An Overview of the Different Legal Structures for VCSE Organisations and the Implications for Grant Assessment

Yorkshire Funders Presentation

The History of the Trust

- Founded in 1999 by John Prescott – Deputy Prime Minister, as part of the National Coalfields Strategy
- Between 1999-2015 we distributed approx. £300million in grant funding in England as part of delivery contracts from central government
- Our teams in Scotland & Wales are still funded year to year by the own governments but England has not received any central government funding since 2015
- The Trust has had to become self-sustaining whilst need for our services has increased

How Has the Trust Changed?

- We are no longer predominantly a grant-funder
- Our Grant Programme for 2023-24 is £500,000, we used to award individual grants up to £300k
- Income now comes largely from the receipts from our commercial property portfolio
- We developed the CRT Support programme in response to changes in our circumstances and to respond to need in former coalfield communities
- Membership of the CRT Support programme is 630 small-medium sized VCSE organisations

Unregistered Group With Formal Rules

Pros:

- Can be set up quickly and cheaply (constitution agreed between initial members) no setting up fees (unless legal support is requested)
- Cheap and relatively easy to run, appropriate for small/grassroots groups
- Offers a democratic structure with reasonably flexible procedures

Cons:

- The group cannot hold property or enter into contracts in its own name
- Members may be held personally liable for the organisation's debts

The Trust's Perspective:

- Low risk but only for small awards up to £500
- Due Diligence can be protracted if the required documentation is held by different members

Registered Charity

Pros:

- Are readily recognised and enjoy considerable support from funders and other potential supporters. Tried and tested structure
- Charities can benefit from tax advantages including mandatory relief from business rates and utility costs
- Are the stated purposes of the organisation charitable in law?
- Presumption that charity trustees will serve in a voluntary capacity and not derive any personal benefit from their role (also a Con)

Cons:

- There are limits on the ability of a charity to raise funds by trading
- Regulation by the Charity Commission involves a significant administrative burden
- When a charity is wound up, surplus assets/funds must generally be transferred to a charity with similar purposes
- The registration process can be very slow (up 12-18 months in some cases)

The Trust's Perspective:

- Easy to access relevant documents for Due Diligence from the Charity Commission website
- Accounting format is relatively straight-forward and clear
- Many members that are charities are struggling to recruit new trustees (concerns over accountability and personal liability)

Company Limited by Guarantee (CLG)

Pros:

- The structure and its day to day operation is widely understood
- Quick and easy to establish with low registration fees
- Can be either charitable or non-charitable (e.g. as social enterprise). If charitable, tax reliefs should be available
- Limited liability for directors

Cons:

- *Filing with Companies House is straightforward, there are high penalties for delay/failure to file information*
- *If charitable, it would be registered with both Companies House and the Charity Commission need to file information/accounts with two regulators with different requirements.*
- *Some funders don't recognise the structure*

The Trust's Perspective:

- Easy to access relevant documents for Due Diligence from the Companies House website. Documentation is often updated quicker than the Charity Commission website
- Accounts can often be filleted (summarised) and may not provide a clear indication of Income and Expenditure which then requires further investigation for Due Diligence purposes

Community Interest Company (CIC)

Pros:

- Flexible – can be company either limited by guarantee or by shares
- Flexibility to pay directors
- If limited by shares it can pay dividends up to a ‘dividend cap’; and can also have non-profit
- Not restricted to objects/purposes, which qualify as charitable
- Usually very quick to set up

Cons:

- Does not receive the tax advantages extended to charities e.g. will not obtain business rate relief but may qualify for discretionary relief
- The scope of the community interest test can be ambiguous
- Not eligible to apply to several larger funders

The Trust’s Perspective:

- Often blurs the boundary between charitable purpose and personal gain
- Accounts can often be filleted (summarised) and may not provide a clear indication of Income and Expenditure which then requires further investigation for Due Diligence purposes
- Several CICs we work with are trying to register as a CIO instead as they found the CIC structure was not fit for purpose

Charitable Incorporated Organisation (CIO)

Pros:

- *One regulator – the Charity Commission*
- *Conversion from a company limited by guarantee should be fairly straightforward*
- *The members and trustees are usually personally safeguarded from the financial liabilities the charity incurs, which is not normally the case for unincorporated charities*
- *The charity has a legal personality of its own, enabling it to conduct business in its own name, rather than the name of the trustees*

Cons:

- *Is not as straightforward as running an unincorporated association or charitable trust*
- *All CIOs have to register with the Charity Commission regardless of their income, even if they have an income of less than £5,000*

The Trust's Perspective:

- Easy to access relevant documents for Due Diligence from the Charity Commission website
- Accounting format is relatively straight-forward and clear
- Several charities we work with are trying to register as a CIO instead to address the personal liability issue for trustees

Community Benefit Society (bencom)

Pros:

- Can be good for social investment: each member can buy shares in the society
- Is a good way of safeguarding community assets and bringing communities together for common purpose
- Strongly recognised amongst particular sectors – particularly where the co-operative structure is valued
- Reflect commitment to the wider community, with profits often being reinvested back into the business, rather than being distributed to members
- Societies without the statutory asset lock may seek charitable tax status from HMRC

Cons:

- Weak 'brand' – the existence of this structure and its key characteristics are poorly understood even in the charity sector. That lack of recognition can be more pronounced – and inconvenient when dealing with commercial bodies such as banks
- Registration is with the Financial Conduct Authority - administration procedures are different to those of companies

The Trust's Perspective

- It is very rare for the Trust to receive applications from a bencom

Legal Structure of Yorkshire Member Organisations

- All members have to be legally constituted / incorporated organisations
- The 132 Yorkshire members are:
  - Charity & Co. Ltd. By Guarantee = 36 (27%)
  - Registered Charity = 35 (27%)
  - Community Interest Company = 25 (19%)
  - Co. Ltd. By Guarantee = 18 (14%)
  - Charitable Incorporated Organisation = 16 (12%)
  - Other (PCC, town council) = 2 (3%)
- However, there are significant regional differences i.e. The NE region has 35% CICs and only 20% Charity/CLGs

Refocusing of Grant Funding

- Historically we had an ‘open call’ for funding. This created high volumes of demand and low levels of successful applications typically around 20-25% (which meant 75-80% were unsuccessful)
- This year we only allowed CRT Support members to apply through a more controlled application process
- Each region was given the same allocation of £100k, irrespective of the size of the membership
- Grants were awarded up to £5k
- Success rates increased to between 70-80%

The Way Forward

- We want to be a relational and responsive funder addressing real need in former coalfield communities, whilst recognising our resources are limited
- The 630+ members provide a voice for these communities to engage with us and guide our future planning
- We are providing funding for Core costs (rather than just project funding) which does present challenges from an application design and impact measurement perspective

Coalfields Regeneration Trust

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