

Between Social Enterprise and Social Movement: The Bristol Report – headlines, March 2015

Caroline Bird, Bronwen Morgan, Declan Kuch, Bristol, UK



1. Overview

The project

The research project from which this summary report comes is a study of legal support structures and regulatory barriers for small and medium-sized organisations and initiatives responding to climate change. The research aimed to give more prominence to the ‘bottom-up’ perspective of those working to respond to climate change and who have to deal with formal government policies and laws to achieve their goals. We have studied local, community-based initiatives as a way of helping both policymakers and citizens understand better how formal laws block or facilitate social initiatives. This is a comparative study looking at a spectrum of grassroots organisations, from social enterprises to social movements, which are responding to climate change challenges in and around Bristol, UK and Sydney, Australia with researchers based in both countries. The research focused on 5 core sectors: food, energy, transport, waste and recycling, and work hubs.

This report

This report is a summary of what we have found in the Bristol case studies, enterprises and support organisations. A range of organisations have been interviewed about their formation, challenges and available support, their position on the spectrum between enterprise and activism, and how law and regulation have been helpful or hindering in the pursuit of their goals. For the purposes of this summary report, we have kept all respondents anonymous. A more detailed final report will identify, where appropriate, how different sectors responded and who has said what.

2. Background, context and methods

Social enterprise

Social enterprises, as defined by Social Enterprise UK, are businesses that trade to tackle social problems, improve communities, people’s life chances, or the environment. They operate in the wider market but they reinvest their profits back into the business or the local community. The term has become more widely used since the 1990s alongside the term ‘not-for-profit’ – as compared with for-profit organisations which seek to maximise profits in order to reward the business’s shareholders or owners. They are often small and entrepreneurial and trying to do things in a new and different way. There are legal forms that overtly state their social purpose and sometimes tax advantages.

Bristol

Bristol was chosen as the site for the UK comparative work partly because of familiarity but also because it has a long history of activism and enterprise with a huge range of social enterprise and charitable organisations addressing climate change and sustainability issues at all scales. Note for

example that the Centre for Sustainable Energy (CSE) has its origins back in 1979 as the ‘Urban Centre for Appropriate Technology’, it is now an established charity supporting individuals and communities in sustainable energy. The SOFA (Shifting Old Furniture About) Project was founded some 30 years ago by a group of individuals who collected used but good furniture from donors and made it available to those on low incomes. Other long established organisations based in Bristol include Sustrans, the cycling and sustainable transport charity which was formed in Bristol in July 1977 as Cyclebag by a group of cyclists and environmentalists, becoming Sustrans in 1983; and the Soil Association which was founded in 1946 in Suffolk before moving to Bristol 30 years later and setting up the organic certification scheme.

In 2015, Bristol has the status of European Green Capital which has the potential to further develop and enhance its reputation and capacity for green enterprise. The award recognised the value of grassroots movements in helping Bristol achieve its ambitions as a low carbon, sustainable and healthy city.

The city council has an independent elected mayor at its head with keen interest in making Bristol safer and greener for future generations, and already Bristol uses less energy per household and cycles more than any other major UK city.

Research methods

Open-ended semi-structured interviews were conducted with a range of organisations in order to explore their level of legal consciousness (what ordinary people understand law to mean within their social relationships) and the law’s capacity to support and facilitate social activities and enterprise that responds to climate change. The interviews initially focused not on law per se but instead explored the key activities, networks, relationships and problems of each organisation. The second part of the interviews sought to identify the professional associations, government policies, and formal legal rules that have the greatest impact on the organisation’s activities and relationships.

These interviews were carried out with key people (founders or directors) of a range of social enterprises in and beyond Bristol. Analysis of the interviews, together with that of documents relating to the organisations such as their constitution or annual reports was contextualized by discussions with organisations providing support services to social enterprises; studying a range of literatures including academic writing and the ‘grey’ literature of case studies and web-sourced information; and by mapping formal legal structures and regulations.

3. Overview of enterprise (and activism)

In this section we delve further into the development and operation of the organisations studied. Through our research, we have come to think of their evolution in terms of a hierarchy (?) or chronology of development:

1. initial idea,
2. space to do it,
3. forming an entity,
4. formalisation and external funding;
5. expansion and red tape

In this hierarchy, law comes increasingly to prominence whilst, in some cases the activism and idealism that initially fired the idea become less visible.



An energy spectrum from activism to enterprise (and beyond)

3a. Ideas and activism

The initial idea that develops into enterprise can emerge from a range of motivations: an issue needing solution, something that isn't being addressed by policy or business, issues of equity and societal fairness or people taking control or reconnecting with the land, neighbourhood or energy source (for example). Quite often this starts with just a couple of people who see something great happening elsewhere and want to do something similar for their community. Some individuals start from an activist base and turn that into an enterprise for social change and, hopefully, future employment.

Most of the organisations did not claim to be activist, but they did want to show that there is another way of doing things, one that is more socially equitable, healthier and greener. They also hoped that if they demonstrated that what they were doing worked then others could follow, so replicability was an issue too. And, despite denying the suggestion of activism, most organisations took part in some form of campaigning or education and awareness raising.

Several interviewees talked about social change by creating community, connecting people who would not otherwise meet, including socially and economically marginalised people and providing supportive and healing environments for volunteers (and themselves).

3b. Space

Space comes next in this hierarchy as the enterprise develops. Sometimes this is a flexible space which can be reconfigured or moved to suit the changing needs of a growing enterprise, in other cases, the space is fixed eg in the case of CSAs seeking land for growing on or a community renewable energy enterprise installing solar PV or a wind turbine. In many cases the space was occupied at below market rates but suffered from short leases which, although likely to be renewed, were not guaranteed.

Planning permission was an issue that came up in a number of cases with a lack of clarity over whether permission was needed, even within a council department. In some cases, perhaps because of the nature of the enterprise and characters involved ('we're rebels'!) activities went ahead anyway and the council realising, perhaps belatedly, that what was being created was good, accepted it.

Space can also mean the mental space to think, develop and start to create change. The location of space is important in developing connections with like-minded people and / or with the community.

3c. Structure – forming an entity

A new enterprise quickly realises that the legal form that it takes might determine what it is able to do in the future – for example how quickly decisions can be made or how it can raise capital or reward investors. The need to take on some sort of legal form is in part to give credibility to an enterprise both to potential investors or funders and also to customers and wider society. In forming as a legal entity, the enterprise has to think about its objectives and set out ways of working.

In the UK there are several main legal forms:

- Company limited by guarantee is a simple flexible model which does not overtly state a social purpose although this can be written into its constitution – favoured by lawyers and by organisations keen to get started.

The other forms used do require social purpose, asset locks and different decision making structures:

- Community Interest Company (CIC) is viewed as the quickest, cheapest, most flexible entity structure to form that clearly states a social purpose, they are regulated, as with a limited company, through Companies House. Some advantages of CICs were given as independence, clear demonstration of community purpose and asset lock, speed and relative simplicity to set up and operate, small group of directors needed, ‘cheap and dirty’, fleet of foot, less co-operative decision making, ‘more entrepreneurial’.
- The Industrial and Provident Society (IPS) (now termed ‘Registered Society’)/ Community Benefit Society form has been around for longer and tended to be favoured by enterprises going down the community shares route for funding (where they are less regulated). They are registered (but not regulated) by the FCA and the form has recently been updated by the *Co-operative and Community Benefit Societies Act 2014*.
- Co-operative societies are a way of sharing ownership and decision-making and there are several different forms depending on who its members are, ranging from worker co-operatives to multi-stakeholder co-ops – all set up to provide benefit across their membership.
- Charity (which will also be a limited company) – this is the oldest form of all but requires more levels of management and accountability so is less favoured by more recent and smaller organisations. Charities require an extra level of trustee involvement.

With formalising comes issues of governance, primarily around who manages the company and the selection of directors. Some of our interviewees viewed this as barely worth thinking about, just nominate a couple of people and get on with it – maybe get some more when they get bigger. More often, directors were carefully selected to bring a range of valuable skills to support the enterprise. Similarly with a charity, a mix of trustees filling different roles and bringing a range of experience is useful. Formalising as a legal structure also requires the production of articles of association and in some cases bad habits of copying from others (‘cutting and pasting’) emerge which can cause problems later.

3d. Funding and resources

The next stage in evolution is finding the financial and human resources to sustain and grow an enterprise.

- Community shares

Community share offers have become increasingly popular as a way both of raising finance and also of sharing ownership locally. This is particularly prevalent in the community energy sector with the returns now being offered well above bank interest rates. In other cases it is more about being a part of and supporting something new without expecting a financial return. The experiences of our enterprises was that it was easy to raise well above the amount that they were seeking with many

potential shareholders only being allowed a part of their investment so that everyone who wanted to buy into it could have at least a small share. The other side of this was that, with large numbers of shareholders, the founders of the enterprise realised that there was a greater requirement for good paperwork and communication with the community of shareholders – very different from running a limited company.

There are concerns, particularly from the support organisations, that one or two bad share offers might upset the whole business of community fund raising and ownership and again copying from other documents can be problematic. The Community Shares Unit has been set up to provide clarity and best practice.

- Independent fund raising / private finance

For larger amounts of money, community shares play a part in maintaining local ownership but other private finance is needed and there are organisations set up to help source that funding such as Pure Leapfrog in the community energy sector.

- Grants and getting paid to employ

Winning a grant for capital items or activities peripheral to the core business is something that many organisations aim for, whilst maintaining self-sufficiency for the core business. The unpredictability of grant-funding means that reliance on it to keep an enterprise solvent is risky.

Another source of funding can come from government and non-government organisations seeking to help people back into work or for rehabilitation from mental health or drug problems. The enterprises interviewed are mostly wary of such schemes as they lay down rules that might not match how an enterprise wants to work with its employees / volunteers and, although the social outcomes might be good, the work doesn't get done efficiently – they want people working with them that actually want to be there and understand the ethos rather than someone sent there reluctantly.

3e. formalisation, expansion and red tape

- Professionalising

Lots of organisations felt that they were 'professionalising as they went along' and had faced a really steep learning curve from the initial germination of their idea. This was felt particularly by the organisations that had the responsibility of hundreds of small community shareholders. For some it was just a lack of experience in being a business and forming in a slightly chaotic way initially to get something done. Others felt that they were gradually being taken more seriously as they professionalised and could demonstrate that they were more than just 'do-gooders'.

There seems to be a point at about 5yrs in business where, as an organisation grows, it starts to suffer 'growing pains' and needs to review its structures and governance.

- Employment, volunteering and rewards

Many of the organisations that we talked to started off with workers in a voluntary capacity with rewards in the form of social and community cohesion benefits or perhaps vegetables from a CSA enterprise. Volunteers contribute their time for a range of reasons including a desire to be part of something and fill some time, and for physical and mental health and rehabilitation outcomes. A couple of our interviewees referred to the potential for 'wierdos' or 'fruitloops' and how to manage them either supportively or to resist their offers of 'help'. The exchange of food for labour becomes a legal grey area and relates to the receiving of rewards within the benefits system.

From a legal perspective, employment law is the most complex and problematic area that they face as they expand and take on employees. Getting it wrong and failing to set out and follow good procedures can be costly and potentially terminal for a small enterprise.

- Industry regulations

Each sector that we studied has industry-specific regulation that impacts on them and a common complaint was that big regulation designed for big business was too burdensome for a small enterprise and unnecessary because of their direct relationships with consumers and a different ethos in how they operate (ie not seeking to make profits potentially at the expense of workers and consumers). The problem centres around the need for audits and paper trails and potentially hinders the creative operation of new forms of enterprise.

Health and safety is the other area of note, with most organisations having health and safety procedures in place, particularly where any sort of machinery is involved, but which are otherwise more light touch for ‘essentially just gardening’ in the case of CSAs.

4. Barriers and facilitators

Social dimensions

- Co-operative / collaborative working

The benefits of working in an environment with like-minded people were recognised with an ethos of helping each other out and being considerate to your neighbours more generally in how they work.

The more developed organisations can help others to set up and grow and a number of sectors are exploring ways of doing this without detracting from the business of running the enterprise. One way is setting up agreed modest charging structures for formalising help and the CSA Network is helping to facilitate this in that sector as well as running regional events to bring people together. For some, it is a case of reaching an optimum size and continuing viability and then offering help to grow the sector more widely (the replicability mentioned earlier).

- Competition

Most organisation saw competitors more as beneficial to growing the sector and sought to establish good working relationships and communication. Competition from private (for-profit) enterprise or big business is another matter and differentiating non-profit to consumers is key to addressing that form of competition – local ownership is a big advantage as is transparency and openness.

- Conflict

There is little perceived conflict and any that arises is dealt with immediately, it is seen as a responsibility of social enterprise to be socially responsible and responsive to any issues arising, one saying ‘we’re desperate to be loved’ and another that ‘There’s no conflict here, we all love each other’.

- Public buy-in

A problem for many organisations is that what they do is seen as ‘fringe’ and not relevant for most people who don’t, for example, care where their food comes from and like the ‘bargains’ in the big supermarkets (even if they then throw away food because they bought too much). Changing this mindset is not easy and the historical disconnect between people and their food and energy production is much more pronounced in the UK than in much of Europe.

External opposition comes from either people saying that ‘business as usual is fine’ or, conversely, that there is a need for a ‘more radical stance’.

However, a more tangible buy-in through community shares has become popular because of the banking crisis – a distrust in big banks and very low interest rates have bolstered the local, transparent community shares sector with little expectation of return as there would be little from savings in

conventional banking anyway. The problems with the Co-op Bank did dent confidence in the co-operative sector although it was understood as a banking problem rather than a co-operative one.

Intermediaries and support

- Industry or Professional Associations and Networks

The organisations which relate specifically to the community / social aims of many of the organisations interviewed were seen as the most useful and relevant, with benefits including collective lobbying of government and peer-to-peer support. Other more broadly targeted associations tended to be viewed with more suspicion – ‘expensive members clubs to give you a badge’.

- Formal co-operative / collaborative relationships

As well as the individual cooperative businesses, there were a number of wider cooperatives or formal networks which agree to work together for a collective advantage, for example a group of farmers supplying into a community scheme or solar installers working together to secure bigger contracts. It is a ‘cooperative principle to cooperate with cooperatives’ and to share experience - the CDA is a formalisation of this but peer-to-peer support is generally valuable.

- Support organisations

Typical roles of the formal support organisations are to help with establishing the enterprise, and providing advice on structure, governance and sources of finance. The other type of support is from professional organisations offering pro bono advice to non-profit organisations in areas such as law, accountancy and planning. In some cases the broader support organisations can refer on to the specific professions if that is appropriate, effectively acting as a conduit.

- Local authority support / opposition

Bristol has the status of ‘social enterprise city’ by Social Enterprise UK and the independent, elected mayor is generally very supportive of co-ops and social enterprises. But, with the reduction in local authority budgets, there is little money to put into business advice or development of social enterprises which historically they have done. A couple of interviewees have noted that “they are supportive in theory, but in practical terms, they’re not supportive.” And is hard to generalise about ‘the Council’ - interviewees referred to silos and having support and co-operation from one section and no communication or even active opposition from another, with a lack of clarity over whose job it might be anyway.

Policy and regulation

- Accessing legal support

New enterprises, understandably, felt nervous about the legal implications of their business but worried about the costs of bringing in legal professionals (hence a frequent desire for a lawyer-director). One suggestion was that a lawyer who filled a voluntary board position could help an organisation understand the risks and help steer a realistic path through the legal minefield. Helping with leases and contracts was one important legal area and the other was employment law which can take up a large part of the modest budget of a developing organisation. Often support organisations providing more general advice can provide initial help before referring to specialist lawyers if necessary.

- Legal structures and policy frameworks

Past and current (right wing) government policy has supported (arguably left-wing) enterprise in surprising ways: through the introduction of the CIC form supporting flexible enterprise, de-regulation of energy supply, feed-in tariffs effectively providing government guarantees to investors and ‘big

Society’ localism encouraging self-supporting enterprising community environments. However, it was also suggested that government regulation is struggling to catch up with the current reality and that barriers still exist both in terms of the development of new forms of enterprise and the weighty documents needed to make them and their projects legal. Government’s (simple, traditional) view of enterprise is still that you set up an enterprise which employs people under set rules to make profits for anonymous shareholders and to deliver something for an anonymous set of purchasers.

- Impacts of (central government) policy and who has influence

Comments were made by several interviewees about the relative lobbying weight of big business to support their own profitable goals. We perhaps see evidence of this in the reduction of ECO targets for the big energy companies despite evidence to show that it is good for carbon reduction; in the lack of regulation for repairability and re-use of goods; and in the relative lack of support for organic or small-scale or community supported farming. There seems to be a perception of lack of big picture / interconnected thinking across government with disconnects between departments and small-scale responses unable to make a big difference.

5. Discussion and summary

What sort of animal are our social enterprises and movements? We asked them this question as it is a useful and fun way of exploring how people thought about the relationship between their organisation, its competitors and its social and material habitat.



And it turns out that they are all sorts of animals – but generally, social, friendly, clever, keen to please, persistent, adaptable and nurturing.

Notes from the Bristol workshop, March 20th 2015

We introduced the findings in this report at a workshop with social enterprises, support organisations, lawyers and academics held in Bristol in March 2015. There was a good degree of recognition of the issues raised and wider discussions about approaches to take next.

A criticism was that the burden of regulation and negative findings seemed to weigh down the fun and exciting entrepreneurial spirit that started the enterprises going and that whilst regulation and structure were needed there could be a different way which was more positive, especially if the lawyers and policy makers could be persuaded to also take a different and more facilitative approach. A collaborative way is needed to create system change with the energy coming from a critical mass of bottom up enterprise.

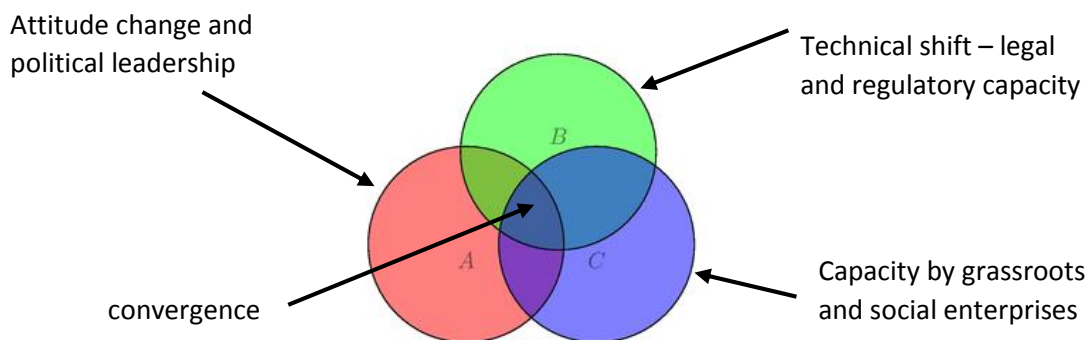
We talked about creating coalitions which were seen as giving a stronger and more cohesive voice to disparate local groups and for sharing expertise and learning for a collective good. Emergence was a term used to describe the shift from dispersed individual action to something more cohesive and resilient.

In relation to accessing legal support, the ideal might be a middle way, accessible to everyone, either through affordable lawyers or law clinics or café-style open sessions offering community oriented legal advice. Currently, under-resourced enterprises have to hope that they can secure pro-bono professional support or find the funds for expensive conventional lawyers.

Raising funds was also discussed, with the question of what is reasonable to expect by way of return on investment coming under scrutiny. The recent controversy over the changes to registration of co-operatives and community benefit societies in relation to their fund-raising capacity, particularly in relation to community energy schemes, prompted this debate.

A broader debate was around the role (s) of local government as facilitator and through its procurement processes. There is a tendency to be risk-averse in local government and good leadership is needed with clear corporate objectives allowing officers to make decisions based on a broader definition of value. A deeper system change is starting to occur as civil society responds to some of the big challenges of the public sector, for example in housing provision and social care, although this is somewhat outside the remit of this project which concentrates on 'green' social enterprises responding to the challenges of climate change in new and innovative ways. The feeling in the room was that (local) government needs to collaborate (and not compete) in helping to co-produce new ways of doing things.

One of the breakout groups came up with a Venn diagram to illustrate the issues faced in working with local government, with the 'sweet spot' in the centre illustrating the convergence needed:



Drawing together some key themes

Some broad threads running through the brief commentary above are:

- simple flexible legal structures such as the CIC form or a simple company limited by guarantee are welcome, the overt statement of social purpose and asset lock of the CIC especially so, but the wider diversity of legal form available allows organisations to choose what fits them best
- there is a lack of clarity in employment and benefit law over the status of volunteers and their ability to spend time and receive rewards for volunteering
- support organisations are valued for helping enterprises establish and develop, and they act as conduits to pro bono professional support, particularly from lawyers, at key moments in contracts and employment
- however, access to legal support is at best patchy and new affordable ways of accessing the law and financial advice are needed which are relevant to social enterprises
- there is a lack of government understanding and support for a growing and diverse group of enterprises trying to work in new ways – including a one-size-fits-all approach to regulation which doesn't recognise the differences between small non-profit and large for-profit organisations
- a confused and risk-averse response by local government and lack of cross-department communication both at a local and national level can mean that support from one section is negated by contradictory policy from another.
- there are benefits of collaborative working, networks and peer-to-peer support at a sectoral level which helps to give the sector a stronger voice, share learning and support replication of a range of approaches by new entrants.
- there are perceived to be benefits of people working or volunteering outside their normal peer groups with enhanced social and community outcomes as a result
- a lack of public understanding and buy-in to these new ways of doing things limits the spread of community benefits and future resilience

In conclusion

One of our interviewees put it succinctly as 'it's about breaking this connection between financial reward and work in the sense of encouraging people to work together as a community to do something' – which is how many of the social enterprises seek to work. The law can help organisations clarify their purpose and give legitimacy to a wider audience. Conversely, some regulatory structures are over-burdensome on small and under-resourced enterprises.

Intermediary and support organisations provide a range of support in helping with entity formation and governance issues and in connecting different organisations to engender peer-peer relations which help keep the activist and entrepreneurial spirit alive when regulation and public indifference or negativity start to weigh them down.

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