

Norfolk Association of Local Council – our Legal Structure

1 Background

In September 2020, the Association (ALC) was registered with the Financial Conduct Authority as a co-operative society (previously known as Industrial & Provident Society). I believe that this step was taken with the best of intentions because the persons who did this believed that this structure would encourage more participation by members.

It has been apparent for some time that this is not the optimum legal form for an Association such as Norfolk ALC. The Board has consulted with experts in the law and, as many of you know, one person in particular who has considerable experience over many years of dealing with different ALCs, including National and also with town and parish councils. This expert states very firmly that the Norfolk ALC should not have been set up as a Co-operative Society and this structure is quite unsuitable for its purpose.

This issue was raised at the AGM in October 2023, at which time members present said they wished to see more information before making any decision.

Some of the difficulties with the present Co-operative structure stem from the provisions written into the ALC's registration document which provides a set of guiding principles for how the ALC should act.

Any change to this registration document (copy available on request) or any proposal to change to a different legal form must be passed by a Special Resolution to be put to members with TWO month's notice. This meeting tonight is the start of the period of notice for a Special Resolution which we intend to bring forward.

2 Why is change needed?

Advantages of the Co-operative Structure:

- **Easy to form** – a minimum of ten members can form a co-op with little difficulty
- **Liability** of members (including those elected as Directors) is limited to £1: if there were to be any liabilities, the personal assets of members would be safe.
- **Stability** – as it is a separate legal identity, the co-op is not affected by the departure of any individual members

Disadvantages of the Co-operative Structure:

- **lack of efficiency** – due to the welfare motivation of a typical co-op, it is difficult to earn sufficient revenue to pay for professional staff and advisers. As a result, co-ops can struggle with insufficient resources.
- **participation** – members are meant to participate in important decisions. The reality is that the vast majority of members do not.
- **conflicts** – if there is a wide range of members, conflicts and disputes can arise as individuals may expect different things from the society
- **lack of privacy** – decisions are meant to be taken in a meeting with an open discussion which makes it hard to maintain confidentiality
- **privacy** – The Co-operative and Community Benefit Societies Act 2014 states that societies must have a member register available for inspection (**Section 103i**). Recently a member asked for our list of members and their addresses. We consider your data is too valuable to give out in this way.

- **Section 103ii** of the Act states that this requirement is subject to “*any regulations.... made by the society's general meeting*”. We believe that this requirement is superceded both by our own Rules of Association and by more recent legislation on data protection. We want to know what you think, so we intend to ask members at the AGM and hold a vote on this issue.

Restrictions within the Norfolk ALC Rules of Association (Registration document)

18. All Members agree to attend general meetings and take an active interest in the operation and development of the Co-operative and its business. Members have a duty to respect the confidential nature of the business decisions of the Co-operative.	Is this unrealistic?
19. <i>In accordance with the Co-operative Principle of education, training and information, the Co-operative shall provide potential Members with information about what the role of a Member is within the Co-operative and will provide training in the skills required to be a Member and to participate in the operation of the Co-operative.</i>	Is this relevant to our members?
20. <i>The Co-operative shall provide ongoing education and training in co-operative values and principles and associated topics.</i>	Is this relevant to our members?
17. <i>A corporate body which is a Member shall by resolution of its governing body appoint a representative who may during the continuance of her/his appointment be entitled to exercise all such rights and powers as the corporate body would exercise if it were an individual person. Each such corporate body Member shall supply notification in Writing to the Co-operative of its choice of representative.</i>	Is this a good idea?
40. <i>A Member is able to exercise the right to speak at a general meeting and is deemed to be in attendance when that Person is in a position to communicate to all those attending the meeting. The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it including by Electronic Means.</i>	This was recently challenged, but in fact is covered in our Rules.
96 <i>The Society may, by a special resolution passed in a way required by section 113 of the Act, amalgamate with, or transfer its engagements to, or convert to a company, subject to at least the same degree of restriction on the distribution of profits and assets as imposed on this Society by virtue of these Rules</i>	No other ALC is registered as a Co-operative Society.

In reality, it is quite unrealistic to expect that an Association such as ours can muster the resources to undertake some of these provisions. Some seem to be quite archaic and unsuited to our aims and purpose.

3 Alternatives to the Co-op structure:

	COMPARISON OF LEGAL STRUCTURES	UNINCORPORATED ASSOCIATION	MUTUAL SOCIETY – CO-OPERATIVE	COMPANY LIMITED BY GUARANTEE
1	Personal liability – limited liability for members?	No	Yes	Yes
2	Ownership	Members	Members	*Guarantors/members
3	Governance	Management committee	**Board of Directors	**Board of Directors
4	Profits	Not for profit – no dividends. Any surplus goes into the cause and the maintenance of the Association	Not for profit – no dividends. Any surplus goes into the cause and the maintenance of the Association	Not for profit – no dividends. Any surplus goes into the cause and the maintenance of the Association

The nearest equivalent and more suited to the aims and purposes of the ALC is the Company Limited by Guarantee. *This is also a not for profit entity, with liability of members and directors limited, usually to £1.

** The Board of Directors is usually elected from the membership for a fixed term, as at present. Their powers and responsibilities are defined within the Articles of Association.

The Company Limited by Guarantee would have its own governing rules within its Articles of Association. In that respect, converting to a Company Limited by Guarantee provides an opportunity to review and modernise the governing arrangements.

This is not an attempt by the Board to escape any of the responsibilities of acting as a Director of the Norfolk ALC. All commitments, including financial and other assets would be transferred to the new company, once formed. At that point, the Association would seek nominations for new Board members to represent the views of the membership.

This document is intended to provide the information that was requested at the AGM held in October 2023. We hope that it gives sufficient information to help us hold an honest debate about the best legal structure for this Association, bearing in mind that the majority of ALCs are already registered at Companies House as a Company Limited by Guarantee.

We have been advised by the legal expert on such matters, Roger Taylor, who writes:

“In our view a co-operative mutual model is totally the wrong model for the incorporation of a County Association which is a membership organisation and provides services to its members.

As you have discovered the requirements attached to a co-operative are cumbersome and we have considerable doubt as to whether the requirements and functions of a County Association meet the criteria for a mutual co-operative organisation. In no other County Organisation has this model been adopted.”

Notification of a Special Resolution to convert to a Company Limited by Guarantee will be given at the 2024 AGM on 4th December. This subject can be debated but not voted at this meeting due to the requirement to give two months notice before a vote.

A vote will be held on or near the 4th February 2025.