

Social Enterprise

The 'holy grail' of business models?

by Adrian Ashton



Adrian Ashton

This article is based upon a presentation given in 2008 at a workshop hosted by Faith in Business at Ridley Hall. The presentation was chiefly concerned with presenting an overview of the legal forms that a Social Enterprise¹ can adopt in pursuing its objectives, and raised initial questions on the need to consider the appropriateness of such forms in the light of our faith.

Adrian Ashton seeks to elaborate on these 'questions of faith'; and while no definitive answers are offered, it is hoped that readers will be stimulated to begin their own reflections and share them with others to build a stronger resource for Christians in Social Enterprise.

Introduction

Social Enterprise as a concept is not new – examples of people and communities using private enterprise mechanisms to realise social purposes can be traced back throughout recorded history. However, the phrase 'Social Enterprise' is relatively new, having first been used by the UK Government in 1999.

This article sets out not a history, rationale or rallying call for Social Enterprise, but rather makes an initial examination of one aspect of it – its legal status. It considers why what may seem to be a secondary or even trivial decision about how such an enterprise is structured should have a strong imperative due to our faith.

It will briefly profile the various legal forms that Social Enterprises can adopt, show why such forms are important in the context of the implications they create for the ways in which the Social Enterprise might wish to operate, consider how the Christian (or other) faith can be reflected and enshrined, and give an overview of the processes to consider when choosing or reviewing a legal identify.

Different Forms

Social Enterprise is both blessed and cursed in not having a specific legal definition, nor a single legal form in the UK. While this allows social enterprises a great degree of freedom and flexibility in structuring their activities, governance and financing, it can also cause confusion and uncertainty to many.

Currently, there are 13 separate legal identities that a social enterprise may adopt, with some capable of being co-adopted so that the enterprise holds multiple legal identities (for example a charitable company), while others are mutually exclusive (a charity cannot be a community interest company). This collection comprises:

- six forms of limited company (including the community interest company models):

These encompass the traditional 'private company', owned by shareholders privately or publically and the not-for private gain company - limited by Guarantee. All three of these models can also be used as the basis for the Community Interest Company which confers a public 'badge of social enterprise' upon a

company through requiring it to adopt and adhere to additional legislative requirements in its activity, reporting and financing arrangements.

- two types of partnership:
The traditional private arrangement between individual traders, as well as the recent 'Limited Liability Partnership' which confers the benefits of

community benefit over members' interests and in doing so currently hold charitable status.

- two types of charity (with a third expected in 2009/10):
Charities are unincorporated entities, with their members having personal liability; in recent years many have therefore become 'charitable companies' with dual legal

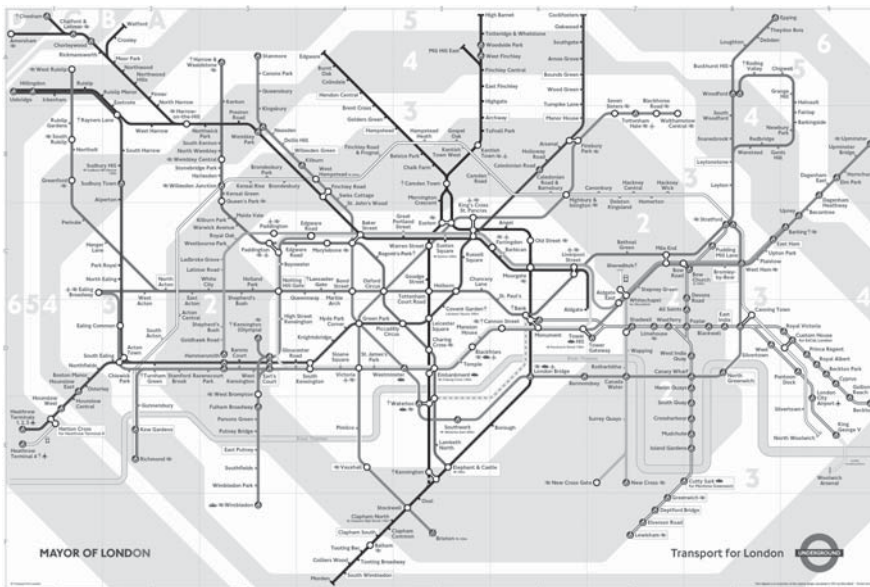
their enterprise before committing it to a specific legal identity.

The confusion that this range of options creates is further magnified by a proliferation of 'types' of social enterprise. While these are not specific legal forms, they are a reflection of a specific identity or values set reflecting the enterprises' principal aim in relation to its community. These include Development Trusts (which are not usually a legal trust, but are enterprises concerned with the holistic regeneration and support of a specific geographic community) and Social Firms (concerned with supporting people most disadvantaged in the labour market to gain employment).

While some readers may find it of interest to learn more of each of these forms, it is not the intent of this article to profile them all – references will be made to many to illustrate arguments and issues, and should you require any further information about the detail of each, I would be happy to discuss them with you by arrangement.

Implications

The decision of which form to adopt can have considerable consequences if done so without proper advice and guidance, and an understanding by those governing the enterprise as to what the implications of adopting different forms are. Through ignorance of what can and cannot be done within the legal structure adopted, some enterprises have acted illegally, while others have lost control of the enterprise and seen it subverted by either a self-



■ A confusing maze of options ■

limited liability on each partner for their agreeing to be more transparent in their trading through registration with Companies House.

- two forms of industrial and provident society:
IPSs were created in the 19th century in order to offer greater safeguards to members of co-operative enterprises (company law at the time being inadequate), and evolved to a second form which are primarily concerned with wider

identity. Recognising this trend, legislation is currently being passed to create the Charitable Incorporated Organisation which will confer a limitation in the personal liability of members without their needing to be governed by both charity and company legislation as many currently are.

- an unincorporated association:
Used by sole traders, this form is also very popular amongst 'social entrepreneurs' who wish to further explore and develop

interested minority or regulatory body that has no connection to their respective communities. However, some have been able to exploit their chosen form in order to create new routes to raising



■ Legal structures maze ■

finance from non-traditional sources.

In the context of Christian faith, such issues over loss of control or the need to conform to certain standards are crucial if we are to retain our basis in faith, along with the ability to be influenced and led by our faith in all decisions affecting the enterprise. For example, how 'free' can we be in pursuing our objectives, if the respective regulatory body has the power to arbitrarily impose restrictions on our trading activities? (This is the case with Community Interest Companies).

Process to identify appropriate forms

For most social enterprises, the methods chosen in identifying and adopting their legal form are various. Some seek advice from mainstream business support bodies who usually encourage the adoption of a legal form first, as opposed to individual consultants and specialist support agencies who encourage groups first to

consider their values, priorities for governance, financing and accountability and then select a form based on scenario planning on the basis of these considerations.

There also exists a proliferation of tools including charts, books, tables, questionnaires and physical 'building blocks', yet none exist that are specifically tailored to the Christian faith in allowing Christians to consider what may be an appropriate form in the context of their faith and scriptural teaching about work.

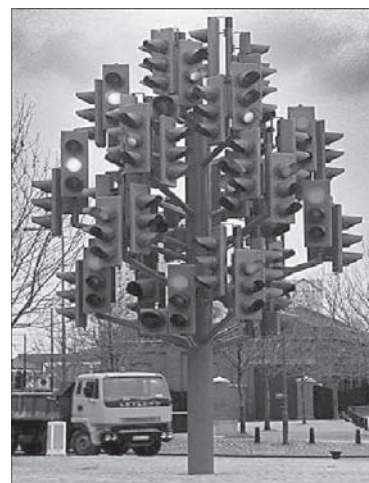
As Christians we therefore find ourselves needing to find our own path. Many faith-based enterprises have previously chosen their form on the basis of what they have seen other faith-inspired groups adopt, and others on the basis of what they have informed themselves by using whatever tools and information they have been able to identify.

Impact of, and on, faith

Yet this issue of legal form is crucial if we are serious about linking our faith with our work. As Christians we subscribe to certain values and teachings over how we are governed, how we should relate to others, and what constraints we should seek to impose upon ourselves, and so we should be able to relate all of these to how the enterprises we work within are structured. Yet for many Christians, such issues are not usually considered – we are clearly taught in scripture to obey the law of the land ("pay unto Caesar what is due to Caesar"²) where it does not contravene God's commandments

to us, and so often we simply 'fall into line' with the enterprise's regulatory requirements concerning governance, management, reporting and financing without considering or questioning them.

However, with regard to the issue of legal form for the social enterprises that our faith is compelling us to create, we have the opportunity to select which 'laws of the land' we wish to subject ourselves to. Such an opportunity is not usually afforded us and so, understandably, very few faith-based social enterprises have considered so explicitly their structure and form in relation to their faith. We have the option to choose a legal form that will cement our aspirations with regard to how we wish to relate to external bodies who finance us, with the community in



■ Legal structures options ■

which we trade, and also with regard to our accountability.

Contrary to popular belief by many, the Community Interest Company, perhaps the most high-profile form for social enterprise,

does not require such a legal form to ensure involvement with the community it is established to benefit. In contrast, an Industrial and Provident Society, a far older, less 'glamorous' form, is subject to a regulator who requires that its community are not only involved in it, but that they actively own, direct and benefit from it in ways and means appropriate to all - so that none are excluded.



■ The Co-op store, Beamish Museum ■

Historical Precedents and Models

However, despite all of the above, many still find the idea of how to reconcile their faith to a legal form extremely difficult and complex – perhaps because as Christians, many of us are not generally encouraged or taught to consider the relationship between our faith and the laws of the land. It may therefore be useful to consider two historical models as to how Christians have approached these issues over the years: one from the nineteenth century, and one from the pre-Reformation period:

The 'Co-op'

Many around the world hold Rochdale (more precisely, 28 Toad Lane, Rochdale) as the birthplace of the modern co-operative business – a model of enterprise that was founded explicitly to enact social values³ with the aim of addressing social injustices and inequalities facing local people with little means or power of their own.

What is perhaps not so well known, is that these 'Pioneers' of the modern co-operative movement were rooted in faith as Christian Socialists. The Rochdale Pioneers sold basic items such as flour, butter, tea and candles, but it was how they ran the business that made them different. Their faith compelled them to take action in a situation where they perceived injustice, and they sought to ensure that their faith could be reflected in their trading and ownership structure. They therefore agreed upon a set of core values and principles, determined by their faith, that would guide the business, and subsequently influenced the creation of a legal form that would give them the ability to protect and entrench these values. Perhaps most revolutionary amongst the manifestation of these values was the opportunity for women to gain a legal vote in how the enterprise was managed – decades before they gained the

legal rights to vote in parliamentary elections.

Ultimately they became an Industrial and Provident Society, not the normal form for a trading business at the time, but an indication that if our enterprises are to be founded upon values that are not the norm in business, we should not automatically assume that the most commonly used model will be the most appropriate for us.

The Monastery Model

And yet, going back even further in history, we find another model of Christian social enterprise – monasteries.

The medieval Christian monastic communities recognised the need not only to ensure that the members of the community worshipped God in prayer and singing, but that they were also engaged in productive and meaningful activity on a day-to-day basis. The Rule of St. Benedict emphasised hospitality, so the provision of health and education services for the local community was part of the daily work offering to God. Over time, the work on the land resulted in large-scale production of wool, crops and minerals, providing opportunity for trading in international markets. However, the question arose as to what form this trading should take. Company and enterprise forms did not exist as we recognise them now. So these early communities devised a legal structure appropriate to their ethos: the CEO of the monastery (the abbot or abbess) to be elected by the whole community "with one consent, in the fear of

God” (Rule of St. Benedict Chapter 64), and all important decisions to be taken by consulting with the whole community (Rule of St. Benedict Chapter 3) in the circular Chapter House (i.e. a circular boardroom!). Furthermore, they sought to trade in ways and in markets that were beneficial to the wider environment (e.g. wool, crops, health, education, beautiful architecture, sustainable land use),

ventures, subject to the relevant regulatory body, and held accountable by its members in ensuring that its values are constantly at the fore of everything it does; or (ii) that they can be based within our existing Churches, under the direct authority of the leadership of that Church, and needing to be fully integrated within the life of that Christian community.

Both offer appeal over the other, yet both also have limitations. For example, the stand alone venture may be able to be more responsive to changing market forces over that situated within a Church’s structure and its governance, yet its members may not share or view the enterprise in a consistent way over time, and so their interest in it retaining its adherence to its Christian values may be at risk of erosion.

Conclusions

As stated at the outset, this article has not sought to give definitive answers as to how Christians exploring social enterprise should structure their venture, nor to explore in detail the implications that each legal form infers.

Instead it has highlighted the need for us as Christians to consider carefully how our faith should impact upon, and in turn be affected by, those things that we engage in as we form our enterprise: accountability, control, financing, and so on. It has offered a framework within which to begin to explore these issues, and pointed to historical examples to

illustrate different approaches that can be taken.

I hope that this article, along with others in this edition of FiBQ, and further resources available, may help Christians creating or involved in Social Enterprise become better equipped to fully enact their faith and reflect the glory of God in their working lives. ■

Adrian Ashton

(www.adrianashton.co.uk) is recognised by many local, regional and national bodies as an authority on Social Enterprise (particularly their governance and structure) after working in this sector for 10 years in a variety of roles. While not a ‘classically trained’ theologian or solicitor, he has worked closely with a number of faith-based social enterprises and bodies in supporting them to explore the relationship between their faith and activity, and also successfully lobbied the regulatory bodies for different legal forms over aspects of legislation and the values that such enterprises have sought to express and protect.

He works in a freelance capacity throughout the country, is father to two boys, supports his partner in her artistic career as a felt maker, and has an active role in his local community church.

Notes

1. A business created primarily to meet social needs that does not allow private individuals to make excessive profits from its trading activities
2. Mark 12:17.
3. The values agreed by the International Co-operative Alliance being: self-help, self-responsibility, equality, equity, solidarity and democracy



■ Chapter House complete with circular boardroom table ■
■ (Southwell Minster, but in the monastic tradition) ■

and they sought to do so in such a way that the focus of this trading would reflect their faith – in ensuring that all people, especially local people, would benefit, in not allowing an undue amount of the surpluses generated to be taken out of the local community (so they reinvested them for future and further growth, and in buildings for the glory of God), and in structuring the working day around the worship of God.

These examples therefore give us as Christians two clear models of how to approach the development and establishment of our social enterprises: (i) that they can be established as ‘stand alone’