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## **Legal structure and outcomes of social enterprise: The case of South Yorkshire, United Kingdom**

### **Abstract**

Over the past two decades the discourse on social enterprise has emerged as a powerful intervention for addressing socio-economic deprivation in communities across the globe. Although the concept is increasingly attracting academic interest, there are still several areas requiring further scrutiny. One such key area is how the legal structures of social enterprises influence their outcomes. Drawing on a qualitative case study approach in South Yorkshire UK, this study contributes to ongoing debate on social enterprise by providing insights into the nature of legal structures and related operational issues across the region. The findings revealed that type of legal structure is intricately linked to social enterprises' ability to achieve their objectives. Rather than rely on traditional legal structures, social enterprises in South Yorkshire have adopted innovative legal vehicles that help them to achieve financial sustainability while at the same time maintaining their social ethos.

### **Keywords**

Social enterprises, legal structures, South Yorkshire, extraction of value, economic development

## **Introduction**

The concept of social enterprise derives from discourses on the social economy that dates back to the nineteenth century industrial revolution (Hines, 2005; Teasdale, 2011). As a concept, this type of business is politically contested and subject to different interpretations (Dacin et al, 2011; Kerlin, 2010; Weerawardena and Sullivan, 2006). Despite different views on its meaning, there is a general consensus that a social enterprise is, first and foremost, a competitive business engaged in some form of trading to produce a financial surplus which helps to sustain its social ethos (Defourny and Nyssens ,2010; Doyle,2013; Zahra et al, 2009). Historically social enterprises have utilised legal structures that support their philanthropic origins and their not-for-profit business activities. A legal structure (or form, structure or constitution) provides an operating framework for social enterprises and it relates to the way these enterprises are set up and the rules and regulations that govern them (SEL, 2003; Snaith, 2007). The advent of globalisation, largely typified by liberalisation of trade and scarcity of resources, appears to have prompted social enterprises to re-evaluate their legal and governance structures so as to maximise mobilisation of resources (Peattie and Morley, 2008; Snaith, 2007). Current discourses therefore suggest a move by some social enterprises to align their structures with the demands of their institutional environment (Lewis et al, 2004). They reveal a gradual shift towards hybrid models of social enterprise, supported by more innovative governance and legal structures to improve their competitiveness in the market (Lewis et al, 2004; Low, 2006; Salamon and Anheier, 1996). Though research interest in the legal structures of social enterprises has increased over the past decade, there is still a dearth of knowledge and intellectual scrutiny of this key component of organisational design (Cornforth, 1998; Doherty et al., 2009; Eversole, 2013). Current work in this area tend to focus mainly on the motivations behind the selection of specific legal structures and not how type of legal structure influences enterprises' outcomes (Alter 2003). Given these developments, the key question this raises is whether the current menu of social enterprise legal structures allows them to achieve their social outcomes. This paper seeks to contribute to this gap in knowledge by critically examining the type of legal structures of social enterprises in South Yorkshire, UK, and how they influence their operations. The South Yorkshire region contains some of the most deprived communities in the UK due to the steady decline

of its industrial base (Thompson et al, 2000). This has resulted in particularly challenging socio-economic conditions that make the region an ideal location to understand the operations of social enterprises in the UK. This paper is structured as follows: The discussions start with a critical analysis of social enterprise legal structures in the UK. This is followed by a discussion of the development of social enterprise in the context of South Yorkshire. This focuses on the political economy of the region and explores the impetus behind the emergence and development of the concept. The paper concludes by discussing and reflecting for findings of an investigation on social enterprises undertaken in this region and their implications for policy formulation as well as local economic development.

### **Background: Social enterprise legal structures in the UK**

The UK has about 62,000 social enterprises with a combined turnover of £27 billion per year (Jones, 2010). Social enterprise is therefore central to the UK government's policy on tackling deprivation and regeneration of economically deprived areas across the country (Bertotti et al, 2011; Mason et al, 2006; Spear et al, 2009). There is no single preferred legal structure for social enterprises in the UK (DTI, 2002; Manning, 2006). UK Social enterprises take a variety of legal structures including amalgams of different organisational forms to pursue their specific objectives (Lyon and Humbert, 2012; Martin and Thompson, 2010). A legal structure ensures boards of directors/trustees and other individuals associated with the organisation discharge their duties lawfully (SBS, 2005; Osterloh and Frey, 2000). In effect, it spells out key responsibilities of individuals involved with social enterprises. Further, a legal structure is important in defining the activities and decision making process of a firm (Ellerman, 1984). Most crucially, for social enterprises, their legal structures determine and influence the types of financial resources they can attract (ACEVO, 2005; Doherty et al, 2009). The legal structures of social enterprises in the UK include: Company Limited by Guarantee (CLG), Industrial and Provident Society (IPS), Community Interest Company (CIC) and some variants of (CLS), Company Limited by Shares (DTI, 2002). See Table 1 for a review of key descriptions of the different types of legal structures. For ease of analysis, we have divided the types of legal structures into classes, reflecting the type of legal structure and what this allows social enterprises to do.

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[Insert table 1 here]

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Class A legal structures are the most common legal vehicles within the social enterprise sector in the UK (Lyon and Humbert, 2012; Martin and Thompson, 2010). These are Company limited by guarantee (CLG) and Industrial and Provident Society (IPS). These forms of legal structures permit wider participation in ownership and control of assets of the social enterprise and can be traced back to the historical and philanthropic origins of the concept of social enterprise (Martin and Thompson, 2010, Pierce, 2003). While they are vehicles for enterprise, they are unable to attract financial investments in the form of equity investments since social enterprises with these types of legal structures cannot issue shares in return for equity (Cornforth, 1998). It is important to note however that Class A legal structures allow social enterprises to access grant funding and other forms of donations. However these organisations need to demonstrate financial viability to attract loan finance packages (Bank of England, 2003). In view of their inability to attract equity investments, it therefore not surprising that organisations with these forms of legal structure are heavily dependent on grant funding to cover the core costs of delivering their interventions (Cox, 2000). The financing options of this type of legal structure are therefore restricted.

Accessing suitable financial resources and investments is a key challenge facing social enterprises in the UK as current evidence shows that the majority of these organisations are undercapitalised (Doherty et al, 2009; Alter 2006). The inability of the CLG and IPS legal structures to access a wide range of financing options is one of the reasons the UK government Introduced the Community Interest Company (CIC), in 2005 (DTI, 2003). This model, shown as a Class B legal structure, has triple functionality. According the National Archives (2013), a CIC can be structured as;

1. Schedule 1 : Company limited by guarantee (without share capital)
2. Schedule 2: Company limited by shares or limited by guarantee (with share capital). This type of social enterprise pays dividends to asset locked bodies only.

3. Schedule 3: Company limited by shares or limited by guarantee (with a share capital). This type of legal structure will allow a CIC to pay dividends to shareholders

The innovation in this legal structure is that it can allow a social enterprise to access, financial support in the form of grants, loans and equity investments. The CIC's financing options are therefore significantly better than Class A legal structures as they offer social enterprises opportunities to widen sources of finance without compromising their social ethos (Department of Innovation and Skills, 2013). Nonetheless, there are still problems with the model. For instance, despite a review of dividend and interest caps in 2009, there is still no significant uptake of the share capital variant of the CIC (Department for Innovation and Skills, 2013). Moreover, the presence of external regulatory mechanisms and asset locks does not make it attractive to venture capitalists (Brown 2003).

Class C legal structures refer to company limited by shares models. While the number of social enterprises that are structured as share capital entities is limited, there is anecdotal evidence that they are increasing (Brown, 2006). These types of legal structures, in certain cases, attract both grant funding and equity finance, when they are appropriately structured, such as the NEWCO, an acronym for New Company pioneered in Sheffield in 2003. This legal vehicle, unlike the CIC, has an internal regulatory mechanism comprising organisations and individuals involved in the enterprise. The structure also recognises the contribution of individual entrepreneurs and has mechanisms to remunerate them financially. It is important to note, however, that the concept of equity investments in social enterprise is problematic. Research has shown that most social enterprises are not familiar with the concept of equity investments (Bank of England, 2003). This could be one of the reasons why share capital legal structures are not a common feature in the UK social economy (IPSEYH, 2004). Spear et al., (2007) urges caution regarding moves towards commercialisation as this might compromise social objectives.

The choice of legal structure has therefore been a source of debate. Social Enterprise London (2003) argues that the choice of legal structure is influenced by the nature of the social enterprise and its particular requirements. That is, form follows function

and the choice of legal structure is an accurate reflection of the enterprise's needs. Others, such as Etchart and Davis (2003) and Alter (2003) note that it is not uncommon for social enterprises to opt for a legal structure consistent with the funding they require.

The above discussions reveal three key dimensions. First, a social enterprise is a legal entity in its own right and its legal structure is a key operational component that protects and allows its boards of directors to discharge their duties effectively and lawfully. Second, social enterprise's legal structure has implications for its ability to attract suitable investments to reinforce or support its social ethos (Doherty et al., 2009). Considering that social enterprises seek to simultaneously achieve social, economic and environmental objectives in challenging environments, the type of legal structure they adopt therefore will invariably influence what they can achieve (Bridge et al., 2009). Third, innovation in social enterprise legal structure reflects challenges they face in mobilising resources in an increasingly competitive environment (Bubb, 2007). The consideration of equity finance for social enterprises is in itself a clear indication of the need to find appropriate mechanisms for attracting private capital into the social enterprise sector (Brown 2006). Social enterprises therefore need to operate as commercial enterprises so that they can extract and deliver value to their communities of benefit.

### **Overview of social enterprise development in South Yorkshire**

The purpose of this paper is to understand the nature of social enterprise in South Yorkshire. A prerequisite for understanding the legal structures of social enterprises in South Yorkshire is insight into the region's political economy. The South Yorkshire region was formally established in 1979 and comprises four unitary boroughs of Sheffield, Rotherham, Barnsley and Doncaster. From a historical perspective, South Yorkshire's economy was primarily industrial and this dates back to the nineteenth century industrial revolution, with coal mining and steel production being the mainstay of the economy (Birch, 2006). The region's economy developed as a dual economy comprising agriculture and heavy industry, although coal and steel became dominant (Hey, 1969). At its peak in 1971 coal and steel employed approximately 187,000 people, which represented a quarter of local jobs, but by 1996 60% of these

jobs had been lost (Yorkshire and Humber Plan, 2005). The accelerated closures of steel industries and coalmines in South Yorkshire resulted in massive job losses and devastated entire towns (Thompson et al., 2000). By the end of 2004, a further 65,000 jobs had been lost in South Yorkshire (Beatty et al., 2005). These developments reduced the number of collieries to eight from a peak of 211 in 1981. This in turn created a plethora of socio-economic problems for people across the region (Price Waterhouse Coopers, 1988). For example thousands of laid off miners and steel workers needed retraining (Murray et al, 2005). In addition to high levels of unemployment, the economic downturn also resulted in many families requiring welfare support. As a result, the region benefited from European financial assistance to support regeneration activities, under the European Regional Development Fund (ERDF) which involved a £1.8 billion investment programme in 1999 (SYIF, 2003). The development of sustainable social enterprises along with retraining was considered a key way in which deprivation and exclusion could be tackled across the region (Bache and Chapman, 2008; IPSEYH, 2004). It is in this context that social enterprise development is scrutinised in this paper particularly its effectiveness as an intervention to complement government efforts in tackling deprivation. These developments are central to the socio-economic issues affecting South Yorkshire.

### **Method and Analysis**

Being a relatively new concept, social enterprise is under researched and consequently much literature on this concept is either in the grey form or fragmented (Salamon, et al,2004 ;Swanson and Di Zhang,2010). In order to gain a deeper understanding of the legal structures of social enterprise in South Yorkshire, the investigation used an in-depth multiple case study approach (Tellis, 1997; Kohn, 1997; Yin, 2003). Given the diversity in types and thematic activities of social enterprises, this approach was considered as the most ideal in this investigation. This approach also allowed the researchers to explore new areas and themes where very little theory was available to explain a phenomenon (Kohn, 1997). Parallel investigation on social enterprise support organisations within the study area was undertaken. This also made it easier for the researchers to triangulate different sources of evidence and theory to achieve validity Towill (2006). The case study analysis involved a comparative analysis of four cases, two structured as CLG and the remaining two, CLS, as shown below in Table 2 below. The four cases are given fictitious names to anonymise them. The



selection of these cases was based on the need to illustrate the diversity, representativeness, nature and character of the social enterprises under scrutiny (Pharaoh et al., 2004). For the purpose of this investigation, social enterprises operating across the South Yorkshire region comprised the accessible population. Informal mapping exercises undertaken across the region put the number of social enterprises to no more than 400 at various stages of development. The researchers used their social capital, knowledge of the region and contacts in key social enterprise support organisations across the region to identify suitable cases for scrutiny. This allowed us access to informal data bases of social enterprises held by these organisations.

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[Insert table 2 here]

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Social enterprises with CLG and CLS legal status is an area requiring further investigation to understand the development and operations of social enterprises (Low, 2006). Two examples of social enterprises structured as companies limited by shares were selected from Sheffield. The reason for this is that at the time of the research, such structures were only available in Sheffield. It is important to note that during this research none of the informants had considered the Community Interest Company (CIC), which has a share capital variant. The share capital model under analysis in this study was developed and pioneered in Sheffield, and accepted by key social enterprise funders in the region.

The data collected from interviews of key informants was recorded, transcribed and manually analysed through an inductive process of interpretation, which enabled the researchers to critically analyse each case study, generate relevant codes and identify the emerging themes. This method of textual data analysis is consistent with the work of researchers such as Basit (2003); Bryman and Bell (2003); Cassell and Symon (2004); Kohn (1997); Miles and Huberman (1994); Straus and Corbin, (2008). The interviews of key informants lasted at least an hour and included repeat visits to verify information. Comparisons through cross – case analysis were then made to ascertain if

there were similar patterns or themes across all four case studies that could be generalised, a method associated with the work of Agar (1980); Kohn (1997) and Miles and Huberman (1994).

## **Findings**

The in-depth case study analysis identified key themes that allow us to understand the influence of type of legal structure on the outcomes of social enterprises.

### *Accessing funding and investments:*

Accessing funding and other forms of technical support has been a constant challenge for social enterprises (Chalmers, 2012; Martin and Thompson, 2010). The analysis of the findings of this investigation provided more insight into this dimension which emerged as a key theme. We identify and critically analyse the reasons for selecting specific legal structures as well as how the nature and type of legal structure influences the way social enterprises operate.

### *Case with CLS legal structures*

The two cases (the Educator and the Landscaper) were clearly focused on pursuing predominantly commercial routes to support their social ethos and objectives. In order to support these, these organisations selected CLS legal structures to enable them to access a wide range of financial products, particularly equity investments. Closer scrutiny of the memoranda and articles of these organisations shows that these organisations have an allocation of 40 equity shares in the form of redeemable preference shares valued at £2500 each. Therefore purchase of such shares by an external investor would result in cash flow into the organisations. These resources are used to grow the social enterprise and support its social ethos. This reflects a deliberate effort to cede part of the organisation to investors in return for much needed financial resources. A respondent from the Educator, when asked why the current legal structure had been selected, said *'We wanted a share capital legal structure that would enable us to issue shares and get financial resources from the private sector'*. On a similar note, the respondent from the Landscaper said, *'We wanted something (a structure) that would ensure the longevity of our operations by making it possible to*

*acquire other financial products... I mean investments*'. Therefore one can reasonably conclude that the desire to widen sources of financial resources influenced the Landscaper's decision to select a share capital legal structure. This decision was also confirmed by the respondent from the Educator who said, *'As I told you earlier I have a few people who have invested their monies into this... of course they would be expecting a good return...and that's what we want so that they can invest more'*. These statements are consistent with the views of Low (2006) and Cornforth (1988), who argue that social enterprises might need to embrace innovative legal structures to attract investments.

Further analyses revealed that by adopting the CLS legal structure, the social enterprises intended to move towards a blended sustainable model of social enterprise. This is captured by the respondent from the Landscaper who said, *'While we are a profit making social enterprise, we are conscious of the need to address socio/environmental issues. It's important to achieve these objectives at the same time and also appeal to different funders'* Such an approach provides the enterprise with the flexibility and capability to attract a wide range of financial resources, including equity finance, to further its social aims. Adopting this innovative strategy provides opportunities for enterprises to access the right networks, access finance and grow their capital and therefore reinforce their social ethos (Lettice and Parekh, 2010). For example, both the Educator and the Landscaper managed to acquire grants from various social enterprise infrastructural support organisations. This was made possible by modifications in their governing documents that ensured that social and environmental objectives were upheld. On this issue the respondent from the Landscaper said, *'The funders didn't like us at first because of our structure (CLS) but once they understood it the Key Fund [Funder] gave us the grant'*. This signifies a fundamental shift in how enterprises with legal structures that allow profit distribution are viewed by funders.

### ***Cases with CLG legal structures***

The Haven and the Community Centre have CLG legal statuses characterised by an aversion towards material infrastructure and a commitment to democracy and inclusiveness in the running of the organisation (Pearce 2003). This is a key characteristic of social enterprise, reflecting its philanthropic origins and

development. When the respondent from the Community Centre was asked why they chose the CLG legal structure, he answered, *'We were convinced that people would have greater respect for that because it reflects who we are...we are not a private company.....and there is a possibility that funding would be easier to obtain.'* The legal structure of the organisation allowed it to access funding from the public and other institutional funders. When asked if his organisation had considered other legal structures (such as the IPS cooperative model, which can also attract grant funding) he replied that *'the cooperative model appeared too complicated and so it was better for us to go for something that we could understand...I mean something that reflects our philanthropic objectives'*. Similarly, a respondent from the Haven said his organisation selected the CLG legal structure because of the need to *'access grant funding to kick-start its enterprise'*. These organisations had also considered other legal structures such as the IPS and the CLS but they were critical of these. The respondent from the Community Centre said, *'They [IPS and CLS] were not suitable because one of our key aims was to draw down funding...and that's what we wanted to do, right from the start'*. This finding makes it clear that grant funding continues to play a major role in the development of non-profit organisations and therefore social enterprises can select legal structures such as CLG to achieve this objective (Alter, 2003; Cox, 2000; Etchart and Davis, 2003). The findings are significant in that they show how type of legal structure can influence the nature of funding or investments a social enterprise can access.

#### *Achieving financial sustainability:*

Financial sustainability is a catch all phrase packed with a wide variety of ideas and conflicting perceptions (Eade and Williams, 1995; Holdren et al, 1995). In the commercial world the term implies that the core purpose of business is to generate profits for shareholders and to sustain operations and growth (Dyllick and Hockerts, 2002). For social enterprise, this translates as successfully achieving their economic and social objectives (Conaty and McGeehan, 2000; Doherty et al, 2009). This also entails generating sufficient revenues by being more entrepreneurial so as to build their capacity to be financially self-reliant.

This paper analyses the financial health of the four cases to analyse the relationship between type of legal structure and a social enterprise's ability to be financially sustainable. This is reflected in table 3. The financial information obtained was up to the financial year end, April, 2012.

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[Insert Table 3 here]

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### **Cases with CLS legal structures**

In-depth scrutiny of financial statements of social enterprises with CLS legal structures revealed that they had significantly better financial health than those with CLG legal status. This could have several explanations. Firstly, both organisations have viable business models and this could have enabled them to secure contracts consistently and to access resources from sources outside the social enterprise sector. Secondly, their legal structures enabled them to secure additional capital through share allocation. On this issue, the respondent from the Educator, said, *'Our constitution has allowed several people to invest their monies into the organisation because they can see potential in us to make profits'*. The Landscaper, after barely two years of trading, had cleared its loan of £8.000 from The South Yorkshire Key Fund for Social Economy, a regional funder for social enterprise, after having issued shares to a number of equity investors, including the South Yorkshire Key fund for Social Economy itself. The respondent from the Landscaper said, *'I have already told them [The Key Fund-a funder] that I will be writing them a cheque to clear my loan'*. He continued, *'Equity investments have been crucial in building this company and we can now expand into other projects in our business plan'*.

The findings in Table 3 reveal that the social enterprises with share capital legal structures have positive balance sheets and current ratios, in contrast to those structured as company limited by guarantee. While this does not necessarily mean that the share capital social enterprises are sustainable, it nonetheless puts them in a favourable position to borrow funds or attract a wide range of external financial investments. Earned income in particular is crucial in allowing social enterprises to

reinforce their social ethos and therefore take crucial steps towards achieving financial sustainability (Cornelius et al, 2008; Mair and Marti, 2006). A negative current ratio implies that an organisation cannot meet its short term debt obligations. It is clear that the CLS legal structure not only allows various stakeholders to participate in the organisations, but also allows financial reward through capital gain. This method of raising finance enabled the organisations to develop robust business models as well as the capacity and credibility to compete in the market (Peattie and Morley, 2008).

### **Cases with CLG legal structures**

The findings shown in Table 3 reveal that cases with CLG legal structures have poor balance sheets. This is not surprising given that generation of trading income is given a low priority. This state of affairs is likely to have led to restrictions in income. The respondent from the Community Centre is very clear about this dimension; *'We are not a fully-fledged commercial organisation....we are here to help the community .That's why our activities are largely grant funded'*. This view was supported by the respondent from the Haven, who remarked, *' We have potential to generate a lot of trading income here but we haven't got the experience in that area...that's why we are grant funded....besides I don't think our constitution allows us to go for loan finance'* While poor financial performance might be attributed to a variety of reasons, it is however clear that the CLG legal structure allows the Community Centre and the Haven to achieve their social but not necessarily their economic objectives. The CLG legal status continues to enable social enterprises to be credible and effective avenues for channelling funding and support to communities and addressing various socio-economic issues at grassroots level. Their continued survival might be explained by the sweat equity provided by volunteers at no financial cost to them (Haberberg and Rieple, 2001; Strothotte and Wustenhagen 2005). This is confirmed by the respondent from the Community Centre who remarked, *'We are fortunate to have a lot of volunteers who have kept us going for years...I don't know what we would do if we had paid staff.'*

This scenario perhaps explains why these two organisations were reluctant to consider loan finance to support their activities or express any willingness to do so in the future. Accessing loan financial support is predicated upon a robust business model. Regarding this dimension, the respondent from the Community Champion remarked, ‘ *We would not want to put our community assets at risk*’. This aversion to risk represents the stark reality of most social enterprises that are dependent on grant funding to cover the costs of delivering their interventions (Sunley and Pinch, 2012)

Their heavy reliance on grant funding means that both enterprises have limited prospects of achieving long term financial sustainability, given the demands of competitive markets in which all enterprises operate (Brown, 2006). This paper argues that the presence of a viable business model supported by more investor- friendly legal structures would have allowed these social enterprises to achieve financial sustainability (Smallbone et al, 2001; Lazonick, 2002). We therefore contend that CLG legal structures severely limit social enterprises’ ability to secure meaningful capital funds or to tender for large contracts which might require involvement of external strategic partners.

### **Discussion and Conclusions**

This paper sought to investigate the effects of different types of legal structures on social enterprises’ operation by reviewing the current menu of these vehicles in South Yorkshire. In particular the aim was to ascertain whether there is a relationship between a social enterprise’s particular legal structure and the way the enterprise seeks to achieve its outcomes. The overall results of the investigation showed that there is a relationship between type of legal structure and outcomes in that type of legal structure of social enterprise is vital in assisting social enterprises to achieve their objectives. The findings therefore suggest an intricate relationship between a social enterprise’s ability to achieve financial sustainability and its institutional legal form (Etchart and Davis, 2003; 2003; Bank of England, 2003; Peattie and Morley, 2008).

The analysis of social enterprises with CLS legal structures reveals that they have the flexibility that allows them to take advantage of loan, grant and equity finance. The multi-functionality of this type of legal structure provides opportunities to maximise

extraction of resources from various sources outside the social economy (Letts et al, 1999). Crucially they demonstrate investment- readiness which allows them as well as investors to grow their own capital. This comes at a time when there is pressure to introduce new and innovative ways of delivering public services in a sustainable manner (Chapman et al,2008;Doyle, 2013;Steinerowski and Steinerowska-Streb, 2012) This is a significant finding which contradicts traditional views on social enterprises that preclude full blown commercial activities in the social enterprise sector. Therefore this paper argues that social enterprises have a symbiotic relationship with the markets. They encourage a much more financially rewarding partnership between social enterprises and stakeholders inside and outside the social economy, thereby improving inflow of capital into the sector. Despite being a less tried option, the CLS legal structure enables social enterprises to engage with the wider market and exploit commercial opportunities (Conaty and McGeehan, 2000).

On the other hand, it is evident that, by their nature, social enterprises with legal structures characterised by common ownership, such as CLGs, can only attract specific forms of finance, mainly grant funding and loan finance in some cases. These organisations are therefore restricted in their ability to access different forms of finance beyond the social economy (Brown, 2006). This paper argues that this dimension can result in negative financial performance and short termism of interventions. The paper however acknowledges that the CLG legal structure does not necessarily lead to poor financial performance, but does not allow social enterprises to take advantage of all forms of financial resources or opportunities available. This clearly becomes a barrier to success and stifles innovation (Chalmers 2012).The CLG legal structure, however, still allows social enterprises to perform their social functions

The findings of this investigation therefore allow us to gain more insight into how type of legal structure influences outcomes of social enterprise. This is a key contribution to knowledge that this investigation has made, given the paucity of literature on this phenomenon .Researchers such as Peattie and Morley (2008), Mills (2002) and Snaith (2007) acknowledge that there is insufficient academic scrutiny on this key area of social enterprise development.



The practical implications of this research in light of the conclusions drawn above suggest that current policy on social enterprise development needs to be clarified. For example, it is now necessary to re-visit the contemporary understanding of social enterprises as a concept, given the emergence of share capital social enterprises in the sector. Importantly, this means that the current UK government's definition of a social enterprise, which precludes personal financial gain, no longer captures the true essence of social enterprise (Marshall and Lovatt, 2004). There should be a specific legal structure that identifies an organisation as a social enterprise and facilitates extraction of value beyond the social economy, without restrictions. The CLS legal structure discussed in this paper offers a practical way of achieving this objective. Although the CIC was designed for this specific purpose, current evidence, discussed in this paper suggests that this legal vehicle has not been entirely successful, despite amendments to the interest and dividend cap that had been a deterrent to investors. The paper has only scratched the surface of this complex component of social enterprise evolution. Further empirical work is required to explore some of the key themes identified in this research. Firstly, despite apparent advantages, the uptake of the CLS legal structure within the social economy in the UK is still low. Secondly, further research is required to explore the capacity of social enterprises with CLS legal structures to manage the extended stakeholder base. Thirdly, the impact of type of legal structure on operations of social enterprises in other environments, regions or social contexts also requires examination.

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**Table 1-Summary of legal structures**

CLASS	TYPE OF LEGAL STRUCTURE		CHARACTERISTICS
		Structure of Ownership	Implications on resource mobilisation
A	Company limited by guarantee	<ol style="list-style-type: none"> <li>1. No individual ownership. Company held in stewardship by an elected board of directors (usually unpaid).</li> <li>2. Allows community ownership.</li> </ol>	<ol style="list-style-type: none"> <li>1. Cannot attract equity finance.</li> <li>2. Can attract both grant and loan finance.</li> </ol>
	Industrial and Provident society/cooperative	<ol style="list-style-type: none"> <li>1. Controlled and managed by members.</li> <li>2. Directors have delegated powers.</li> <li>3. Democratic structure, with one member, one vote</li> <li>4. Equitable and fair distribution of</li> </ol>	<ol style="list-style-type: none"> <li>1. Strict share holding rules, therefore unattractive to venture capitalists.</li> <li>2. Can attract both grant and loan finance as well as tax concessions.</li> </ol>



		economic results.	
B	Community Interest company (CIC)	<ol style="list-style-type: none"> <li>1. No individual ownership.</li> <li>2. Can either be a CLG or CLS</li> <li>3. Has an asset lock on profits and assets.</li> <li>4. Has external regulatory mechanism.</li> </ol>	<ol style="list-style-type: none"> <li>1. Can issue shares depending on type.</li> <li>2. Attractive to philanthropic and venture capitalists.</li> <li>3. Can also attract grant and loan finance.</li> </ol>
C	Company limited by shares (CLS)(NEWCO)	<ol style="list-style-type: none"> <li>1. A legal entity in its own right.</li> <li>2. Private/public finance initiative allowing various stakeholder participation in the enterprise.</li> <li>3. Allows ownership of idea and intellectual property.</li> </ol>	<ol style="list-style-type: none"> <li>1. Can attract equity finance.</li> <li>2. Allows profit distribution to investors and community organisations.</li> <li>3. Can attract both grant and loan finance.</li> </ol>

Table 1: Adapted from ACEVO (2005), Cox (2000), Doherty et al (2009), National Archives (2013).

**Table 2: Cases under investigation**

Case	Social enterprise Operations	Type of Legal structure	Interviews
The Educator	<p><b>Thematic area-</b> Provision of affordable basic education and training opportunities to the community.</p> <p><b>Enterprising activities</b> The organisation generates income via training contracts secured from local authorities and public bodies.</p>	Share capital (CLS)	Director and owner  Board member
The Landscaper	<p><b>Thematic area:</b></p> <ol style="list-style-type: none"> <li>1. Promotion of a broader understanding of the importance of green space, particularly within areas of social deprivation.</li> <li>2. Offers direct employment and training opportunities for local people interested in environmental management.</li> </ol> <p><b>Enterprising activities</b> The organisation undertakes landscaping activities including garden pruning for fee paying customers</p> <p>2. The organisation also provides</p>	Share Capital (CLS)	Director and owner  Manager

	environmental conservation consultancy services to organisations that can pay for the services.		
The Haven	<p><b>Thematic area</b></p> <p>The organisation's key objective is to become a centre of excellence in environment, renewable energy and healthy organic eating. This is achieved through the promotion of environmental energy production expertise.</p> <p><b>Enterprising activities</b></p> <p>This is achieved entirely through trading involving:</p> <ol style="list-style-type: none"> <li>1. A shop that sells organic foods and cleaning products</li> <li>2. Bed and breakfast and conference facilities.</li> </ol>	Company Limited By Guarantee (CLG)	Manager  Staff
The Community Centre	<p><b>Thematic area</b></p> <p>The organisation provides;</p> <ol style="list-style-type: none"> <li>1. Training in arts and crafts.</li> <li>2. Training for people getting back to work after long illness.</li> </ol> <p>Enterprising activities</p> <p>Current income generated by ;</p> <ol style="list-style-type: none"> <li>1. Grant funding.</li> <li>2. 'Home Services', a handyman service for the elderly in Doncaster.</li> </ol>	Company Limited By Guarantee (CLG)	1. Board Chairman 2. Manager

**Table 3: Financial health of cases**

Financial Information	The Educator	The Landscaper	The Haven	The Community Centre
Current ratio	CA)£19,647 (CL)£13,360 +ve	(CA)£5,411 (CL) £328 +ve	(CA)£40,939 (CL)£43,929 -ve	(CA)£47,300 (CL)£51,260 -ve

Balance Sheet	<u>Capital &amp; Reserves</u>	<u>Capital &amp; Reserves</u>	<u>Capital &amp; Reserves</u>	<u>Capital &amp; Reserves</u>
	TA-TL £58,100-£30,397 = £27,703  +ve	TA-TL £11,153-£328 = £10,824 +ve	TA-TL £64,650- £67,640 = (£2,990) -ve	TA-TL £58,165- £62,125 = (£3,960) -ve

**CA: Current Assets**

**CL: Current Liabilities**

**TA: Total Assets**

**TL: Total Liabilities**