

# Faith-Based Enterprises:

## Making the link between Faith and Enterprise



by Simon Lee

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**What ways are there for Faith-Based Social Enterprises to ‘show their true colours’ and demonstrate to the wider world the principles on which they stand and operate?**

**This article explores the options and builds upon the outline of legal form and structure as considered by Adrian Ashton on pages 9-13.**

### Introduction

Can there really be such a thing as a ‘faith-based enterprise’? If so, what does this look like in reality, and to what extent can the ‘faith’ element influence the ‘enterprise’ part?

Adrian Ashton considers some of the issues around choosing the appropriate legal form. This is certainly an important process and the legal form you choose will have an impact not only on the kinds of activities that you can carry out and the types of funding that you may be able to access, but also on the level and type of reporting to which you are subject, and the degree of freedom that the enterprise has to operate (both now and in the future). Whichever legal form you opt for, it is worth taking the time to investigate the relative merits of each in the context of your own circumstances.

This article assumes that you already have a faith-based enterprise or organisation set up, and are looking for the ways in which the ‘faith’ part can shine through, more strongly, in the context of the business as a legal entity. For this reason I look at aspects of company law (the framework of directors’ responsibilities), employment law (religious discrimination), charity law (the rules on social investment), and wider ways in which the general public can be made aware of the work of your enterprise.

### Company law – the changing framework

The 2006 Companies Act is the most significant thing to happen to company law for over 20 years. The Act itself is enormous – it has 1300 sections – and brings about considerable changes in emphasis of company law. One of

the key introductions from the point of view of company directors is that their legal duties are put in an Act for the first time. (Previously, they have been framed by way of case-law only). Seven duties are now included, and I wish to concentrate on one of these which is new, namely the “duty to promote the success of the company”:

*A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole...*

In doing this, a director must have regard to factors such as the interests of the Company’s employees, the impact of the Company’s operations on the community and the environment, and the need to act fairly as between members of the company. This suggests a holistic

approach which is thoroughly biblical. Taking an Old Testament perspective, clear parallels can be drawn between these corporate responsibilities and the values of fairness, justice, and stewardship of God's creation. From God's clear pleasure and delight with his creation in Genesis chapter 1, his command to Adam in Genesis chapter 2 to work and take care of the Garden of Eden, and Leviticus chapter 25's principle of the 'Sabbath year' (when the land is itself to have a rest), it is clear that God as creator is passionate about the natural world - and that human beings have been entrusted with a momentous role in looking after it.

Justice too is an important theme running throughout the Bible, old covenant and new, with Isaiah chapters 58 and 59 revealing God's powerful call to his people to act with integrity, fairness, and compassion when making decisions.

It is important to note that the obligation under the Companies Act is to "have regard" to these things: that is, the traditional business drivers of profit and staying ahead of the competition can still take precedence over, for example, environmental impact. It is also important for directors of faith-based companies to take account of financial factors given that, unless the enterprise works from a business point of view, then an organisation can be left with good intentions but little else.

However, it is also true that there is provision here for people of faith to bring their principles to the Boardroom and for these principles to have a direct impact on key decisions that the business will need to take.

### What about discrimination?

There is an important distinction to be made between being guided by one's faith when making decisions (see above) and taking a person's faith into account when providing goods, facilities, or services to them. The first is perfectly legitimate, within the wider framework of company law; the second may count as

of goods, facilities, or services. An exemption can apply, in certain circumstances, to organisations 'relating to religion or belief'. However, it will also be necessary to show that the 'sole or main purpose' of the organisation wishing to discriminate is not 'commercial'.

The degree to which a faith-based enterprise is or is not 'commercial' is clearly something that must be considered on a case-by-case basis. For instance, there would be good argument to say that a faith-based charity, which carries out some trading primarily to meet its purposes, would not be classified as

'commercial'. In comparison, an accountancy firm which has some internal procedures designed to bring Christian principles into the workplace, but which is externally indistinguishable from other firms, is likely to be considered 'commercial'. Further advice will be needed to ensure that a faith-based enterprise does not unlawfully discriminate when providing goods, services or facilities as it makes a purposeful choice to

operate on the grounds of religion or belief.

### Social Investment and Charity Law

Perhaps you are coming from the perspective of a charity looking to support an enterprise or seeking support from the charity sector rather than running an enterprise. If so, have you considered social investment? These may not give your charity



■ *The Lord saw it, and it displeased him that there was no justice... According to their deeds, so will he repay. (Is 59:15,18).*  
 Christ Pantokrator and the Last Judgement  
 ■ (Mosaic, Baptistery of San Giovanni, Florence, c.1300) ■

'discrimination' and so potentially infringe the provisions of the Equality Act 2006, or the Equalities Bill which is currently making its way through the legislative process.

The starting point under the Act is that no organisation may discriminate on the ground of religion or belief in the provision

the full financial return which your charity may expect from other forms of investment, but social investment could still further your charity's aims. A Christian perspective on this might be that whereas many charities, including local churches, regard their task as to maximise its financial power, a more self-sacrificial way might be to give support to social investments with a lower financial return. Whilst many organisations are more or less free to invest as they see fit, charity law, understandably, has restrictions on the ways in which charities can use their funds. In this way trustees will need to carefully weigh the merits of social investment against more traditional forms of financial investment. To assist those considering this avenue, the Charity Commission has issued some helpful guidance on the subject.

It explains that

*social investment is not 'investment' in the conventional sense of a financial investment. Conventional investments involve the acquisition of an asset with the sole aim of financial return which will be applied to the charity's objects. Social investments, by contrast, are made directly in pursuit of the organisation's charitable purposes. Although they can generate some financial return, the primary motivation for making them is not financial but the actual furtherance of the charity's objects.<sup>1</sup>*

In this way, charities with funds to invest can potentially pass them

on to enterprises, thereby helping to fulfil both the purposes for which the charity was set up and the purposes of the recipient organisation. In order to satisfy the Charity Commission on a social investment, the trustees must ensure three things.

First, there must be a proper and direct connection between furthering the charity's objects and the investment made into the enterprise.

Charities must primarily exist to benefit the wider public.

Therefore, the trustees need to be sure that any 'private benefit' derived from the grant or social investment will be *incidental* to any 'public benefit' achieved. In this context, 'private benefit' means a benefit to a person or organisation which is different from the benefit that the charity is intended to produce (which is the 'public benefit').

So, for instance, a charity may be able to provide social investment into a social enterprise which gives training to the long-term unemployed in order to help them get back into the workplace. The public benefit is in the benefit to the individual being trained who has additional skills and also to society as a whole if the number of people out of work is reduced. There is also a private benefit to the person who, on getting a new job, receives an

income higher than before. In this example, the private benefit is incidental to the public benefit.

Finally, the trustees need to know that any private benefit which does arise is not excessive and will be clearly outweighed by the public benefit. Where charities are investing in 'businesses' this can be a hard balance to achieve and an even harder one to prove to the Charity Commission.

Those making such social investments will need to check them from time to time to ensure that they are still fulfilling the charity's aims, and an exit route should be ready if it is needed.



■ An example of Social Enterprise for the unemployed, Harmony Training is a social enterprise based in Hillsborough, Sheffield. Their mission is to increase the skills, confidence and employability of South Yorkshire communities through music. In particular, they specialise in music industry training courses for women and girls. ■

Social investment is therefore one way in which a charity might use its funds to stand behind its principles and help to develop enterprise.

### Ways of spreading the word

This can, of course, be done by way of normal marketing and publicity of one form or another. However, in addition you may



wish to consider the principles of 'social accounting' and / or SROI (social return on investment) which is not to be confused with 'social investment' (see above).

For the Christian, social accounting has the advantage that it affirms strengths of an organisation other than the financial, and can also be a powerful marketing tool in that it 'spreads the word' by the good publicity engendered by openness to non-financial review of the organisation.

In a nutshell, social accounting reviews the actions and decisions of an organisation. 'Normal' accounting does this too, concentrating on the financial impact of these things: assessing profit and loss, asset and liability. Social accounting concentrates on those matters which go 'beyond' numbers and takes on board the human (and for the Christian, godly) element - including, for example, our stewardship of the creation through environmental impact. Social accounts will track how well an organisation has done to meet its mission statement or objectives, enabling it to assess past strategy and plan an appropriate way forward.

For a global perspective, you may wish to visit the homepage of AccountAbility<sup>2</sup>, which describes itself as promoting "accountability innovations for sustainable development" and has a long track record in this area.

Whilst the principles of social accounting have been advocated for over 20 years, they are only now beginning to be understood and applied more widely. Perhaps for this reason, there is as yet no

one universally accepted form of reporting. The Office of the Third Sector has announced that it is backing research into more standardised methods for assessing and measuring social benefit and intends to issue guidance in the near future.

Nevertheless, there are good examples around already. Traidcraft, for instance, has been producing social accounts since 1994 and is, I understand, the first public limited company in the United Kingdom to do so. Therefore, whilst there is a lack of certainty over the 'correct' form of social accounting, it is nevertheless something that should be seriously considered as a way of promoting your organisation, its work, and its ethos.

Social Return on Investment UK describes SROI as

*an approach to understanding and managing the impacts of a project, organisation or policy. It is based on stakeholders and puts financial value on the important impacts identified by stakeholders that do not have market values.*



AccountAbility's Assurance Standard for sustainability

*The aim is to include the values of people that are often excluded from markets in the same terms as used in markets, that is money, in order to give people a voice in resource allocation decisions. SROI is a framework to structure thinking and understanding. It's a story not a number. The story should show how you understand the value created, manage it and can prove it.<sup>3</sup>*

SROI UK sees the benefits as including the provision of "a consistent and clear approach to understanding and reporting on the changes caused by an organisation."

SROI overlaps with social accounting and is a cost-based analysis tool that gives monetary values to environmental or social impacts. For instance, for every £1 invested into an organisation, there are social or environmental returns of £3.50. Clearly, if your organisation can accurately show that it is making the best use of the funds it receives, then you should be well equipped to tender for contracts or apply for grant funding.

However, it is the 'story' which comes out of the social accounting or SROI process which can be most useful to a faith-based enterprise seeking to tell others about its achievements. A good example is given within the helpful summary of SROI contained on the Philanthropy UK website<sup>4</sup>. An edited version appears below.

*"Getting Out to Work ("GOTW") is a programme in Merseyside that helps young ex-offenders into long-term, sustainable employment through intensive, one-to-one job*

*coaching and personal support. Although the investment does not generate a financial return, it does produce social returns, some of which can be monetised. For example, as GOTW clients gain work, they begin to pay taxes to the government while ceasing to claim welfare benefits. Furthermore, they are no longer re-offending, thus saving costs to the criminal justice system.*

*The New Economics Foundation carried out a SROI analysis. In its first twelve months, GOTW exceeded both funder objectives and regional targets for employment, while reporting client re-offending rates that were 15%-20% lower than national averages. These outcomes translated into economic impact: for every £1 invested in the programme, it generated a return of £10.50.*

The 'story' could be adapted for use on a website, in marketing material, or even for staff to



Jesmond Pool in Newcastle on Tyne - a social enterprise which publishes its social accounts ■

share with others. Organisations sharing their social accounts on their website include the Bloomsbury Cyber Junction in Birmingham<sup>5</sup>, Jesmond Swimming Pool in Newcastle<sup>6</sup>, and the Dee Valley Community Partnership in Wrexham<sup>7</sup>.

In addition, if the enterprise in question is registered as a CIC (Community Interest Company) there is a requirement to submit an annual report to the CIC Regulator<sup>8</sup>. This must identify the community which the CIC was set up to benefit and the ways in which the CIC has worked for the benefit of that community over the previous 12 months. The minimum requirement to comply is a short two-page report though the CIC Regulator encourages CICs to produce a more detailed document. Alongside, or instead of, some form of social accounting, then this report can be a useful tool to help tell others about your organisation, your activities, and even the faith which motivates you to act in this way.

## Conclusions

This article highlights some of the ways in which faith-based enterprises can (i) use principles grounded in faith in their decision-making within the organisation, in order to be more effective; and (ii) tell others about the subsequent achievements.

There will always be a challenge in presenting the link between the 'faith' and 'enterprise' elements and, ultimately, the organisation and management of this falls to those charged with the strategic direction of the organisation. Nevertheless, there are numerous resources and mechanisms available, to equip and facilitate those seeking to bring their faith to the forefront of the enterprise rather than leaving it trailing along behind. ■

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*He also advises on related legal issues such as contracts, directors' duties and responsibilities, and law applying to companies and CICs. Simon's colleagues advise on other areas of law including employment, charities, property, and dispute resolution. Centrally-based in Birmingham, Anthony Collins Solicitors advises clients up and down the country.*

*In his spare time, Simon enjoys playing football, writing poetry and competing in poetry 'slams', and co-leads a home group with his church.*

## For more information

Please see the resources highlighted in the footnotes to this article, or feel free to contact Simon on 0121 214 3710 or [simon.lee@anthonycollins.com](mailto:simon.lee@anthonycollins.com) and he will do his best to assist you.

## Notes

1. [www.charitycommission.gov.uk/supportingcharities/casi.asp](http://www.charitycommission.gov.uk/supportingcharities/casi.asp)
2. [www.accountability21.net](http://www.accountability21.net)
3. [www.sroi-uk.org](http://www.sroi-uk.org)
4. [www.philanthropyuk.org/AGuidetoGiving/Howtogive/Socialreturnnoninvestment](http://www.philanthropyuk.org/AGuidetoGiving/Howtogive/Socialreturnnoninvestment)
5. <http://www.bjunction.org/AnnualReports/SocialAccounts/tabid/88/Default.aspx>
6. [http://www.jesmondpool.co.uk/social\\_accounts.asp](http://www.jesmondpool.co.uk/social_accounts.asp)
7. [http://www.dvcp.org.uk/pdf/DVCP\\_Social\\_Accounts.pdf](http://www.dvcp.org.uk/pdf/DVCP_Social_Accounts.pdf)
8. [www.cicregulator.gov.uk](http://www.cicregulator.gov.uk)