

Clarification on distribution of surplus assets of a registered society on solvent winding up

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Friendly societies, along with other mutual societies, are registered with and regulated by the Financial Conduct Authority under the Co-operative and Community Benefit Societies Act 2014 (the Act). By section 123(1) of the Act, a society may be dissolved by "being wound up in pursuance of an order or resolution made as is directed in the case of companies." Section 123(2) provides that the provisions relating to the winding up of companies have effect in relation to a society as if the society were a company save that any reference to the registrar of companies is to be read as a reference to the Financial Conduct Authority.

Questions arose in the matter of *Watford Printers Limited* (in liquidation) (judgment dated 22 February 2018) as to the application of this provision and the Insolvency Act 1986 to a friendly society. Watford Printers Limited (the Society) was registered as a friendly society following the establishment of a workers' cooperative in 1921 to buy and operate printing machinery. The members of the Society were the workers (or former workers) of the printing business and their spouses. Membership was attained by purchasing at least five shares of £1.00 each.

The conduct of the Society was governed by its rules, which were registered on the Mutual Public Register. The need for clarification of distribution of surplus assets arose because there was no rule expressly covering distribution of surplus assets at the end of the life of the Society. Certain rules made it clear that the Society did not operate in the same way as a company. For example, irrespective of the number of shares held by a member of the Society, in any meeting, each member held only one vote.

In the absence of guidance in the rules of the Society, legal precedent, or unanimity among the members as to the method of distribution, the liquidator sought direction from the court. More specifically the court was asked, *inter alia*, whether the distribution should be made (a) in accordance with the number of shares held at the date of liquidation (the formula familiar to all involved in winding up companies); or (b) on the basis that every shareholder should receive the same capital distribution irrespective of the number of shares held after repaying the amount of capital showing as the nominal value for each member.

There is some support for the latter formulation in a) section 2(3) of the Act: a society will not be eligible for registration if it carries on business with the object of making profits mainly for the payment of interest, dividends or bonuses on money invested or deposited with the society; (b) the fact that during the lifetime of the Society, distributions were never made by reference to the profits or net asset value of the Society and, if a member left the Society, only the capital showing as their nominal value was returned; and (c) in guidance issued by the Financial Conduct Authority in November 2015.

The relevant provision of the Insolvency Act 1986 applicable by virtue of section 123 of the Act is section 107 Insolvency Act 1986 which provides:

"...the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the articles otherwise provide) be

distributed among members according to their rights and interests in the company."

The question for the court was what were the rights and interests of the members of the Society.

Chief Registrar Briggs applied the reasoning of Lord Sumption in *Bailey and another v Angove's PTY Limited* [2016] UKSC 47 at para 25: "The statutory rules for the distribution of insolvent estates represent an important public policy designed to achieve a pro rata distribution of the company's estate between its creditors."

The Chief Registrar held that the same rationale applies to a solvent winding up in the absence of some positive provision in the rules of the society to exclude it. The surplus assets of the Society are therefore to be distributed by the liquidator in accordance with section 107 of the Insolvency Act 1986 proportionately to the number of shares held by the respective shareholders.

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