Chapter 7: Social Enterprise Law in the Platform Economy

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1. Introduction

During the coronavirus pandemic, much of our world shifted online. While offices, schools and shops stood empty, remote working became essential. Online trade rose significantly. So did the income and shares of large online platforms, even while other equity slumped in the global economic chaos. Many smaller and local businesses connected online with their customers to cope in the crisis. Even public services, including GP delivery, have increased online elements of their provision. There are predictions that at least some of these changes are here to stay even when the pandemic subsides. Some will welcome this, but others point to economic and social risks, including the possibility that big corporate platforms that run online provision will be able to consolidate their existing economic and political power, making it increasingly difficult to hold them to account for their global operations.

This chapter builds on the detailed characterisation of online platforms in previous chapters of this book to reflect on the specific question of how their legal ownership structure can be adjusted to steer their behaviour and socio-economic impact. The tool to do this sort of steering is here loosely termed “social enterprise law”. It describes, in shorthand, that branch of business organisations law which enables ‘blended’ ownership that is both socially committed and economically sustainable. This includes general company law (covering limited companies) to the extent that it allows for flexibility to make changes to a company’s purpose, membership or governance to make it operate as socially responsible economic actor. In addition, it comprises tailored legal formats for blended ownership which, in the UK, are regulated in several specific legal instruments overseen by different regulatory bodies. They include the law on community interest companies and on incorporated societies.

We ask how platforms set themselves up in blended ownership and how to do so impacts their behaviour as economic actors. What lessons can we learn for organising a platform economy post-COVID? To focus on platform ownership – and the use of social enterprise law as (private) transactional law - is complementary to alternative approaches that ask how (public) regulatory intervention can police the behaviour of incumbent corporate platforms whose dominance and its socio-economic effects have become a concern. Social enterprise law also regulates these socio-economic effects, but it proceeds “from the inside out” by imposing internal rules on purpose,

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3 Insert reference to Iris platform chapter
4 Insert reference to Iris platform chapter
membership and governance that are incorporated into the platform’s legal format. In doing so, it potentially reduces the need for external regulatory intervention and resulting transaction costs.

Social enterprise law is a system of choice. Organisations that own and run platforms may or may not select to incorporate as a (here broadly understood) “social enterprise”. The vast majority prefer the traditional form of a for-profit limited company, for commercial reasons. And those that do set up as social enterprises are, as Chiu observes, widely ‘regarded as ‘alternative’ or ‘in the minority’ compared to corporate platforms. In this chapter, however, we encourage a shift in perspective whereby to recognise them as a minority, and acknowledge the optional (private law) nature of social enterprise law as a system of choice, does not mean to assign them a marginal role in attempts to reform and regulate important socio-economic aspects of the platform economy that are perceived currently to be problematic. On the contrary, social enterprise law, by enabling blended ownership committed to different socio-economic priorities from the traditional company form, provides an essential ingredient in this reform process.

The chapter proceeds as follows. Section 2 sets out, as conceptual frame for understanding its approach to steering, corporate as distinct from community ownership in platforms as two ideal types but introduces at the same time the idea of blended ownership: in reality, a spectrum of blends and variations of platform ownership exist that, in terms of their purpose, governance and membership, are clearly distinct from typical corporate ownership yet also distinct from one another. Social enterprise law provides the legal tools for incorporating these different ownership blends. The following sections explore systematically three elements of UK social enterprise law to document how this blending works practice. Section 3 considers the legal mechanisms available to incorporate social purpose into a platform company including the implementation of an asset-lock or mission-lock, the tailored legal format of the community interest company, as well as the loser (but for some, more commercially attractive), B Corp accreditation. Section 4 examines formats that go further than to embed social purpose, moving to community membership where the right to make key decisions in the organisation, and in some cases to share in its proceeds, is shared among the platform’s stakeholders as members. The discussion incorporates two case studies of UK-based multi-stakeholder “platform coops” that follow democratic membership despite being incorporated under different legal forms. Section 5 explores inclusive governance processes that suit platform organisations in blended ownership, including heterarchical methods that operate outside traditional boardroom structures. Section 6 concludes by briefly drawing some initial lessons and challenges from the discussion in this chapter.

2. Platform ownership: the role of social enterprise law

The role of platforms in today’s online economy, as others in this book have highlighted, is hard to label. Existing labels, such as the ‘sharing’ economy, have been found ambiguous, too narrow or otherwise problematic, for good reasons. We may then go with the more generic denomination of a “platform economy” instead, and focus not on labels but on key features that tend to characterise the reality of these organisations. Platforms are online matchmakers building on networks and network effects: the more users the platform accumulates, the better its business model works. They generate

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5 Insert page citation to Iris platform chapter
value by matching-up people or businesses and, by collecting data as they go along, they usually become better at it (and often make additional profit). Large platforms now exist to enable trading, swapping, streaming or sharing (Amazon, Airbnb, Spotify, TaskRabbit), but others to simply connect people, socially or for work (Facebook, Instagram, Zoom). Quite separate is the question of how commercialised individual platforms are as organisations. Facebook for example enables social relationships but runs a highly commercial corporate enterprise. Contrast this to a local platform like UK-based Ecoswap which enables, amongst other things, local and sustainable commercial trade but is run as a community interest business and incorporated as such. These two platforms are distinct not only for the obvious differences in the sheer scale of their operations, but also structurally for their respective role in the economy and, fundamentally, in the underlying understanding of what the platform economy is for, what it should do and, accordingly, who should run it. The table below summarises the key distinctions before we discuss them.

Table 1: Capital and community platform ownership (ideal types)

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Corporate ownership</th>
<th>Community ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance</td>
<td>Hierarchical, with directors accountable to shareholders.</td>
<td>Inclusive of stakeholders (direct or through fiduciaries).</td>
</tr>
<tr>
<td>Membership</td>
<td>By capital investment.</td>
<td>By contributing to value.</td>
</tr>
<tr>
<td>Platform economic model</td>
<td>Financialised capitalism</td>
<td>Social economy</td>
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2.1 Corporate ownership

In the case of Facebook – or any other big corporate platform – the focus is on the interest of capital. Regardless of what their business model might look like, behind it are the trimmings of a capitalist organisation controlled by and run, ultimately, for the purpose of investors. The legal format that suits this model is the company limited by shares (or equivalent) either privately held or, in the case of larger platforms, publicly listed. It is designed for business organisations that focus on profit and return on investment, usually measured by quarterly increase in share price. Rules on membership and governance traditionally reflect this. Membership rests with financial investors, even if they are distant from the company (exceptions are equity-incentivised directors or key employees). In corporate governance, the members (shareholders) as the providers of the company’s capital are prioritised and treated, if not as full owners, then at least as holders of residual property rights in the company, including the right to receive a share of profit, to vote and hold company directors to account (including to appoint and dismiss them). Company directors are accountable to shareholders above others and incentivised (including by their remuneration policies) to deliver shareholder value.

This ownership form corresponds with an understanding of the platform economy as a new arena for the evolution of financialised capitalism, offering additional opportunities for investment and economic growth. The platform economy and the for-profit corporate format are, from this perspective, well-paired economic structures to the extent that the focus on profit and return on investment inherent in the corporation drive the platform business and set it up to pursue growth. Investors, including venture capitalists, tend to see the benefit of platforms as an ‘asset- and

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9 Ecoswapstore webpage <https://www.ecoswapstore.com/> accessed 14 June 2020
10 Evans and Schmalensee, supra n. 7; see also Nic Srnicek, Platform Capitalism (Polity Press 2016), p. 9.
employee-light’ business model relatively ‘low on liability and high on upside’ not least because, being moveable, it is relatively easy to minimise exposure to regulation, such as tax and labour laws. Access to networks and data are often seen as promising opportunities to expand into secondary markets or diversify the platform’s services.

The downsides of this legal and economic model, on the other hand, include evidence of a lack in balanced and sustainable growth in the platform economy with high levels of market concentration, reinforced by network effects, that have allowed incumbent corporate platforms to accumulate levels of independent power that render them state-like. Operating internationally, these powerful companies escape much regulatory control, with high levels of regulatory failure and arbitrage. States have spent millions on infrastructure to ensure large corporate platforms comply with regulations to protect the public interest, from tax to labour laws, yet often still failed to effectively rein in rent-seeking behaviour. In the absence of effective regulation, however, the corporate format has the disadvantage that it incorporates few self-policing mechanisms against socially irresponsible and unsustainable pursuit of profit. By affording shareholders legal privileges, corporate ownership enables further rent-seeking from investors extracting profit for private gain. Without internal legal safeguards against this, the format reinforces socio-economic inequalities between capital-holding investors and other stakeholders in the platform economy in ways that, ultimately, undermines its ability to bring wider economic prosperity. The effects of corporate irresponsibility can be, from labour and environmental exploitation to the problematic use of data surveillance and political power can be far reaching, as has been highlighted in previous chapters of this book.

2.2 Community ownership
The Ecoswap platform – as example of a locally-run community platform form – operates for an entirely different purpose (and legally, as a UK community interest company, further discussed below). Financial objectives are important insofar as they help to ensure the economic sustainability of the organisation. But they are strictly instrumental, and subordinate, to the social purpose of the organisation which is to serve the platform’s local user community. Value is measured therefore not from the point of view of extraction but based on the platform’s contribution to the community. This difference in direction and purpose is reflected in its governance by providing that company directors will be bound to engage with community stakeholders in leading the organisation. Other similar platforms go further and incorporate this inclusivity also into their membership structure by adopting a format of community membership that reflects and rewards the contributions different members make to the platform’s value creation. While for some (like Ecoswap), these connections are mostly locally

15 Add page references to Iris chapter.
rooted, community in others goes further. Wikipedia, for example, a well-known community platform and non-profit online encyclopedia, involves thousands of volunteers contributing globally.\(^\text{17}\)

Community platforms are unconnected to the structure of financialised capitalism. Their version of the platform economy is unconcerned new opportunities for extraction but instead extends patterns of the social economy, combining collective values and solidarity-based organising with the operation of commercially viable ventures, into the online world.\(^\text{18}\) Typically, however their main challenge is financing these ventures to enable growth and development enough to catch up on the market share of at least some corporate incumbents. Venture capital, which is available to corporate start-ups, usually ‘requires investor control and the potential for large future returns’ which community formats typically cannot to offer.\(^\text{19}\) We will return to this and other challenges in our discussion below.

A key advantage of community owned platforms, on the other hand, is their ability through ownership, or elements of ownership, to steer the organisation to behave in the community interest. These elements in other words build into the organisation a form of “regulation from within”. The ability to internally steer in this way is typically absent in corporate ownership: corporate platforms expect to operate for profit within the “rules of the game” set by externally imposed regulatory standards, from matters of taxation, environmental laws to labour standards. The company’s internal rules of corporate governance, on the other hand, remain largely unconcerned with these matters except where they adversely affect investors’ interests, increasing investment risks. The tug-of-war between regulatory intervention and corporate push-back against it however can be costly as well as ineffective, as we have seen. Corporate resistance against regulation, and the resulting regulatory arbitrage and failures, happen because for-profit companies are wired, legally as well as economically, to push back against interference with their profit-maximising objective. Platforms in community ownership, on the other hand, are wired to respond differently in accordance with their commitments in purpose, governance and membership.

2.3 Blended ownership and social enterprise law
Corporate and community ownership of platforms are ideal types: they bring a “neat” categorisation to the reality of platforms when in fact that reality is messier, and fuller of ownership blends, than these categories suggest. Granted, corporate ownership is tangible, in virtually unadulterated form, in the widespread global practice of well-known commercial platforms run by corporate multinationals. Its counterpart the community platform, on the other hand, is closer to an ideal type in the true sense: the simplified description of an ‘extreme’ ownership type that sits at one end of an organisational spectrum. In reality, that spectrum includes different blends and variations of platform organisations that, in terms of their purpose, governance and membership, are clearly distinct from typical corporate ownership yet also distinct from one another. Some of these do not fall neatly within the conception of a social economy: mission-led platforms that are accredited B Corps for example (see below section 3) are too commercially oriented for this. But B Corps are, online as offline, part of an emerging impact economy that looks at social mission and impact as well as profit. In short, on the spectrum between the archetypically corporate and community organisation, a long and colourful stretch of blended ownership exists.

\(^\text{17}\) Wikipedia Foundation webpage <https://wikimediafoundation.org/about/> accessed 14 June 2020
The legal tools for incorporating different ownership blends are provided by what we loosely call “social enterprise law”. It describes, in shorthand, that branch of organisations law which ‘enables businesses to specify the nature, intensity, and duration of their commitments to objectives other than profit maximisation’ and reaches, thus understood, ‘from the borderlines of charitable venture to the heartland of corporate law.’\footnote{Benjamin Means and Joseph W. Yockey, ‘Introduction’ in idem (eds), Cambridge Handbook of Social Enterprise Law (Cambridge University Press 2018) p. 2} This includes, for our purposes in this chapter, mainstream UK company law (the formats of companies limited by shares or guarantee) which platform organisations may flexibly adjust to implement their own blend between communal and corporate ownership. But it also incorporates more tailored legal forms including the UK legislation on community interest companies and societies law.

Social enterprise law, whilst not by character regulatory, is still the enabler of internal steering – of regulation from the inside out - that platforms in community or blended ownership are capable of. Its ability to do this - to make a relevant set of legal tools available to create internal rules that steer membership, governance and purpose - is essential for creating platform organisations that behave differently from big corporations in the first place. The remainder of this chapter, therefore, is dedicated to exploring how different aspects of UK social enterprise law can enable the blending of community platform ownership in practice. We focus on each legal element at a time – considering varieties of (1) social purpose, (2) community membership and (3) inclusive governance structures.

3. Social purpose
During the coronavirus pandemic, the social impact of organisations with a communal purpose has been magnified. From foodbanks to community self-help groups, in these organisations a human response to the catastrophic impact of the virus, based on solidarity and empathy, became clearly visible. How organisations, and especially businesses, embed a commitment to communal purpose into their venture, however, differs widely. For a UK for-profit limited company, it usually involves incorporating a purpose statement into its articles of association, specifying what community or wider social interests it intends to serve. By committing the company thus, it places on directors a duty to consider these interests in the pursuit of the company’s business. UK company law is sufficiently flexible to allow for these changes,\footnote{Beate Sjåfjell, ‘Dismantling the Legal Myth of Shareholder Primacy: The Corporation as Sustainable market Actor’ in Nina Boeger and Charlotte Villiers (eds), Shaping the Corporate Landscape (Hart 2018)} which in the case of a company limited by shares can only be reversed if at least 75% of shareholders vote to do so. The question is how those companies (or any blended ownership format) address the inevitable complexity in blended ownership of running a for-profit organisation, especially a platform business, for a social purpose while securing its economic sustainability. As the venture grows, so typically does the pressure to satisfy financial objectives. These however can become so overwhelming that, unless it is firmly locked into the organisation, purpose may become secondary. In the case of platform organisations, and in the platform economy, where business models rely on network effects that depend on accelerated growth and investment, these risks can be magnified.

3.1 Asset lock and community interest company
One way of addressing these issues is to incorporate an asset lock into the company (or other legal format): a constitutional device that prevents the distribution of residual assets to members. The purpose of an asset lock is ‘to ensure that the public benefit or community benefit of any retained surplus or residual value is cannot be appropriated for private benefit of members’.\footnote{‘Asset lock provisions’ (Community Shares, 2017) <https://communityshares.org.uk/resources/handbook/asset-lock-provisions> accessed 14 June 2020} A second
possibility, often seen as distinct from the asset-lock, in the case of a company limited by shares is a restriction on dividends. Both stipulations ensure that the company’s profit-making mission is tempered significantly by mandating effectively that assets are kept in common ownership and profits at least partly re-invested the business and its purpose.

UK social enterprise law offers a tailored legal format of community interest company (CIC) with mandated dividend cap and asset lock (though these can also be incorporated into the standard company form).

As asset-locked organisations CICs do have access to certain forms of social and community finance, donors or grant funding from public and private organisations that expect an irreversible commitment to a designated social purpose (though some of those will be limited to charities) and currently, certain charitable forms and CICs can trigger UK social investment tax relief for funders. But the restrictions on CICs clearly affect their ability to access other commercial finance and equity investment.

There are currently over 15,000 registered CICs in the UK. Exactly how many of those are hosting online platforms is difficult to track, but a preliminary search reveals that only a small proportion currently seem to focus their operation on the platform economy. That said, where it does exist in the platform economy, CIC ownership demonstrates the benefits of a clear and enforceable social mission coupled with the company format. It is typically chosen by social enterprises that operate to enable smaller businesses to extend their markets market reach via online distribution but without giving up on local ethos or sustainability (see also the discussion of Open Food Network UK in the following section). CICs have played a relatively strong role in the provision of communal service delivery, especially in the areas of health and social care, and it will be interesting to see if more enter the

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23 Office of the Regulator of Community Interest Companies, ‘Information and guidance notes Ch. 6: The Asset Lock’ accessed 14 June 2020
24 Office of the Regulator of Community Interest Companies, ‘Model constitutions’ accessed 14 June 2020
25 Office of the Regulator of Community Interest Companies accessed 14 June 2020
platform economy as more public service may be moved online in the context of COVID-19 and its aftermath.

3.2 Mission lock and B Corp

A further option involves a constitutional mission-lock that incorporates a commitment to purpose and may include a limit on profit distribution, but no full asset-lock. Compared to asset-locked formats this choice enhances commercial flexibility, while also giving social impact investors trust that their funding will be dedicated to a social purpose.29 In the platform economy, this direction effectively bakes a commitment to pursue ‘responsible tech’30 into the ownership of the platform business. To address the risk of ‘mission drift’,31 companies can go further and entrench – genuinely lock – mission into the organisation by making it difficult to reverse the existing social purpose clause (this would usually require a 75% shareholder majority to reverse). This can be done via a constitutional ‘supermajority’ clause requiring shareholder unanimity (or at least 90%) for a reversal to be approved; or involve a golden share arrangement that requires the consent of a non-profit organisation (a charity, trust or foundation with a golden share in the company). Golden share arrangements are more complex but can be flexible and time limited.32 They are similar to company structures widespread in Northern Europe with a non-profit foundation as dominant shareholder.33

Another possibility for platform companies is to become a certified ‘B Corp’ by going through an accreditation process attesting the company’s legal commitment to pursue purpose beyond profit and to consider the impact of its business on its wider stakeholders.34 The process is run by B Lab, an internationally operating non-profit organisation, and it is now available to all UK-incorporated companies. Key requirements for accreditation include a mandated constitutional objects clause ‘to have a material positive impact on (a) society and (b) the environment, taken as a whole’, and for company directors in the pursuit of this object to balance fairly a range of stakeholder interests (wording based on the general UK company law on directors’ duties but strengthened). As B Lab points out, the modification ‘does not aim to be overly prescriptive, so that it has wide applicability and can be used by all prospective B Corps’.35 A further condition is for the company to successfully complete a B Impact assessment (renewable every three years) certifying its impact in the areas of governance, community, workers, environment and customers.

B Corp accreditation has not been without criticism for not going far enough in its social ambition. It hardly offers assurance that social impact can be guaranteed over time (given that accreditation lapses unless renewed).36 There are further concerns about “purpose-washing” and the worry that we might be seeing not a paradigm shift so much as a repeat of previous CSR trends that were eventually

29 Dana Brakman Reiser and Steven A. Dean, Social Enterprise Law: Trust, Public Benefit and Capital Markets (OUP 2017), Ch. 1
30 Borkin, above n. 19, p. 10
33 Peer Hull Kristensen and Glenn Morgan, ‘Danish Foundations and Cooperatives as Forms of Corporate Governance: Origins and Impacts on Firm Strategies and Societies’ in Nina Boeger and Charlotte Villiers (eds), Shaping the Corporate Landscape (Hart 2018)
34 B Lab webpage <https://bcorporation.net/about-b-lab> accessed 14 June 2020
35 B Lab, ‘Certified B Corp: legal requirements’ <https://bcorporation.uk/certification/legal-requirements> accessed 14 June 2020
36 Brakman Reiser and Dean, above n. 29
eclipsed by shareholder value and reduced to management strategies to further the corporate business case.\textsuperscript{37} But it appears to be popular among socially committed and commercially oriented companies in the platform economy with investment needs that a more commercially restrictive format would not meet. Neighbourly, for example, one of the founding UK B Corps (accredited 2015), is a company limited by shares running a CSR platform that connects businesses, including large multinational companies, that wish to donate to the community with ‘thousands of local good causes’.\textsuperscript{38} In 2015 it secured a £1m start-up investment from angel investors.\textsuperscript{39} Similarly, Peerby is a B Corp accredited product-sharing platform based in the Netherlands.\textsuperscript{40} In 2016, it raised over $2m from its users in a successful crowdfunding campaign from investors, most of whom where platform users.\textsuperscript{41}

4. Community membership

Community membership in platform organisations follows a radical but simple idea: ‘imagine if the platforms we used every day were owned by the workers and the users themselves.’\textsuperscript{42} Here, the ambition goes further than embedding purpose (though usually, community membership also incorporates a commitment to social purpose). In a clear departure from corporate ownership, which is extractive, moving to community membership means that the right to make key decisions in the business organisation, and to share in its proceeds (if applicable), must be shared among the platform’s community of stakeholders as members who are active participants in the business and not external investor-shareholders.

This can be achieved by offering shares in a limited company to the platform’s community of stakeholders including its users, workers or supporters (e.g. via crowdfunding as with peerby.com above). To do so alters the corporate structure to ensure members, who continue to vote and share profits in accordance with their financial shareholding, are also linked as stakeholders to the platform (and its purpose). But more far-reaching ideas of community membership are linked to cooperative ownership, and an emergent movement to support the development of “platform coops” as democratically organised alternatives to corporate platform ownership, where membership is based on one person one vote and profit shared equitably. The platform coop movement started in earnest about five years ago with some academic support, publicity and funding. Globally, the number of existing platforms that organise democratically as coops is still relatively limited, but it has grown with support of the movement.\textsuperscript{43} Existing platform coops are diverse. A relatively common model involves

\textsuperscript{38} Neighbourly webpage <https://www.neighbourly.com/aboutus> accessed 14 June 2020
\textsuperscript{40} https://www.peerby.com/
multi-stakeholder community membership where ‘users and the producers of the products/services facilitated by the platform, and the platform developers themselves, all come together as members-owners’ (like resonate.is, introduced above). Others however are organised by a single group of stakeholders, for example producers (e.g. stocksy.us), workers or service providers (e.g. taxiapp.uk.com) or as consortia of worker-owned businesses (e.g. upandgo.coop).

As with the incorporation of social purpose (discussed above), the stipulations that implement community membership will be enshrined in the organisation’s governing documents and in its legal form, making it important for law to provide sufficiently flexible instruments. UK social enterprise law contains several legal formats to implement community membership, each allowing for adaptation to accommodate variations in the law on companies, societies and partnerships. To illustrate these variations, rather than setting them out theoretically, we look at two examples of organisations that practice community membership in the UK by operating as democratically owned platform cooperatives, with different legal models. Both operate as multi-stakeholder models of cooperative membership: departing from a more traditional understanding of the cooperative as an employee-owned business form, they provide for membership of the platform organisation to be shared among different member-groups (including platform users, providers and supporters etc.) all of whom are identified as contributing value to its operation.

4.1 Open Food Network UK CIC

The Open Food Network (OFN) is described as ‘a global network of people and organisations who work together on the development of open and shared resources, knowledge and infrastructure to support the emergence and development of food enterprises and short supply chains all over the world.’ The network is committed to building a sustainable and resilient food system by reconnecting producers and consumers, by empowering people and giving them tools and knowledge to develop the food hubs they need for their community. OFN platforms host open source software that anyone can use and build their own project on it to support sustainable and resilient food systems, as well as development products such as marketing tools, research, incubation and training programmes, case studies, consulting etc. which are released publicly under a creative commons license and can be used by anyone for commercial or non-commercial use as long as they are attributed to the OFN and released under the same licence. These online products, which are central to the network, are described as the OFN Commons.

Membership falls into three types. ‘Affiliate’ members include OFN regional representative organisations that deploy and maintain a branded OFN platform and provide the OFN Commons for the communities, food producers and food enterprises within their defined region. ‘Associates’ and ‘Service Providers’ on the other hand describe members contribute to the OFN Commons in other ways, for instance as a web agency, developer or consultant etc. Membership revolves around a “community pledge” that OFN asks all members to sign, as formal mutual engagement, providing ‘a format for accountability and transparency where people are using the Commons but want to clearly

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44 Borkin, above n. 19, p. 18
46 Ibid.
be part of strengthening and spreading it.\textsuperscript{47} The pledge involves a commitment to (1) share the OFN values that underpin everything the network does;\textsuperscript{48} (2) be transparent and communicate with the community about projects and opportunities that can impact the community; (3) actively contribute to the improvement and strengthening of the OFN Commons; (4) respect the licencing conditions; (5) update pledge commitments if members surpass or cannot keep them. Affiliate members commit to additional responsibilities, including local development and building-up service capacity to respond to local needs, and to represent the OFN brand.

The Affiliate member with regional responsibility for the UK is Open Food Network U.K. Community Interest Company (OFNUK), a CIC incorporated as company limited by guarantee (without shares). OFNUK’s articles of association are adapted for the organisation to operate as a co-operative with democratic membership where each member holds one vote (an entrenched provision that can only be changed by unanimous approval of all members).\textsuperscript{49} Its community interest statement specifies that by hosting of the OFN website and keeping the software open source, OFNUK offers an alternative to venture-capital funded sites that are otherwise available to local food hubs, enabling them to retain their own profit within their communities.\textsuperscript{50} Subscriptions to the site are means-tested, making its use free for hubs initially and subject to a small fee for larger organisations.\textsuperscript{51} All users have access to an online community forum which is used for the development of the OFN system.\textsuperscript{52} OFNUK describes itself as a ‘platform cooperative’ in which platform users are members and can contribute to the growth and direction of the company, and some users are non-executive company directors.\textsuperscript{53}

Flexibility in UK company law, including within the CIC format, to allow for constitutional variations enables OFNUK to adapt its articles of association to operate as a co-operative. In OFNUK’s case, the articles feature not only an objects clause committing the co-operative to carry on activities that benefit the community and, especially, to provide services that facilitate the development of sustainability food distribution networks. Supplementing these objects, the articles also include an asset-lock, based on the mandatory wording for CICs but supplemented to reflect cooperative principles.\textsuperscript{54} A further clause (entrenched and requiring unanimity to change) commits OFNUK to the purpose of carrying out its functions as a co-operative and to abide by internationally recognised cooperative values, and cooperative principles as defined by the International Cooperative Alliance (ICA).\textsuperscript{55}

\textsuperscript{47} Ibid.
\textsuperscript{48} Open Food Network, ‘Our Values’ <https://www.openfoodnetwork.org/values/> accessed 14 June 2020
\textsuperscript{52} Open Food Network UK Ltd. community webpage <https://community.openfoodnetwork.org.uk/> accessed 14 June 2020
\textsuperscript{54} OFNUK Articles, above n. 49, Clauses 101 and 102
\textsuperscript{55} Ibid., Clause 5
Membership in OFNUK operates democratically (one member, one vote) and it is open and voluntary, aligning with ICA principles. It may include platform users, employees and supporters – the latter defined as persons or organisations operating in an associated field of activity to OFNUK or with an interest in supporting OFNUK’s business. Applications for membership are determined by company directors. Directors also determine what proportion of profit is reinvested in the business or applied for the community benefit (no profits are distributed to private shareholders).

4.2 Equal Care Coop Ltd

Equal Care Coop Ltd (ECC) is a locally operating multi-stakeholder cooperative that uses platform technology to provide personalised care services in the UK. It has four member categories: service recipients who use the platform (supported members), the caregivers (worker members), relatives or friends of care recipients who cannot be members (advocate members) and those who support and have made a financial investment in ECC (investor members). However, to ensure that the coop is controlled by key stakeholders, investor members have no more than 10% of voting strength in the organisation. The cooperative is committed to ‘delivering a fair, relationship-centred, co-owned care and support service that matches, supports and develops the users and the givers’ of care. Its business model is dedicated to empowering both users of care services and care givers: the former, by enabling them to select their own care workers and have control over their own care planning, coordination and data; the latter, by ensuring they are paid fairly and have flexibility in choosing the employment model and timetable that suit them. ECC deploys its platform technology to manage the service efficiently and free up resources to focus on the quality of care and work instead.

Unlike OFNUK, it does not rely on the company (or CIC) format. Instead, ECC is incorporated as a UK cooperative society, registered under the Co-operative and Community Benefit Societies Act 2014 and regulated by the Financial Conduct Authority (FCA). The FCA controls the society’s rules (its governing documents) and statement of operation to ensure it adheres to the ICA Statement of Co-operative Identity as well as the statutory principles and requirements in the 2014 Act. The society format is arguably less well known than the private company or CIC, and it offers slightly less flexibility for adaptation, but it is designed especially for cooperatives. Unlike a company, a society is always formed to run for the mutual benefit of its members, based on their common economic, social and cultural needs and aspirations. Decisions are taken in accordance with the principle ‘one member one vote’ (unlike for a company, this cannot be changed).

An advantage of the cooperative society form is the ability within the coop structure to attract capital from investor members. It can pay interest on share capital and distribute a share of its surplus, although return on capital is limited and while profits may be distributed to members, this must follow an equitable formula. Interest payable on shares is limited to what is necessary to obtain and retain enough capital to run the business. ECC for example has successfully taken advantage of the financial flexibility within this regulatory system to attract equity capital (in addition to grant funding). After an

56 Ibid., Clauses 10 – 14.
57 Ibid., Clause 100
58 Equal Care Coop Ltd., Rules, Clause 63(b) <https://work.equalcare.coop/the-bylaws/the-rules> accessed 14 June 2020
59 Ibid., Clause 5
initial crowdfunding campaign, raising over £20,000 with nearly 200 supporters to provide important start-up funding, the coop has recently completed a successful community share offer raising over £400,00 to fund technology and ongoing cost.\footnote{Power to Change, ‘Equal Care Co-op: A platform co-operative that brings community together in social care’ (September 2019) \url{https://www.powertochange.org.uk/what-is-community-business/stories/equal-care-coop/?format=pdf} accessed 14 June 2020}

Despite their legal and structural differences, there are similarities between ECC and OFNUK worth highlighting. Both are platform organisations in blended ownership, incorporating the pursuit of social mission and democratic membership while operating as a business to be financially sustainable. They rely on UK social enterprise law as enabler of this operational mode, having chosen legal formats that suit their venture individually. By placing values of fairness, community and sustainability at the heart of their venture, both fulfil social functions which the coronavirus pandemic has accentuated. OFNUK for example has played a key role globally in the pandemic, including in the UK, in helping communities, including producers and consumers, build and plan their online food systems and home delivery.\footnote{Open Food Network UK Ltd., ‘Helping with Covid-19: all the links for resources and funding opportunities’ \url{https://about.openfoodnetwork.org.uk/blog/online-food-sales-in-response-to-covid19/} accessed 14 June 2020}

Similarly, ECC’s personalised approach to care has proven advantageous for reducing infection risks because care recipients see their chosen caregiver continuously person, not a stream of different workers. Both organisations, in community ownership, have reacted responsibly, inclusively and fairly to a global crisis, steered by their constitutional obligations.

Both have found means of dealing with economic challenges that most platforms face, such as building networks or ensuring financial sustainability. In ECC’s case, this involved especially the successful crowdfunding and community share campaigns. In the case of OFNUK, the interaction between the UK organisation and the global OFN network acts as a mutual enabling mechanism: by plugging into the global network, OFNUK sustains its business model, while the network on the other hand, relies on its UK regional partner to sustain the global OFN system and brand.

Both ECC and OFNUK are also examples of organisations that have an identity as platform coop and member of a social movement challenging corporate platform ownership.\footnote{Nina Boeger, ‘The New Corporate Movement’ in Nina Boeger and Charlotte Villiers (eds), \textit{Shaping the Corporate Landscape} (Hart 2018)} They have profited from the movement as a support structure, concretely for example by receiving targeted support from a UK accelerator programme for the platform coops.\footnote{‘Unfound’ platform coop accelerator webpage \url{https://unfound.coop/pioneers/} accessed 14 June 2020} How the coronavirus pandemic will affect this movement and platform organisations in community membership, like ECC and OFNUK, is still uncertain. As with other areas of the economy, COVID-19 has brought us a watershed moment that, on the one hand, might see existing socio-economic systems and embedded inequalities further exaggerated. Or it might go the other way and allow genuinely radical alternatives to flourish in a (post-)pandemic world. For the platform coop movement, the stakes are high. There clearly is potential for platform coops to play a key part in the recovery of local economies from the pandemic’s devastating economic impact by generating genuinely inclusive and shared local platforms for business, workers and users to benefit. Their success in the medium term, on the other hand, will depend heavily on whether governments and their economic policies, but also platform users and their consumer habits, can be weaned off habitual reliance on the convenience of large corporate

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platforms whose dominance may instead become further entrenched and centralised in this new world. Key members of the movement are mobilising to address these challenges by democratising ‘digital-business-as-usual’. 65

5. Inclusive governance

Membership in a business organisation determines who can take key decisions and share proceeds if applicable. Governance on the other hand concerns the rules and processes within the organisation that ensure the overall direction of its leadership and that hold leaders accountable. Governance may involve members directly, but it will usually be delegated to a group of fiduciaries, typically a board of directors who manage the venture on behalf of members. We have seen that archetypically corporate ownership, by prioritising shareholders and the pursuit of shareholder value as the (sole) measure of good corporate governance, tends to operate as unidimensional and structurally speaking, therefore, relatively simple model (see section 2 above). In contrast, governing organisations in blended ownership is very much a multi-dimensional exercise that involves balancing diverse stakeholder interests as well as ensuring that the organisation is economically successful. Platform organisations that have legally committed to reflect community interests their purpose and potentially their membership, will typically aim to operate an inclusive governance model to suit this. The complexities that come with such a move have long been recognised. 66 Being inclusive involves discretionary judgments by directors or others involved in the balancing act that can be complex and time consuming. 67

UK law does not currently offer much direction on these issues. General company law, as we have seen, is flexible enough for company directors to take account of stakeholders in discharging their duties towards the company (i.e. the shareholders), but without imposing a strict legal obligation on them to do so unless companies choose to stipulate this in their articles. 68 The accompanying corporate governance codes, which set out soft-law principles applicable to public and large private limited companies, impose some procedural accountability on companies for accounting to stakeholders. 69 But these obligations are relatively limited, applicable on a ‘comply or explain’ basis. Neither general company law, nor the codes, offer any detailed guidance on how directors might go about the exercise of balancing various stakeholder interests in practice.

Specialised UK social enterprise law (including the CIC regime and societies) includes few express or detailed stipulations on corporate governance, with some exceptions. The ICA cooperative principles, for example, are incorporated into the cooperative society under the FCA’s direction. And the CIC legislation provides that CICs are legally required in their annual community interest report to specify, at least briefly, how they have tackled aspects of their governance, including details on their directors’ remuneration, dividends paid on any shares, and details of how they involve stakeholders. The CIC regulator does have powers to investigate individual CICs and take appropriate action where necessary, including by changing directors or even to wind up a CIC. But these are exercised light

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67 A point classically raised to reject managerial or stakeholder theories of corporate governance, e.g. Henry Hansmann and Reinier Kraakman, ‘The End of History for Corporate Law’ (2001) 89 Georgetown Law Review 439
touch, in accordance with a soft-law guidance set out by the regulator.\textsuperscript{70} None of these legal regulations are particularly detailed on matters of inclusive corporate governance. Mostly, therefore, it is currently up to platform organisations themselves to come up with an appropriate governance framework that works for their venture as well as complying with the applicable legal framework.

The complexity of having to balance diverse stakeholder interests and economic constraints while governing inclusively raises two specific structural questions. The first is whose interests as stakeholders are being included. Inclusive governance may for example incorporate a specific and relatively homogenous stakeholder group, allow for multi-stakeholder input (e.g. in organisations like OFNUK or ECC) or aim to be more radically inclusive and accept input from open groups, interested parties, contributors or supporters etc. of the organisation (e.g. Wikipedia incorporates aspects of this). The second and related question is whether stakeholder voices will feed into governance directly via a process of participation, or whether they are channelled mainly through fiduciaries (usually, the board of directors) with decision-making powers.

Commonly, even inclusive structures tend to favour a board-centric and hierarchical methods of governance that rely on directors duty bound to consider and evaluate stakeholder input, though it is possible to place stakeholder representatives on the board (e.g. OFNUK where some members are also non-executive directors). Some however favour more radical models organised around a ‘decentralization of power and authority’,\textsuperscript{71} that enable stakeholder groups to play an active role as decision-makers in the governance of the platform, in ways that are not centrally mediated through the boardroom. The difference between the two approaches hinges on the very character they assign to the stakeholder: in a board-centric structure, unless stakeholders are directly involved in the boardroom, they often remain a relatively passive voice - an interest to be consulted and considered. In a community-led model, they are assigned an active role as decision-makers that determine the overall direction of the organisation.

It is not uncommon for platforms in blended ownership make use of the availability of technology and networks built into their business model to pursue a more flexible and decentralised form of governance that also helps with inclusivity and transparency. As a member-owned organisation, ECC for example has built its decision-making structure on a model of ‘sociocracy’\textsuperscript{72} relying on “circle” governance that is different from a board-centric model. ECC describes its model as ‘self-governance using a hierarchical structure of semi-autonomous, inter-linking Circles which are responsible for policy decisions within their areas of responsibility. Each Circle is guided by input from the more general circle it is linked to and co-operative members through the Circle thread in the main Equal Care Co-op Forum on [the open source software] Loomio.’\textsuperscript{73} Every circle must set out its aim (description of purpose), domain (work areas and tools), term (how long it will run for), membership (participants and how to join) and work roles it creates to fill its aim. Circles are linked to one another in a hierarchical structure (with broader circles overseeing the aim and domain of more focused ones), though they can have overlapping members, and all circle meeting records are made public to ECC’s


\textsuperscript{72} Sociocracy For All, ‘Sociocracy’, <https://www.sociocracyforall.org/glossary/sociocracy/#keyconcepts> accessed 14 June 2020

\textsuperscript{73} Equal Care Coop Ltd, ‘Circles - who decides’ <https://work.equalcare.coop/circles> accessed 14 June 2020
members (except for discussions of confidential or sensitive information). This method of organising closely resembles a heterarchy. It does not discard the idea of hierarchy altogether but softens it by introducing changing, and overlapping, hierarchical patterns. In ECC, for example, clearly some circles still decide things over others but, given the flexibility of the circle structure itself, there is no fixed hierarchy of who comes out ‘top’ and ‘bottom’ in the long term.

6. Conclusion: lessons and challenges

In attempts to control the socio-economic impact of platforms, political and regulatory intervention has to date received the lion share of attention. Much less has been said about the corporate legal structure of the platform and its ownership. This chapter introduced an alternative response to the corporate platform economy that relies on blends and variations of its ownership to steer its socio-economic effects. We asked what flexibility there is within (UK) social enterprise law to incorporate constitutional commitment to social purpose, community membership and inclusive governance within business organisations that run platforms. When these organisations are in corporate ownership, they operate from a perspective of satisfying the demands for regular profit income in order to stay ahead of the competition for growth and, ultimately, to improve shareholder value. In this hierarchy, other stakeholders, even if they are closely involved in the platform (users, producers, community supporters etc.), have little weight in its governance, nor the opportunity to be active members or share in the profit of the business to which they contribute.

Our response to this format is based on a simple observation: being both exclusive and extractive, this ownership design is a root cause for the socio-economic problems emerging in the corporate platform economy, to growing political attention. The behaviour of corporate platforms is steered not just by economic and cultural etc. imperatives but also, and fundamentally, by the extractive legal ownership format of the corporations that run them. Social enterprise law, on the other hand, by enabling communal blends of platform ownership, opens the possibility of steering their behaviour “from the inside out”, offering legal forms that make platforms operate differently (in terms of their governance, membership and purpose) from the corporate format but without the need for (the same level of) additional, external regulatory intervention.

Our discussion of UK social enterprise law in this chapter brings up some initial lessons. While the law can offer much-need legal framing and flexibility, the commercial challenges facing blended ownership formats are formidable. Their success will depend crucially on their ability to govern their own complexities as organisations, to encourage growth, build networks and access finance. Despite their legal framing, for some organisations the risk of mission drift cannot be excluded. Managing drift, on the other hand, involves carefully balancing the inevitable impact of some legal mechanisms, like an asset-lock, on commercial prospects. Matching models of ownership and available capital finance is a recurrent and urgent commercial issue for blended formats, from member-owned cooperatives to mission-led B Corps. There simply are, currently, not as many of these as there are of corporate platforms, and where they exist, many are smaller organisations and less “visible” in everyday economic and political life. These are challenging conditions, no doubt, despite promising signs that emerging movements and their associations do manage to offer support, gather and disseminate knowledge, provide advice and build networks that help tackle some of the challenges. It will be important to strengthen these further, especially to support the development of new instruments for social impact finance in which both platforms and potential investors have trust. This support should

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74 Ibid.
76 Borkin, above n. 19, p. 10
come from local and central government as well as the sector itself, including some further direction on corporate governance for blended ownership.

But the emphasis on blended ownership, which is advocated in this chapter, has another structural challenge to answer. It raises the question whether, despite some of the promise we see, the advocated approach - which relies on social enterprise law as a voluntary regime to enable changes in ownership design - is ever enough to bring about structural reform in the platform economy. Currently, this approach creates blended formats that only ever seem to operate in the interstices of corporate capitalism, but not replace it. Some might go further therefore and ask whether this approach carries risk, of diverting resource and focus away from alternative, and potentially more effective strategies to meet the momentous challenge of controlling the extractive behaviour of incumbent corporate platforms. From that perspective, surely, we should be focusing on the reform of corporate law generally to enable sustainable corporate ownership more broadly? Or concentrate on devising more effective transnational instruments to gain political control and steer corporate platforms by regulatory means (as advocated by Chiu in this book)? Or advocate at least only one legal form for social enterprises operating in the platform economy rather than supporting multiple blends and movements to avoid confusion and fragmentation?

A new sense of urgency has entered these questions as we try to figure out how (not if) the COVID pandemic will change how the platform economy works. The stakes are high. Corporations are seeing new opportunities while community businesses are showing potential but anxious about marginalisation. Already implicit in the discussion in this chapter is the argument that the relationship between regulation and re-design of legal ownership is not a zero-sum game but mutually reinforcing. On the one hand, by keeping incumbent corporate platforms in check, regulation (if successful) will create a more equal playing field for new entrants including community platforms. On the other hand, if regulating corporate platforms is difficult or fails, then to encourage ownership that steers internally, if well-supported, can, to some extent at least, compensate for it. This suggests we need both regulation and ownership design, as a pincer movement to eventually create a legal environment that manages both to enable and support the evolution of blended ownership and, at the same time, to improve the regulation of existing corporate platforms. It would seem that for this pincer to be strong, as the post-COVID economic develops we should embrace diversity and experimentation in blended ownership than committing to some formats over others at this point in time. The challenge is to find those ideas that generate structural change. Systems thinking tells us that structural or systemic change – of the kind some of us would like to see in the corporate platform economy – usually requires a paradigm shift: a change in ideas and assumptions about how the world is and how it can be. In other words, it involves devising new ideas of how the platform economy could (and should) operate. Regulating corporate platforms alone cannot help us here - after all, regulation is part of the existing system setting “the rules of the game”. Recognising that ‘ownership matters’ – that ‘deepening problems … are the predictable outcomes of the basic organisation of the extractive economy’ - is another good place to start.

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