial risk in being a member is limited to the value of this share (i.e. a pound).
- 2.3 The democratic principles on which membership of a CBS are based can lead to concerns that groups of members could come together and exercise their voting rights in a way which is contrary to the aims and ethos of the CBS, and the key principles on which a CBS is based (see above).

3 Custodian trustee

- 3.1 To mitigate the risks set out at paragraph 2.3 above, some CBSs seek to appoint a custodian trustee which has certain rights and powers embedded within the CBS' rules to help protect the aims and ethos of the CBS. Any such custodian trustee is usually an important stakeholder in the objects of the CBS, and is a member (not director) of the CBS.
- 3.2 As set out in paragraph 2.1 above, because the rights and powers afforded to a custodian trustee contradict the usual position that it is not appropriate for a CBS to convey greater governance rights or benefits upon one or more members over others, the FCA would need to be convinced that the reason for a society appointing a custodian trustee would benefit the CBS' community. We believe that the FCA would be sympathetic to the appointment by Thame of a custodian trustee, where that appointment is designed to protect the key principles on which Thame, as a charitable CBS, is based (see above).
- 3.3 We understand that, as an important stakeholder to the objects of Thame, Thame is in discussions with Thame Town Council (**Council**) as to the Council taking this custodian trustee role. Whilst the detail of the rights and powers afforded to the Council would be to be agreed, the sort of limited rights and powers which we have seen accepted previously (and which we anticipate Thame would afford to the Council) include:
 - 3.3.1 any resolution to amend the objects of Thame (see *Purpose* above), or certain rules including payment of interest on shares (see *Application of Profits* above) or winding up (see *Use of assets and asset lock* above), not passing if the custodian trustee votes against it;
 - 3.3.2 when Thame uses any financial surplus to achieve its objects (see *Application of Profits* above), the custodian trustee having the right to veto the decision of the board to do so, if it considers the decision would not be in Thame's best interests, not be in the best interests of Thame's members or community, or otherwise not be in accordance with the Rules; and
 - 3.3.3 the custodian trustee having the right to nominate where the surplus assets of Thame would go to on its winding up (see *Use of assets and asset lock* above).
- 3.4 Subject to any special rights and powers afforded to it, the Council (as custodian trustee) would simply be another member of Thame with the same rights and

powers (including the right to vote at general meetings) and liabilities (see paragraph 2.2 above), that apply to all members.