

## **FAQs on the recommendation to pursue a change of form of organisation to become a Cooperative Society.**

### **What legal form of organisation is our current set-up, Osney, St Thomas & New Botley Allotment Association?**

- We are currently an unincorporated association.
- This means that trustees represent the association legally; and they (or perhaps their families, after their death) are also legally liable for any claim against OSTNB-AA.
- Legal documents etc. have to be signed by trustees – the association itself doesn't have a legal identity.
- Following years of difficulty in finding individuals to be trustees it was decided a couple of years ago that the OSTNB-AA trustees would, going forward, be the Secretary, Treasurer and Committee Chair.

### **Why do we want to change our form of organisation?**

- The old 'trustee' structure is no longer considered sustainable or fit for purpose because of the legal risks trustees are exposed to.
- In today's world, where legal action against an association is more likely than it used to be, it is much harder to find people willing to stand to be trustees. Indeed, with families of trustees potentially legally liable after the death of the trustee him or herself, it seems frankly inadvisable to take on the role, and we do not want any individual or their family members to face such risks.
- Oxford City Council would like us to be an incorporated organisation so that they can deal with us as a legal entity – we would be able to enter into a lease as an association, not a group of individual trustees; OCC also don't want us to be at risk of legal action against individuals and their families, which could lead to a messy and damaging situation for the council too.

### **How have we approached finding out which would be the most appropriate form of organisation?**

- The committee delegated investigation of this question to the Secretary, who (through his role as co-chair of the Oxford & District Federation of Allotment Associations) has been looking at incorporation options for all the allotment associations across Oxford.
- Different options were investigated by ODFAA, including: Community Interest Company (CIC), Cooperative Society (Coop), Company Limited by Guarantee (CLG); Charitable Incorporation Organisation (CIO); Community Benefit Society (CBS). We also have thought about what we need – incorporation, which means that the organisation has the ability to act as a legal entity so that individuals do not bear the risk of being sued; simple, democratic structure and governance; straightforward regulation.
- ODFAA have consulted the National Allotment Society (NAS) to find out about their recommendations for legal structures.

### **Which legal structure are we recommending?**

- We are recommending the Cooperative Society (the former Industrial and Provident Society – updated by the 2014 Co-operative and Community Benefit Societies Act).
- The following description [blue text] is pasted from an FCA (Financial Conduct Authority) document available on its website:

## Cooperative society

Cooperative societies are formed primarily to benefit their own members, who will participate in the primary business of the society.

To satisfy us that it will be a bona fide cooperative, a society will normally have to fulfil the following conditions, the first four of which also reflect the International Cooperative Alliance's Statement on the Cooperative Identity:

- **Community of interest** - There should be a common economic, social or cultural need or interest among all members of the co-operative.
- **Conduct of business** - The business will be run for the mutual benefit of the members, so that the benefit members obtain will stem principally from their participation in the business. Participation may vary according to the nature of the business and may consist of:
  - buying from or selling to the society;
  - using the services or amenities provided by it; or
  - supplying services to carry out its business.
- **Control** - Control of the society lies with all members. It is exercised by them equally and should not be based, for example, on the amount of money each member has put into the society. In general, the principle of 'one member, one vote' should apply. Officers of the society should generally be elected by the members who may also vote to remove them from office.
- **Interest on share and loan capital** - Where part of the business capital is the common property of the co-operative, members should receive only limited compensation (if any) on any share or loan capital which they subscribe. Interest on share and loan capital must not be more than a rate necessary to obtain and retain enough capital to run the business. Section 2(3) of the 2014 Act states that a society may not be a bona fide co-operative if it carries on business with the object of making profits mainly for paying interest, dividends or bonuses on money invested with or lent to it, or to any other person.
- **Profits** - If the rules of the society allow profits to be distributed, they must be distributed among the members in line with those rules. Each member should receive an amount that reflects the extent to which they have traded with the society or taken part in its business. For example, in a retail trading society or an agricultural marketing society, profits might be distributed among members as a dividend or bonus on purchases from or sales to the society. In other societies (for example, social clubs) profits are not usually distributed among individual members but members benefit through cheaper prices or improvements in the amenities available.
- **Restriction on membership** - There should normally be open membership. This should not be restricted artificially to increase the value of the rights and interests of current members, but there may be grounds for restricting membership in certain circumstances, which do not offend co-operative principles. For example, the membership of a club might be limited by the size of its premises, or the membership of a self-build housing society by the number of houses that could be built on a particular site.

## Why should the Committee recommend the Cooperative Society structure to members at the next AGM?

- It is the legal structure recommended by NAS as most appropriate for an allotment society and, so long as the association takes on NAS membership, they are able to sponsor our application to the FCA, and offer support with setting one up.
- It is an incorporated form of organisation, so we would exist legally and have limited liability.
- It exists for the benefit of its members, and is regulated by the FCA, the Financial Conduct Authority.
- It fits our purpose and the way we want to be organised.
- Other structure options were rejected as follows:
  - Community Interest Company and Community Benefit Society – both these must be able to demonstrate that they operate for the benefit of the wider community, not just the membership. It is sometimes possible to demonstrate that allotments benefit their local communities, but it is difficult and open to challenge. We don't feel this accurately reflects what we are.
  - Charitable Incorporation Organisation – the regulation involved with charities is far too demanding and rigorous for our small organisation, and the benefits of charitable status not clear for our purposes. We would be disproportionately burdened by cumbersome regulation.
  - Company Limited by Guarantee – this model is a possibility, but the 'company' structure involves significant regulation as well as requirements for company directors. Accounts must be submitted annually, and regulation is by HMRC and Companies House. The personal details of directors are recorded as part of the registration. This structure seemed less appropriate than the Co-operative Society in terms of the identity of the organisation.

## Are there any disadvantages to the Cooperative Society model?

- Greater reporting requirements but these are the same format each year – so a bit of work at the beginning and less each further year.
- Coops failing to submit annual returns can be 'struck off', prosecuted and/or fined up to £1000.

## What is the cost of setting up a Cooperative Society?

- We will need to register the new lease (when signed) with the Land Registry – costing £40 whether we are a Coop or stay unincorporated (NOTE: Unincorporated Associations need to re-register their lease every time trustees/signatories change at £40 or whatever future cost is)
- The registration of the Cooperative Society is approved by the FCA. Registering would cost between £40 and £60 if we went down the route of NAS sponsorship.
- We would need to join NAS as an Association in order for them to sponsor us. This is £3 per member – with around 250 members we would be looking at around £750, but there would be no ongoing requirement to remain NAS members after the first year. (**Note:** *alternative sponsorship approaches are being investigated – with possibly lower costs involved*)

## If we agree to set up a Coop, how will the transition work? How long will it take, and what will happen to money and assets of the Association?

- An Annual General Meeting or Special General Meeting would have to agree to set up a Coop – a meeting open to all members.
- The FCA undertakes to register a new Coop within three weeks of application, if the paperwork is all in order.

- ODFAA suggests setting up the new organisation (OSTNB-AA Ltd.) in parallel to the old one. When the new Coop is registered, members would be able to join it. We envisage that this would happen at the next rent-taking in October 2019. Rent would be paid into the account of the new Coop.
- The old OSTNB-AA could continue to hold the current lease, but the financial assets could be transferred to the new organisation. When the old lease runs out in Sept 2021 it would be the new Coop that signs the lease. The old Association would then be wound up.

### **Where can I find out more about Co-operative Societies and their legal set-up?**

The FCA website has comprehensive information – here's the link:

<https://www.fca.org.uk/firms/registered-societies-introduction/co-operative-community-benefit-societies-act-2014>

### **Does this process have anything to do with the new lease?**

- In part. As almost all Oxford Allotment 21-year leases expire in September this year, ODFAA have been negotiating the new leases with OCC.
- As an unincorporated organisation (our current status) the lease would have to be signed by the Trustees and finding people to agree to be trustees has been problematic at times during the last couple of decades. Therefore the fact that the leases are being renewed is a good opportunity to address the issue of how we function as an organisation.
- With no Trustees we would simply be unable to sign a lease, and we would revert to being a direct let site, which would involve a very large rent rise, and which the Council doesn't want either. Or we would cease to exist as an allotment site.

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