



# Transfer of Engagements

## Briefing note

### Background

The Board of The Phone Co-op (TPC) is recommending to its members that the Society transfers its engagements to Midcounties. This document serves to provide some guidance on what a transfer of engagements is and the role of the members within it.

### What is a Transfer of Engagements?

TPC is registered as a society, under the Co-operative and Community Benefit Societies Act 2014 (the "Act"). This Act that governs how TPC operates provides for a unique way for societies to come together, not available to other legal forms such as companies. The society legal form allows for the continuity of the business and contractual arrangements without the need to stop, renegotiate everything and start again, making it a seamless process. A transfer of engagements is not an amalgamation nor is it a form of selling the business and its operations to another organisation.

The 'engagements' referred to means all business undertakings and includes all assets and liabilities. The engagements are not transferred in return for consideration, rather the accepting society issues shares to the members of the transferring society at the rate of one share for each share already held.

By agreeing to a Transfer of Engagements Midcounties is agreeing to fulfil all of the 'engagements' of TPC.

Co-operative societies have been doing transfers of engagements for decades as a way of ensuring the strength and continuity of the co-operative movement. When a small society is struggling or wants to grow, the transfer to a larger society means it can continue and flourish as a co-operative presence in its local area while at the same time benefitting from increased resources. In the case of TPC the transfer proposal has not come because it is struggling but rather to enable it to adapt its operations to meet the needs of a changing market and benefit from the scale and scope offered by working as part of Midcounties. A transfer of engagements between co-operative societies also ensures continuity of operating as a co-operative business owned by and for the benefit of its members following the International Cooperative Alliance Co-operative Values and Principles.

## **Who makes the decision?**

A transfer of engagements is an arrangement between two co-operative societies, so both societies have to agree to the transfer. The Act limits the power of the Board of the society proposing the transfer in this regard and does not permit it alone to make the decision to transfer, this provides an important protection for members.

TPC must present the decision to its members. Those members, having considered all the facts, decide whether to transfer or not. At the first meeting a special resolution is put to the members - a special resolution is one passed by two thirds of members present at the meeting voting in favour (this includes those present using electronic means). If members vote in favour then it is confirmed at a second meeting held no less than 14 days later, which requires over half of the members present to vote in favour. This Special General Meeting of TPC is the first meeting of the two described above.

The process for Midcounties is slightly different to that of TPC. It decides whether to accept the transfer by way of a simple resolution of its Board of Directors. This resolution was passed on 23 March 2018.

## **Factors that should be taken into account when making a decision.**

TPC Board has considered all the business and financial decisions, before proposing to the membership that it is in the best interests of the society to consider a transfer of engagements.

In making the decision it is helpful for the members to be reminded of the special circumstances that apply when co-operatives are considering this course of action.

### **Legislation**

TPC is registered as a society so the provisions of the Act apply, providing the power to undertake a transfer of engagements.

### **Being a co-operative**

The co-operative society has to be mindful that it is a co-operative society and being recognised as one and continuing to operate as one is a condition of being registered under the Act.

### **The Registrar**

The body that registers co-operative societies is the Financial Conduct Authority (FCA). As the Registrar, the FCA has a duty to ensure that any co-operative societies registered under the Act abide by the provisions of the legislation, their rules, and the co-operative values and principles that define how co-operatives operate.

When it comes to a co-operative society making a decision as to its future, the Registrar will expect the society to have considered all the options and propose a course of action that is in the best interests of the society and its members, taking into account its co-operative and legal status.