

Village Halls and the Community Benefit Society A discussion paper

Introduction

Village halls are at the hearts of thousands of communities across rural England and Wales; loved and cared for by volunteers who take on financial and management responsibilities as trustees. Halls are held on charitable trusts and regulated by charity law under their registration with Charity Commission.

The ACRE Network has provided information advice and support for village halls since the 1930s and pioneered the model legal documents which set out their constitutional structure. The Trust Deed sometimes including a Lease, Articles of Association for village halls wanting to incorporate as a company limited by guarantee and more recently a model constitution for halls that decide to use the new Charitable Incorporated Organisation (CIO) structure. A few village halls have taken the Community Interest Company (CIC) structure.

In the current move towards social enterprise and social investment and away from reliance on grant funding ACRE needs to consider what legal structure would be appropriate for charitable village halls looking at alternative forms of fundraising and investment.

Loan finance is used by village halls for a range of capital projects but is limited. Hall trustees are often wary of taking on a long term debt on behalf of the community and of the personal liability as an unincorporated body. They could, of course, incorporate which would limit their liability.

Some village halls set up trading arms where they have a service or activity that generates income above the tax exemption threshold and the profits are then reinvested in the village hall.

An alternative form of finance may be a community share issue? It has been used by many community shops and pubs so why not village halls? Could a village hall raise capital for extension and refurbishment to their hall through a community share issue? What would be the financial benefit to investors or would holding a

share/interest in the hall be enough? Perhaps it is a more modern version of 'buy a brick' schemes?

Jonathan Dawson, Solicitor and author of the Charity Commission approved CIO constitution for a village hall, has provided us with this technical discussion paper that considers whether village halls could become a community benefit society (bencom), which would enable a community to raise finance through shares.

ACRE would like to hear from hall management committees; all organisations and individuals with an interest in village halls as well as from the ACRE Network. In particular, are there any other technical points that should be included in this discussion paper and what do you agree or disagree with? In general, should we continue to look at creating a model for a village hall as a bencom; is this the future for capital funding and regenerating interest in the hall? Are there other options? We look forward to hearing from you by 22nd June 2016.

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Contents

Background

- A. The ACRE model for village halls
- B. What is social enterprise?
- C. Legal structures for social enterprises
- D. Community Shares
- E. Can a village hall be a social enterprise?
- F. Is it a choice between being a charity and being a social enterprise?
- G. A village hall as a community benefit society
- H. Differences between a village hall which adopts the usual model and a village hall community benefit society
- I. Permanent endowment and designated land
- J. Should a village hall become a community benefit society?
- K. When might a traditional village hall become a community benefit society?

Analytical comparison of village hall models

Appendix A – Community Interest Companies

Appendix B – Withdrawable shares

Background

The aim of this paper is to review the ACRE model for a village hall in the light of the increasing interest in England and Wales in social enterprise and social investment funding. Social enterprise is a growing phenomenon in the voluntary and community sector and, although the idea of social enterprise is nothing new, the growth in the UK of organisations which have an altruistic view of how business should be run and financed is having a marked effect on the charity sector.

Although this paper has not been approved by the Charity Commission, it has been discussed with them. They supplied useful feedback which is reflected below with particular comments in footnotes 1 and 5. The principal issues raised by the Commission were the problems presented by village halls which have permanent endowment and/or land subject to specific trusts and the consequent complexity of a new social enterprise model for a village hall.

A. The ACRE model for village halls

Most village halls in England in Wales are unincorporated charitable trusts, many of whose governing documents follow the ACRE model. Such village halls are largely managed by representatives of the village hall users and, although charitable trusts do not have members as such (their only members are their charity trustees), the ACRE model recognises that people living in the area of benefit of a village hall should have an opportunity to vote on important issues facing the village hall, including the election of charity trustees, disposal of village hall land, the winding up of the charity and amending the governing document.

Some village halls are owned and managed by Parish Councils so the ACRE model rarely applies in these cases.

The ACRE model was originally developed for unincorporated trusts but it has been used as a basis for the preparation of model Articles of Association for a company limited by guarantee and a model constitution for a charitable incorporated organisation (CIO).

Throughout these developmental changes to the ACRE model three factors have not changed:

- village halls are charities (whether they are registered or not) because the model objects are accepted by the Charity Commission as being exclusively charitable;
- village halls are largely run by voluntary effort and;
- the predominance of grant funding in financing of a village hall.

Village hall income typically comprises fees arising from the hiring of the hall from hall users and local community events, although services such as community shops and post offices etc. are growing features of village halls. Parish Councils occasionally include an element of village hall funding in the council tax precept and can make grants to the village hall. The income is used to pay for the running and maintenance of the village hall, any surplus going into reserves. Larger projects such as building extensions or replacing the hall itself usually need to be funded by grants or from statutory bodies, hall surpluses normally being insufficient either to accumulate sufficient reserves or repay significant borrowing. Larger

projects such as building extensions or replacing the hall itself are usually funded by grants or from statutory bodies, donations, fundraising events and in some cases loans.

Benefits of charity status

In general, the benefits of charitable status are financial (tax relief on rates and zero rating on new build, although the biggest problem for village halls is VAT) and reputational: the general public has a strong belief that the work carried out by charities benefits society.

The restrictions of charitable status

The corollary of the benefit of charity status for village halls is that they are governed by charity law and subject to monitoring by the Charity Commission. The main restrictions for charities are:

- **Asset lock and non-distribution:** all the assets and income of a charity must be retained by the charity; none of the assets or income may be distributed to members or charity trustees; disposals of land are subject to regulation by charity law and, in the case of most village halls, require the approval of people living in the area of benefit.
- **Permanent endowment:** in addition to the asset lock, a charity's governing document may specify that the charity's capital and/or assets (and income arising thereon) must be used solely to promote its charitable purposes - this is permanent endowment (PE) which can include land and investments.
- **Designated land:** a charity's governing document may specify that the land occupied by the charity must be used only to promote the charity's purposes, and also place restrictions on the charity's power to dispose of such assets –this is designated land (DL).
- **No remuneration of charity trustees for their services as charity trustee:**
 - The concept of unpaid trusteeship has been one of the defining characteristics of the charitable sector, contributing greatly to public confidence in charities.
 - A charity trustee may only be paid for serving as a trustee where this is clearly in the interests of the charity and provides a significant and clear advantage over all other options. There is no general power in law for this type of payment - a charity would need a specific authority which may be found in its governing document, or be provided by the Commission, or, more rarely, the Courts.
 - There are a few charities whose governing document allows charity trustees to be remunerated as charity trustees and this is allowed by the Charity Commission but usually charity trustees may only be paid for additional, specific services to the charity and restrictions apply in this case as well.
- Employees of the charity are not permitted to be charity trustees unless sanctioned by its governing document or the Charity Commission.
- Charity Commission filing requirements re charity trustees and, if appropriate, accounts.

- Restriction on non-charitable trading, including sale or supply of alcohol.

B. What is social enterprise?

There is no generally accepted definition of social enterprise.

According to [Social Enterprise UK](#), a social enterprise is “a business that trades for a social and/or environmental purpose. It will have a clear sense of its ‘social mission’, which means it will know what difference it is trying to make, who it aims to help, and how it plans to do it. It will bring in most or all of its income through selling goods or services. And it will also have clear rules about what it does with its profits, reinvesting these to further the ‘social mission’”.

Social Enterprise UK states “A social enterprise is a business that trades to tackle social problems, improve communities, people’s life chances, or the environment. This might sound like charity work, but social enterprises are businesses. They make and do things that earn money and make profits like any business. It is how they work and what they do with their profit that is different: working to make a bigger difference, reinvesting the profits they make to do more good. They do this in lots of different ways: creating jobs for people who would otherwise be left out; reinvesting profits in community projects; protecting the environment, providing vital services for people who might not get them otherwise. It’s this combination of doing business and doing good that makes social enterprise one of the most exciting and fast-growing movements in this country and across the world.”

Actually, when you think about it, many charities are businesses, working to ‘make a bigger difference’, ‘protecting the environment, providing vital services for people who might not get them otherwise’ and will use any surpluses to further their charitable objectives.

Is there a difference between a charity and a social enterprise?

While a social enterprise may not be a charity, it is possible for a charity to fall within the definition of a social enterprise.

The principal difference between a social enterprise and a charity lies in the way in which a social enterprise is funded and the rewards available to its managers. Many social enterprises seek to attract social entrepreneurs and social investors to provide finance, be it equity or loan finance, although this is not the only source of funding. Notwithstanding lack of charity status, social enterprises seek grants and grant-making bodies are increasingly prepared to make grants to them.

Social enterprise funding

Many social enterprises will want to attract people and organisations to invest with perhaps a greater concern for the ‘social mission’ than for a competitive financial return on their investment. However, many social enterprise investors will want their capital repaid, whatever the financial return on their investment. A social enterprise can seek loans (there is nothing new or specific in that) but it can also seek equity finance. Equity finance is, essentially, share capital, i.e. the money paid for a share or shares in a social enterprise. Share capital is a long-term solution to raising finance for new enterprises.

Rewards for managers

The persons having the general control and management of the administration of the social enterprise may pay themselves for the work they do. A charity may only pay its charity trustees with Charity Commission consent.

A social enterprise which distributes surpluses to shareholders cannot be a charity. As a result, none of the restraints of charity status apply.

C. Legal structures for social enterprises

These are many and varied.

Company limited by shares

The company model is suited in many ways to social enterprise, indeed a community interest company (CIC) is a social enterprise vehicle. There are no restrictions on the number of shares that may be issued by a company (see Society below) but, unless it is a public company seeking a listing on a regulated share dealing market, a company may not offer shares to the public by open invitation.

Private companies issue shares to their managers and to individuals and companies who have an association with the company.

Shares issued by a private company cannot be sold in the open market in the same way as shares of companies listed on the Stock Exchange: there is no market as such for the shares. Thus, shares can only be sold to someone known to the shareholder or company: even then, the share price will be set by agreement between the shareholder and the purchaser. Shares issued by a private company are highly speculative. The voting strength of shareholders is dependent on the number (and sometimes, class) of shares held.

Shareholders can only realise the value of their shares by selling them. If the sale price exceeds the nominal value of the shares (e.g. ordinary shares of a nominal sum of £1 each) the shareholder will, in effect and putting it very simply, receive back the capital it paid for those shares. Otherwise, short of selling the shares, that capital will only be repaid to the shareholder on a solvent winding-up of the company. Contrast this with withdrawable community shares (below).

A CIC can be a company limited by shares or a company limited by guarantee. Appendix A gives detailed information on the community interest company models (CIC).

Registered Society (formerly Industrial and Provident Society)

Industrial and provident societies are now known simply as registered societies. There are two types of society: the co-operative society and the community benefit society. This paper is only concerned with the community benefit society ("bencom").

A bencom, like a company, can issue shares. It is not suitable for investors who wish to provide major equity finance as regulations limit any individual investment to £100,000 but it can issue a particular type of shares known as **community shares**.

D. Community shares

ACRE has a Topic Sheet¹ on Community Shares in relation to social enterprises identified in a Community Led Plan. It gives a brief overview of Community Shares in the context of community-led enterprises such as shops, pubs, community buildings, local food schemes, football clubs and renewable energy initiatives. However, its focus is that of an alternative, supplementary model to a charitable organisation.

As stated in that Topic Sheet:

- Community shares are a way of raising investment capital from communities. Local people are encouraged to buy shares in the enterprise and become part-owners. As shareholders they are more likely to do everything they can to ensure the success of the business by becoming loyal customers, volunteers and supporters of the enterprise.
- Community shares are non-speculative and democratic (unlike shares of a private company). Community benefit registered societies are democratic organisations that work to the principle of one-member-one-vote, rather than the principle of one-share-one-vote enshrined in company law.

Community shares can be withdrawable shares.

Registered societies can use a unique form of share capital called **withdrawable community shares**, which allow members to withdraw some or all of their capital when they need it back. Contrast this with shares issued by a private company.

It must be said, however, that the right of society shareholders to call for the repayment of their capital may never be capable of exercise. This is because the rules of the society will make such right subject to terms and conditions. Most registered societies have the power to suspend withdrawals until they are affordable, which usually means only when the enterprise is profitable. For example, the rules may specify that the right may only be exercised once the society's profits exceed a proportion of its share capital. If it makes no profit or its profits fail to achieve that percentage, no repayment of capital can be made.

See **Appendix B** for detailed information on withdrawable shares.

E. Can a village hall be a social enterprise?

The answer is YES but, technically, a social enterprise which:

- (a) Issues shares to investors,
- (b) pays dividends on such shares,
- (c) whose rules provide for the assets of the society to be distributed to its shareholders on a solvent winding-up, and/or
- (d) takes loans from investors and pays interest on such loans **will not be a charity.**

¹ Community Led Planning Toolkit: Community Shares @ACRE 2006-2012

F. So is it a choice between being a charity and being a social enterprise?

Not necessarily, but a village hall that wants the benefits of being a charity yet also be a social enterprise must ensure that its constitutional structure falls within the limits of charity law and, if it issues community shares and/or pays interest on loans, keeps within the limits on returns to investors agreed by the Charity Commission as not affecting charity status.

G. The village hall as a community benefit society (bencom)

A bencom village hall, by adopting suitable rules, can be a democratic organisation owned by local people. Subject to the comments below, a bencom village hall that does not issue withdrawable shares can also be a charity recognised as such by HMRC and by the Charity Commission and there is no reason why it should not adopt the ACRE model objects wording. It could include within its objects such other purposes as those seeking to set it up have identified via a village survey or similar and, provided such purposes are exclusively charitable, it will be a charity. Note that charitable registered societies are, at the present time, exempt from registration with the Charity Commission. This situation is likely to change, the only issue is when.

The usual arrangement will be to ask residents in the area of benefit to become members: the usual subscription would be £1 although this can be a larger sum if necessary and achievable within the locality. One would hope that, say; a few hundred local residents would apply to become members.

If the bencom village hall needs to raise a large amount of equity finance then it might consider making a public offering of community shares. The maximum that an individual member may subscribe for is £100,000. The bencom would hope that dozens, if not hundreds, of local people would subscribe at the level proposed by the public offering document. In these circumstances, it could still be a charity.

Bencoms are not regulated by the Financial Services Management Act 2000. This means that any open public offering of withdrawable shares is not regulated by the Financial Conduct Authority (FCA), formerly the Financial Services Authority. This does not mean that those preparing the offer document can be cavalier with the facts or their plans for the bencom or make misleading statements, but the costs of producing such offer document will be vastly less than would be the case for a public company offer of shares.

Distinguishing features of a charitable village hall social enterprise issuing community shares

- Public share offering not regulated by the FCA or subject to public share offer regulations.
- Local residents (who subscribe) have a different (some may say greater) degree of 'ownership' of the village hall beyond the usual model of trusteeship.
- There must be at least 20 shareholders having such 'ownership' – a larger number of local people than is the case in many traditional village halls.
- People are motivated to buy community shares because they identify with and want to support the community purpose of the village hall: financial rewards of share ownership are (or should be) secondary to the community purpose.
- The rules must include an asset lock.

- Community shares may help to bind a community in to the village hall; this buy-in is something which can galvanize support from a community in a way that cannot be achieved through the traditional village hall model.

Will the payment of dividends or interest on community shares put the charity status at risk?

Not necessarily.

Interest on community shares

A charitable village hall bencom can pay interest to members on the share capital they hold in the bencom. However, the interest rate should be “no more than is necessary to attract and retain the investment”. The FCA, which oversees this requirement, does not provide guidance on precisely what this means. It could be interpreted as meaning that higher risk schemes are free to offer higher rates of return.² Some bencoms only set their interest rates after the year end, when it is known how much profit has been made, and what can be afforded by the bencom, along with its other priorities for reinvestment and spending on its social objectives. However, if a bencom wants to be a charity and be able to attract grant funding, it should set the interest rate (and cap) at the outset in its constitution.

Interest on share capital should be seen as fair and reasonable compensation for the risks members are taking when they invest in the society. These risks are far greater than those associated with savings accounts that are protected by the government’s Financial Services Compensation Scheme. Therefore, a reasonable interest rate might arguably be above the interest rates on savings accounts, but below the interest rates payable on commercial debt.

Dividends

The Charity Commission considers that a power to distribute profits is fundamentally incompatible with charitable status. This is because a power of a corporate body to apply its property and assets for the purpose of making profits and devoting the resulting profit to the distribution of dividends among the members is considered by the courts to be incompatible with charitable status.

Charity status: the Charity Commission’s current position is as follows:

“Some registered societies are set up as co-operatives, which cannot be charities, but others are set up as community benefit registered societies, which can be charities in certain circumstances. The activities of charitable registered societies include such things as redevelopment, regeneration and housing projects.

Some registered societies for the benefit of the community receive tax benefits as charities³ but have the power to pay interest on share capital. While the rules of registered societies often make a distinction between interest and dividends, they also indicate in many cases that the payment of interest is out of profits and so is clearly a distribution of profits.

² If the bencom is charitable, the rate of return has to be consistent with condition 1 on the next page, i.e. set at a level which is not in itself a motivation to buy shares. Offering a higher rate of return because of risk would be considered by the Charity Commission to be a motivation to buy shares.

³ No information is given as to why they receive tax benefits – see the HMRC position recorded overleaf

We have looked at the legal framework in this area and discussed it with the FCA and HMRC. **We are now satisfied that there are circumstances in which limited payments of interest may be made, which would not amount to a distribution of profits.**

The Commission's position is that a power of a community benefit society to pay interest on shares is not incompatible with charitable status, provided that the following conditions are required by the society's rules:

1. The interest rate is set at a level which is not in itself a motivation to buy shares and which the charity trustees can justify as being in the interests of the charity by reference to available commercial rates for borrowing.
2. The cost is part of the society's revenue expenses and met before the surplus is determined.
3. The rates are declared **in advance** of the period for which they will become payable, just as for a bank or building society account, and never retrospectively.
4. There is a power to suspend interest payments in the interests of the society.
5. There is a power of the society to withhold repayment of the shares, either temporarily or indefinitely and to write the value down below the nominal £1.
6. The shareholding does not confer any rights to the underlying assets of the society.
7. In the event of a solvent dissolution, shareholders cannot be paid more than the nominal value of their shares.

The Commission will continue to discuss the issue with the FCA, HMRC, DCLG and representatives of other Government departments and organisations affected"

The legal position of registered societies is under review by the Government but apparently nothing is on the horizon.

Tax exemptions or reliefs

HMRC say that registered societies registered under the Co-operative and Community Benefit Societies Act 2014 are bodies corporate. Registered societies are therefore companies for tax purposes and are liable to Corporation Tax. However, provided the village hall bencom satisfies HMRC's 4 tests for charity status, all the usual tax exemptions and reliefs will be available to it.

HMRC's tests are that the bencom:

1. Is established for charitable purposes only.
2. Meets the jurisdiction condition (established in the UK).
3. Meets the registration condition (registration with the FCA).
4. Meets the management condition (fit and proper persons test - the propriety of the persons who have control and management of the organisation).

H. What are the main differences between a village hall which adopts the usual model and a village hall bencom?

- Whereas the usual village hall model allows governance by a mix of people elected at the AGM and appointed by user bodies⁴, a village hall bencom will be governed by people elected by its shareholders, i.e. user bodies will cease to have any control as such, although individual members of a user body could be shareholders.
- AGMs of the bencom will probably not be open to the public: they can be open to the public but non-members are unlikely to be allowed by the members to have a say in how the village hall is run. Of course, anyone living in the area of benefit, who wants a say in how the bencom is run, can purchase one or more shares, but this is a major departure from the ACRE model.
- Although much of the Charities Act applies to a bencom, the restrictions on disposing and mortgaging of land do not. Thus, a new village hall set up as a bencom is free to dispose and mortgage its land as it wishes (of course, its directors must act in the best interests of the bencom in doing so) and public approval is not required.

I. Can an existing village hall become a bencom?

It is possible for an existing village hall to become a bencom, but not always.

Village halls with Permanent Endowment (PE) and Designated Land (DL)

The existence of PE and/or DL will prevent this if the incorporation process is not structured correctly (see the italicised paragraph below). The transfer by an existing village hall of PE and/or DL to a corporate body (other than a CIO) will constitute a breach of trust by the village hall's charity trustees.⁵ Although a corporate body may hold property (and other assets) subject to specific trusts, there is no legal authority to support the notion that PE or DL held by a corporate body cannot be used to pay creditors in the event of an insolvent winding up of that body.

To put this another way and to avoid the double negative, a corporate body (but not a CIO) holding title to PE and/or DL (notwithstanding this should not have happened) will hold such assets subject to specific trusts but, if it becomes insolvent, one or more creditors may be able to force the disposal of such assets.

An existing village hall with PE and/or DL must not transfer any of such assets to the bencom. Instead, the village hall charity trustees must, as part of the incorporation process:

- (i) ensure that the bencom's rules empower the bencom-*
 - (a) to act as trustees or managers of any property, endowment, legacy, bequest or gift for charitable purposes only, and*
 - (b) to undertake and execute any charitable trusts which may lawfully be undertaken by the bencom and may be necessary to the objects*
- (ii) appoint the bencom to be sole charity trustee of the village hall charity*

⁴ This traditional model is rejected by a growing number of village halls due to a decline in user bodies having an interest in governance and in people willing to come forward to act as trustees from user bodies

⁵ No account has been taken of sections 267 and 268 of the 2011 Act which might apply to some village halls. This requires separate consideration.

(iii) *apply to the Charity Commission to have the PE and/or DL vested in the Official Custodian for Charities,⁶ and*

(iv) *ask the Charity Commission to make a uniting order whereby the village hall charity will be united with the bencom for reporting and accounting purposes.*

Failure to do this will result in the PE and/or DL (and the trusts applying) being put at risk.

If a bencom issues community shares, the issue price will, among other factors, reflect the bencom's asset base. Where PE and/or DL is involved, the value of each community share must not include any value attaching to the PE and/or DL.

The apparent complexity of all this should, I believe, cause one to pause before advocating the bencom model for an existing village hall.

Village Halls without Permanent Endowment (PE) and Designated Land (DL)

An existing village hall with no PE or DL may incorporate as a bencom provided Charity Commission guidance is followed. The existing village hall must ensure that the bencom is a charity because a transfer of the village hall's assets to a society that is not a charity will constitute a breach of trust by the charity trustees.

An existing village hall can incorporate itself as a bencom provided the bencom conforms to the 7 conditions for charity status prescribed by the Charity Commission, listed in section G. If any one of these features is absent from the bencom's rules a transfer of village hall assets to it will be in breach of trust.

J. Should a village hall become a bencom?

This is a tricky question because since the 1930's, the ACRE model has not changed in a substantive way. The message to new village hall committees is that the ACRE model should be followed with few changes made. How do ACRE and the Network of Hall Advisers respond to the social enterprise and social investment agenda which is venturing beyond community owned pubs and shops. If we say that it is a matter of 'horses for courses' and provide objective advice on the options which, as advisers we give to the community to decide which model or way forward to adopt, will the current ACRE model be devalued?

This must be considered for both an existing village hall and a new village hall (where there has been no village hall before).

Existing village hall

A village hall must be sustainable: its income must at least cover expenses; ideally a surplus should be made to enable a reserve to be established. Most village halls scrape along, barely covering expenses. Consideration of change usually only arise when a village hall requires major funds for a rebuild of the hall. If grants (or loan via the Parish Council) are available, all well and good: the village hall can stay as it is.

⁶ The Charity Commission said that it sees no reason why the DL cannot be vested in the bencom to hold as trustee on the specific trusts and not as corporate trustee. I believe they are wrong to say this for the reasons explained in section I. They did not refer to PE because PE must never be transferred to a bencom under any circumstances.

If an existing village hall wishes to consider the bencom model with community shares it must decide at the outset what it wants to achieve and, more importantly, design the project so that the outcome will be viability, i.e. the project and the business plan are predicated on future surpluses. Surpluses not simply to cover expenses and provide reserves, but of a scale that will attract equity investment.

Social enterprise investors will range from those who are motivated by benevolence and philanthropy to those who want a dividend on their investment. How likely is it that a community share issue will succeed if the village hall cannot guarantee dividends on investments?

Other issues that must be considered before ACRE commits to providing a bencom model constitution for an existing village hall:

- The complexity issue discussed above
- Possible division in the community between shareholders and non-shareholders
- PE and DL: (a) is the bencom correctly set up in order to hold PE and/or DL on the same trusts, (b) what happens about public approval of a disposal of DL?

Designated land (DL)

Under s.29 of the Co-operative and Community Benefit Societies Act 2014, the Treasury may by regulation make provision for enabling any bencom, or any bencom of a prescribed kind, to ensure that assets of the bencom of a prescribed kind or all of the bencom's assets may only be used or dealt with where the use or dealing is, directly or indirectly:

- (i) for a purpose that is for the benefit of the community and is of a prescribed kind, or
- (ii) if no kinds of purpose are prescribed, for any purpose that is for the benefit of the community, or

The assets concerned will be known as "dedicated assets" for this purpose. When such regulations are made, they will go some way in covering this issue.

No such regulations have been made at this date, so this paper (and ACRE's advice) must follow the current legal position (see section I).

Whether or not ACRE commits to providing a bencom model constitution for an existing village hall, it should provide advice to charity trustees on the issues presented by the village hall holding PE and/or DL (as is usually the case for village halls).

An existing village hall wanting to become a bencom must work through the incorporation process and transfer all of its assets to the bencom once it has been registered by the FCA. For further information on the transfer refer to ACRE's Information Sheet 39: Village Halls and Incorporation. However, if the village hall holds PE and/or DL, the charity trustees cannot transfer it or them to the bencom (subject to sections 267 and 268 of the 2011 Act): a charity can only transfer PE and/or to a CIO which has a statutory power to hold the same on the original trusts (provided the correct procedure is followed),

Unless or until new legislation is in place (subject to sections 267 and 268 of the 2011 Act), or the Charity Commission rule otherwise, it is doubtful whether a bencom can hold PE or DL on the original trusts applying to them. In these circumstances, the only way to proceed

is to retain the unincorporated village hall charity and for the bencom to be appointed its sole trustee. This is the process where a village hall uses the company limited by guarantee model.

New village hall

The same issues as above (other than the paragraphs under DL but including the possible regulations under s.29) apply but the village hall will be starting from scratch and can, if its charity trustees decide, acquire land and other assets to be held otherwise than as DL or PE.

If the new village hall will not have PE or DL, the bencom is free to dispose of any part of its assets without needing anyone's permission (apart from its shareholders if the rules so provide).

K. When might a traditional village hall become a bencom?

- To raise funds for rebuilding or major refurbishment of the hall
- and
- to regenerate interest in the hall.

Analytical comparison of village hall models

Issue	Unincorporated Trust	CIO	Bencom	CIC	Company limited by guarantee
Charitable?	Yes	Yes	Possible	No	Yes, if the Articles of Association are purely charitable
Regulator and applicable law	Charity Commission Charity law Trust law	Single regulator: the Charity Commission only and only charity law applies	FCA but registration with the Charity Commission is under review	Registrar of Companies Company law	Charity Commission (charity law) Registrar of Companies (company law)
Disposal of land	Must comply with ss.117 to 119 of Charities Act 2011	Must comply with ss.117 to 119 of Charities Act 2011	ss.117 to 119 of Charities Act 2011 do not apply	N/A	Must comply with ss.117 to 119 of Charities Act 2011
Permanent endowment	Must be retained by the unincorporated charity, unless permitted by the trusts or by the Charity Commission	Must be retained by the CIO, unless permitted by the trusts attaching thereto or by the Charity Commission	Cannot hold PE in its own right – it can only act as the trustee of the original trusts applying	N/A	Cannot hold PE in its own right – it can only act as the trustee of the original trusts applying
Designated land	Village hall must obtain public approval for any disposal. s.121 of Charities Act applies, requiring public notice and opportunity to comment.	The current ACRE model does not require the charity trustees to obtain public approval for any disposal, but it would be advisable given s.121 of Charities Act applies.	Cannot hold DL in its own right – it can only act as the trustee of the original trusts applying. The rules need not require public approval of any disposal of any other asset	N/A	Cannot hold DL in its own right – it can only act as the trustee of the original trusts applying. The rules need not require public approval of any disposal of any other asset
Familiarity	Well known and understood	CIO is new and unfamiliar – banks and other institutions may have initial problems dealing with a CIO	Well known but not in relation to a village hall	Well known	Well known
Flexibility of creating governing document	Some but usually only in relation to the make-up of the management committee	ACRE model constitution based on the Charity Commission model so changes must be kept to the minimum	Depends on the sponsoring body's model used	Subject to the inclusion of specific 'community interest' clauses, great flexibility	Great flexibility within charity law limits
Changing the constitution	Either use express power in trust deed or s.280	In accordance with the constitution: changes to constitution are effective only when registered by the Charity Commission	Depends on the sponsoring body's model used	Easy in accordance with company law	Easy in accordance with company law but within charity law limits

Regulator fees	None	None	Set up costs and annual fees, which keeps registration up to date and covers the cost of: filing annual return registering changes and any other documents; other services (for example, answering queries and maintaining the public register)	Yes – Companies House	Yes – Companies House
Fines for late filing with regulator	Failure to do so is a criminal offence under s.173 of the 2011 Act and subject to a fine. The Charity Commission does not currently have power to fine charity trustees.	Failure to do so is a criminal offence under s.173 of the 2011 Act and subject to a fine. The Charity Commission does not currently have power to fine charity trustees	Failure to do so is a criminal offence under s.173 of the 2011 Act and subject to a fine. The Charity Commission does not currently have power to fine charity trustees	Yes	Yes
Accounting requirements	Charity Commission requirements	CIO whose annual income is under £250,000 may choose to use the simpler receipts and payments basis	FCA	Company law requirements	Company law requirements
Duties of directors or charity trustees	Charity law	Charity law	Charity law	Company law	Company law and charity law
Privacy of members or charity trustees	Only trustee names are public	Only the register of charity trustees is open to public scrutiny		None	None

Appendix A

Community Interest Company (CIC)

Although a CIC cannot be a charity, many grant makers, including some charitable bodies, are willing to consider making grants to CICs. Why? Because:

- its objects and activities must pass a 'community interest' test
- its governing document must include an asset lock, i.e.-
 - the assets of the company must be used solely for the objects or transferred to another asset-locked company
 - the assets may be transferred only at full market value unless transferred to another asset-locked organisation
 - assets cannot be returned to the members except in limited circumstances
 - dividends can be paid but there must be a dividend cap (set by the Regulator)
 - interest can be paid but there must be a similar interest cap on loans and other debts

A CIC can raise capital by issuing shares and can issue debentures (subject to the above-mentioned interest cap).

The problems with the CIC model are-

- no access to grant aiders that make funds available only to charities
- no exemption from income tax or corporation tax on profits or surpluses and no relief from capital gains tax on the gains from the sale of assets
- legacies to a CIC will not be exempt from inheritance tax and gifts of assets to a charity will be subject to capital gains tax
- gift aid will not apply to donations made to a CIC
- no right to the mandatory 80% business rate relief on property used wholly or mainly for charity purposes or the possibility of up to 20% further discretionary relief.

Appendix B

Extract from *The practitioners' guide to community shares* Jim Brown, Baker Brown Associates

Withdrawable shares are wholly unlike transferable shares in companies, which are traded at speculative prices and are subject to the controlling interests of a majority shareholder. Withdrawable shares solve a major problem associated with having a relatively large number of shareholders in a small enterprise. Small enterprises with a capital value of less than £5m, are usually owned by one or two people, or a handful of family members and friends. It is very rare for companies of this size to have more than ten shareholders.

Small enterprises structured as private companies, including community interest companies, can issue a form of equity known as transferable shares. These shares can be traded between buyers and sellers at a mutually agreed price. Most small private enterprises are owned by a handful of people who might sell their shares to each other or to a third party. But most third parties will want to buy the whole business, which means that at least three-quarters of the shareholders must agree to the sale. The sale of minority stakes in private businesses to third parties very rarely happens.

Larger companies, including many public limited companies, are listed on stock exchanges, which facilitate the trade in shares and enable companies to have many small shareholders. The smallest businesses listed on stock markets have a minimum capital value of between £5m and £10m. The problem with owning transferable shares in a community enterprise is the lack of any market for such shares.

Buying shares in a community enterprise that needs the capital to get started, provides the investor with a clear social motive. But buying those same shares from an existing shareholder only helps that shareholder get their money back; it does nothing for the community enterprise; there is no social motive. Of course, it might be possible for the community enterprise to create a financial motive, by offering attractive dividends on the shares, but this starts to defeat the original purpose of the enterprise, which is social, not financial.

Withdrawable share capital solves the problem of transferability by allowing shareholders to withdraw their capital instead, subject to the terms and conditions laid down by the society. These terms and conditions are designed to protect the interests of the society at the same time as not being so onerous that they will put off potential investors. Typically these terms and conditions include:

- A minimum period of notice of the intention to withdraw capital. This may range from one week to one year, but is more typically between one and three months.
- There may be limits on the amount of share capital that can be withdrawn in one financial year, on a first-come-first-served basis. Typically these limits are about 10% of total share capital.

- Most registered societies will have a rule granting the directors the discretion to suspend withdrawals if in their opinion withdrawal might seriously weaken the financial security of the registered society.

Some new start-ups suspend all withdrawals for an initial period, typically up to three to five years, to enable the registered society to establish the business and build up the reserves to meet withdrawals.

Withdrawable shares do not usually change in value. Some registered societies have rules that allow withdrawable shares to go down in value if the net asset value of the society drops below the value of the share capital issued. Withdrawable shares cannot go up in value. This means the only financial incentive for owning withdrawable shares comes in the form of interest and/or dividend payments.

Making provisions for withdrawals

Although withdrawable shares solve the exit route problem for investors, they can also create a new problem of liquidity for registered societies. Registered societies must make provision for withdrawals in the longer term. There are three main ways to do this:

- Make and retain profits as cash reserves in the society, earmarked for meeting future withdrawals of shares.
- Attract new investment from existing members and recruit new members who can also invest.
- Pay interest and dividends into members' share accounts, thereby increasing members' shareholdings