The Enemy Within? A Critical Analysis of the Credit Unions Act 1979 and the Common Bond

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The aim of this paper is to critically assess the impact of the common bond upon the development of credit unions. In particular the authors discuss its philosophy and briefly assess how the Credit Unions Act 1979 impacts upon the evolution of the common bond in the United Kingdom. The paper also considers the impact of the US Supreme Court ruling upon the interpretation of the common bond under section 109 Federal Credit Union Act 1934 and the Credit Union Membership Access Act 1998. The authors conclude that lessons could be learnt from other jurisdictions where the common bond has been given a flexible interpretation by regulatory bodies.

> The common bond is a multifaceted concept, interpreted tightly or loosely depending on the nature of the social, political, and economic environment. The common bond has been the strength of credit unions and also their Achilles' heel. It has aided the founding of thousands of credit unions, but over emphasis on common bond and disagreements over interpretation have also made it a weakness.[1]

Common Bond

The common bond reflects the philosophy of the credit union movement in that it is something that unites its members. The sharing of the common bond is a type of principled or honourable influence that persuades borrowers to repay the money that other members have loaned them. Snaith took the view that:

> The credit union movement has always emphasised that the protection against bad debts should be the assessment of creditworthiness on the basis of the knowledge that members have of each other rather than

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> more conventional credit ratings based on wealth or status. As a result of this, it has usually been stressed that all members of a credit union should form part of one community. This is also intended to assist in ensuring that members repay loans on the basis that they will feel that if they do not do so they will let down work mates or neighbours.[2]

Ferguson and McKillop share a similar view and claim that the common bond relates to the existence of a common identity "where the nature of social relationships stems from reciprocal interdependence typical of traditional community relationships."[3] Griffiths and Howells took the view that there are a number of secondary issues that arise from the common bond. For instance, "the philosophy is underlying the need for a common bond and what relationship may, in the eyes of the law, constitute such a bond, and last, whether credit unions based on different bonds exhibit differences such as the type of potential member they tend to attract."[4]

The term 'common bond' first appeared in credit union literature in 1914 and it refers to the association shared by members of a group served by a credit union.[5] The common bond describes the tie that binds the members together and it is an essential safeguard ensuring that there exists between the members a sense of loyalty. Burger and Dacin took the view that:

> Credit unions were born and fostered as the result of a marriage between democratic principles and economic concerns. The credit union movement is grounded in both philosophical and economic ideals such as mutual self-help, trust, co-operation, economic freedom or democracy, and a sense of community. These beliefs came to be the driving force for the formation and success of thousands of credit unions. Many of these social and economic ideals were embodied in the notion of 'common bond'.[6]

The importance of the common bond is reflected within legal frameworks in a number of jurisdictions. The common bond is

the legally approved criteria, which identifies who is entitled to become a member of the credit union. The World Council of Credit Unions (WOCCU) argues that membership of a credit union requires "the sharing of a pre-existent relationship by a group of people as the bond for membership in a credit union."[7] In its Model Law for Credit Unions, WOCCU stated that to qualify for membership of a credit union, a person must belong to a *field of membership/common bond* contained in the relevant law. The *field of membership* should include people who share a similar occupation or profession, who have common membership in an association or organisation and who reside, work or worship within the same defined community.[8]

The Credit Unions Act 1979

Within Great Britain, credit unions were initially regulated by the Companies Act 1948 and the Industrial and Provident Societies Act 1965. Both of these pieces of legislation were deemed *inappropriate for* credit unions.[9] An initial attempt to introduce legislation was made in 1972 by John Roper MP who introduced a Credit Union Bill modelled upon the Northern Ireland legislation.[10]

The Credit Unions Act received Royal Assent on 4 April 1979 and was intended to limit the size of membership, shareholding and loans to small amounts consistent with the formative years of credit unions.[11] In order for a credit union to become registered under the Credit Unions Act 1979, it must meet a number of statutory conditions.[12] It must have at least twenty-one members[13] and normally not more than five thousand members.[14] The objects of a credit union must be those and only those as contained in the legislation.[15] The credit union must restrict membership to persons with a common bond[16] and its rules must contain those matters set out in Schedule 1.[17]

The Common Bond/Field of Membership

Section 1(2)(b) requires a credit union's membership to be restricted to people who fulfil a set qualification that is

appropriate to the credit union and that a common bond exists between its members. There are five types of common bond permitted by the Credit Unions Act 1979: industrial, live or work, residential, association and live or association.[18] It is important when determining if a common bond exists that it is a 'real' one. The Rt Hon Denzil Davies MP took the view that:

> It is ... necessary to ensure that the common bond is a real one. A society whose only qualification for admission to membership was one which was so wide as to lack any real element of community would not provide the necessary function of mutual trust and co-operation. For example, a requirement that all members must reside, or be employed, in Greater London would be unlikely to be acceptable as a qualification for registration even though ... it might be said to meet the criterion of residence in a particular locality.[19]

The Association of British Credit Unions Limited (ABCUL) has campaigned for a more flexible approach to the common bond and have suggested four amendments to section 1(4).[20] Firstly, it is important that each credit union is able to define its own common bond. Secondly, where the members of two credit unions desire to merge, the Credit Unions Act 1979 should permit them to do so even though they had unlike common bonds.[21] Thirdly, the law should allow for 'once a member, always a member' and eliminate the concept of non-qualifying members, so those members who leave the common bond retain all rights of membership. Finally, the law should clarify requirements for family membership and also clearly provide that an occupational common bond may include retirees and also subcontractors of the employer.[22]

The first reform of section 1(4) occurred in 1996 via the Deregulation (Credit Unions) Order 1996.[23] HM Treasury were of the opinion that provisions of the Credit Unions Act 1979 imposed burdens affecting persons in the carrying on of a trade, business, profession or otherwise and that by amending or repealing the provisions concerned with the

common bond it would be possible to remove or reduce the burdens without removing any necessary protection.[24] The 1996 amendment introduced a new membership qualification and permitted the use of a statutory declaration in connection with the submission of the common bond. The qualification for admission to become a member of a credit union was amended to include residing in or being employed in a particularly locality.[25] The amendment combined the qualifications of residence and employment in a particular locality.[26]

The movement largely welcomed the 1996 amendments and HM Treasury took the view that the amendments proved successful. Since then however, there has grown up a broad conscience of opinion that there is scope for further reform, which would benefit credit unions and their members without any adverse effects.[27] This is a view supported by Ferguson and McKillop:

> A dissatisfaction had arisen in the United Kingdom with regard to the legislative framework within which credit unions operate. In general [the reforms] have been welcomed by the movement and are seen by many as a means of further increasing the growth potential.[28]

The qualifications for a common bond in section 1(4) act as a factor that has limited the development of credit unions as it restricts the number of people who are entitled to become a member, this is especially the case where credit unions wish to merge.[29] Fuller supports this view:

> In spatial terms, the rigid demarcation of common boundaries, whether based around pre-existing common attributes, or what are perceived to be common attributes, is exclusionary in nature.[30]

In October 2001, the Government published a consultation paper aimed at lifting the restrictions imposed by the Credit Unions Act 1979.[31] Credit unions welcomed these proposed amendments:

> The consultation document issued by the HM Treasury is warmly welcomed by ABCUL, as the culmination of four years lobbying and representation work to modernise the Credit Unions Act 1979 ... ABCUL has continued to urge them to re-consult upon the revised proposals that emerged from the consultation. Our legislation has been described by the World Council of Credit Unions as the most restrictive credit union leqislation in the world, as such reform is urgently overdue. [2]

HM Treasury proposed to "make the common bond requirements more flexible". ABCUL supported the suggestion to combine the common bond of association with any other common bond including 'live or work' common bond.[33]

In addition to these amendments, the Financial Services Authority has also affected the common bond. The Government announced in November 1999 that credit unions were to be brought within the scope of the Financial Services and Markets Act 2000.[34] The FSA welcomed this decision, because they felt that the regime would strengthen the credit union movement. [35] The consultation process began in December 2000 when the FSA published Consultation Paper 77: *The Regulation of Credit Unions.*[36] Consultation Paper 94, *Credit Unions: Consumer Compensation and Consumer Complaints* recommended that credit unions should be members of the Financial Services Compensation Scheme (Compensation Scheme) and the Financial Services Ombudsman Scheme (Ombudsman Scheme).[37] *Consultation Paper 107, Credit Unions Specialist Handbook - Draft Rules,* contains the draft rules that are applicable to credit unions from July 2002.[38] *Consultation Paper 127, Credit Unions: Financial Returns,* contained proposals aimed at rationalising the quarterly and annual reporting returns under the Credit Unions Act 1979.[39] As a result of the consultation process the Credit Union Source Book (CRED) came into effect on 2 July 2002.[40] Chapter 13 of CRED states that members of credit unions should fall within three permitted categories: directly qualifying member, indirect qualifying member and a non-qualifying member.

Northern Ireland

It is interesting to note the position in Northern Ireland, which has tended to follow a hybrid legislative system in relation to credit unions, compared with the rest of the United Kingdom. Credit Unions in Northern Ireland are overned by the Credit Union (Northern Ireland) Order 1985,[4] in which the common bond provisions bear a striking similarity with that of the Republic of Ireland's 1966 Act.

It is also noteworthy that many of Northern Ireland's credit unions are more closely associated with the Irish League of Credit Unions than with its UK counterpart, ABCUL. This may be partly why, on the face of it, credit unions in Northern Ireland have grown with greater success than their mainland counterparts. [42] In 1999 there were 659 credit unions on the mainland with a membership of 225,000 and assets of £124m, whereas, in Northern Ireland there were only 174 credit unions, but they had a membership of 267,000 and assets of £321m.[43] Of course other socio-economic factors may play a part in this development and, as Quinn notes[44], one of the driving forces may have been the large numbers of credit unions membership associated with the Roman Catholic Church in Northern Ireland and its traditional links with the Republic.

The Republic of Ireland

Since the establishment of the first credit union in 1958, the movement has grown and now numbers approximately six hundred, with savings amounting to three billion pounds, over two thousand full-time employees and a market share of over forty per cent. A factor that has assisted the development of the credit union movement in the Republic of Ireland is the statutory framework established by the Credit Union Act 1966 and the Credit Union Act 1997. Until 1966, credit unions in the Republic of Ireland, like their counterparts in Great Britain, were regulated under the Industrial and Provident Societies legislation. The process, which took three years to complete, came to an end in 1966, when the Credit Union Bill unanimously passed the Irish Parliament. Under the Credit

Union Act 1966, the membership of a credit union was based upon the concept of a common bond between the members of the credit union.

The implementation of the Credit Union Act 1966 was fundamental for the development and growth of the credit union movement:

> The [Credit Unions] Act was a landmark for the wider co-operative movement because of statutory recognition of co-operative concepts including the mutuality of members in ownership and organisation of their societies.[45]

Donnelly concurred with the view of Quinn that the Credit Union Act 1966 had a major positive impact upon the development of the credit union movement in the Republic of Ireland and that the Act subsequently laid down the foundation for the Credit Union Act 1997:

> In the decades which followed the 1966 Act, the popularity of credit unions has grown considerably. Credit unions now provide a range of financial services including foreign exchange, insurance product sales and ATM facilities.[46]

The prov1s1ons for the common bond were contained in section 2(b) of the Credit Union Act 1966. This section provided that a common bond could be based upon an association between the members,[47] an occupational common bond,[48] and the common bond could be based upon the residence or employment within a J'articular locality,[49] the employment by a common employer[5] and the membership of a bona tide organisation. [51] Section 2 of the Credit Union Act 1966 was amended by section 6 of the Credit Union Act 1997.

Section 6(3) outlines the types of common bond that are permitted in the Republic of Ireland. These include occupation,[52] residing or being employed in a particular locality,[53] employed by an employer or having retired from employment with a particular employer,[54] being a members of

a bona tide organisation or being associated with other members of the society for a purpose other than that of forming a society to be registered as a credit union[55] or any other common bond approved by the Registrar.[56] These statutory requirements for the common bond in the Republic of Ireland provide credit unions with greater flexibility than under the corresponding provisions in Great Britain.[57] Donnelly took the view that the common bond is the most important of the legislative requirements.[58]

The most frequently utilised common bond by credit unions in the Republic of Ireland is "residing or being employed in a particular locality".[59] The "being employed by a particular employer or having retired from employment with a particular employer" means that employees of large companies who are spread throughout the country still have a common bond of employment.[60] It is submitted that a similar provision should be enacted in Great Britain to permit credit unions to adopt a more flexible approach to their common bond and thereby assist the development of the movement.

Section 6(5) of the Act demonstrates that flexible legislation is a key factor in determining the successful development of credit unions. Section 6(5) specifies that a member of a credit union whose 'relative' or 'family' member resides in the same household is entitled to become a member under the common bond. A member of the family is defined in section 2 of the Credit Union Act 1997 as including a father, mother, children, grand parents, uncles and aunts, nephews, nieces, in-laws and first cousins.[61] It is submitted that the Credit Unions Act 1979 should be amended and this type of common bond should be incorporated into the legislative framework within the United Kingdom.

The provisions of the Credit Union Act 1997 that relate to the common bond are extremely liberal when compared to the Credit Unions Act 1979. These more liberal provisions have assisted the development of the credit union movement in the Republic of Ireland. Despite the merits of adopting a flexible approach to the common bond Quinn took the view that:

The wide definition of common bond, however, is open to criticism from people outside the credit union movement, including financial institutions. In contrast, common bonds based on localities in cities and suburbs may be artificial and unrelated to actual communities and their shopping patterns.[62]

Despite the thoughts of Quinn, we would wish to argue strongly that the Credit Unions Act 1979 be amended to permit more people to join credit unions in Great Britain.

The US Experience

Credit unions in the USA can be traced back to the early twentieth century. The first credit union was set up in Manchester, New Hampshire in 1909.[63] This precipitated a Massachusetts state-wide charter for credit union, eventually sweeping across the entire United States.[64] That credit unions have been a success in the US is an understatement; there are around 82 million members with assets exceeding half a billion dollars. There exist in the US some 10,000 unions of which 6000 are chartered under federal law.[65]

The success of credit unions in the US is due generally to two factors. First the movement is exempt from taxation, all profits are ploughed back in the form of increased rates on deposits or lower rates on loans, and second, they have traditionally operated under a less restrictive legislative framework than has the UK movement.

Federal Credit Union Act 1934

The origins of the US legislation can be traced back to the 'Wall Street Crash' and the ensuing Great Depression. It is interesting to note that while many banks collapsed during this period there were no involuntary liquidations of state chartered credit unions.[66] This was seemingly because the co-operative nature of credit unions bound the members together under a common goal.[67] This success was not lost on the federal government and in 1934 it enacted the Federal Credit Union Act to aid in the development of credit unions.

Section 109 of the Federal Credit Union Act 1934 provides that federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighbourhood, community, or rural district to permit federal credit unions to be composed of multiple, unrelated groups, each having its own distinct common bond.

The National Credit Union Administration (NCUA) regulations establish three categories of common bond: occupational, associational, and community-based. Credit union members in the occupational category are employed by the same enterprise, or in the same trade. An associational common bond is available to groups of individuals who participate in activities that develop common loyalties, mutual benefits, and mutual interests. Members in the community category have a common bond based on employment or residence in a geographic area with clearly defined boundaries.

In the early 1980s the NCUA came under pressure from within the movement to expand the ambit of the common bond. This was due to the fact that a number of federal credit unions were failing; 222 in 1981.[68] These failures were occurring because of a recession that was fuelling large-scale industrial downsizing and closures, resulting in dwindling memberships in some credit unions. This in turn caused a dangerous drain on the National Credit Union Share Insurance Fund.

As a response, in 1982, the NCUA interpreted this common bond provision to mean that members of each occupational federal credit union must be drawn from a single occupational group (employees from a single employer), however, later that year the NCUA further amended its interpretation to allow a federal credit union to comprise 'multiple occupational groups' which only had to be within a 'well defined area' according to an NCUA interpretative ruling. The term 'well defined area' was interpreted by the NCUA as an area served by either an actual or planned office of the credit union. This is a very broad interpretation as there could be virtually any number of such offices. This broad interpretation of the common bond allowed the NCUA to

merge and transfer assets and members of failed or failing credit unions into far healthier federally insured credit unions. The actions seemed to have worked, credit union failures dropped to 112 in 1982 and 40 in 1983.[69] However, it is submitted that the NCUA's new interpretation of the common bond led to a conflict between banks and credit unions.

Credit unions were eager to take advantage. One such union, Communicators Federal Credit Union of Houston expanded its membership to include "all retirees and citizens living within a 25 mile radius of Houston."[70] However, it is the activity of the AT&T Family Federal Credit Union (ATTF} that brought the movement into direct conflict with the banks. The ATTF was formed in 1952, with its membership restricted to the occupational common bond of "Employees of the Radio Shops of Western Electric Company Inc, who work in Winston-Salem, Greensboro, and Burlington, North Carolina; employees of this credit union; members of their immediate families; and organisations of such persons."[71] ATTF took great advantage of the wider NCUA interpretation of the common bond by applying for and being accepted to expand its field of membership to include of a number of different companies including, inter alia, Coca Cola Bottling Company, Black and Decker Corporation and American Tobacco Company.[72]

In December 1990, five North Carolina banks and the American Bankers Association sued the NCUA for allowing ATTF to serve employees at more than 150 different companies. The banks argued that the NCUA interpretation violated the Federal Credit Union Act (FCUA) by allowing unaffiliated groups to join together in a credit union. On 30 July 1996, the US Court of Appeals for the District of Columbia Circuit issued an opinion that rejected the NCUA's new interpretation of the common bond language in the statute. The court held that the Federal Credit Union Act common bond provision requires all members of an occupational federal credit union to share a single common bond. The court held that the NCUA had exceeded its statutory authority when it permitted the ATTF to expand its field of membership to include the employees of a variety of

businesses that were unaffiliated with the credit union's original membership.

On 25 October 1996, the US District Court for the District of Columbia issued an injunction in the consolidated case declaring unlawful membership in a federal credit union by individuals or groups who do not share a 'single common bond of occupation.' The court also ordered the NCUA to cease authorising occupational federal credit unions to admit members who do not share a single common bond of occupation. The Court of Appeals issued a partial stay of this decision on 24 December 1996. Under this stay, federal credit unions were allowed to continue accepting members from existing groups that were not part of the credit union's original and core membership group. Credit unions were not, however, allowed to add *new and unrelated* groups that did not share a common bond with the credit union's original core membership group.

On 25 February 1998 The US Supreme Court issued a 5-4 decision concluding that the banks had standing to challenge the NCUA's interpretation of the FCUA, and that the NCUA's interpretation was contrary to the unambiguously expressed intent of Congress[73], and was therefore impermissible. Furthermore, the Supreme Court held that the NCUA's current interpretation of section 109 was contrary to the unambiguously expressed intent of congress and is thus impermissible.[74] The court felt that the NCUA interpretation of the field of membership was so wide as to make the definition of the common bond 'surplusage' in reference to federal credit unions made up of multiple unrelated employer groups.[75]

Several people have noted that the Supreme Court decision would cause adverse effects for the credit union movement in the USA. In his testimony to the House of Representatives, Norman E D'Amours[76] noted that the ruling would put many credit unions in a difficult position. The very reason that NCUA made the interpretation, to combat recessionary pressures, would be overturned, once again making credit unions susceptible to economic downturn. He also noted that at the time of the case 75 per cent of credit union assets were held by multiple group unions, and that this

would lead to a fragmentation of the movement into a large number of small credit unions, which Novajovsky noted would mean that credit unions would be unable to offer such diverse services such as ATM provision common among larger multiple group unions. He also felt that fragmentation of the larger unions would mean less professional management and governance structures and place increased burdens on the regulatory bodies faced with large numbers of small credit unions to supervise.

D'Amours also commented that that credit union growth would be stifled as access to new members, particularly younger members at the borrowing stage of life[77], was critical. To restrict the field of membership to a single occupational group would seriously restrict the possible membership numbers. He also stated that people employed by small businesses would lack access to credit unions,[78] and it was these employees of small businesses that were in greater need of access than those employed in larger enterprises. [79] In fact 94.2 per cent of employee groups served by multiple group credit unions have fewer than 500 employees.[80]

Credit Union Membership Access Act 1998

The possible effects of the Supreme Courts decision were not lost on the US legislature, with the passing of a bill with a majority of 411 to 8 in the House of Representatives and 92 to 6 in the Senate; President Bill Clinton signed the Credit Union Membership Access Act[81] on 7 August 1998. The Act codifies two types of occupational credit union, namely, the single common bond and the multiple common bond[82], clarifying, amending and expanding the Federal Credit Union Act provisions regarding the field of membership question,[83] leading one member of the House of Representatives to state "... it stops the bleeding that would have killed the credit union industry."[84]

The Act contains three provisions relating to the issue of credit union fields of membership. Firstly any federal credit unions that included multiple common bonds before 25 February 1998 would be allowed to carry on uninterrupted. Secondly the Act places a limit on numbers. Groups with over

3,000 employees are excluded from joining multiple common bond credit unions. Thirdly NCUA has the right to grant an exemption to the 3,000 maximum member rule if in the circumstances they feel that the group in question could not reasonably support its own credit union.

> This bill ensures that consumers continue to have a broad array of choices in financial services ... and [makes] it easier for credit unions to expand where appropriate.[85]

Section 102 details the criteria for approval of expansion of membership of multiple common-bond credit unions. It was the Committee on Banking and Finance's position that the NCUA should charter new credit unions wherever possible and such formation would be consistent with safety and soundness. The 3,000-member figure is not intended to indicate that groups below 3,000 are incapable of forming new, viable credit unions. To the contrary, over 3,300 credit unions have less than $2 million in assets and average just 700 members. The NCUA should encourage groups, regardless of size, to form their own credit unions where such formation would be consistent with safety and soundness and not pose a significant risk to the share insurance fund.

Section 102 also articulates a strong policy towards placing groups that cannot form their own credit unions with a local credit union. If the NCUA determines that a group cannot form a viable credit union on its own, then it is required to place the group with a credit union within a reasonable proximity of the group. This local preference is qualified by safety and soundness principles. The Committee strongly believes credit union members who live, work and interact in the same geographical area are likely to have more of a meaningful affinity and common bond than those who do not are. The NCUA's regulations shall strongly favour placing groups with local credit unions and document in writing their compliance with the local preference requirement. We note, however, that this provision does not require local credit unions to add groups, which they do not want.

Under this section, multiple common bond credit unions

are required to apply to the NCUA every time they want to add a new group to their field of membership, regardless of the size of the group to be added. The NCUA must determine in writing that the six specific approval criteria have been met. This NCUA determination is a final agency action. Specifically, the Board must find that the credit union has not engaged in material unsafe or unsound practices during the year prior to the application; the credit union is adequately capitalised; it has the administrative capability to serve the proposed membership group and the financial resources to meet the need for additional staff and assets to serve the new group. Additionally, in accordance with section 215 of the Federal Credit Union Act, the Board must determine that the credit union is satisfactorily providing credit union services to all individuals of modest means within its field of membership; and that any potential harm to another insured credit union and its members from the credit union's expansion is clearly outweighed by the probable beneficial effect of the expansion in meeting the convenience and needs of the members of the group proposed to be included. The credit union must also meet any other requirements the Board has prescribed.

The Committee specifically notes the approval criteria in subparagraph (E), which relates to potential harm to other insured credit unions. As noted above, the Committee strongly favours placing groups with local credit unions. However, it is not intended that this requirement be implemented in a manner that causes significant injury to other local credit unions in terms of creating overlapping memberships that may weaken the membership or financial base of an existing credit union. The Board is expected to establish procedures to minimise the potential harm to other insured credit unions wherever possible and, at a minimum, to ensure that any potential harm to an existing credit union is clearly outweighed by the benefits created by the membership expansion in terms of additional services and convenience for the new member group.

The Acts purpose was to ensure the safety and well being of credit unions and to protect its membership. The new Act clearly does this in respect of the field of membership

argument, however it is noted that there are some difficulties and that future battles with the banks will no doubt materialise over time. The issue of restricting membership to 3,000 according to Novajovsky will be obsolete in that what happens if fifty 3,000 member groups come together, this would equal 150,000 members and would be technically allowable under the legislation, however three 50,000 member credit unions would not[86] The American Bankers Association have called the legislation 'ironic' in that although it is meant to protect the movement it may actually dilute it as credit unions are turned into larger and larger institutions.

Th Act undoubtedly helps the credit union movement in the here and now, however, it is possible to envisage that at some point in the future credit unions will need to grow again, and this will only be achieved by further interpretative guidance from the NCUA and by legislative amendment. This could bring the movement into conflict, once again, with the mainstream financial service providers, and maybe next time the Congress will not be so kind.

Success or Failure?

Integral factors that affect the success or failure of the common bond are the relevant statutory provisions and its interpretation by the relevant regulatory authority. Lessons however could be learnt from other jurisdictions where the provisions of the common bond have been relaxed. Griffiths and Howells concluded that the approach towards the common bond varies from country to country and that in Canada the regulators will 'pay little more than lip service ... to the notion of a common bond.' [87] Evidence to support the argument that a flexible common bond assists the development of the credit union movement is illustrated by examining the relevant statutory provisions in the United States of America. Ferguson and McKillop took the view that:

> Experience, particularly in the US, has demonstrated that where definitions of the common bond are too restrictive this can hinder the strategic development and growth of

credit unions. In the US, liberalisation of the common bond to a wider field of membership concept has strongly been .associated with the large growth in credit union membership during recent decades.[88]

It can therefore be argued that lessons from the United States experience concerning the common bond are a beneficial reference point for consideration of a more permissive legal stance. A strong case can be made to incorporate the lessons gained from the experience of US credit unions in framing any future legislation. Ferguson and McKillop argued that credit unions and regulators should move away from the utilisation of a single common bond as a universal approach to credit unions. The authors argued that the movement should adopt a multiple approach to common bonds and the model adopted within the United States of America should serve as a model for framing future amendments to the Credit Unions Act 1979.[89]

Conclusion

In this paper it has been argued that the provisions of the Credit Unions Act 1979 that relate to the common bond be amended. For instance, the principle of once a member always a member should be adopted as this would prove beneficial towards the development of credit unions in Great Britain, as it would encourage members to stay with credit unions even if they move outside the common bond. The provisions of the Credit Unions Act 1979 should be amended to reflect the liberal provisions of the Irish legislative framework towards credit unions.

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Notes

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5 See Burger and Dacin above, n1.
6 *Ibid*
7 World Council of Credit Unions (2002), Laws Governing Credit Unions, WCCU: United States of America.
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14 S6(2).
15 For a more detailed analysis of the objectives of a credit union see generally Ryder, N, Two plus two equals financial education - The Financial Services Authority and consumer education, Law Teacher, (2001), 35(2), 216-232 and McCarthy, 0, 'A Value Perspective of the Irish Credit Union Movement', *Journal of Co-operative Studies,* (2002) 35(2) 128-140.

16 S1(2)(b), (4)-(6) Credit Unions Act 1979.
17 This includes the objects of a credit union, the registered office of the credit union, the qualifications for admission, the mode of holding meetings, the appointment and removal of a committee, determination of the maximum amount of the interest in the shares of the credit union that are held by any member, the withdrawal of shares and payment of balance due, the mode and circumstances in which loans are to be made and repaid, provision for the withdrawal from the credit union of a member and the auditing of accounts.
18 S1(4)(a)-(e) Credit Unions Act 1979. The live or work common bond requires all members of a credit union to work for the same employer or group or employers, or to carry out the same occupation. The residential common bond requires that all members must live within a defined geographical area, which may be defined by a line drawn on a map, or it may be determined by the use of postcodes. In order for a credit union to adopt an associational common bond, all its members must belong to the same association. This would include for example, a trade union, housing association or religious group. The live or work association stipulates that all members must live in the same area and/or have something specific in common. This may be employment by the same employer who has sites outside of the area, or members of a church group who do not live in the area. Clearly, these provisions of the Credit Unions Act 1979 have, by their very nature, affected the development of the credit union movement within the United Kingdom. For example, if a person wanted to become a member of a credit union but failed to meet the criteria laid down in section 1(4), that person would not be permitted to join and become a member.
19 HC Vol. 962, col.803.
20 Inter-Association Legislative Liaison Group *Common Ground: National Goals for Improving the Laws Governing Credit Unions* (Manchester, ABCUL, 1997).
21 In particular, ABCUL were of the opinion that a new common bond would be defined to cover both groups in the merged credit union.
22 ABCUL noted that the latter of these categories is particularly important, for example, for local council employee credit unions who are losing potential members to compulsory competitive tendering.
23 Deregulation (Credit Union) Deregulation Order 1996, SI 1996 No. 1189.

24 ***Ibid***
25 See above, n23.
26 ***Ibid***
27 HM Treasury (2001), Proposed amendments to the Credit Unions Act 1979, HM Treasury: London.
28 See Ferguson and McKillop above, n3.
29 ABCUL (2000), Transferring Engagements, ABCUL: Manchester.
30 Fuller, D (1998), "Credit Union Development: Financial Inclusion and Exclusion", *Geoforum,* 29(2), 145-158.
31 See above, n27.
32 ABCUL (2002), Response to the Proposed Amendments to the Credit Unions Act 1979, ABCUL: Manchester.
33 *Ibid.* The proposed amendments have been enacted by the Regulatory Reform (Credit Unions) Order 2003/256. Article 3 amends section 1 of the Act so as to permit credit unions to combine the qualification for admission to membership specified in section 1(4)(e) (the associational common bond) with any one of the other qualifications specified in section 1(4), so long as in consequence there exists common bond between members of the society. For the FSAs guidance on what constitutes a common bond see FSA (2003} Guidance Note 8 (2003) which came into force July 1 2003.
34 See HM Treasury Press Release, Enhanced Role for Credit Unions, 16 November 1999.
35 HM Treasury (1999), Credit Unions of the Future Task Force Report, HM Treasury: London. The HM Treasury Task Force concluded that if credit union growth is to be soundly based, there needs to be both effective regulation and effective enforcement.
36 For a more detailed examination of the consultation process see generally Ryder, N, The Financial Services Authority and Credit Unions: The Final Piece of the Jigsaw? (2002) *Nott. L J* **11 (2), 17-32.**
37 *Ibid*
38 FSA, Consultation Paper 107: Credit Unions Specialist Handbook - Draft Rules (FSA, 2001). See generally FSA, General Handbook - Credit Unions Sourcebook (FSA, 2002).
39 For the accounting requirements of a credit union see s24 Credit Unions Act 1979 and generally Friendly and Industrial and Provident Societies Act 1968.
40 For a more detailed analysis of the consultation papers see Ryder above, n36.
41 Arrangement of 1985 No 1205 (NI12)

42 For a more detailed comparison illustrating the effectiveness of the Irish League of Credit Unions compared to ABCUL see generally Ryder, N (2002), Credit Unions and Financial Exclusion - The Odd Couple? J Sac Wei & Fam L 24(4), 423-434. For a more detailed discussion of the fragmentation of trade associations within the credit union movement see Sibbald, A, Ferguson, C & McKillop, D An Examination of Key Factors of Influence in the Development Process of Credit Union Industries, Annals of Public and Co-operative Economics, 73 **(2),** 2002, pp399-428.
43 See HM Treasury above, n35.
44 Quinn, A P (1999), *Credit Unions in Ireland,* Oak Tress **Press:** Dublin.
45 *Ibid*
46 Donnelly, M (2000), *The Law of Banks and Credit Institutions,* Sweet and Maxwell: Dublin.
47 S2(b)(i) Credit Union Act 1966.
48 S2(b)(ii).
49 S2(b)(iii).
50 S2(b)(iv).
51 S2(b)(vi).
52 S6(3)(a).
53 S6(3)(b).
54 S6(3)(c).
55 S6(3)(d).
56 S6(3)(e).
57 See Ryder above, n9.
58 See Donnelly above, n46.
59 See Quinn above, n44.
60 Quinn noted that a number of companies have utilised this type of common bond, such as Telecom Eirann, ESB and Garda.
61 See Quinn above, n44.
62 *Ibid*
63 Emmons W R, and Schmid F A, "Credit Unions and the Common Bond", Federal Reserve Bank of St Lois Review, September/October 1999.
64 *Ibid*
65 For a more detailed analysis of the growth of the credit union movement in the United States of America see the Credit Union National Association website (www.cuna.org). CUNA (Credit Union National Association), based in Washington, DC, and Madison, Wisconsin, is the premier national trade association serving America's credit unions. See The World Council of Credit Unions (hereinafter WOCCU) *2001 Statistical Report* (Madison, WOCCU, 2000).

66 See NCUA v First National Bank & Trust 118 US 927 (1998).
67 *Ibid*
68 Testimony of Norman E D'Amours, chairman NCUA to Committee of Banking and Financial Services, US House of Representatives, 11 March 1998.
69 *Ibid*
70 Novajovsky D, "Form National Credit Union v First National Bank & Trust to the Revised Federal Credit Union Act: The Debate Over Membership Requirements in the Credit Union Industry", 2000, 44 NYL Sch L Rev 221,228.
71 Mattson R, "Banks Win The Battle - Credit Unions Win The War: An Examination Of NCUA v First National Bank & Trust Cos Effect on Occupational Credit Unions." 1999 L Rev Mich St U Det CL, 1021, 1029.
72 *Ibid*
73 The first part of the so called Chevron Test from Chevron USA Inc. v Natural Resources Defence Council Inc. 467 US 837 (1984).
74 The members of the court were split 5 - 4 on the issue of standing, however in the dissenting judgement no reference was made to the issue of the NCUA interpretation being impermissible.
75 Justice Thomas, NCUA v First National Bank & Trust 118 US 927 (1998).
76 Chairman NCUA.
77 D'Amours pointed out that younger people borrow more and older people save more, it was therefore, important that credit unions have access to those at the borrowing stage to ensure continuity of revenue.
78 Small business defined as one with 500 employees or fewer, while 500 persons is the minimum number of people required to set up a federally chartered credit union.
79 Average salary of small business employee was $23780, compared to $29662 of large business employee. D'Amours n68.
80 *Ibid*
81 CUMM or 'the Act'.
82 Section 101. Section 101 also allows for a third field of membership, that of community credit union.
83 Novajovsky. n70 above.
84 *Ibid*
85 President Clinton; Emmons W R, and Schmid F A, "Credit Unions and the Common Bond", Federal Reserve Bank of St Lois Review, September/October 1999.

86 See above, n66.
87 See Griffiths and Howells above, n4.
88 See Ferguson and McKillop above, n3.
89 Ferguson, C & McKillop, D (1997), Credit Union Development: A New Platform Future Adaptations to Legislation Governing UK Credit Unions, Credit Union Research Forum: Belfast.