

**BEING A MORE INCLUSIVE GRANTMAKER:**

**FUNDING NON-CHARITIES**

**Further Information from Social Enterprise UK & Wrigleys Solictors**

**27th September 2023**

**Social Enterprise UK**

Q. Andrew, what would you say to a charity only funder how to manage any perceived risks funding a social enterprise (SE)? For example you mentioned not funding profit distributing SEs.

A. As the world has changed and other entities have sought to address some of the issues we discussed, founders having a say at Board, business solutions to social issues, earned income in direct pursuit of social objectives etc… a traditional charity only funder could look to other social vehicles based on a number of factors:

1. Are the objects, mem & arts encompassing of a social mission and is this enshrined in their purpose.
2. Do the objectives of the organisation match with the objects of the charity funder. (this is no different for charities. If their objects are not within scope of the funder (if a charity themselves) they should not receive funding or the Charity Commission would have a right to criticise and / or sanction the funder.
3. How is the organisation controlled. A board as with a Charity or a sole arbiter / owner? An appropriate Board would be a good sign.
4. How are surpluses / profits used;
* The easiest would be to return to do more / better. Ie a non profit distributing entity.
* If a profit distributing organisation are there caps and collars and why have they used this method (was risk capital needed to begin etc…)
1. What is the impact and how is this evidenced?

In short, the easiest method would be to select a non profit distributing Co Ltd by Guarantee, CIC / Bencom / Co-op etc…, but as they see these investments they may find some of the profit distributing organisations are also worthy of support after due diligence.

Q. Please can you tell us about Community benefit societies? Where do they sit in the SE environment, how are they organised?

A. We would absolutely see these organisations also described as Bencom’s as SE’s and they are required by an Act of parliament (2014) to carry on a business or trade and exist to serve the broader interests of the community. They are different to Co-op’s that exist for members (though these members may well fit your criteria for funding support too. Co-op’s UK (one of our members) explain the differences well here:

[2.1.1 Community benefit societies | Co-operatives UK](https://www.uk.coop/resources/community-shares-handbook/2-society-legislation/21-bona-fide-co-operative-societies/211)

Q. Social Enterprises aren't sustainable just because they are called that, what makes them sustainable?

A. We would class an SE as an organisation with a social purpose that is trading at 50% or more or is on a trajectory to achieve this. The earned income provides greater resilience against changes in external forces (think SWOT analysis and operating in an external environment over which there is no / limited control) and less reliant on funding which may follow a trend / fashion that could skew mission. (this year knife crime, next year substance abuse etc… before any are resolved. Trading can be in direct pursuit of the social impact goal or could be a subsidy model with profits from a business model funding the impact side of the business.

Q. Why have shares if no profits are being distributed?  This always causes questions for us.

A. CIC’s Ltd by share (as opposed to guarantee) may have shares and can distribute profit within the limitations. Majority profit returned to purpose and caps and collars on the amount that can be paid to the investors. This can provide risk capital and though much less attractive than the free market to an investor it could allow socially motivated investors to receive some compensation for their funds while allowing a model to grow / start. It could even allow endowment funders to invest for a return to make grants while utilising endowment capital far  more socially than usual. Often these funds are invested on the stock market with no social impact / or even with an impact contrary to the goals of the organisation (think grant making profit maximising investment in big tobacco for a foundation making grants to help cancer sufferers ie £100m invested in tobacco p.a. and 8% of £100M = £8m granted to help those who contract the disease etc… = net deficit on goal £92m!)

Community organisations may issue shares i.e. an appeal to save the local pub and purchase it for the community. The community chip in to buy it and then all contribute to its running etc….

One share one vote democratic institutions.

The key will be in the mem and arts of these organisations / their purpose / how enshrined etc… Handling of surplus / profit.

Q. Is the CIO model going to see the CIC model start to disappear over time?

A. I would not expect it to. The CIO model is likely to impact the Co. Ltd by Guarantee based on the old 2 stage structure of;

* Charity

plus

* Company Ltd by Guarantee

This was often required because a Charity does not limit Trustees liability and a Co Ltd by Guarantee does not confer Charitable status. Both were historically needed to get the full benefit of Ltd Liability and Charitable benefits and without both, benefits are diminished for each of these vehicles. The old method saw a requirement to file with both Companies House and the Charity Commission while the new CIO means only one filling is required with one governing body. This simplifies things and I would expect the Co Ltd by Guarantee to be much less widely used as time goes on with the CIO replacing Charity plus Co Ltd by Guarantee. The I is purely “Incorporation” which confers the Ltd Liability to Trustees.

The CIO still has some of the less desirable aspects for modern entrepreneurial solutions to problems:

1. The CEO typically is not allowed to sit on the Board (special charity commission dispensation req’d) . In no other organisation would this be accepted much less mandated and is probably a throwback to philanthropists wanting someone else to handle the workload while keeping control of the funds etc…
2. It will often be harder to respond quickly to external influence rather than a business focused approach to solutions taking account of externalities.

We discussed in the meeting good and bad PLC’s (Enron) Charities (those funding terrorism etc…) and CIC’s (mission drift, governance etc…) I was asked to provide a guide on how to choose a good CIC and we don’t have one but the rules of due diligence for any organisation being funded would apply and I have tried to capture some of these here;

1. Is there a clearly defined purpose?
2. Is purpose articulated and demonstrable?
3. Is the purpose enshrined in governing documents?
4. Is there a good governance structure – (appropriate skills rather than family etc…) ?
5. If skills are not seen as strong could this be because they represent the community who are the target audience?
6. Whether Ltd by Guarantee or Shares what is the exec remuneration compared to the role and scale of the business?
7. Are there appropriate accounts for the scale of the operations?
8. Are there beneficiaries prepared to provide testimony of support?
9. What is the team completing the delivery? This is ultimately who you are investing in.

I hope this helps and I am very happy to have conversations with anyone who has more questions.

The following is also a good read if a little geared to the solving of insomnia but covers the CIC asset lock and distribution parameters where applicable:

[Community interest companies: guidance chapters - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/community-interest-companies-how-to-form-a-cic)

**Wrigleys Solicitors**

* Every grant-maker should have a grant-making policy and decision-making framework in place for establishing whether funding is charitable and for the public benefit;
* All grant-making must comply with the charitable objects of the grant-maker;
* Subject to the objects, the trustees of a grant-maker need to determine whether the purpose of a grant is charitable in law before a grant can be made;
* Where an applicant is a registered charity and the project falls within the charitable objects of both the grant-maker and the applicant, the normal application process can be followed;
* If the applicant is a registered charity but the project is outside its objects, this should be discussed with the applicant to attempt to find a resolution;
* Where the applicant is not a registered charity, the grant-maker needs to consider whether the activities to be funded can be considered charitable. To do this, it should assess whether the activities fall within the description of charitable purposes contained in the Charities Act 2011;
* If the activities to be funded can be considered charitable, the grant-maker should then consider whether there is public benefit involved, again taking charity law and Charity Commission guidance into account. Any private benefit must be no more than incidental. Where the applicant is a non-profit (eg. CBS/CIC) there is a higher chance of public benefit and lower chance of private benefit. Where the applicant isn’t a non-profit, the risk of private benefit is higher.

The trustees must always remember that each case is different and they should consider the merits of each individual application against the points set out above. There isn’t a one size fits all approach.

Where a grant-maker isn’t sure whether to award a grant, this would suggest that they shouldn’t proceed or should seek further advice.