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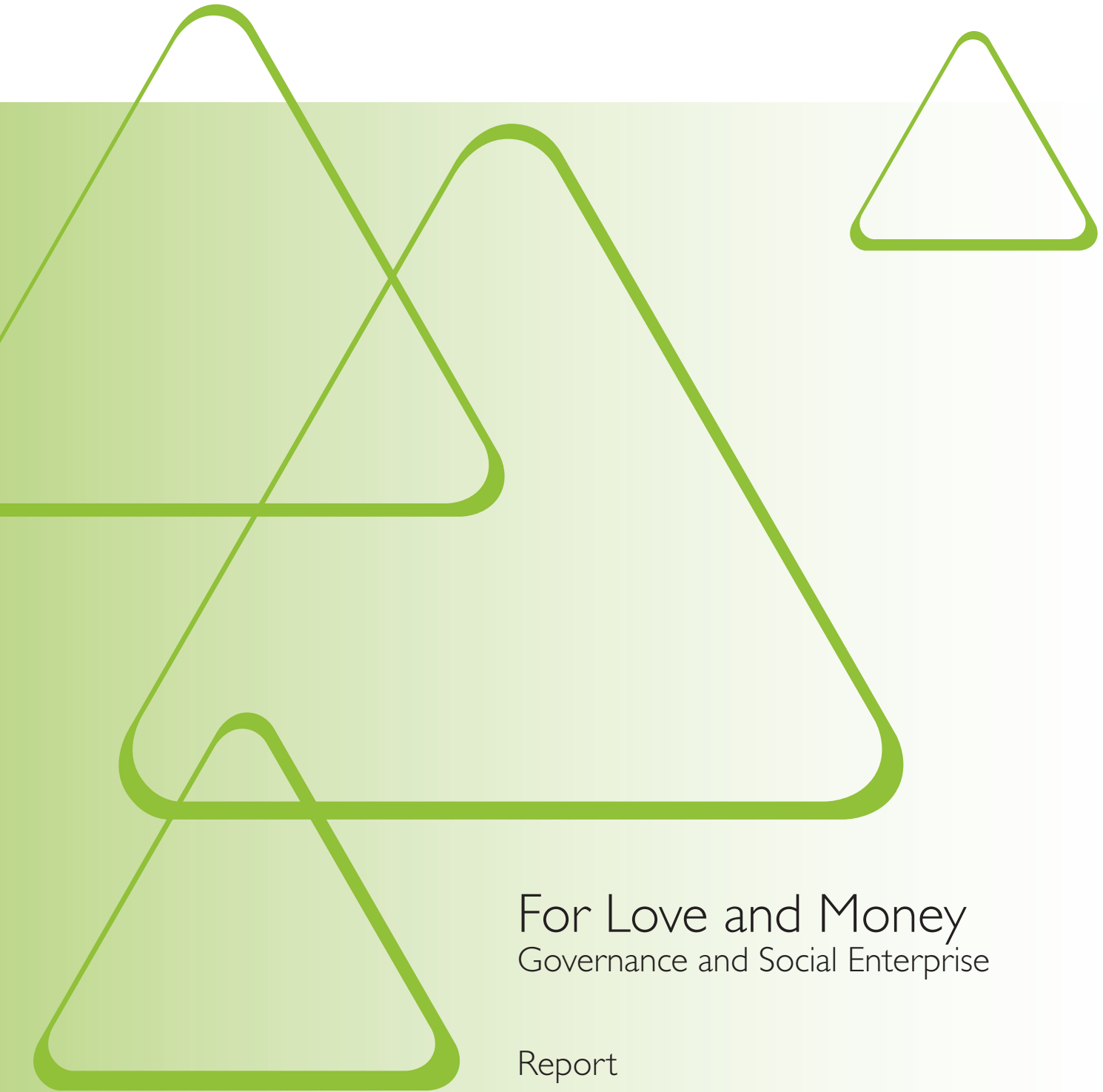
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For Love and Money

Governance and Social Enterprise

Report

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Governance and Social Enterprise

Report

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¹The researchers gratefully acknowledge the support of the Governance Hub and the Social Enterprise Coalition which enabled this research to be carried out, and the well-considered guidance of the Steering Group: Jolanta Lasota and Anne Moynihan, John Goodman and George Leahy.



Foreword

Social enterprises are an increasingly important part of our national economy and are growing rapidly. They include social firms, an increasing number of voluntary organisations who are setting up trading activities, co-operatives, credit unions, community businesses, development trusts and housing associations.

The social enterprise and social entrepreneurship movement is very important, and is driving a big change. It is influencing the private sector to take ethical values into account, the public sector to be more focused on users in its delivery of public services, and charities to develop trading activities.

Good governance in social enterprises is essential for the movement to continue to thrive and be sustainable. Good governance provides legitimacy, accountability and transparency for all stakeholders, and provides a framework for responsible decision making and safeguards for investors.

I am very pleased this report has been produced. It will be of great value to all those that are supporting social enterprises including the Social Enterprise Coalition and the new Leadership and Governance National Support Service.



Campbell Robb

Campbell Robb
Director General of the Office of the Third Sector

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Glossary of Terms and Abbreviations

Governance Systems and processes concerned with ensuring the overall direction, supervision and accountability of an organisation. (Cornforth, 2004)

Social Enterprise Business with a social purpose (and often socially owned)

Third Sector used here to refer to voluntary sector, co-operatives, and mutuals

CEO Chief executive officer

CIC Community Interest Company

CLG Company limited by guarantee

CLS Company limited by shares

FSA Financial Services Authority

I&PS Industrial and Provident Society

LA Local authority

LT Leisure trust

LLP Limited liability partnership

NEDs Non-executive directors

OTS Office of the Third Sector (where the DTI's Social Enterprise Unit relocated)

SE Social enterprise

VCS Voluntary and community sector

VO Voluntary organisation

Executive Summary

1. Background and Aims

Social enterprises that trade for a social or environmental purpose are a rapidly growing part of the third sector. They comprise a very diverse range of organisations, including co-operatives, community businesses, credit unions, development trusts, trading charities, housing associations and social firms. Social enterprises may take a variety of legal forms; for example they may be registered as companies limited by guarantee or shares, industrial and provident societies, as community interest companies or take unincorporated forms.

Their growth and significance is due in part to changes in government policy, which sees a greater role for social enterprises in, for example, restructuring public services, community development and welfare to work initiatives, as well as the emergence of new ethical markets such as fair-trade. The growth in the contracting out of public services, the move from grants to contracts and the development of new forms of ‘venture’ philanthropy has led to a general trend of increasing levels of earned income in many third sector organisations. This has raised concerns about how to manage new entrepreneurial initiatives and risks whilst sustaining core values. As in other sectors the quality of governance and accountability are crucial in maintaining reputation and public trust.

However, the evidence base on the distinctive governance² challenges of social enterprises and how they can be best supported is not well established. As a result the Governance Hub, in partnership with the Social Enterprise Coalition, commissioned this research by third sector researchers from the Open University.

- Identify any characteristics of governance practices specific or distinctive to social enterprises.
- Identify and examine the governance support needs of social enterprises, the specific sources of governance support they currently access and the limitations and gaps in this provision.
- Explore how Governance Hub strategies, services and resources, and those of its successor, might be communicated, adapted, or extended to meet the needs of all types of social enterprises.

2. Research Approach

Given the lack of existing knowledge about the distinctive governance challenges of social enterprises, the research adopted a qualitative approach to research in order to explore in detail people’s experiences of social enterprise governance. The research used a combination of interviews and focus groups with a range of governance advisers, board members and managers in the sector. In all, more than 45 people from across 40

² Governance is often defined as the systems and processes concerned with ensuring the overall direction, supervision and accountability of an organisation.

organisations were interviewed or took part in focus groups during a four month period in the summer of 2007.

A critical consideration in designing the research was the great diversity of the sector. It was important to include people from a range of organisations that captured at least some of this diversity and varied on important dimensions, such as size, legal structures, and origins that were likely to shape the governance challenges the organisations faced. However, not all types of social enterprise could be covered in a relatively small study and it was decided to exclude housing associations, because there is already good support available for boards and managers in this field, and social enterprises established as sole-traders or partnerships as their governance challenges were likely to be simpler (although as they develop the study findings would be highly relevant). As a result the research focused on co-operatives, credit unions, development trusts, football supporters' trusts, health social enterprises, social firms, leisure trusts, trading charities, and a regional group including a range of different types of social enterprise. The advisers interviewed often dealt with a range of organisations and were able to offer at least a partial overview.

Drawing on existing research, a framework was established to guide the conduct of interviews and focus groups. A semi-structured format was used so that interviewers had the freedom to follow interesting issues as they emerged or probe for more detail. The main areas of questioning included:

- legal and governance structures
- typical governance problems and challenges in various areas including: board recruitment, board roles, relationships with management or staff, relationships with stakeholders and funders, balancing social and business goals, training and development, member relations, regulation and accountability.
- the availability of governance support, advice and training and gaps in provision.
- awareness of Governance Hub services, web site and materials; their relevance and extent of use; and the potential for adapting them to better meet the needs of social enterprises.

3. Research Findings: Governance in Social Enterprise

The research suggests that, despite the apparent diversity of the different types of social enterprise, there are some similarities in the governance challenges they face. There seem to be two dimensions which are important in helping to understand some of these similarities and differences. The first dimension concerns the origins of the social enterprise and the second the governance structure.

The **origins** of social enterprises are significant because the social enterprise sector is in a state of emergence and social enterprises are developing from very different roots. These different roots affect the transitions they have to make and can influence both the way governance structures are constructed and developed, and the types of issues that emerge. The research identified four important **origins** of social enterprises: mutualism (e.g. credit unions, co-operatives), public sector spin-offs (e.g. leisure trusts), charitable and voluntary activity (e.g. trading charities), new enterprises established by social

entrepreneurs, either linked to new social movements (e.g. fair trade and recycling organisations), or from the business sector.

One important way in which **governance structures** vary is in terms of whether the organisation's board is self-selecting or whether the board is elected by a wider membership, to whom the board is accountable.

Despite the diversity of social enterprise, there are some general themes that have emerged to varying degrees across the research; as well as some specific themes that relate to different types, or the different origins and paths of development of social enterprise. And while a lot of concern was expressed about governance standards in most of the sub-sectors researched, almost all could point to excellent examples of effective governance.

General themes

- Choosing and developing appropriate *legal and governance structures* for a social enterprise is important, but can be quite complex and difficult. A number of advisers highlighted the importance of good *legal advice* and suggested that from their experience poor decisions could come back to haunt the organisation. However, it may be particularly difficult for small organisation to access this advice, either because it is not available in their locality or because they cannot afford it.
- *Board recruitment*: many people reported problems with 'recruiting or electing' people with the *right skills* and experience onto boards, particularly people with financial, business and strategic skills. The problem appeared most acute in disadvantaged communities and among smaller organisations. It is difficult to know how much this is due to a genuine shortage of people willing to volunteer their time and how much is contributed by poor recruitment processes.
- *Membership* sets particular governance challenges for how members influence the board; sustaining active membership becomes more difficult with increasing size (though footballers' trusts offers one model for addressing this issue); but when membership is active, it can be a considerable strength.
- There may be problems maintaining an appropriate balance between *social and business goals*. Some social enterprises may become too focused on social goals at the expense of building a strong, sustainable business and hence jeopardise their survival. Conversely, some may become too focused on business goals at the expense of social goals, which may lead to *mission drift*, compromising the real purpose of the organisation. Boards play a key role in ensuring that any plans for the organisation are subject to critical scrutiny in relation to mission, and that resources are used for their intended purposes.
- *Founder syndrome*: Many new social enterprises may be set up by strongly committed *social entrepreneurs* intent on creating a new market niche such as fair-trade or finding innovative ways of meeting social needs. Governance issues may seem like a low priority as they strive to establish the business, yet as they grow crucial governance decisions can be made by default. There is also a danger that board may be dominated by strong founders, who may have influenced the

selection of board members in the first place. Boards need to be in a position to hold managers and staff to account for their actions. Good governance helps bring new perspectives and a more detached view to make sure that proposals are robust and well thought out.

- There are problems managing the often competing *demands of different stakeholders* – particularly around public service contracts, and with multi-stakeholder boards; good governance ensures an appropriate balance between the interests of the organisation and its obligations to different stakeholders.
- There is sometimes insufficient clarity about *board/staff roles*, and developing staff support for effective board functioning is often not achieved
- There can be a number of important constraints that make *board development* challenging, with resources for training often limited and board time at a premium. This highlights the importance of recruiting or electing members with appropriate values, skills and experience and also establishing expectations that board members are expected to devote time to board development activities.
- Perhaps paradoxically, *senior managers* have a key role to play in improving board effectiveness. Boards can not function effectively unless management supplies them with appropriate information and options, and encourage board scrutiny and challenge to their proposals. Senior management are also often in a better position to help identify board development needs and encourage training or other forms of board development. Senior managers may also require training to help them carry out this board development role.
- In small organisations which employ only a small number of staff or no staff at all, the boundaries between governance, management and operational matters can be very blurred. Often current advice and support materials are not so appropriate for these organisations as they assume a professional management structure and fairly clear division of responsibilities between the board and staff.

Specific themes

Social enterprises with small business origins

- Business people moving into the social enterprise sector do not always recognise the need for transparency and accountability; their interest often stems from pressure from public contractors/funders expressing concerns about the adequacy of governance.

Member-led/mutual organisations

- In these social enterprises the *board is elected* from the membership. This can mean that boards are elected that do not have the '*appropriate*' mix of skill that is desirable to run the business.
- Another common problem is *maintaining membership involvement and commitment*, particularly as the organisation grows and becomes more professionally led.

- There is a danger in membership organisations that over time the active membership may become *dominated by a particular sectional interest or clique*, who do not represent the interests of the broader membership. Hence the priorities of the organisation may become distorted. For example a consumer co-operative may become dominated by staff members (although they can only take a minority of seats on the board) and no longer reflect consumers' interests.

Social enterprises with charitable origins

There is good evidence of governance improvements in this segment of the third sector. But although there are important examples of charities engaging whole-heartedly with entrepreneurial ventures and government contracting, particularly amongst larger charities, for many small and medium sized organisations considerable challenges remain:

- One such challenge is constructing appropriate *governance structures for trading charities*. Broadly speaking, where trading is not central to the charity's mission it is beneficial to establish a non-charitable trading subsidiary, and hence a multi-organisational structure. Legal advice is likely to be needed to design an appropriate structure, including governance arrangements.
- Some charities and voluntary organisations experience problems establishing a social enterprise in moving from a charitable culture to an *enterprise culture*, for example, board members may lack business skills, board members and staff may be risk averse or the organisation may lack a sustainable business model for their enterprise.
- There can be big risks associated with *public service contracting*, particularly for small to medium size organisations. They may not have the expertise or weight to negotiate successful contracts, for example achieving full-cost recovery. There may also be a danger of over-dependence on a few sources of income, leaving them vulnerable to sudden changes in public policy. Good governance helps to ensure a strategic approach to managing the risks of such opportunities.

Public sector spin-offs

The origin of these social enterprises in spinning off from the public bodies creates particular challenges for their boards and staff.

- The development of new public services markets can create considerable *uncertainty about appropriate governance arrangements and business structures*. For example, difficulties in transferring staff over pension liabilities and terms of employment may influence business structures and can result in difficult periods of transition. This uncertainty during the phase of market construction can be exacerbated by considerable variation in the practices of service commissioners; and by uncertainty about responses of regulatory bodies, such as the Charity Commission.
- Many social enterprises in this field have multi-stakeholder boards, and there can be a challenge moving away from "*delegate syndrome*", where stakeholders

- represent particular stakeholder interests rather than the interests of the organisation as a whole.
- With a multi-stakeholder board it can be a particular challenge *recruiting enough people* to the board who have the necessary *business skills, expertise and time* to help run what can be a multi-million pound enterprise. In the early days this can be important in helping establish the legitimacy and market presence of the new enterprise.
 - Some social enterprises in this field include staff in their membership. Maintaining *staff membership and involvement* can be a challenge over time as staff leave, and new staff who were not involved in the initial transfer may fail to see the benefits. Staff recruitment, induction, training and consultation procedures can be crucial in helping maintain staff involvement.
 - A key challenge is *developing boards and staff for market challenges and culture change* – moving away from bureaucratic processes and structures, and reconfiguring and balancing powerful interests like trade unions, staff and funders against those of service users.
 - Developing appropriate mechanisms to *involve service users* is often a priority but notoriously difficult to achieve. Boards need to consider how this can best be achieved on a regular basis. In practice it is likely that combining a variety of mechanisms, ranging from customer satisfaction surveys to board involvement, will be more satisfactory, rather than relying on just one method.
 - Many social enterprises in this field are *highly dependent on the contracting relationships* with a dominant funder, such as the local authority or health trust. This can leave them vulnerable to changes in public policy and cost cutting pressures.

4. Support for Governance in the Social Enterprise Sector

State of advice/materials in the social enterprise sector

- *Advice on legal structures* - for many individuals and groups wanting to establish a new organisation one of the biggest challenges is deciding on the legal form and governance structure of the organisation. People may not be well-informed at this stage, with choices based on dominant legal forms rather than an informed consideration of a range of structures. Similar problems can also occur if social enterprises wish to change their legal structures or governing documents later in life.
- Larger established organisations are more likely to have enough knowledge of governance and the resources to select appropriate professional advisors; similarly for public sector spin-off organisations which can draw on the expertise and resources of the public body.
- Smaller and medium sized social enterprises with less resources and less knowledge of infrastructure are frequently unsure where they can get good governance advice, or feel that it is not affordable.

- Occasionally people may find well informed local advisors. In general, agencies like Council of Voluntary Service were not felt to offer much more than basic information and Business Links were perceived as more oriented to other business models and were not felt to understand the needs of social enterprises.
- Some agencies specialise in social enterprise support, such as regional bodies like RISE (for the South West), and SEEM (for the East Midlands). They generally recognise the need for governance support and training and provide basic support on, for example, legal structures. However, such resources are limited.
- Umbrella bodies for particular types of social enterprise, such as the Development Trusts Association or ABCUL for credit unions, are often the first port of call for governance advice and training for social enterprises in their field, but again they have limited resources.
- *Peer to peer learning* is sometimes facilitated by umbrella bodies and also takes place through local linkages and relationships, as well as through visits and publicity about 'model' organisations.
- There are several *Codes of Practice* and *Toolkits* designed for different types of social enterprise that are attempting to raise the quality of governance. However, it was often felt that social enterprises need advice and training on how to use these effectively in their organisations.
- *Overall the picture of support available is one where standards are highly variable from locality to locality; and where low-cost, specialist governance advisors are thin on the ground, if not impossible to find.*

Governance Hub materials

- The Hub materials were generally known and valued by governance advisors. The Hub was valued for its clear, principled, ethical approach and for being a one-stop shop for advice for trustees and board members of voluntary organisations.
- However, chairs and chief executives were much less likely to have heard of the Hub, or the materials and the support it offers, though when presented with some of the material they were usually impressed.

However it was also felt that there were some weaknesses or gaps in the Governance Hub provision in relation to social enterprises:

- The general feeling was that the Hub was *a good web resource* – but there remained an important gap between the web-based resources and the direct support that many organisations needed. It was felt that many social enterprises would require support or facilitation by intermediaries to use the materials effectively.
- It was felt that the materials are better for larger, more formal organisations and that the *needs of smaller organisations* are less well catered for.
- Many social enterprises have their *preferred channels* of information and support, particularly via trusted umbrella bodies for the particular type of social enterprise.

So unless these bodies provide links to the Governance Hub many social enterprises are likely to remain unaware of what is on offer.

- The Governance Hub materials were originally designed for use by voluntary organisations and charities, which has influenced the *language* in which they are written (for example board members are often referred to as ‘trustees’). This language is off-putting to some social enterprises, so the materials may need to be revised accordingly.
- Similarly, some aspects of the Governance Hub advice are only appropriate to charities (for example that board members in their capacity as trustees should not benefit personally from their role) and may not be relevant to other types of social enterprise, such as co-operatives. Similarly other types of social enterprise may want to emphasise their *own distinctive characteristics* such as the seven co-operative principles.
- There needs to be better coverage of *membership issues*, for example maintaining an active and committed membership, managing member relations, and involving members in governance issues.
- It was felt that the Governance Hub materials under-emphasised the potential impact on governance of *entrepreneurial and trading activities*, (which is crucial for social enterprises). So, for example, case studies do not generally address trading issues.

5. Recommendations

The following are recommendations to the Governance Hub, its successor and national bodies responsible for governance support in this sector to enable them to better support the good governance of social enterprises:

1. If the Governance Hub and its successor are going to better meet the needs of social enterprises it will need to find a way of *differentiating and tailoring its resources* to reflect the needs of different types of social enterprise and the issues they face. This will involve both adapting the language used to reflect that used in the particular types of social enterprise and considering some issues in more depth.
2. The Hub and its successor should consider developing *better information and support* for social enterprises on the following topics:
 - *overseeing commercial activity and managing business risks*
 - *legal and governance structures for trading subsidiaries*
 - *the governance of multi-organisation partnerships*
 - *membership issues* e.g. maintaining an active and committed membership, developing members so they have the skills to serve on the board
 - *user involvement*, including how to involve users in governance issues and increase accountability to users
 - *the governance of smaller organisations.*
3. The Hub and its successor should explore developing *closer relationships with umbrella bodies and local agencies* that support different types of social

- enterprise to achieve enhanced support for social enterprises. This might include umbrella bodies adapting and contextualising Governance Hub resources to support governance in their area, ensuring there is better signposting of each other's resources, and developing possible pathways of support related to different types of social enterprise.
4. Many social enterprises are likely to need face-to face advice and support if they are to use many of the Governance Hub resources effectively. An important priority will be to work to *strengthen links with governance advisers and consultants* working at local, regional and sectoral levels, and provide them with appropriate training and support.
 5. The Hub and its successor need to consider more *active strategies for improving governance*; for example joining with infrastructure bodies and regulators to raise awareness of the importance of governance, promoting the opportunities for different groups to become involved in governance, particularly under-represented groups such as young people, and providing training and development opportunities.
 6. The Hub and its successor should explore the possibility of aligning good practice codes of governance and other standard governance advisory materials amongst third sector umbrella bodies, by drawing out common principles and standards which would form the basis for different versions for different types of social enterprise (as suggested in 1 above).

1. Introduction

Social enterprises are organisations that trade for a social or environmental purpose. As well as meeting their social and/or environmental goals, they have to be business-like and meet financial and commercial goals. As a result they are sometimes referred to as having a double or even triple bottom line. The number of social enterprises in the UK has grown rapidly over the last 10 years, and includes a very diverse range of organisations, including co-operatives, community businesses, credit unions, development trusts, trading charities, housing associations and social firms. Social enterprises may take a variety of legal forms: they may be registered as companies limited by guarantee, industrial and provident societies, and community interest companies or simply take a number of unincorporated forms. Government estimates³ of the number of social enterprises vary considerably from 15,000 in 2004 to 55,000 in 2005, depending on how they are defined; and, in particular, whether the estimate includes sole traders and partnerships.

At the same time social enterprises have become an important plank of government policy. In 2002 the New Labour government launched its Social Enterprise Strategy and established a Social Enterprise Unit (SEU) in the DTI to co-ordinate its implementation in England and Wales. In 2006 the SEU moved to the Office of the Third Sector and the government established a Social Enterprise Action Plan to encourage and support the development of social enterprises across the economy. Social enterprises are seen as having potentially important roles in the restructuring of public services as well as being a source of innovation in fields as diverse as recreational and cultural services, and recycling. For example social enterprises have been promoted as a new way of delivering some health and social care services and the Department of Health has established a Social Enterprise Unit to stimulate their formation and growth, and funded a programme of support for 26 social enterprises that can act as ‘pathfinders’ so their experiences and learning can be shared across the sector (Walsham et al, 2007).

Paralleling developments in the private, public and voluntary sectors, the growth in the size and significance of social enterprise sector has begun to raise new concerns about the quality of governance and accountability of social enterprises, and how governance arrangements can best be supported. However, the evidence base regarding the distinctive governance challenges of social enterprises, and how social enterprises can be best supported to meet these challenges is very thin. While there is a growing body of research on the governance of voluntary and community organisations in the UK (e.g. Cornforth, 2003, other research including that commissioned by the Hub), research on the governance of other forms of social enterprises has been relatively neglected. Similarly, while there has been a good deal of effort devoted to improving the governance of voluntary organisations, most significantly by the Governance Hub⁴, which was established in 2004, less is known about the distinctive governance support needs of social enterprises.

³ IFF Research Ltd (2005) and Small Business Service (2006); research conducted in 2004 & 2005.

⁴ The Governance Hub was one of a series of hubs established under a government funded programme ‘Capacity Builders’ in the UK to strengthen the infrastructure of the voluntary sector.

As a result the research project on which this report is based was commissioned by the Governance Hub in partnership with the Social Enterprise Coalition, to help fill these gaps in current knowledge. In particular it aimed to:

- Identify any characteristics of governance practices specific or distinctive to social enterprises.
- Identify and examine the governance support needs of social enterprises, the specific sources of governance support they currently access, and the limitations and gaps in this provision.
- Explore how Governance Hub strategies, services and resources, and those of its successor, might be communicated, adapted, or extended to meet the needs of all types of social enterprises.

1.1 Research approach and methodology

Given the lack of existing knowledge about the distinctive governance challenges of social enterprises, the research team felt it was important to adopt a qualitative approach to the research that would enable the team to explore in some detail people's experiences of governance in the sector. The research used a combination of interviews and focus groups with a range of governance advisers, board members and managers in the sector.⁵

The very great diversity of the social enterprise sector meant one of the first challenges the research team faced was to 'map' the diversity of the sector and decide what sorts of social enterprises to include in the research. It was felt important to include a range of organisations that captured at least some of this diversity and varied on important the dimensions, such as size, legal structure, and origins that were likely shape the governance challenges the organisations faced. In addition it was felt that some sub-sectors, such as housing associations, should be excluded because there were already good support structures and materials in place to help meet their governance challenges. In addition sole traders and partnerships were excluded as their governance challenges were likely to be less complex and more to do with external regulation. It was decided to focus on co-operatives, credit unions, development trusts, football supporters' trusts, health social enterprises, social firms, leisure trusts, trading charities, and a regional group including a range of different types of social enterprise. The background to this choice is set out in more detail in section three of the report which examines the social enterprise sector.

Data collection was carried out in two main phases. The first phase consisted of two parts: first, desk research aimed at uncovering the main sources of governance support available to social enterprises and secondly, a series of interviews was carried out with staff of infrastructure organisations and advisers familiar with the governance needs of social enterprises in different fields of activity. The interviews focused on the identification of common problems and challenges around the governance of different types of social enterprise and gaps in the provision of support. More than 45 people

⁵ The original tender document for the research called for a survey. However, the research team felt this was premature for a number of reasons. First, the lack of existing research meant it was unclear what would be good questions to ask in the survey. Secondly, the problems in defining the sector, the variety of different types of social enterprise and the lack of a single good data base of social enterprises meant that it would have been difficult constructing a good sample.

across 40 organisations were formally interviewed, while others supplied additional insights or resources in 2007.

The second phase of the research consisted of a series of focus groups and interviews with board members and senior staff from different types of social enterprise. The original intention was to carry out face-to face focus groups with board members and senior managers in a number of sub-sectors. However, the relatively short time scale of the project and the many demands on the time of potential participants created logistical problems for holding the focus groups, which meant this approach had to be revised. In some cases telephone focus groups were arranged, and where even this proved difficult, individual telephone interviews with members of the potential focus group were conducted. These focus groups and interviews explored in more depth the issues identified in phase 1.

Drawing on existing research a framework was established to guide the conduct of interviews and focus groups. A semi-structured format was used so interviewers had the freedom to follow interesting issues as they emerged or probe for more detail. The main areas of questioning included:

- legal and governance structures
- typical governance problems and challenges in various areas including: board recruitment, board roles, relationships with management or staff, relationships with stakeholders and funders, balancing social and business goals, training and development, member relations, regulation and accountability.
- the availability of governance support, advice and training and gaps in provision.
- awareness of Governance Hub services, web site and materials; their relevance and extent of use; and the potential for adapting them to better meet the needs of social enterprises

Details about the interviews and focus groups are included in Appendix 1.

1.2 Structure of the report

Sections two and three of the report outline the context for the research. Section two draws on existing research on corporate governance in the private and voluntary sectors to examine some of the broader trends that have influenced corporate governance, the different schools of thought aimed at understanding what boards do and the common challenges that boards face. Section three examines the social enterprise sector. It considers the definition of social enterprise, the blurred boundaries between the social enterprise sector and other sectors, and identifies some of the main types of social enterprise. Section four presents the main empirical findings from the research, examining the governance challenges of social enterprises in various sub-sectors. Section five presents the main research conclusions. Section six describes some of main sources of information and advice on the governance of social enterprise. It examines levels of awareness among social enterprises and their advisers of some of the materials provided by the Governance Hub; and it discusses their perceived relevance. Finally Section seven presents the recommendations from the research.

2. The changing context: governance reforms, problems and challenges

The purpose of this section is to give a context for the research. It begins by examining why reforms to 'corporate' governance arrangements have risen up the policy agenda in all sectors. Then it draws on existing research and theories on corporate governance to help understand some of the different roles boards can play and the challenges they can face in carrying out these roles. It looks first at those challenges that appear to be common across all sectors, before focusing on those that are specific to organisations in the third sector.

2.1 The context for governance reforms

In recent years there has been considerable interest among policy makers in reforming 'corporate' governance arrangements across the private, public and third sectors. Much of the initial impetus for these changes came from the private sector, and many of the reforms that were initiated there have had an influence in the other sectors.

An important stimulus for change in the private sector were a number of major corporate scandals that occurred in larger public companies, such as Guinness, BCCI, Polly Peck and more recently Enron and WorldCom, which kept concerns over corporate governance in the public eye. These scandals occurred against a background of growing globalisation and the deregulation of markets around the world, together with concerns over the growing power and perceived lack of accountability of modern corporations.

The main thrust of corporate governance reforms in the UK has been on improving self-regulation. Perhaps the most significant influence on reform process was the report of the Cadbury Committee (1992) on the financial aspects of corporate governance of public companies. The committee was established in 1991 to address concerns over the low levels of confidence in company financial reporting and auditing (Pettigrew and McNulty, 1995: 846). In addressing these issues the committee went beyond issues of financial audit and developed a Code of Best Practice in Corporate Governance, which was subsequently adopted by the London Stock Exchange.

Since then there have been a series of further reports into strengthening other aspects of corporate governance, which have resulted in a Combined Code of Practice (FRC, 2006). The Code is voluntary, but public companies are expected to comply with the Code or explain their position in their annual reports. In the UK companies have boards composed of both executives (i.e. the senior managers in the company) and non-executive or independent directors from outside the company. (This contrasts with many parts of the third sector where the norm is to have boards composed entirely of non-executive board members⁶). The main purpose of these reforms has been to strengthen the position of non-executive directors on boards, so they are better able to hold the executive to account. The main structural recommendations were to separate the roles of chair and chief executive and establish internal audit and remuneration committees under the

⁶ This norm is changing in some sub-sectors, so for example some housing associations have changed their rules to allow executive board members.

control of non-executives. Other recommendations include fair, open and rigorous appointment procedures, induction and development for directors, and performance appraisals for boards and board members.

Parallel developments have taken place across the third sector. However, the diversity of the sector and the differing regularity requirements has meant that different sub-sectors have often developed their own codes, for example there are codes for consumer co-operatives (Co-operatives UK, 2005), for housing associations (NHF, 2004), voluntary and community organisations (Governance Hub, 2005) and others.

As well as the development of codes there have also been an increasing number of initiatives within all sectors to increase awareness of the responsibilities of board members and provide them with appropriate advice, support and training. In the voluntary and community sector one of the most significant recent developments was the establishment of the Governance Hub in 2005, one of several hubs set up with government money to build the capacity of the sector. The hub has played an important role in developing and disseminating the code of practice for voluntary and community organisations, developing a wide range of governance advice and training, and developing national occupational standards for trustees and board members.

2.2 Common governance roles and challenges

Four common challenges that boards face are outlined below:

The power of boards to control management

There is a paradox at the heart of governance arrangements in all organisations that employ professional managers. While it is the board that is formally responsible for the overall control of the organisation it is management that have access to the main levers of power to carry out this responsibility; management have the time, infra-structure, information, skills and access to resources (Demb and Neubauer, 1992). The danger then is that managers may run organisations to further their own interests rather than the interests of their shareholders, members or other stakeholders. As discussed above the thrust of many of the reforms of corporate governance arrangements has been to try to strengthen the hands of non-executive board members so they are better able to oversee management and direct the affairs of the organisation. However, there remain important question marks about the ability of many boards to carry out this task. A common complaint of boards in all sectors is that they effectively become a 'rubber stamp' for management's proposals (see for example Steele and Parston (2003) research on boards in the public sector). Yet the conclusion that all boards become rubber stamps is too sweeping, the empirical evidence suggests a much more varied picture (e.g. Murray et al, 1992; McNulty and Pettigrew, 1999). Pettigrew and McNulty (1995) suggest that patterns of power and influence at board level will depend in part on the 'will' and 'skill' of board members in using the sources of power available to them.

The difficulty of separating the board's role from management's

Another common complaint about boards is that they often stray into management's territory and meddle in their affairs (Middleton, 1987; Harris, 1999). Perhaps, as a result, much of the practice-based literature on governance stresses the importance of being clear about the difference between governance and management, and defining the

different roles of boards. While it is important to have some clarity over these issues this prescription is in danger of over-simplifying the problem. The roles of boards and management are inter-dependent and the boundaries between the two are often necessarily somewhat blurred (particularly in smaller organisations). For example it is often said that boards should stick to strategic matters and not interfere in operational issues. However, drawing the boundary between operational and strategic matters is itself difficult. Strategy may emerge from practice and knowledge of operational matters may be important in making strategic decisions. Equally boards are often dependent on management to draw up strategic proposals, and the appropriate level of board involvement may vary between different organisations at different times depending on the circumstances. For example if an organisation is facing a crisis or major change, such as a merger, the board may quite appropriately want a greater degree of involvement. What does seem to be important is that board members and management acknowledge this potential problem and recognise the need to review and renegotiate their respective roles and relationships from time to time.

Balancing the different roles of boards

One of reasons that being a board member is so challenging is that board members have to play a variety of different roles, which may at times be in tension with each other. These roles include being:

- a *supervisor*: safeguarding the resources of the organisation and making sure they are used for the purposes intended. For example in companies this is to safeguard the interests of shareholders and in charities to make sure resources are used to further the interests of the intended beneficiaries. Hence the emphasis is on supervising the organisation's management and staff, and overseeing how the organisation's resources are used.
- a *director*: working with the executive of the organisation to provide strategic direction and leadership for the organisation. The emphasis here is on working as a *partner* of management to improve the performance of the organisation.
- a *representative*: ensuring the interests of particular stakeholders are represented on the board in order to improve the legitimacy of the organisation and its responsiveness to important groups such as shareholders or members, users, funders and employees. This role is underpinned by a more political perspective on boards and draws on ideas of democratic or stakeholder accountability.
- a *'supporter'*: assisting the organisation's executive to manage important external relations and dependencies by providing contacts, support, access to resources and legitimacy to the organisation. This may be through 'lending one's name', opening doors, providing resources or using personal contacts and influence on behalf of the organisation. People are selected more for 'who they know' than 'what they know'. It is often this kind of role that organisations have in mind when they involve the 'great and the good' on their boards.

Each of these roles is underpinned by a rather different model or perspective on how boards work. Each model has its own powerful logic about how boards should work, which has implications for board functions, relations with staff and the likely problems that can arise if too much emphasis is given to a particular role, as set out in Table 1.

(Cornforth (2003a and b) explains in more detail how these models are derived from different theories of how boards work.)

MODEL	Board member role	Underlying Assumptions	Main board function	Potential problems
Compliance model	<i>Supervisor or guardian</i>	'Owners/members' and managers have different interests	Supervision: - safeguarding organisation's mission and resources - supervising management/staff - ensuring legal compliance	Emphasis on control may stifle innovation and risk taking, and reduce staff motivation and enterprise
Partnership model	<i>Director</i>	'Owners/members' and managers share interests	Improving Performance: - adding value to 'top' decisions and strategy - partnering management	Emphasis on partnership may mean that management proposals and systems are not given adequate scrutiny
Political model	<i>Representative</i>	Different stakeholders have legitimate interests in governance	Political: - representing and balancing different stakeholder interests - making policy - controlling executive	Board members may promote stakeholder interests rather than the organisation's. May be difficult to mobilise support to make changes
Co-optation model	<i>Supporter - chosen for influence with key stakeholders</i>	Organisations are dependent on other organisations for resources. Board members selected to help manage these dependencies.	External influence: - securing resources - improving stakeholder relations - bringing external perspective	External focus of board members may mean internal supervision is neglected

Table 1: Different models of how boards work

In reality board members may have to play all these different roles and more. This can present boards with various paradoxes (Cornforth, 2003). For example they have to both partner and support management and, at the same time, oversee their activities and hold them to account. Getting the balance right can be a difficult challenge (Sundarmurthy and Lewis, 2003). If boards are too controlling they risk reducing manager's motivations and ability to take risks or innovate. Ultimately this may lead to a downward spiral in relationships where trust breaks down. Conversely, if boards are too supportive and trusting they may neglect to challenge management and hold them to account. This may lead to a complacent management team and a decline in organisational performance. Also, if different board members and the staff they work with interpret their roles in

different ways it helps to explain why it is difficult to get board members and staff to work together effectively.

The increasing demands on board members

One consequence of the push to improve governance has been increasing expectations and demands on board members. Board members are now increasingly aware of their wide ranging responsibilities. There are also increasing expectations that board members should be able to bring particular skills or expertise to the board and be willing to undertake regular training and development activities. This has led to increasing demands on the time and commitment of board members.

2.3 Some distinctive governance challenges of organisations in the third sector

There are also a number of governance challenges which appear to be distinctive to third sector organisations, including social enterprises.

The lack of a dominant external stakeholder

In public companies shareholders are the dominant stakeholder, that is to say, within various legal and regulatory constraints, companies are meant to be run in the interests of their shareholders. In the third sector the situation is often more complex, and a variety of stakeholders may have a legitimate stake in the organisation, for example, members, beneficiaries or users, and funders. Sometimes different stakeholder groups are explicitly represented on boards of third sector organisations, for example tenants in housing associations. However, even if they are not then an important role of the board is to balance different stakeholder interests, for example the interests of funders versus the interests of users or beneficiaries, or the interests of existing users versus the interests of future users.

The mix of social and financial goals

Organisations in the third sector pursue a mix of social and/or environmental goals many of which can be difficult to measure. Of course they have to do this within the constraints of their financial and other resources. This is sometimes called the double or triple bottom line. As a result boards may be faced with quite difficult trade-offs between different types of goals. The frequent separation of funding from service delivery can also mean there is a danger of mission drift if funding is not fully aligned with an organisation's mission. Given the difficulty of measuring the impact of social or environmental change there is a further danger that boards may focus on those aspects of performance that are easier to measure to the detriment of more important aspects of performance.

The voluntary nature of board membership

In most of the third sector unpaid volunteers fill board positions. Given the increasing demands on boards this has raised concerns about what can be realistically expected from volunteer board members in terms of skills and time. This can mean that managers are reluctant to take some issues to their boards for fear of overburdening them. Perhaps as a result the issue of whether to introduce payments for board members has arisen in debates

within the third sector. Although still not that common it is noticeable that it is becoming much more common in some areas such as housing associations.

Getting board members with the right skills and experience

There is some evidence to suggest it is becoming more difficult to recruit suitable board members in the third sector where most board members are volunteers. For example a survey of charities showed that a much higher proportion of charities felt that finding board members was becoming more rather than less difficult and this was especially true of small to medium size charities (Cornforth, 2001:9). There may be a number of reasons for this. First, the demand for board members appears to have increased with the growth in the size of the third sector, and also increasing demands from within the public sector for people to serve on the boards of a variety of public bodies. Second, as noted above the increasing demands on boards and a growing recognition of the considerable responsibilities of board members may have put some people off becoming a board member. Third, traditionally many voluntary organisations have relied on informal methods of recruitment such as word of mouth, which may not be very effective. Fourth, demographic trends and increasing work intensity are placing increasing demands on the potential supply of people for such roles. The Government's active citizenship policy agenda also aims to involve more and more people in participative/civil action, and yet a Joseph Rowntree Foundation study on building community participation in neighbourhood governance proposed aiming for mobilising as little as 1% participation (Skidmore et al, 2006). Perhaps as a result of these difficulties more voluntary organisations are beginning to use more formal recruitment methods to find and select board members.

3. The social enterprise 'sector'

The purpose of this section is to give an overview of the social enterprise sector in the UK. It begins by looking in more detail at what defines a social enterprise. This is important because as will be shown that different definitions can lead to widely different estimates of the size of the sector, and highlight different characteristics. Then the section examines some of the main ways in which social enterprises are formed, and discusses the often blurred boundaries between social enterprises and organisations in other sectors.

3.1 What is a social enterprise?

There is no one well established definition of social enterprise, and definitions vary somewhat between different countries and contexts⁷. The UK government's Social Enterprise Unit (SEU), now part of the Office of the Third Sector, developed the following definition:

“A social enterprise is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or the community, rather than being driven by the need to maximise profit for shareholders and owners” (DTI, 2002).

The Social Enterprise Coalition, the main umbrella body for social enterprises in the UK, elaborates further identifying three key criteria. As well as an *enterprise orientation* and *social aims*, it highlights a third criterion of *social ownership*, which is defined as follows:

“They are autonomous organisations whose governance and ownership structures are normally based on participation by stakeholder groups (e.g. employees, users, clients, local community groups and social investors) or by trustees or directors who control the enterprise on behalf of a wider group of stakeholders. They are accountable to their stakeholders and the wider community for their social, environmental and economic impact. Profits can be distributed as profit sharing to stakeholders or used for the benefit of the community.”
(www.socialenterprise.org.uk)

However, operationalising any definition and identifying social enterprises is not straightforward. The government's SEU commissioned two surveys⁸ in 2004 and 2005 years, using somewhat different criteria and surveying different populations of organisations, which produced widely differing estimates of the number of social enterprises.

The 2004 survey was based on organisations that generated a minimum of 25% of their income from trading activities, and were incorporated as companies limited by guarantee (CLG) or industrial and provident societies (I&PS) as an indicator of social ownership and aims. The survey estimated that there were 15,000 social enterprises employing

⁷ A good overview of how social enterprises are viewed in some different countries can be found at the EMES Network website (www.emes.net), or by looking up social enterprise in Wikipedia (<http://en.wikipedia.org>)

⁸ IFF Research Ltd (2005) and Small Business Service (2006); research conducted in 2004 & 2005.

475,000 people with a combined annual turnover of £18 billion, of which 82% was generated through trading.

The later 2005 survey used somewhat different criteria and surveyed a wider population of organisations. To be included as a social enterprise a minimum of 75% of income had to come from trading, and in addition not more than 50% of profits could be paid back to owners or shareholders. In addition respondents were asked whether they fitted the government's definition of social enterprise. Hence, this survey relies in part on respondents self-identifying themselves as social enterprises. Rather than using the CLG and I&PS legal forms of enterprise to define the sector, a much wider range of organisations was surveyed, including companies limited by shares, unincorporated associations, partnerships and sole traders. As a result this survey includes many small, owner-run businesses that were excluded from the first survey and may not meet the criterion of social ownership, but see themselves as social enterprises.

This later survey estimated that there were at least 55,000 social enterprises in the UK with a combined turnover of £27 billion per year, which constitutes about 5% of all businesses with employees. The majority of these businesses are sole proprietors, partnerships or limited companies with just one executive director (SBS, 2006: table 2.18). It was decided to exclude these small businesses from this study, because of the difficulties identifying one-person social enterprises, and because the governance issues they face would be much less complex and challenging than other types of social enterprise. Nonetheless, it is anticipated that the findings of this study would be very relevant to such micro-businesses as they grow and develop.

As noted above social enterprises may adopt a variety of different legal forms, including incorporated forms such as companies and industrial and provident societies, and unincorporated forms such as associations and partnerships. In addition some social enterprises may choose to register as charities if they serve charitable purposes, or as community interest companies. Whatever its legal form an organisation will also have a governing document, which may be called different things depending on the legal form, which sets out in broad terms how it is to be governed and run.⁹ Although most social enterprise of significant size are likely to use CLG, I&PS or CIC legal structures, it is not possible to identify the whole field of social enterprises simply by the legal form they may adopt. There are also a wide range of regulatory frameworks which influence governance issues, depending on the sector in which the social enterprise operates, (for example housing and credit unions are both highly regulated sectors).

As well as definitional problems recognising and agreeing what is a social enterprise is difficult for other reasons. The term is a relatively recent one, and has not gained currency in some circles. There may also be overlap with other ways of categorising organisations. As a result some organisations that fit the definition of social enterprise, such as trading charities and co-operatives, may not identify themselves as social enterprises. Equally there may be some organisations who don't meet all the criteria for being a social enterprise, but who identify themselves with the term.

⁹ It is not possible in this short report to go into detail about different legal forms and their implications for governance, but Co-operatives UK (2005, and with Governance Hub 2007) have produced two excellent guides.

3.2 Origins and types of social enterprise

One way of thinking about social enterprises is as the more business-like part of the third sector, where the third sector is seen as those organisations that are not part of the public and private sectors, such as voluntary and community organisations, charities and co-operatives or other mutual organisations. As noted above quite how much income has to be raised from trading for an organisation to be classified as a social enterprise is open to debate, although a common rule of thumb is 50%.

However, this still leaves a very wide range of organisations. One way of distinguishing different types of social enterprise is in terms of their origins and roots. There appear to be four common routes into becoming a social enterprise, those that arise from mutualism, those that come from existing charitable or voluntary organisations, those that arise as spin-offs from the public sector, and those that are created from scratch by social entrepreneurs.

Co-operatives are probably one of the oldest forms of social enterprise. They are trading organisations that are established to benefit their members, who are often perceived to be disadvantaged in some way, rather than shareholders. There are a number of different types of co-operative depending on the needs they are trying to meet, for example consumer, worker, or housing co-operatives or credit unions. A key feature of co-operatives is that they are membership organisations i.e. they are owned and democratically controlled by their membership on the basis of one member one vote, which has important implications for their governance.

Another group of social enterprises come out of existing charitable or voluntary organisations, where these organisations have chosen to develop trading to fund their main activities alongside more traditional forms of fundraising such as grants and donations. Where trading is not primarily for serving the mission or purpose of a charity, but is intended as a fundraising activity, the charity is required to establish a separate subsidiary to carry out the trading activities.

Some social enterprises arise out of the activities of the public sector. One example is Leisure Trusts, which have been spun out of local authorities as separate enterprises to run what were previously the local authority leisure services, such as sports centres and swimming pools. Other examples are some of the social enterprises in the fields of health and social care formed to provide new ways of delivering these public services.

Other social enterprises are set up from scratch by social entrepreneurs to address particular social issues, such as the 'Big Issue' to support the homeless, or Jamie Olivier's restaurants 'Fifteen' to offer opportunities to disadvantage young people. Some of these new start social enterprises have links with particular social movements or causes, such as those involved in fair trade.

What this means in practice is the boundaries between the social enterprise sector and other sectors is very blurred, and social enterprises may have multiple identities. A social enterprise may for example be a charity or a co-operative; it may have close links with the business or public sectors. Social enterprises may also identify and group themselves in terms of the issues they deal with or the services delivered, such as 'social firms' that are created to provide employment opportunities for people who are disadvantaged in the labour market, or development trusts which aim to develop successful local communities.

4. Research Findings: Governance in Social Enterprise Segments: trading charities, social firms, community business, co-operatives, etc

The social enterprises examined in this research cross boundaries of legal forms (charity, company, I&PS, Community Interest Company (CIC)), affiliations to a recognised grouping or movement (Development Trusts, Social Firms) and/or to a given sector of work (Green issues, Health). We have taken a pragmatic approach and presented the organisations according to recognised affiliations, whilst trying to tease out the key governance challenges they face, and their support needs. These *recognised types* are clearly not distinct: indeed there is considerable overlap in terms of their legal and governance structures. Thus for example many social firms are also trading charities, similarly for community enterprise. And although co-operatives and credit unions are member-based organisations, membership is also an issue for many charities. There are distinctive governance challenges in member-based structures which typically require quite pragmatic advice, for example on best methods of voting, or how to manage AGMs and members. So these broad features of governance structures are addressed wherever relevant to a particular type. Generic themes emerge across types; these include those arising from common regulatory requirements, like dealing with the FSA or Companies House. Finally while these types of social enterprise are well known, there will be many social enterprises that do not see themselves as linked to particular types or specific umbrellas bodies. Nonetheless the wide range of governance issues raised and discussed should find a resonance with these other social enterprises, since we have qualitatively mapped many of the characteristics of the sector.

The sub-sections describing each type of social enterprise are ordered to give some broad clustering of similar types (with similar governance issues): First small firms, then types of social enterprise owned and controlled by members, such as credit unions, and co-operatives; then voluntary organisations with trading social enterprise elements are presented; these are followed by development trusts and social firms which tend to identify with a set of organisations sharing a particular target group, affiliating with a given organisational umbrella; similarly with fair-trade which follows; next come social enterprises closely associated with a given field or type of activity - work-integration enterprises (enabling disadvantaged people into work), and green enterprise (such as recycling co-operatives); finally come government spin-offs in the health, social care, and leisure sectors. The questions examined in the research are shown in Appendix 1, and evidence relating to these issues is discussed for each type of social enterprise. This is reported in each subsection under the broad categories of: legal structures, boards, skills, etc.

Preliminary comments:

Initial choices of legal form and governance structure: At a more fundamental level there can be big issues around the complexity of institutional choice, and poor or misleading advice resulting in poor choices which come back to haunt the governance structure. For example: 'sometimes people are directed into a charity route when they

would be better to be a co-op – they start an organisation and then find they can't be on the board which is what they want.' Thus time spent designing appropriate governance structures (and selecting the relevant legal structure) reduces the medium term challenges.

Good practice begins at the founding (design) stage: thus it is important to ensure boards have good provision for rotation/removal to prevent "founderitis" where founders won't move on, and "sitiritus" where people like sitting on boards...'

Legal forms researched: while the research was not based on a legal typology, most relevant legal structures were referred to by respondents: Voluntary Associations, Charities, Partnerships, Companies, Industrial and Provident Societies, Community Interest Companies. With regard to **CICs**, the Community Interest Company, although over 1200 have been formed, so far there is not much evidence on governance issues; less than 40 annual reports have been submitted (to mid 2007). One issue is matching intentions with performance: in their application documents to form a CIC, social entrepreneurs have to specify which activities will benefit the community, and in their annual "community interest report" they have to state which activities they have done and who they have consulted and why. Similarly they have to specify details of any asset transfers, and dividend payments. Funding and tax exemption are often issues for new/emerging CICs. (See Appendix 3 for more details on CICs).

4.1 Small business social enterprise

This is an important new development or transition - where social entrepreneurs with small business backgrounds are moving into social/community service sectors.

Governance issues: social entrepreneurs (from small business backgrounds) often come from situations where there is very little in the way of governance structure. 'They only realise they need governance when applying for grants', where there are issues about showing transparency in decisions, etc. And if they get the grant, 'it may be questionable whether they would stick to what they have said on governance in practice'.

And there is sometimes a perception that governance, accountability, transparency are only relevant in relation to public funding: 'some social enterprise don't get much or any public funding so it is all less interesting for them.' 'The more enterprising don't want to be hampered with all that (governance stuff).' This raises the issue whether it is necessary to address: 'governance for busy entrepreneurs'.

4.2 Co-operatives

A co-operative¹⁰ is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.

¹⁰ There are seven co-operative principles

- Voluntary and Open Membership:
- Democratic Member Control:
- Member Economic Participation:
- Autonomy and Independence:
- Education, Training and Information:

There are essentially only two main types of co-operatives: users/consumers (like the well know co-operative shop) and producers (like farmers' co-ops) – workers co-operatives are a special case of producers' co-operatives. Generally co-operatives are single stakeholder organisations i.e. of users or producers. But more recently with the growing interest in social (and community) co-operatives, we have seen multi-stakeholder structures formed with workers, users, volunteers, community members, trade unionists, etc on the board. The Co-operative Bank (well-known for its ethical policy) is part of CFS (Co-operative Financial Services) which is wholly owned by the UK's largest co-operative retailer, the Co-operative Group.

For co-ops and more commercial types of social enterprises there is more of a business element, creating a stronger entrepreneurial tension than in voluntary and community organisations. Thus co-ops can make a surplus, which tends to be reinvested, returned to members, or socially invested. They emphasise the democratic control of the enterprise by members – which tends to mean that it is more difficult bringing in outsiders onto the board, thus the skill base is generally drawn from the membership, although this depends on the governing document. Umbrella bodies like Co-operatives UK (and the much smaller ViRSA – Village Retail Services Association, the umbrella body for village shops) have model governing documents.

Legal issues:¹¹ Co-operatives may be registered under Industrial and Provident society law or under company law (usually company limited by guarantee, but sometimes company limited by shares) – thus they are incorporated with limited liability. There has been some use of Employee Share Ownership Plans (ESOPs) and Share Incentive Plans (SIPs) which allow substantial levels of employee ownership particularly in buyouts or conversions from the public sector (for example in the 1980s, this was seen in local state privatisations of bus services).

Board: For small co-operatives, board roles are not always defined, and 'it is hard to make time to think strategically' but it is also important 'to make sure you do look at the roles' [on the board]. Strategy is particularly tricky for public contracts where the risk of tendering failure can be catastrophic.

Outside role on the board – traditionally the use of non-executive directors (NEDs) has been resisted by co-operatives, and board members are drawn from existing membership. But with increasing demands for good governance, this policy is being reviewed; sometimes it is seen as important for getting other views, but at other times for some smaller co-ops threatening. Thus one cycle co-op has scope to have some external people 'to get an outside view' - from the cycling world and from another co-op.

Another issue in democratic structures is that it may be hard to confront people on the board of a co-operative especially in a co-operative where there are close relations outside the board. On the other hand "having workers on the board offers advantages too: as protagonists in implementing decisions!"

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- Co-operation Among Co-operatives:
 - Concern for Community:

¹¹ Governance and Organisational Structures, a joint publication [by Governance Hub and Co-ops UK] was published in 2007 – it covers legal structures and options for governance forms.

Tensions between board and management: there can be interference ‘...it is important to ensure the idea of delegated authority is put in the rule book...’, just as there are managers who try to control the board, so there are boards who get into the day to day management; and drawing the boundary ‘deciding what is and what is not a board issue’ can be problematic. And there can be conflicts of interest: ‘directors are duty bound to act collectively – they shouldn’t take an individual line outside the meeting but it can happen – partly because people on boards are wearing more than one hat’.

Members and Stakeholders: Member engagement can be hard, particularly where the membership is large and not closely linked to the enterprise. Even in worker co-ops senior staff are usually more available than junior or specialist staff. And in care co-ops: workers may be remotely located and so harder to engage in central processes around governance. And getting good people to stand for the board can still be a challenge.

Skills – a range of skills (finance, marketing, strategy) were mentioned as typically lacking on boards.

Challenges: In some sectors like childcare, entrepreneurship can be difficult: ‘it is hard to be brutally business-like’. And tough decisions can be hard to implement in a democratic structure. However Co-op principles provide some guidance on social/business tensions.

And in some sectors there are confidentiality issues for the board (e.g. in care co-ops).

As in other more conventional enterprises, the burden of “red tape” regulation was cited.

Development: In any new social enterprise there could be two phases in the development of the organisation: (1) an entrepreneurial phase involving fundraising and getting premises up and running and then (2) running a business (like a retail outlet). This might demand different governance considerations (for example in terms of skills mix, leadership).

For co-operatives there seem to be issues about lack of strategy time for boards (maybe due to the small size of organisations researched).

There is a preference for developing skills in existing boards – less chance of “bringing in particular skilled board people in the way a charity might”. A continuing relationship with a development agency has been good for governance development. And board training collectively seems harder – it seems to be done more individually.

4.3 Credit unions

Credit Unions in the UK have developed much later than comparable movements elsewhere (e.g. in Ireland). Growth has been steady, and it is estimated there were about 216,000 members in 1999, and 549,406 members in 2005. There are 2 federations WOCCU; and ABCUL (which represents 70% of credit unions (CUs)) with combined totals of 740 CUs in the UK, £44.87m income, £15m profit, and 732 staff; and over £425 million assets. Almost all CUs are either employee based or community based.

Context: There is a big pressure from government to encourage a prioritisation of financial inclusion and poverty goals, rather than normal business development (which might target better off households). These financial inclusion priorities are funded

through contracts such as the Growth Fund (for affordable lending, administered by the Department for Work and Pensions), and other financial inclusion funds. But it means that credit unions are tending to confine their business to financially excluded communities, and develop that niche. The Co-op Bank has partnered credit unions in giving a wider range of banking facilities such as current accounts to credit union customers e.g. ATM use, security, and computer time/space.

An FSA study (2007) was conducted on senior staff and board members of 30 small, medium, and large credit unions, because it was felt many problems at credit unions were due to corporate governance failures. It reported the following key findings:

- Over three-quarters felt the Board had the necessary skills to carry out their duties – which means that a quarter did not.
- Less than half of respondents said the General Manager or Chair decided what was on the agenda.
- A third of respondents from medium-sized credit unions felt discussions were dominated by one or two individuals.
- One-fifth of respondents from medium-sized credit unions felt detached from the decision making process.
- Over three-quarters of respondents said they understood their own roles. Over half believed the roles and responsibilities of senior management were clearly defined and understood
- A large majority said the General Manager updated the Board with a formal report. A clear majority said the Board set the remit of the General Manager and reviewed their work annually.
- Well over half of respondents said the Board set the remit and reviewed the work of the General Manager,
- Almost one-third of credit unions allow non-eligible Board members to vote, (and 25% allow Chief Executives)
- Almost half of respondents from medium-sized credit unions said a dominant culture did exist – where propositions went unchallenged.

The pressure of government to construct its markets: Getting Growth Fund contracts has not been easy, negotiations have been tough, and only 76 credit unions (out of about 400 in ABCUL), got money of varying amounts. Amounts received varied from several million to a few thousand. Gaining a contract was based on five-year business plan, plus interviews with the boards. Even now some credit unions are struggling with quite demanding contracts which specify target numbers for new customers, target loan values; and tight credit controls, since they can't afford to lose the money. This is a big challenge for some credit unions.

Transitions: There is a gradual trend towards larger CUs, with more formal systems of governance, including through mergers. There has also been a trend to smaller, more professional boards; partly because of a trend from social movement origins (driven by volunteers and community activists) towards greater professionalisation; and partly because of the increasing demands on organisations with regard to regulation and financial management, which has imposed a substantial burden on individual board members, and has made it more difficult to get people to agree to sit on the board.

Legal structures: Credit unions are formally all the same: a special type of Industrial and Provident Society, registered and regulated by the FSA, although they operate differently. Users of credit unions services have to be members, but there are substantial variations in member activity.

Boards - Boards typically range in size from 7 to 15. The size of the board is decided at the AGM. The sector is highly regulated - all board members need to be approved by the FSA. The criteria used are more to do with moral character, (rather than skills/expertise, which applies in other countries such as Canada).

Member relations is a big issue. In the small credit unions which are more volunteer-oriented, they frequently have successful membership programmes in a wide range of areas such as schools; and volunteers keep close to the membership. In the professional top-down credit unions, the trend is that they risk losing some membership linkage with professionalisation. Maintaining the interest of members in the governance structures can be hard; and AGM attendance can tail off – in one CU with 8,000 members, the numbers who come to AGM meetings is very small. But through various projects and volunteering and taskforces, it is possible to involve membership. For example, in one large more professional credit union, the AGM was in a local pub on a housing estate and served a hotpot for about a hundred people.

Further Challenges: There are a number of problems and challenges faced by CU boards.

- Getting required skills and competencies on boards, (this could be improved through requiring more formalised training as in other countries). This applies particularly to financial management and strategic management skills. Many on the boards don't have financial skills.
- The struggle between different models of board operation i.e. representing members versus providing expertise.
- The development of a more professional approach - including succession planning for the board.
- Transitions, and problems with management - there can be a particular problem of separating roles: with grassroots driven types of credit unions, where directors used to be hands-on; and where the CU runs informally with volunteers carrying out operational duties. Similarly as they grow and evolve boards move to more formal arrangements, but some directors find it difficult to allow staff to manage. This can be a conflictual problem, even in large credit unions. On the other hand some larger top-down credit unions, with subsidies can be rubber-stamping, particularly where managers were the ones who got the funding.
- Relations between boards and senior managers - there has been some work done on this in the past (FSA, 2007), and many CUs have resolved this issue. N.B. senior managers are not able to take seats on the board, but most are there as observers; though some boards meet without managers there.
- There is an issue over paid board members, ABCUL voted against it, but the FSA has no objection. However it may become an issue as credit unions get larger; a

very large one recently went to the FSA to get support for this. However, board members can get expenses which sometimes can be large. And the treasurer gets an honorarium, which can also be quite substantial, especially in Northern Ireland.

- Gaining skills on the board: ‘It is very hard to manage a credit union serving only socially excluded people – often you need other, more affluent members, to make it economic; and you need the knowledge and skills of both constituencies of members in governance.’
- Funder relations is not an issue - some board members are recruited from funding bodies; this amounts to a form of co-option, but they are normally persuaded to join as members prior to joining the board.

4.4 Football Supporters’ Trusts

There are currently over 100 Supporters’ Trusts across England, Wales and Scotland, with about 95,000 members. Of these Supporters’ Trusts, 61 hold equity within their football clubs, while 39 have supporter representation within the boards of their football clubs. In a handful of league and non-league clubs there is full supporter ownership of the clubs. These have been promoted with government support for their federal body “Supporters’ Direct”, with the aim of linking supporters more closely with the ownership and governance of their clubs, by offering the opportunity for pooling individual equity to get representation on the board. In effect they are clubs within clubs (self-organising lobby groups of supporters within football clubs).

Legal structures: From the perspective of this research these Supporters’ Trusts are hybrid structures for enhancing user involvement, ownership and participation. They represent a self-organising model for involving one type of stakeholder – in this case users of the clubs services (football supporters) – moving them beyond mere consumers of services (albeit often passionate and committed ones!), to more active stakeholders. And they have their own boards with democratic membership-based structures, registered as I&PS legal structures. Although not social enterprises in themselves - they are not trading organisations - but members’ clubs run by volunteers. However, as one senior advocate argued “they have as a mission the desire to see the football club – which is a trading enterprise – to take on the characteristics of a social enterprise itself.” They do this through increasing their ownership and involvement in governance, so once the club becomes more influenced by the Trust, the internal governance of the Trust becomes pertinent to the operation of the business of the club. The Supporters’ Trust offers a model for strengthening membership in a social enterprise for a particular stakeholder group - with potential in other areas like health.

This structure has parallels in other social enterprise for example the employee ownership trust gives similar possibilities of involvement in governance for worker/employees through ownership of shares – though in this case the company typically helps set these up as part of remuneration and involvement packages.

From the point of view of the football club these trusts formalise links with the body of supporters, and allow consultations to take place - for example on the level of commercialisation, balancing player buying power against ticket prices. In addition, at times of financial difficulty, the trusts have often played central roles in ensuring the

viability of the clubs. From the government's point of view, they help build football clubs as civic/community institutions. And they can be a force for better corporate governance and management in clubs, through the action of the representatives within boards.

In terms of the **mode of operation**, there are two models of football trusts, on the one hand:

- A rather passive fundraising type of organisation that would not be critical but is close to the club; and
- Others which are very good at advocating and being oppositional, but generally could not construct and build alternatives.

But in practice there is a mix between these two forms which many trusts aim for. However there is often an ongoing tension between running the trusts in a businesslike fashion, and ensuring the values that animated the trust are sustained.

Trusts have broad constituencies - from bankers and lawyers to trade union people – the former like the Trust from a corporate governance point of view, while the latter like the sense of a ‘mass aggregation of voice.’ This also brings tensions in mode of operation.

Boards- balancing popular people against skilled people is an issue e.g. how do experts (like accountants) get elected to the board? Accountability, sometimes leads to people getting strongly criticised, but this is tough for some people to take.

Challenges: As in many other membership structures, they face the challenge of developing active membership amongst a large group of service users. Take the Co-op: ‘why are people members? Some because they are passionate about democratic ownership; for others it is more of a symbolic gesture; but for many it is because they shop there – they have the card and the governance is a side issue.’

In effect: “how do you make membership organisations work in the 21st century? And how can you achieve a balance between participation and the rhythm of people’s life? And can you use 21st cent technology to help?” The risk is, unless you solve this dilemma, the membership structure will atrophy, and its legitimacy and influence decline. As with all organisations based on membership, “if membership declines, or becomes more theoretical than actual, then other structures built on these foundations (like the board) may become very weak.”

[N.B. Supporters Direct has raised the possibility of virtual board meetings on Skype, and developing dynamic mechanisms for engagement – “since members are unlikely to come along and say they have a governance problem, they may need message boards and discussion lists enabling involvement and engagement – making short comments, etc - and the need for actual meetings may grow out of this.”]

Supporters Direct (the umbrella body) has developed fact sheets and a wide range of information resources, which is a searchable archive.

4.5 Trading Voluntary organisations

In 2003/4 The UK Voluntary Sector Almanac reported “Social enterprise activities are driving the sector’s economy”, with the dominant source of income in the sector

(£12.5bn) being earned income. But many trading voluntary organisations¹² may not identify themselves as social enterprises, even though in terms of the earned income criterion (> 50%) they are. Trading voluntary organisations are probably the largest part of the social enterprise sector. And while trading is an increasing trend, many different types of voluntary organisations have been doing some kind of trading for many years. NCVO (National Council of Voluntary Organisations) is the major membership body, with over 90% of its members being charities – the more entrepreneurial of these are likely to be incorporated i.e. companies limited by guarantee (or share) **and** legally registered charities – thus registered and regulated both by Companies House and the Charity Commission¹³. They may have wholly owned subsidiaries which are either companies limited by share or companies limited by guarantee.

Context: As noted in the previous section, there are important definitional issues around social enterprises – this relates to self-perception and identity as well as how they might be labelled by external bodies. Thus a trading charity may not ‘self-identify’ as a “social enterprise”, but it may be seen as a social enterprise because it meets the defining criteria of social enterprise. Thus “...you may not necessarily feel you have joined something... that it is part of a self identified movement which you can attempt to describe and characterise...Deciding what kinds of organisations you think you are...can be a matter of who you file your accounts with...’ A regulatory ‘home’ is often important (and this only exists for the small proportion of social enterprise that are CICs)...’you can often build up from that – from regulatory needs to good practice.’ On the other hand, sometimes people unthinkingly assume that a certain type of organisation should be thought of as a charity – “there has been this sense that there has been no choice”, and the idea of social enterprise may prompt a more critical look at appropriate structures for trading.

However a changing contracting culture can still catch organisations unawares. For voluntary organisations involved in delivering contracts – do boards know what is happening with trading activities? One answer is provided in a Charity Commission report (2006) which showed that trustees of charities delivering public services are less likely to be involved in decisions about what activities the charity will undertake, i.e. boards don’t know. Charities may not be aware that they’re running some kind of social enterprise (SE) and ‘it is likely those SE type of issues will be low on their boards’ agendas’ and they may not be aware of its growth, and not recognise it is happening. Similarly they may not know if full cost recovery is undertaken (NB the private sector is by definition ‘full cost *plus*’) – ‘but the question of whether and how they recognise it has important implications for its stakeholders.’

¹² There are several main types of voluntary organisation: associations (unincorporated or incorporated – usually as a company limited by guarantee), and charity (unincorporated, trust, or incorporated), and “BenCom” – I&PS society for the benefit of the community (incorporated), and the CIC (incorporated). **Board members are personally liable in unincorporated and trust structures, thus where there is significant financial risk, incorporated legal forms are recommended.**

¹³ The new Charitable Incorporated Organisation, when it becomes available for use under the Charities Act 2006 will reduce the burden of dual regulation for incorporated charities, with the Charity Commission as sole regulator.

Whereas in the past charities often provided some additionality to government services, increasingly now they are providing mainstream services – which may create a greater tension with their traditional charitable missions. And where a charity decides for economic or political reasons to go down the SE route, how it communicates this to donor stakeholders is very important. Many of the wider public may not understand these transitions, or that it has become a general trend for charities to increase their proportion of earned income – so for example, how many people would be aware that Age Concern generates most of its income from trading? i.e. based on the majority of its activities it is a social enterprise; in fact, one of its strategies is very entrepreneurial: “influencing markets... (via) a new range of products and services, offers and promotions to help members get the most for their money.” Similarly, many other medium sized charities with a high proportion of trading and services can be seen as social enterprises.

Trading: Organisations that call themselves social enterprise can be (a) delivering government contracts or (b) selling goods or trading services in the market. The attitude to the “enterprise” part of the organisation may also be influenced by how close it is to its mission and core activity: thus with some charities the trading is not part of the primary purpose, it is simply ‘income generation’ like charity shops - [the ‘cash cow’] - a way to feed money into the charity’s core service activity. [N.B. There may be a hybrid model where charities set up shops initially as non primary purpose trading but are now using them for primary purposes too e.g. providing information about the charity and its cause, recruiting customers to campaigning activity]. In other charities such a part of the organisation is seen as ‘integral to the core activity (maybe delivering a service to beneficiaries), like St Mungo’s carrying out government contracts for the homeless. Such differences can influence the approach to managing entrepreneurial activities (separation, higher/lower profile, etc).

The new Charities Act and public benefit test of the Charity Commission could pose dilemmas for trading charities: for example educational trusts running special schools (e.g. RNID (Royal National Institute for Deaf People, RNIB (Royal National Institute of the Blind)) – 90% of their income is trading but they operate as charities. Such organisations might, under the Charity Act, become ‘all and wholly charity’ so will face the greatest dilemma with the public benefit test. ‘Trustees may not have woken up yet to what sort of organisation they are running – i.e. that they are running trading organisations.’

While some charities have large levels of trading within the charity (The Directory of Social Change has 83% of its income earned); but when increasing trading activity, charities often establish wholly owned trading subsidiaries (either to contain the risk or because the trading activity is not within the charity’s objects (i.e. it is non-primary purpose trading). This then involves establishing appropriate systems of overlapping board membership, and clarity about responsibilities and issues for each board. Addressing the different parts of the organisation’s activities reveals issues of identity, structure (trading subsidiary or cost centre within the charity; as well as board sub-committees), and the extent to which they bring distinctive values into the trading part. At the extreme it could be seen as trying to manage ‘multiple personalities.’ They may well have different approaches to governance in their different roles, with separate identities, and potentially different values. So for example they might have a board meeting but

they might not always take it that seriously, since it might have been the case that in the past there was less rigour over contracts – the environment may have been more convivial. ‘They may be imagining that the governance of the entrepreneurial activities is happening elsewhere in the organisation’ – but it might not be true. Thus it is important to raise the question: ‘have the organisations worked out who is responsible for the trading arm and what effect running these operations has on the “core business” of the charity?’ One clear implication is about the skill set of board members when delivering contracts – it would be different from traditional charity work. Another is being clear about how their trading divisions are managed. And there are also important issues of brand management across the charity & trading subsidiary.

For example, in one children’s charity every year there was a discussion about whether to put fees up for the children’s school places – which would involve stronger and possibly failed negotiations with the LA. This would be the business side. On the charity side people were concerned about the children who would suffer. The business side was worried about reserves being eaten up each year. Whenever it got to a crunch point they realised the LA wouldn’t pay and they couldn’t allow the children to leave the school. They even got to the point of developing a closure programme. There were similar tensions between policies for inclusion and supporting charitable activities making the most impact. Lots of organisations are split in this way – both a split between people on the board but also played out within some people as individuals.

There are clear differences in the way charities handle the governance problems associated with being more entrepreneurial.

‘Some larger charities often try to overdo it’ on governance issues. ‘They try to replicate what they have been doing as a charity.’ Many medium sized charities have significant trading wings. There are different approaches amongst charities towards social enterprise – for example Barnardo’s set up a separate SE unit –which worked well; and this resulted in the changes that unit was engaging with moving into the whole organisation.

Some organisations have quite a sophisticated approach to improving their governance with roles such as Governance Support Officers e.g. Home-Start and the YMCA.

Governance Challenges: A number of other issues have been revealed:

- Can voluntary organisations (VOs) be public service providers, and play a role in shaping services?
- Can they fully recovery costs? “12% of charities delivering public services reported that they obtain full cost recovery in all cases; while 43% indicated that they do not obtain full cost recovery for any of the services they deliver” Charity Commission report (2006).
- How informed are VOs about more demanding contract regimes? In the past there may have been more informal contracting processes.
- When trading services – how can VOs maintain their values, and for example, be sure the beneficiaries are not excluded from services by fees?
- In terms of staffing, there can be dilemmas going for a few very highly paid specialist workers or reaching more people but overall with slightly lower wages;

- Some charities, for example, irrespective of their mix of incomes and ways of organising may simply not – at board or CEO level – perceive or articulate themselves as businesses or apply the “social enterprise” label to their work. They may strongly adhere to a given identity (e.g. we are a charity) because to them it links them to a specific ethos, set of values or role in society).
- There are also reputational issues - just providing a ‘standard service’ as a charity via a contract could be seen as an add-on service; while, in other cases the service may be central to the mission.
- There can be complacency - where boards are quite happy with underperformance, so for example ‘they may be an all-white board and not see anything wrong with this’.
- Membership issues can be problematic - ‘there can be difficulties when your membership is too open, but also when it is too closed – getting that balance right is very important’. And what to do if the membership typically supplies people for the board, but can’t supply the requisite skills. Also, membership often provides a key source of income for many charities but there can be a tension between mission and member interests.
- Social enterprise orientation involves risk taking. If an organisation is trying to be innovative and risk taking there can be an issue of taking the board along with you – ‘if the board do not see the risk taking as part of their job’ it can be a challenge for the organisation to move quickly to take advantage of market opportunities ‘to be responsive.’
- Coping with the mega-risk of policy shifts – e.g. the privatisation of the DWP (Dept of Work and Pensions) delivery model means larger contracts and a bigger portfolio will be required: currently it is a £7-£8m part of XYZ business – if this goes to the regional rather than district level for contracts ‘how can we tender for £150m contracts?’
- And charity/business linking roles can be difficult to manage – where someone sits on the trading subsidiary board and the board of the charity.
- Achieving a balance between business and social/artistic or environmental goals may also entail having a certain proportion of insiders on the board.
- Vision and values are not just about what you do, but *how* you do it.
- Insurance has become an increasingly important factor in restricting “risky” activities, as we have become more litigious, as a nation.

The social enterprise political agenda may through wishful thinking or ambivalence mask the difficulties of being both close to business and to voluntary sector.

Boards: Many VOs are not charities and could operate with tiny boards but they tend to recognise the value of “having other voices around” “a board should be... a critical friend. And that’s precisely what we look for in our board members - people who take in the concept of what we’re doing more to help with push it forward, and who will always ask hard questions.”

Whilst other charities when they do social enterprise, they smother it – for example one group wanted to buy £200 of software ‘...they had to wait until the quarterly board meeting...even the CEO couldn’t make small financial decisions...’ Clearly there are problems running a social enterprise like that!

Boards take on risks when taking on contracts – ‘risks about critical funding.’ Some aim to maximise resources through contracts and at the same time seek to maximise their other income – they may be in a good position. If you have maybe 100 contracts you may have more independence than if you only have one or two – you are freer. ‘Boards are probably less aware of where unrestricted funds are used to subsidise the contracts...’

Leadership and strategic thinking are required to properly address the risks of moving substantially into trading, but leadership is required from the combined team of both the board and senior management. It involves getting over a risk averse attitude, through proper assessment of the balance of benefits and risk. But this also involves board expertise, and often there is the question of whether boards have the knowledge to do the strategy and develop awareness on these issues – ‘*many boards don’t know what they don’t know*’. So it is about getting these issues onto their agendas. Building a good staff relationship to get good information, since ‘the staff are the ones who really know what is going on.’ And ‘you need to have a variety of high level skills in different areas: finance, strategy, personnel relations, and group dynamics – it is not easy to find such people’. This is a particular problem with smaller voluntary organisations because they may not have accountants and similar advisors who can alert the board to these issues.

Skills: moving down the enterprise path can have big implications. For example in an IT SE – “they need to pay their directors to get the right skills and qualities of people and also to get ‘buy in’ from board – so they did lots of work on social auditing for board. They do board appraisals too.” It is a move to a more business-like model not just having board members in a representative role – (the old ward councilor model), etc. It is a business field so the organisation needs to be focused on enterprise – it is hard even in the voluntary sector to get people who will understand a multi-stakeholder structure and do multi-tasking but it is even harder in the SE field as you need to add in the SE skills particularly *risk taking*. That is a key difference between VCS and SE boards.

The typical key skills are business/financial and legal understanding, but these have to be balanced against vision and guardianship of the values of the organisation. But there are different views on what is important: whilst accepting financial skill is an essential prerequisite, one CEO commented: ‘my robust view is that core skills needed are integrity, intelligence and the will to challenge...rather than duplicate the skills of the staff whom you have employed to have specialist skills.’

But the trend is positive: “There are more and better practices– you can see:

- induction and development is happening in places now
- recruitment specifications and advertising is more prevalent
- some have signed up to a ‘code of governance’”

But boards can be stuck in the mire, the classic weak board is: “where it’s been recruited ... hand picked by the founder or the chief executive.... I mean clearly people choose for influencing reasons. One is that they are very close friends to back them up in every

situation. Or they pick people they know who are not particularly skilled or aren't particularly challenging, they're not friends. So it's carried by people unable to see the bigger picture, without strategic vision, a lack of understanding of legislation for charity or social enterprise or company regulation.you see a board that has none of those skills."

Development: As charities become more entrepreneurial they often recognise the need to develop the board, for example in an organisation with a £30m turnover p.a. "we had 20 people on our council who were responsible for the governance of our organisation...but they had become inadequate for the needs of a modern organisation.' The old council was 'too close to the detail' ...'they would want to discuss the colour of the vehicles rather than "should we be running vehicles"'... 'The CEO and the Chair decided there was a need for a smaller board with specific skills. Basically the CEO asked them to resign – to ensure it had a more effective governance process and a transition to a new team. They now have a smaller board – 10 people – rather than a council. And they are now beginning to look at a new strategic plan. They used the Carver governance model¹⁴ to reform governance.'

At the smaller local level, **working with disadvantaged groups**, (including some BME groups): '...getting their head round to business...' is hard. Mostly they know about voluntary work. They can go as far as 'sole trader' or 'limited company' they can understand those structures. But it is hard to get the groups to think longer term. 'They are not used to it and are more used to "making it up as they go along."

Some of the groups don't even have computers. Sometimes governance advice has to be simplified. And lack of knowledge can lead to overconfidence - 'Roles and responsibilities are key'. Some roles like the treasurer are hard to fill. And the company secretary role: 'they think they know but I show them that material and they realise they don't.' Similarly for regulatory requirements: like advising people they have to be on time with their returns or they could get a fine – "they tend to say "it's only a £100" we'll pay it" but long term this sends out a poor message, as well as losing money unnecessarily.

At a more fundamental level this has sometimes raised important support questions amongst governance advisors: 'are these the right people to be setting up SE?' They may say the system is against them but when the advisor tells them it is them – 'they don't want to learn, train, read the materials'.

With regard to improving governance, it is important to remember that support at the local level is not all in one place.

The **drivers and barriers** for change are:

- 'Through the CEO's interest in board effectiveness'
- While trustees may be concerned to develop their own abilities, especially around key areas like liability issues; but time pressure particularly for busy people puts a premium on good training.

¹⁴ John and Miriam Carver (revised edition, 2006) *Reinventing Your Board: A Step-By-Step Guide to Implementing Policy Governance*. Jossey-Bass.

- 'There can be a feeling that 'we must be in a bad state if we have to take out a loan' that would be a very different issue with a company.'
- 'Legal liability is an issue too – trustees may be worried they will have legal liability and may lose their house if something went wrong.' (in unincorporated VOs).
- It was seen through Future Builders that there can be 'an inbuilt aversion to risk – a risk aversion tendency' on boards. Charities do take risks that are part of their regular operation, but they are less likely to take new commercial risks, or risks that involve loan finance.
- Charities tend to be 'institutionally good at service risk: 'trying out' a new project model – which may not work but they can deal with that. There is a different sort of risk with 'enterprise risk - where you may invest and not get a financial return.'
- Founders often have the vision, values and drive but at some point the organisation or they move on..... "I always think of Tim Smit of the Eden Project. He's got a broad amount of trustees, if you took Tim Smit away from the Eden Project, what would happen?"¹⁵

4.6 Development Trusts and Community Enterprise

In 2007, there were 423 full and emerging development trusts throughout the UK, with almost 5,000 staff UK wide and over 15,000 volunteers. Most operate in deprived urban and rural areas utilising £430 million of assets in community ownership. They had a combined income of over £240m, of this £97m was earned income.

Legal structures used: 87% of development trusts are companies limited by guarantee and 69% are registered charities. 62% of members of the Development Trust Association (DTA) are both companies limited by guarantee and registered charities, 2% are industrial and provident societies, while 2% are unincorporated associations.

Development trusts are very diverse and any general comments made about "typical" structures may only apply to a minority of trusts; but a common development trust model has: a main organisation (parent charity), and then when charitable trading reaches a threshold, it is usual to set up a company limited by guarantee, wholly owned by the charity; all the trading is then moved into the company, which covenants profits back to the charity. There is overlapping board membership on these two organisations, with the majority of board members being both on the board of the trading subsidiary and on the board of the charity. Thus generally, the charity organisation is fully cognisant of trading activities. There is variation in the relative levels of charitable and trading activities (for a minority the parent charity activity is small and trading subsidiary prominent, and at the other extreme a minority have very small trading activity).

Most development trusts are explicitly focused on trying to integrate the social, the environmental and the economic.

Trading: Over a quarter of DTA members earn more than 50% of their income through trading, thus could be classed as social enterprise. In 2007, the combined earned income

¹⁵ The Eden Project is a limited company, wholly owned by the Eden Trust (a charity).

of all DTA members was estimated at over £97m, a 19% increase compared to 2006. But in terms of public service contracts 74% reported costs exceeded contract income. Around half DTA members are reluctant to use loan finance. There is an increasing level of assets in community ownership currently £436m. an increase of 28% on 2006. Many are small organisations, with 54% of Development Trusts having fewer than 5 paid staff. But a large number of volunteers are involved, with an average of 3 volunteers for every staff member (from DTA Member Survey 2007).

Governance challenges:

- *Legal responsibilities* - this includes employment law (HR), constitution models, personal liabilities, and residual responsibilities; as well as specific legal responsibilities in relation to trading, and loan finance.
- *The relationship between the board and staff* - especially senior board officers and the chief officer; and how to achieve a balance between not interfering too much, and developing a strategic overview without giving too much power to the CEO (as well as managing personality clashes; and avoiding too close a relationship); regular contact and a mentoring scheme between trustees and staff is regarded as important for building trust.
- *Effective trustees and boards* (personal skills as well as board functioning); including overcoming difficulties handling multiple roles e.g. where a Board member is also a day-to-day volunteer.
- *Recruitment and induction*; getting an appropriate skills mix (using skill audits and other toolkits), and trustee recruitment, including how to sell the idea of being on the board and properly inducting people;
- *Organisational issues* for trustees; business issues – especially moving into contracting - not so much about trading, more about mission drift and pressures on the culture of the organisation.

And there are other issues, such as: asset transfer and development which the DTA recognises as very important board issues, requiring specific board skills.

It was very often chief officers who pushed for board improvement; and they frequently complain about: the quality of the board, their availability/involvement, their lack of time, their tendency to rubber stamp; and their lack of skills (especially commercial skills).

Development Trusts are very varied, and one very large successful one has developed an interesting model for managing risk and values. They don't look for specialist skills on the board (they don't have lawyers, bankers or accountants on the board); instead they look for commitment, passion and the desire to improve communities. They argue that that while you can buy in specialist skills, you can't buy commitment and passion. One example is in the particularly tricky area of VAT, which has potentially huge liabilities, which are not always properly thought about. Their approach was to buy in high quality professional advice, which saved substantial sums of money.

Similarly, they argue that the skills of being a charity trustee are not really different from those on the board of a business. Essentially, it involves examining the options in a

rigorous manner, demanding relevant information, making use of relevant expertise, and making the decisions. Delivering on a contract requires very much the same process of decision as delivering on a grant - both need to clarify the outcomes and the costs, and how it would be delivered; as the project progresses the board will need to check out the organisation has done what it set out to do, as effectively as possible. Thus they haven't had difficulties in running contracts, and put this down to taking a rigorous and professional approach to costing the business case. And they only deliver services if they can cover the costs, or fund projects out of profits and free reserves.

4.7 Social Firms

A Social Firm is a business with a social purpose: specifically to create good quality jobs for people disadvantaged in the labour market. In line with other social enterprise at least 50% of the firm's turnover should be earned through sales of goods and/or services. And more than 25% of a Social Firm's employees should be people severely disadvantaged in the labour market – originally there was a focus on disability and mental health; but in December 2006 they broadened out to cover all types of severe disadvantage. The 2006 data on Social Firms shows that mental health problems followed by learning disability were the top two categories of disadvantage. In 2006 there were 67 full Social Firms (an increase of 37% on 2005); and 70 emerging¹⁶ Social Firms (not all were the same firms identified in 2005).

Legal Structures: The legal forms used by the 137 full and emerging SFs: 13% CLS [Company limited by Shares], 17% CLG, 35% CLG with charitable status, 11% CICs, 9% subsidiaries of charities, and 13% statutory bodies.

Most Social Firms come from a voluntary sector registered charity route. So getting the structure right, getting the right board composition, getting the right skills for boards to develop the organisation, are all particularly important issues in the set up phase. 'Charity people usually don't recognise a SF as a business; they often treat a SF as 'just another project' (rather than as a business) so they look at a few streams of money for a year or two –if it fails they shrug and say 'oh well', as if it was another project. They don't realise it is long term work – there is a cultural difference to bridge.' And shifting this culture can be difficult: 'We have found that even when SFs have recruited people with business skills from the business sector to the board they have taken on a "cuddly role" – they see it as a change to the usual business boards they are on.'

Board: Boards tend to be "risk averse"; this may be linked to the difficulty of getting people with business skills on the boards. On the other hand, the risk of failure can be personally damaging - like everyone else people with mental health problems want to work in a successful business – and it is no help to them to be out of a job [if the business fails]. Some social enterprise manage risk by keeping employment costs low and benefit status secure by sticking to 'permitted earnings' (as much for financial risks to the disadvantaged worker as for the social enterprise). The policy of Social Firms UK is for all staff to have employment contracts and employees to be paid the market rate for the job.

¹⁶ An emerging Social Firm is a social enterprise that is seeking to become a Social Firm but hasn't yet met the Values-Based Checklist (see Social Firms website).

Two examples: one CEO said “The board and me are miles apart - they are risk averse”. The CEO wanted to invest to grow – he wanted people to do more work to grow the business, the board only wanted to employ people when they had the money. They saw their job to husband the money.

And: in a SF with old machinery, the CEO couldn't get the board to see the need to invest in new machinery so the organisation could survive longer term. The board were content to see the organisation ‘jog along’ and ‘didn't want any change.’

The importance of governance can be seen through visits made by people from Social Firms UK (the umbrella body), reporting that governance (and boards) is a prominent issue.’ One good example of a Social Firm with a good model of a board is ‘Forth Sector’ in Edinburgh – a coordinating organisation for a cluster of Social Firms where there is also some inter-firm trading.

The attitude to market relations can be seen in the contrasting views on paying board members: one CEO pays the board for doing the work, while someone from a voluntary board was shocked at the idea. Voluntary boards often also carry a culture where there is a sense of people being grateful for those who turn up!

Skills often needed are: financial control skills (reading a cash flow, balance sheet and profit/loss account); boundaries with management: letting business managers get on with their job; developing strategic plans – business planning; employment policy, etc.

And ‘the boards need a balance – they need more business experience’ – not to exclude the other skills but at present it is too skewed one way as ‘the men in blazers with bronze buttons’ brigade.

Development: Managers see it as a challenge to develop their boards, but they often want help, and “want someone to wave the magic wand”! Developing a board and its culture can also be upsetting: very often the chair is the founder, and there may be worries about hurting the board's feelings. Establishing a culture of training days, and strategy days in such a context is challenging. And board/manager poor performance is often interlocked – since lack of good board leadership is unlikely to shake managers out of bad practices. Similarly there may be a tendency for managers to avoid rocking the boat, and not bring up difficult issues, like potential finance problems and possible redundancies.

And the only way forward for some boards is re-recruiting them – as popular as Christmas for turkeys!

There are also issues about supporting board members with disabilities, placing legal responsibility on them or transferring it their helper/supporter.

To a certain extent contractors may exploit the “voluntary sector” dimension: for example where a SF contracts with Health Authority and Local Authority - ‘we asked if these contracts paid their way, but 99% said the work cost more.’ The Social Firm is subsidising the work and there is board collusion – they are allowing money to drain out of their organisation.”

4.8 Fair trade social enterprise

In many ways the **legal structures and issues** associated with fair trade are very similar to those of trading charities, except that much of the earned income comes through consumers in the market. There are also issues of branding and standards (see below).

And since some of the stakeholder relationships are international – with producers like coffee growers, there is sometimes an issue of diversity representation, and language skills with the need for translators at board meetings.

In this rapidly developing segment, there are particular issues of accountability, values and public trust - what if a social enterprise is only accountable to its directors and no one else? Anyone can trade underneath a particular umbrella, but how do the values differ - for example, in fair trade, many multi-national organisations are now developing fair trade lines - what's the difference between them and third sector fair traders?

The Fairtrade Foundation (FF) is a charity registered in England and Wales and a company limited by guarantee. In terms of governance, it is fairly typical of the sector. FF licenses the FAIRTRADE Mark to products in the UK which meet certain standards. The supplier (brand-owner or main national distributor) must sign the Foundation's Licence Agreement which provides a licence to use the Mark.

These licensees are not involved in the governance of FF and at the same time FF does not have a role in influencing the governance of the licensees – FF does not operate like an umbrella body in providing advice or guidance on those kinds of issues. FF advises licensees in relation to criteria for achieving a licence but does not involve itself in the governance or internal structures of licensee organisations.

For a product to display the FAIRTRADE Mark, it must meet international Fairtrade standards. These standards are set by the international certification body Fairtrade Labelling Organisations International (FLO), based in Germany.

The initiatives (there are 22, of which the UK FF is one) license the products for sale in their own country, including auditing sales figures and licence fee payments. Licensees pay a fee to FF in the UK to carry the FAIRTRADE Mark. FF pay a contribution to FLO for its work.

Governance: The board meets at least 5 times a year. It can comprise up to 12 trustees – up to 4 positions available to be elected by the 6 founder members (CAFOD, Christian Aid, National Federation of Women's Institutes, Oxfam, Traidcraft Exchange and the World Development Movement), up to 4 available from the full membership (founder members plus Banana Link, Methodist Relief and Development Fund, Nicaragua Solidarity Campaign, People and Planet, Scottish Catholic International Aid Fund, Shared Interest Foundation and the United Reformed Church) and other trustees co-opted by the board so that the total number does not exceed 12. Co-optees are recruited by word of mouth or from people known in the field (for example the CEO of the National Consumer Council). There are also two producer representatives on the board – one from Mabale Growers Tea Factory Ltd in Uganda and one from Prodecoop (a co-operative on 40 coffee growing co-ops) in Nicaragua. Translators are used at Board meetings to facilitate communication. There are no board positions reserved specifically for private sector organisations.

Recently they have moved to board recruitment for specialist financial skills through public advertisement in national media, including Third Sector.

The roles of the board. Overall it was felt that FF has a very competent management team which works effectively with the board. All board members are offered a one day induction on joining. Board appraisals are being introduced - this year board members have been asked to set three objectives for themselves for the coming year, this process will be developed in future years. The organisation uses the balanced scorecard approach to monitor its work with periodic reporting of key performance indicators at different levels.

The planning process starts in September with board away day. FF is currently undergoing a strategic review, involving input from a wide range of stakeholders, which will inform its direction over the next 5 years. The AGM is held in June, with the formal meeting for members followed by strategy discussions for wider stakeholders (e.g. consumers, producers and licensees).

Social or business conflicts: There are not any obvious conflicts between the social and business goals of FF; rather that the business goals drive the social goals, with the overarching aim of benefiting the maximum number of producers.

Support around governance: they are aware of the Governance Hub resources but have not made extensive use of them; The Charity Commission is consulted as necessary. Legal advice is taken from professionals as required

4.9 Work Integration Social Enterprise (WISE)

This term, perhaps better known in mainland Europe, covers a wide variety of social enterprise that move disadvantaged people back into work through training and trading. Perhaps the best known WISE in the UK are Jamie Oliver's Fifteen, and FRC the Furniture Resource Centre. Fifteen is a charity (Jamie Oliver is one of the trustees), and it has 4 trading subsidiaries named after the 4 places in which its restaurants are located: Fifteen Amsterdam, Fifteen Cornwall, Fifteen Melbourne, and Fifteen London.

The Intermediate Labour Market (ILM) sector (work and training projects for disadvantaged groups) is a key part of work integration and faces particular problems.

The sector – in terms of a homogeneous grouping - is breaking down due to funding pressures and changed government priorities. These tendencies are likely to accelerate as a result of the Freud Report (Freud, 2007); however the sector in some form is, paradoxically likely to be of growing importance. We are entering a period of transition here which, we suggest, makes the changing nature of this field particularly important in governance terms. The closest to an umbrella organisation was the Transitional Employment Network, facilitated by the Inclusion (Centre for Economic and Social Inclusion - CESI), this has now mutated to the Local Works *annual conference* with a wide constituency (including Government departments, Local Authorities, Social Enterprises etc). It does not offer an organisational support role – it focuses more on policy and delivery issues and is anyway not an ongoing organisation or network [see Mike Aiken (2006 & 2007), for further research in this area]. Other well known or 'typical' ILM organisations are 'Bolton WISE', and Necta – engaged in construction, landscaping and horticulture contracts and training.

At the same time, there are also some Resident Service Organisations emerging (arising from the JRF 'PEP' project over 10 years ago), some with a Housing Association 'parent' as in Liverpool. These pilots are in their early stages but also provide interesting models.

Finally there is Remploy (quasi-state but independently managed organisation), the largest single employer of disabled people in the UK, and whose position in the state sector has been under review.

4.10 Green enterprise

This covers a wide range of environmental activities: community composting, furniture recycling, environmental consultancies, green/eco architects. For example in the UK there are around 1200 groups involved in recycling, reuse, composting on a not for profit basis. There is a big range in terms of size and activities. There are also some ethos differences – some of the organisations work very much on a charitable model while others work on a more entrepreneurial social enterprise model, earning their income from a variety of sources. There isn't necessarily a correlation between size and ethos – there are some small and some large organisations with a strong social enterprise focus. However the large ones are not usually solely grant dependent.

Legal structures used are varied: lots of companies limited by guarantee (without share capital); some of the very small groups have less formal structures; a few CICs; a few Industrial and Provident Societies; some are registered charities (a Charity Commission ruling 3 years ago means recycling can be seen as a charitable activity). Some of the larger organisations work more with group structures – a group of companies that develop different structures for particular contracts. An example was a consortium which was owned by four local not-for-profit organisations. This has since (2006) merged to form an employee owned and managed business.

Regulation: 'Most are companies limited by guarantee and this is a pretty light touch regime...' Some organisations recently have decided not to become CICs because '...they are not sure how it will turn out in terms of regulation – however so far the experience with CICs has been good' (e.g. turnaround on documentation and registration has been quick). 'The Charity Commission has been very slow' (groups ring up having sent information 3 weeks ago and staff say that wouldn't even have been opened yet and for these kinds of reasons 'People wouldn't generally go to the Charity Commission for advice'.

Boards: Small groups may have some staff on the board e.g. it was reported that: one group which is self funded and has no grants, has a small four person board including a paid member of staff. Typically there are up to 10/12 people on the boards of most types – in some cases the boards are quite distant from the (internal) organisation and in other cases quite close.' Typically board members would be activists and those interested in recycling issues. The chair's role can be interpreted in a minimalist way - 'just chairing the board meetings and liaison with staff – i.e. not a high profile job.' Or it can be a much more involved role.

The use of Local authority co-optees on the board depends very much on the relationship with the particular Local Authority (LA) and tends to happen where the group is established but not yet competing for LA contracts. Where groups are sufficiently developed to tender for Local Authority contracts, they tend not have LA co-optees on their boards because of the potential conflicts.

With networking organisations, there is a pattern of overlapping board memberships: ‘There is quite a lot of sharing of directors across the organisations’ because people want to use the board as a way to keep in touch and networking.

Skills: ‘Finding someone to act as treasurer or in a finance role is always a problem.’ Legal knowledge is not such a problem although ‘...groups tend to be wary of having a lawyer on the board.’ Because of the excessive caution that they feel an overly legalistic approach may bring when decisions involve some levels of risk.

‘Another gap can be people good on strategic thinking’ – ‘it is easier to get people keen or knowledgeable on recycling...’ When people say they have no treasurer ‘...they often mean they have a lack of financial planning, financial forecasting, or strategic business planning skills, rather than that they lack someone who can add up.’ In smaller organisations it is often hard to make sure the finance officer is doing the right things.

There may also be knowledge/values gradients within the board; thus some may know how tight the finances are while other board members may be close to the mission – which can be a healthy tension.

Governance challenges – there are several major challenges:

- ‘Knowing who and how to recruit to the board.’ For example ‘don’t just take whoever is around but instead do a skills audit of who is already in the board and what you need.’
- ‘Lack of fresh blood on the boards’ – there is a lot of re-appointing of directors at AGMs but it sometimes needs fresh input.
- There are also key business/social tensions arising around growth and the local accountability of an organisation’ – how do they maintain links back to their communities as they get bigger. A rapidly growing social enterprise may face more challenges in this regard, than a newly started SE – one way for addressing this can be seen in a case where an established organisation supports groups set up in an adjacent area rather than simply expanding – ‘they get business support until they have moved to independence.’

Strategic Development: ‘The pattern of board involvement is fairly mixed.’ Sometimes the board is involved in developing the organisational strategy and takes part in planning days. One group holds a strategy day for key staff and board members with the support from a social enterprise organisation in the area which facilitates the day.’ This involves reviewing the aims and objectives of the organisation. And ‘another kerbside collection organisation has quite extensive trustees’ induction and strategy days...’ But overall these are probably the best examples; other organisations have significantly less board level input into strategic planning.

4.11 Health and social care social enterprise

Introduction: In 1993, the Health Services and Care in the Community Act signaled a move towards a mixed economy of social care with public, private and third sector providers competing for service delivery. As a result of this third sector organisations have developed in homecare, and previously existing third sector residential care has also developed, but the largest beneficiary of a decline in public provision has been the private

sector. In a similar way The Government's White Paper: Our Health, Our Care, Our Say: a new direction for community services, (2006), paves the way for a number of reforms and opens the door for third sector organisations delivering more health and social care services in more market like contexts. "Encouraging social enterprise in health and social care is a key part of the patient led reforms. It offers patients and users a greater choice from a wider selection of convenient, innovative and responsive services." (from Department of Health (DH) website). A number of further initiatives help strengthen the development of social enterprise in this sector: the formation of a Social Enterprise Unit in the DH, the setting up of a Social Enterprise Investment Fund (SEIF) of £73 million over a four year period (from 2007), and the development of a Health Pathfinders Programme for health social enterprise to gain funding and wider support – there are currently 26 pathfinders – see DH website for list.

While the social care market is much more settled after many years of contracting, the health "market" is in a process of considerable change, and there are a very wide range of social enterprise established or in the process of being set up, with a wide range of services, and structures.

Transitions - constructing the sector: in an emerging social enterprise sector such as health, it is important to establish a sense of identity and comparative advantage, by clarifying the differences between social enterprise, private providers and statutory agencies in a number of respects. Typically this concerns distribution of profit, accountabilities - who owns the organisation, and who controls the board, etc. This is particularly tricky in health, where new configurations, for example in clinical areas, may be difficult, since in some cases clinicians are sensitive about lay people being on the board. In a very real sense, the pioneers (including the Pathfinders), are currently shaping the sector and its potential. This sometimes involves moving beyond the single social enterprise to configure packages of care through partnerships, consortia and collaborative networks. New health SEs are feeling their way around appropriate structures.

A related transitional issue is where a social enterprise has mutualised (privatised) out of a PCT (Primary Care Trust); there have been issues (conflicts of interest) about having a PCT person on the board. However, there can also be advantages for smaller emerging social enterprises to have a good relationship with the PCT person and to be able to draw on their awareness and expertise when breaking into the PCT market.

The health service is only slowly moving towards conventional models of (quasi-) markets, from a pattern of repeat funding to regular suppliers like PCTs. Appropriate governance structures may be crucial in developing legitimacy in the emerging quasi-markets of health services. Some indication of future trends may be derived from social care services commissioners who have been operating 15 years in a market context. Related to this legitimacy issue, is the risk that social enterprise will be set up in the margins and provide Cinderella services to Trusts.

Contracting context: There is the scale challenge posed by Gershon (and Freud)¹⁷, where size matters, and social enterprises seem only to have a small role as part of big consortia. Already in areas like out-of-hours services, where GP Co-operatives were strong, bigger operators like Care UK and Serco are moving in. But sometimes the involvement of social enterprise can make the difference between winning and losing contracts. Such sub-contracting relations may place strong pressures on governance arrangements.

[NB pensions - transferring of NHS pensions is an issue, and the NHS is working on it; but this can lead to complex structures where a social enterprise uses NHS staff to carry out its work.]

Legal issues are important: for example in primary care the NHS Act requires contractors to be companies limited by shares. But in areas where these restrictions do not apply, the following legal forms are used: a strong interest in CICs, or CLGs, LLPs, or the two types of I&PS.

In terms of governance structures - no one model operates; sometimes there is membership sometimes not; but one positive development for social enterprise is the increasing recognition of the significance of Section 11 of the Health and Social Care Act, which requires organisations to involve and consult patients and the public in service planning and operation, (and this could become a requirement in contracts). Patient and public involvement is seen as essential. The form may vary, however a member of the public (as a representative) on the board is not likely to be good enough since it is about culture and mechanisms and not something just added on. The effect can be positive, since some social enterprises report that user involvement helps change the service and the culture.

Another challenging issue in the health sector is that of **clinical governance** which currently pervades the sector. For independent social enterprise the challenge is developing the expertise needed for processing clinical risk, and managing the relationship between the provision of clinical service governance and business governance – since “clinical people don’t think in a business way” and since clinicians are used to people going to them, “marketing is on another planet”! This may be a size/capacity issue - but it is a challenge for social enterprise, and more flexibility may be required or new thinking about how to manage it.

Boards - It is a big challenge to get a good balance between the social and the entrepreneurial; the development path is important, for example some agencies/enterprises have come out of committees, and consequently have business limitations. Non-executive directors are used to helping to challenge traditional ways of thinking. Apart from the board addressing this issue, commissioners (of contracts) have a role in insisting on this balance. Regarding **accountability** - in some cases, it appears that the board is only accountable to itself.

¹⁷ Gershon, Sir Peter. 2004. Releasing resources to the front line: Independent Review of Public Sector Efficiency. HMSO. Norwich.

Freud, David (2007). Reducing dependency, increasing opportunity: options for the future of welfare to work: An independent report to the Department for Work and Pensions. HMSO. Norwich.

There are difficulties recruiting certain types of people on the board, particularly with the right business skills; this can be more pronounced in certain geographical areas, so this is particularly the case where you need skilled people such as accountants in inner city areas.

Skill - this tends to be lacking in the following areas: legal expertise, especially for Pathfinders, finance (which can be very complex), social benefit outcomes (which health service contracts don't usually require), and staffing issues (which are not much discussed). There are also other areas that need support like risk assessment and compliance.

Development - this is not seen much; but where it is, it is very much a pick and mix situation. People tend to be oriented either to commercial issues or to social/statutory ones, not really understanding the need for both. One of the biggest challenges is to change the organisational culture. The social enterprise label facilitates a cultural shift, opens the organisation more to stakeholder involvement, and emphasises an entrepreneurial orientation.

4.12 Leisure Trusts

There are 110 Leisure Trusts (LTs) now in the UK, most emerged after 1993. Greenwich Leisure has had a hand in setting up around 30 of them. Many are staff-led trusts.

Legal issues: Most Leisure Trusts are Industrial & Provident Societies, some with exempt status; some without exempt status. There are also Companies Ltd by Guarantee again some with and some without exempt status. So there are 4 possible types overall.

Boards typically have customers, trade unions representatives and Local Authority (LA) representatives, but often with staff as majority. Local Authorities can't have more than 20% of seats on the board so if there is 1 LA person, the board has to have 5 others (= 6). Most boards are 11 or 16. If it is to be a staff controlled board, then it tends to be an I&PS structure. In Greenwich Leisure the CEO is the only member of the senior management team to sit on the board. Some LTs have stakeholder boards with the 'great and the good' on them.

Public sector transfers raise a range of issues: for example in 2003 'the Charity Commission were concerned about charities running statutory services, and this involved lots of work'. Also 'there is the issue of staff transferring from the council to the trust – trustees need to understand the liabilities of transfer'. And there can be difficulties establishing the right kind of boards – through recruitment or training – in particular on roles and responsibilities. Financial skills are needed to run a multi-million pound business, but also for exempt LTs it is important to have a good understanding of charity law and for example how the Gift Aid policy works.

In the early days of creating the board of one transferred enterprise: "when we transferred from being council employees, in the Trust the people .. that put their names forward (for the board) were the ones that were cynical, suspicious of the organisation. One of them was making sure that their rights were being protected so they're actually going in it for the wrong reasons, so they're not putting the best interests of the company forward but I was quite happy with that because it's better to have them on the inside rather than

causing problems on the outside. Within a year they realised that there was no hidden agenda and that this was about doing things much, much better.”

Delegate syndrome: one issue in multi-stakeholder boards is the different ‘hats’ people wear: boss/employee/manager/customer/board member/trade union rep...but they have to be clear that on the board, they are first and foremost a trustee – i.e. part of the board team. Otherwise conflicts arise, for example about promoting sport without regard for cost, or pushing for investment in a board member’s part of town. Staff may find it easier to identify with the social enterprise, “but the customers sometimes don’t understand that if they come as a chairman of the local 50 plus group or the bowls club, it’s difficult for them to leave that particular interest behind. Surprisingly the councillors on the whole still very much appear to be wearing their local government hat and not looking at the interest of the trust.” “It’s quite a strange relationship because on the one hand they should be looking at the interests of the company when they’ve got the directors hat on, but we have a contract and a lease with the council and they are part of the council so I understand the difficulty that they are actually in.”

“One of our councils that nominates people has said the portfolio holder for leisure cannot be on the board, but the other council’s legal people have said it’s not a problem - and it works much better when you’ve actually got somebody who is interested in leisure and running leisure from a political point of view in a district that is also one of our stakeholders because you get to know exactly the priorities of the council and in which direction they are going...”

But the link person may provide information both ways - for the Trust; and for the Council - to monitor the social enterprise.

In one LT, they have 3 different fora for board involvement: (1) Annual Strategy event which includes management and the board (a 3 day annual meeting) – this is the crucial meeting; (2) Monthly meetings of the staff board members to sort out staff and similar matters; this is important for managing day to day issues; and (3) Board meetings every 2 months – these are aimed more at stakeholder engagement – and are not so crucial for decision making.

Developing clear responsibilities is very important: ‘the board tells us what to do but should not get involved in how we do it. The board advise, but the CEO needs the power to act; and ‘having an effective chair to the board is *very* important.’

Skills: Demands on board members are not just intellectual; one board meets on Saturday evenings to accommodate work requirements of the trustees. And good trustees are in demand - in one northern LT most are on 2/3 other boards. And getting attendance is not always easy: “looking at the whole board, not everybody attends the meetings. There was a core gang of four, which is now a core gang of three, the chair plus two. When we need to make a decision, we have to make an effort in emailing and ringing around the people to make sure they turn up.” And if several are staff members, controlling the CEO may be tricky: “I think one area that is difficult for our board is in terms of management of me as chief executive or MD. We have an HR sub committee but it’s very difficult for that sub committee to manage somebody that is their boss at the end of the day.”

Some of the larger LTs are able to draw their trustees from senior staff in major local organisations, e.g.: a National Football Club, Proctor and Gamble, Kellogg's and a County Cricket Club – not only has this brought exceptional expertise to the board, but the opportunities for partnership and business development. On the other hand, where LA representatives are appointed, they do not always demonstrate much commitment to the organisation. However, it was also recognised that LA representatives had valuable skills which they also contributed around accountability and organisational process. Larger social enterprises are more likely to have developed good procedures for recruitment/induction, etc and have their own trustees' handbook. Well performing boards can be very challenging for CEOs, but providing trust is high, it works.

However, often it can be rather less than challenging: "I've even been checking in with my chair, probably every other day and just giving him an update of how many people have left, redundancies and whatever and good news on marketing and income, and things like that but it's pretty much one way. Yeah that is the situation, I suppose I would like to be challenged a bit more."

Some LTs did, at times, however face challenges: "well our particular board, the chairman excepted, from what I can gather they are a nice bunch of people and they're well meaning but I wouldn't have said they were particularly selected, after looking through the good governance documents, for certain levels of expertise."

And possibly this is explained partially by another comment: "But it would appear to me, I'm not quite sure how the board was formed, there are quite a lot of long standing board members so I don't know if there is a regular review and an election process or whether it rolls on..."

On the other hand, level of expertise has to be balanced against intimate knowledge of the business: "Some of the people are quite junior staff that aren't used to the cut and thrust of the board meetings. They have not necessarily got the financial background, but what they have got is an understanding of what our business is about on the ground and that is where we wanted to have the thrust from, you know if they were going to be our masters, they needed to be people that understood the business. Sometimes if you get the great and the good on your board they are very well meaning and obviously want to add something to it but unless they are involved an awful lot of the time they don't really understand the issues right the way down to the ground if you know what I mean."

A strong board can also help make tough decisions stick - for example before one trust started there was a very critical report on access and usage by disadvantaged people and leisure. After considering all sorts of options, they extended a discounted fees scheme to all facilities and to all entry times –funded by a 50p charge for any activity. The 60+ group claimed their free swimming had been taken away – there were complaints to councillors and then local MPs – but they stuck firm to their decision, and disadvantaged usage has risen 50%.

Stakeholders: Funder relations: One big issue is conflict with the LA – sometimes this is around legal documents –the letter of the agreement and enforcement. The size of the grant (typically 10% to 60%) can be crucial in influencing negotiations. The main reasons for the transfer from LA to LT have been about saving the LA money and improvements in services. But 'some LAs are now wanting a cut of the surplus or a

return on the surplus (despite it being non-profit) or they threaten to cut the grant the next year - this is not good for investment and future planning...in some cases these grants are on a one year basis and decisions are made very late...the impact on how Trusts are governed is massive.'

And the starting terms for the new enterprise can be crucial: in one that failed: "I think also the council almost kind of set them up to fail. "

Challenges/Tensions: regarding tensions around managing the social mission: one very clear line is that taken by one LT 'Our principle is that you can't give away what you don't have. If we can't finance it we can't do it. If we can run a successful business we do more on our social mission.'" In other words generating surplus allows social investment.

With regard to sustaining core values: expansion can cause tensions, especially around core democracy; and the commitment to such values by founders may not be matched by new people. But induction, training, communication and incentives can help redress such trends - in one LT: 'Our target is 50% of staff in membership. To be a member you pay £25 and there's an induction. You cannot be promoted if you are not a member. All employees get a monthly newsletter with their pay slip.'

And drawing directly on best practices in democratic organisations has been a persistent theme with one LT (and has for example involved visiting Scott Bader, a well known large worker co-op).

[NB The 2006 Charity Act poses a threat for potentially exempt staff driven social enterprise – if an I&PS wants charitable status it would need to register as a charity and this would disallow staff on the board.]

'Some LTs have the advantages of being recently set up organisations and so have taken the opportunity of setting up from scratch in a model way – consciously designing their structure, roles required and how to go about getting these people, and designing appropriate training and development and clarity of responsibilities from the start. This is something which a relatively new movement has the opportunity to do.'

5. Research conclusions

The first section that follows is an attempt to develop a conceptual framework for understanding governance. It based on reflections arising from this research and is offered for wider debate and discussion.

5.1 Towards a new framework for understanding governance in social enterprise

Governance is recognised as an important issue across the social enterprise sector. However, the sector is very varied and a wide variety of governance structures¹⁸ are used, with different levels of formalisation, board size and composition, etc.

Section 4 of the study reviewed the diversity of commonly recognised self-labelled types of social enterprise, but as we have seen in terms of governance there is considerable

¹⁸ Although as noted earlier one would expect most social enterprise to be incorporated (typically CLG and I&PS with or without charity status) in order to manage financial risk.

similarity between these types, in terms of structures and issues. An important contribution of the research is to simplify the apparent diversity of social enterprise, suggest a broad typology of ideal types of governance systems for social enterprises, and identify some of the distinctive governance challenges of the different types. Our research outlines this typology, and discusses several other dimensions of governance which are influential in the governance process.

The suggested typology of governance is based on a dimension relating to the **system of board reproduction** in the governance structure. There are three types:

- The board is **self-selecting** (i.e. where there is no membership or membership is identical with trusteeship);
- The board is **democratic, based on membership** which formally elects the board;
- There is a **hybrid** structure where trustees and membership have different patterns of influence over board recruitment and appointment.

Underlying these differences are the key issues of accountability and control; for example where the board is formally accountable to membership, it could, in principle, be removed by the members.

These broad types are summarised in Table 2.

Table 2: Contrasting three broad governance structures in social enterprises		
Self-selecting trustee-based boards	Hybrid structures	Democratic member-based structures

The first category, **self-selecting boards**, refers to third sector organisations which are charities with no membership (like trusts¹⁹), as well as those where membership is in effect limited to board members; this is seen in trustee-based charity structures. Trustees in such organisations are thus quite powerful, since membership plays little or no role in influencing governance. But to a certain extent this is balanced by their strong drive towards their mission (or charitable purpose); in a sense, the achievement of charitable objects/purposes, which also specify beneficiaries and geography, is a strong beacon for governance, and provides a benchmark of accountability; (this has a much greater force than company objects)²⁰. Self-selecting boards may have an advantage in being able to recruit from a wide range of networks; but there remains the issue of accountability to wider stakeholders representing the public interest.

¹⁹ The term “trust” is often used much more widely in the VCS sector; here it refers to the unincorporated trust which is the traditional form for an endowed, grant-giving charitable trust.

²⁰ Company House website: “The objects are what the company does. An example is ‘General Commercial Trading’”

In the pure **democratic member-based structures** (I&PS co-operatives and bencoms,²¹ and many CLGs without charitable status) it is important to address issues of participation of members, and how they exert influence or control over managers, but also to consider how this relationship can be developed through the board. In this way, the democratic rights of members can expand the concept of governance, emphasising member accountability. In membership structures, typically the influence of the members is through a board of directors representing the members - via an annual general meeting, where directors are elected and major issues are discussed. Thus there are two important structural relations in the governance of member based structures: members influence on the board, and board influence over managers.

In **hybrid structures**, which are typically charities, we need to separate the selection and appointment processes. The board often manages selection: “responsibility for the recruitment of new trustees rests firmly with the existing trustees. They must oversee the management of an open and efficient process and always act in the best interests of the charity.” (Charity Commission publication CC30). But on the other hand, with regard to ratification or appointments: in general, trustees may be appointed by another organisation, by the board, or by its members. In such situations, membership is often significant but so is charitable purpose and some tensions exist. For example if we consider the role of users on the board; user trustees need to manage a conflict of interests between their own personal interests and that of the charity: “If the charity is expected to have user trustees, we advise that it be made a condition that user trustees are excluded from taking any part in decisions directly affecting their or their relatives' personal interests.”(Charity Commission publication CC24); lesser injunctions apply to indirect benefits, but the emphasis is on public benefit rather than private benefit. This view can be compared with member based structures which are explicitly set up for member benefit and as such excluded from charitable status.

At another level these three different types of governance could be conceptualised in terms of the different **systems of political accountability**: i.e. external accountability whereby the board is called to account for its actions (in relation to stakeholders), the sanctions that may be enacted; and how transparency is achieved through information and openness (Greer, A., Hogget, P. and Maile, S. (2003)). The self-selecting mission based board (typical of some charities) does not generally have direct accountability to stakeholders, but it requires a much stronger systems of regulation to ensure transparency and compliance of actions with its purpose (of public benefit). The democratic member based governance structure (typical of co-operatives) has direct accountability to stakeholders (members); this helps ensure the delivery of private and social benefits; thus it doesn't need such a strong regulatory regime (particularly as it enjoys no fiscal advantages)²². The hybrid structure (typical in some charities) has some member stakeholder influence (user and representative trustees may be on the board, though not to

²¹ Society for the benefit of the community

²² The CIC accountability system (which requires the demonstration of community or wider public interest) fits with the democratic member-based system, and seems to shift the emphasis from private benefit more towards social benefit.

represent their interests); as well as a strong regulatory regime, and a strong emphasis on (charitable) purpose.

This more systemic or institutional perspective on political accountability of the governance system which includes the interaction of the regulatory framework, would not be complete without considering other external factors influencing governance. These latter comprise: the market for corporate control (merger and acquisition activities) and professionalisation processes (in an institutional theory perspective).

There are five **other dimensions** which also help to explain the differences in the apparent diversity of self-labelled social enterprise, and which influence the above three types of governance system: origins, multi-stakeholders, client group, size, and main resource type.

Origins: a major theme to emerge from our research is that since the social enterprise sector is in a state of emergence and recognition, different types of transitions seem to be prominent. The origins of social enterprise can have huge impact both on the way governance structures are constructed and developed, and also on the types of issues that emerge. The key **origins** of the social enterprise are: mutualism (e.g. credit unions, co-operatives), public sector spin-off (e.g. leisure trusts), charitable (e.g. trading charities), small business, and new social movements (e.g. fair trade and recycling organisations). For example public sector spin-offs or conversions typically bring the culture of the public sector with them; they may lack business skills requiring NEDs with business expertise, and may have mechanism like LA representatives on the board, etc.

Multi-stakeholder dimension: Governance structures vary in the extent to which they involve single or multi-stakeholders. Multi stakeholder boards may have the potential for bringing together the interest of different groups and generating greater social capital; but they are potentially more conflictual, and reconciling diverse interests of stakeholders can have large transaction costs.

Client group provides another dimension which often differentiates the self-labelled types of social enterprise, for example: social firms have targeted mental health and learning disability groups, but have now broadened this to general disadvantage; development trusts target disadvantaged communities; fair-trade, third world producers. Each of these has strong similarities to trading charities (and frequently use that legal form); and the legal form has implications for the governance issues faced. This dimension of client group has implications particularly around user involvement, conflicts of interest for user board members, and board skills.

Size: this influences formality/informality, managerialism and level of professionalisation, and member relation: setting up a new £50m organisation from scratch will necessarily require a completely different approach to governance structures from small start up social enterprise. On the other hand, there may be some inevitable informality with some small SEs that are in early stages of development; in fact this may be an important factor in developing motivation and commitment of a cohesive and tight knit group with a limited membership. But such a group may not be well-informed at the start-up stage, and the choice of governance structure may be more accidentally associated with informal networks and local advisors, limiting a careful exploration of the options available.

And finally the **types of market served or main resources accessed** can have an impact on governance: for example public sector contracts versus consumer/business markets (fair-trade) versus subsidy – or a mix of these. The impact on governance is mainly in relation to risk. Public sector contracts and subsidies are often seen as very demanding and subject to sudden policy shifts. And **level of regulation** is an important factor when trading is in the public sector; issues of public accountability and transparency are enforced through rigorous contractual procedures; and there may be special requirements such as health social enterprise meeting standards of user involvement and clinical governance. This can place greater governance burdens on private and social enterprise trading in such quasi-markets.

It is also important to emphasise that in many social enterprises there is another level of governance that needs to be addressed: **multi-organisational configurations**, for example charities with trading subsidiaries and less commonly inter-trading networks and clusters. Good practice advice needs to encompass this, for example with advice on overlapping boards, and separating risk out into more entrepreneurial structures.

5.2 Research Conclusions: General themes from the research

Despite the diversity of social enterprise, there are some general themes that have emerged across the research, as well as some specific themes that relate to different types, or the different origins and paths of development of social enterprise. In this section we identify some general themes emerging from the research and then some more specific themes relating to different types of social enterprise. While much concern was expressed about governance standards in most of the sub-sectors researched, almost all could point to excellent examples of effective governance.

Increasing levels of earned income (through contracts or consumer markets) are creating numerous challenges for third sector organisations, whether they label themselves social enterprise or not. Tough cost-driven contracting regimes combined with the risk of policy shifts eliminating business opportunities create particularly problematic risks for small social enterprise. There are two recent examples of policy frameworks changing the market: credit unions have been channeled into the financial exclusion market through the Growth Fund; and the Freud report advocates large regional contracts with huge potential impact on the market for welfare-to-work (work integration) social enterprise.

The following themes have emerged:

- Many third sector organisations while often happy to innovate their services, are not well equipped to recognise and *manage new entrepreneurial risks*. Changes from grants to contracting regimes find managers better placed than boards to adjust, but transforming cultures and practices remains a challenge for many organisations. It is only a small exaggeration to suggest that unless capacity for good governance is considerably enhanced, *the reputational risk* to the sector could transform into substantial *reputation damage*.
- Governance for managing such risks also involves developing appropriate choices and controls over interlinked entrepreneurial structures such as charities trading directly versus via trading subsidiaries.

- Choosing and developing appropriate *governance structures for entrepreneurial activity* is complex and difficult, good advice is needed from the start, or poor decisions come back to haunt the governance structure. In some structures where boards essentially manage their own renewal, the system of accountability can appear very tenuous, or absent altogether;
- There can be *complacency about underperformance* and lack of awareness about the board's inability to govern effectively, particularly around *entrepreneurial risk*, where risk aversion is often the norm, with over-cautious procedures;
- *Board recruitment*: problems 'recruiting or electing' people with the *right skills* and experience – there appears to be a limited supply of good people, and these are in demand, and on several boards. Boards often struggle to find appropriate people, *particularly in disadvantaged communities*; this frequently contributes to a lack of strategic assessment/audit of the board expertise required. The areas of expertise that are commonly lacking are: financial, business and strategic skills, particularly in smaller organisations.
- *Membership* creates particular governance challenges – particularly how members influence the board; sustaining active membership becomes more difficult with increasing size (though footballers trusts offers one model for addressing this issue); but when membership is active, it can be a considerable strength. This can be contrasted with the equally challenging, but different issues associated with *self-selecting boards*.
- There are problems managing the *tension between social and business goals*, some social enterprises may become too focused on business goals at the expense of social goals or conversely too focused on social goals at the expense of building a strong business. Mission and *values* are also about how things are done, and mission drift can begin there.
- Third sector organisations are often at the leading edge of innovation and the development of new market niches (e.g. fair-trade, recycling, work integration); such fledgling social enterprise are often driven by committed value based individuals who find governance a chore; yet as they grow crucial governance decisions can be made by default, as the social enterprise searches for relevant models for how to structure the growing business.
- There are problems managing the often competing *demands of different stakeholders* – particularly around public service contracts, and with multi-stakeholder boards;
- Member directors versus non-executive directors (externally selected): there can be tensions in bringing in professional staff (NEDs) whose expertise is needed but who may not share the ethos of the social enterprise.
- There is sometimes insufficient clarity about *board/staff roles*, particularly in smaller organisations; and developing staff support for effective board functioning is often not achieved.

- *Improving governance* can be very demanding with resources for training limited, board time at a premium, and sometimes board members not suitable for the more demanding regime of entrepreneurial activity – wholesale board re-recruitment is likely to be an unpopular option.
- the *paradox of entrepreneurs* driving improved governance; better managers recognise they are the most powerful figures in many organisations, including social enterprise, but they often feel the need to have some challenge to their strategies; whilst less good entrepreneur managers merely want to ensure a good relationship with their board, so that, at the minimum, their strategic and operational decisions are not unnecessarily interfered with. While there are risks, managers can be seen as important drivers of better governance.
- There can be considerable challenges around the influence of *entrepreneur/founders* in relation to boards; and how the organisation manages the transition to professional management and governance as the organisation develops. Size issues are also important, particularly in the development and early phase (cf. community co-operatives where in the early life cycle founders can act as development workers, as entrepreneurs, and as trustees; and similarly for village shops). With growth and successful development, some formalisation of more distinctive governance roles may emerge. Hence smaller organisations of whatever form may have some very similar governance needs - with an emphasis on flexibility in addressing them.

5.3 Research Conclusions: Specific themes

The social enterprise sector is relatively new, and parallels the extension of the market into more and more activities. “Transitions” was a repeated theme in the research, since as entrepreneurial activity becomes more prominent, different issues arise in different types of social enterprise due to their origins.

Social enterprises with small business origins

- Business people moving into the SE sector do not always recognise the need for transparency and accountability; their interest often stems from pressure from public contractors/funders, and their concerns about the adequacy of governance.

Smaller/informal organisations

- Size is important (and there are issues at either end of the spectrum - large/small). In small organisations boundaries between governance, management and operational matter can be very blurred. Often much existing advice and support materials are not so appropriate for these organisations.

Member-led/mutual organisations

- This type of social enterprise is usually much readier to engage with entrepreneurial risk, but there are often problems in attracting people with appropriate skills to serve on boards; people get involved because they are interested in the ‘cause’ rather than governance;

- The election process which typically requires the board to be drawn from the membership, can mean boards do not have an ‘appropriate’ skill mix;
- There can be problems maintaining membership involvement and commitment, particularly as the organisation grows and becomes more professionally led.
- Where staff are prominent on the board (as in worker co-ops), managing conflicts can be more problematic;

Social enterprises with charitable origins

There is good evidence of governance improvements in this segment of the third sector. But although there are important examples of charities engaging whole-heartedly with entrepreneurial ventures and government contracting, particularly amongst larger charities, for many small and medium sized organisations considerable challenges remain:

- An important issue is constructing appropriate governance structures for trading – within the charity; and in many cases social enterprise have **multi-organisational configurations**: for example charities with trading subsidiaries and less commonly inter-trading networks and clusters.
- There is a problem of moving away from a ‘charity’ culture which may be much happier with a project mentality, towards a more entrepreneurial one; board members may not be sufficiently business-like; they may lack sustainable business model, and are often risk averse; some trustees are very concerned about *legal responsibilities and liability*, and even “head in the sand” approaches are not unknown;
- Managing business risk is an issue for both boards and staff, over-cautious approaches can lead to overdoing governance and procedures, and thereby hampering entrepreneurial activity;
- The progressive development of earned income streams can result in mission drift, with boards insufficiently aware of “the tail wagging the dog” to protect values and vision;
- There can be big risks associated with contracting e.g. over difficulties achieving full-cost recovery, and over dependence on single or few sources of funding. There is sometimes a sense that contractors financially exploit the altruistic values of charities.

Public sector spin-offs

- The development of new public services markets creates considerable uncertainty about appropriate governance arrangements and social enterprise structures, as well as changes in the way providers form partnerships and reconfigure services (as in the case of the early development of leisure trusts). Choices of different governance forms result in variegated challenges. For example LTs sometimes will have multiple stakeholder boards while at other times they have staff (workers and managers) exercising the main control on the board, thus resembling worker co-ops with the associated challenges of that form.). This uncertainty and

diversity of forms during the phase of market construction can be exacerbated by considerable variation in the practices of service commissioners; and by uncertain responses of regulatory bodies, such as the Charity Commission. Establishing legitimacy and market presence can be particularly challenging for senior management and boards, but some larger social enterprise have established high profile boards, which have proved effective for business. Similarly uncertainties and difficulties in transferring staff (pensions, terms of employment) can result in unusual business structures, and difficult periods of transition.

- A key challenge is developing boards for market challenges and culture change – moving away from bureaucratic processes and structures, and reconfiguring and balancing powerful interests like trade unions, clinicians and managers against users' interests.
- Managing multi-stakeholder boards - the challenge is to move from “delegate syndrome” (representation of sectional interests) to the board as a team; it is easy for staff/manager board members to dominate; there are different views on main funders as board members;
- Developing appropriate mechanisms to involve users is often said to be a priority, but notoriously difficult to achieve; staff involvement is easier but still a challenge (particularly at lower levels in the organisation), requiring supporting policies from recruitment and induction onwards;
- Managing contracting relationships with dominant funders can be challenging: particularly around finance - one year grant cycles, and cost cutting pressures; and where issues of public accountability and transparency are enforced;

6. Support for Governance in the Social Enterprise Sector

In this section the support for governance relevant to social enterprise is examined. Firstly the wide variety of materials from different national, regional and sectoral bodies is reviewed. Then the usefulness of the Governance Hub materials is reviewed in detail.

Material particularly relevant for social enterprise is referenced and identified in Appendix 2.

6.1 State of advice/materials in the Social Enterprise Sector

For many individuals and groups wanting to establish a new organisation, one of the biggest challenges is deciding the legal form and governance structure. Some evidence (e.g. Spear, 2006) suggests that people may not be well-informed at this stage – and the resulting organisation may be more accidentally associated with informal networks, and local advisors rather than a careful exploration of the options available. Choices may also be based on dominant legal forms or ones prominent in the media. The outcome, evidenced by some of our interviewees, may be structures that are inappropriate for the organisation's main activities. One lack regarding the new CIC form, identified by the regulator, is that templates or models of governing documents do not seem to be readily available –these are often provided for CLGs and I&PS by federal bodies, and in time they are likely to do the same for CICs (Co-operatives UK for example has a Co-op CIC template available).

Improving structures: Similarly as organisations develop and change their governance structures need to adapt accordingly. In particular, in the current environment, for the VCS sector, there are increasing trends towards the development of trading activities, which brings into focus the social enterprise model. Similarly for more commercial structures moving into public and social markets, the transition may be towards social objectives, and developing appropriate systems of accountability to a range of stakeholders with social and economic objectives. In this respect the new CIC structure requires a community interest report to be submitted annually – at the time of writing there had been too few submitted to be able to comment on this aspect of accountability.

Both these tendencies raise governance and strategic development challenges:

- how to reform the board,
- what systems of transparency and accountability are required,
- how to trade - through subsidiaries or through incorporation or via conversion of legal form

Thus in many ways there is a continual need for governance support.

Larger established organisations are more likely to have enough knowledge of governance to select appropriate advisors; but this assumes that the supply of advice is adequate and transparently available, and a frequent response of interviewees was “where can we get good governance advice?”

Conversion organisations (from public to social enterprise) sometimes model the governance process through the use of consultants: e.g. in Leisure Trusts, they have used a range of consultants from the co-operative sector and also used LA expertise. It is important to be aware of negative reasons for setting up a social enterprise, for example getting out of a large LA or NHS structure.

An important issue is how to sustain good governance, and whether to drive it through additional specialist staff such as governance officers (e.g. Governance Support Officers have been used in Homestart and YMCA). In our research CEOs were frequently the drivers for better governance – there are risks in relying on that route, but emphasizing the importance of developing good governance should nonetheless be part of the ethos of professional managers. In addition to chairs, treasurers have a key role to play in managing more entrepreneurial activities.

Training:

Various fields of social enterprise have their own umbrella bodies that also provide advice and training on governance matters, (directly or indirectly through partner organisations) including governance codes of good practice, etc. And these, perhaps naturally, were often the first port of call, e.g. Co-operatives UK for many co-operatives, Social Firms UK for social firms, Development Trust Association for community enterprise, or the National Housing Federation for housing associations, etc. These bodies often have their own resources and board training activities, and some have developed web based resources. Learning also takes place formally and informally through umbrella body activities. There are published materials often produced by umbrella bodies on good practice codes of governance, standards and qualifications, but it is not

always clear the relevance of these to other groups or the nature of the skill sets being developed.

In the quality area, PQASSO is valued, but seen as very rooted in the voluntary sector.

Types of social enterprise differ considerably in the extent to which a culture of board training has been developed, thus in the more regulated credit union sector this is more developed than for example in the smaller VCS sector.

A frequent emphasis has been on **culture change** rather than just training – and this may require a targeted recruitment and training strategy.

For **Membership Organisations**: training needs to go beyond the board to educate and inform the membership about skills gaps, so that expertise is not superseded by popularity. It has to be recognised that ordinary members would probably not go to websites for advice on governance. Supporters Direct (through its email group) emphasises the possibilities of peer led network of knowledge (they also advocate message boards). They have also developed fact sheets with peer-led learning and exchange moderated by Supporters Direct so that obvious legal or factual things are not misrepresented. However the challenge of finding imaginative ways of engaging with membership remains.

NB in some countries (e.g. Canada for Credit Unions) it is obligatory for board members to complete training packages.

Peer learning was important in many of the sub-sectors studied, green organisations, community business, leisure trusts and social firms. Peer learning also takes place through local linkages and relationships, as well as through visits and publicity about “model” organisations, so for example Scott Bader has served as a model for many larger membership organisations. Some of this operates through umbrella bodies, like SPORTA (for culture and leisure trusts) which facilitates peer to peer support – and has a thriving regional network – with meetings every 2 or 3 months. Finding ways of supporting this form of development support would be worthwhile.

The Charity Commission – even though their website is a mine of useful information (for example on public service delivery), some advisors commented that their members would be unlikely to go to the Charity Commission for advice, possibly seeing it more as a regulatory rather than advisory body; (and they may not be aware of the service improvements with Charity Commission Direct, since it was set up in May 2006).

Toolkits: Several bodies are attempting to raise quality standards in different ways- thus DTA has a health check system which includes governance; Social Firms UK has a Performance Dashboard: an integrated performance management tool based on the balanced scorecard; this doesn't directly address governance, but improved information would clearly be very beneficial to boards.

Compared to other social enterprise, the VCS sector is possibly the best provided for in terms of governance advice with national specialist support through the governance Hub/NCVO, the Charity Commission, and Charity Trustees Network; as well as local support via CVS; however the extent to which social enterprise issues of risk, entrepreneurship, and membership are addressed appears more limited (see next section).

The larger the organisation the more likely it is able to access **professional support from lawyers, auditors and consultants**; though for medium sized social enterprise there may be a more limited fixed days approach. But for the medium sized organisations there are also a range of toolkits. Some Law Centres will offer free advice to organisations.

Occasionally people can strike it lucky, finding well informed local advisors; but agencies like CVS were not felt to offer much more than basic information; and there were sufficient adverse comments about Business Link advice to indicate that they seemed more oriented to other business models, and their standard of advice on governance, based on their understanding of the needs of social enterprise, may need improving. (It may be indicative of their orientation to other areas of support, that the current consultation on Business Link support by the DTI (<http://www.dti.gov.uk/files/file39908.pdf>) doesn't mention governance).

Agencies specialising in social enterprise support, such as regional bodies like RISE (for the South West), and SEEM (for East Midlands) generally recognise the need and provide basic support on, for example on legal structures. RISE has undertaken innovative work offering specialist social enterprise advice by working through a gateway provided by Business Link. Nevertheless resources are limited, and geographically across the country regional support seems quite variable. They often have a network of advisors/consultants for specific support requirements. And sometimes such networks have some level of coordinated self-supporting activity for example in the South West they meet quarterly. However there also may be a general issue around support and capacity building not being tailored enough for the great diversity in the SE sector.

Overall the picture of support available is one where standards are highly variable from locality to locality; and where low cost highly skilled specialist governance advisors were sparse on the ground, if not impossible to find.

6.2 Governance Hub materials

In general the Hub material was known and valued by advisors and more experienced board members; there was a general feeling that it was good material which played a key part of a more focused support for specific types of social enterprise. But chairs and chief executives were less likely to have heard of the material (possibly due to the fragmented nature of the sector), though when presented with some of the material they were usually impressed.

Some of the resources were mentioned specifically as useful including the Code of Good Governance, and the Governance Health Check.

When used with small local groups, the Governance Hub materials are well regarded – but sometimes they have to be simplified.

- The ethos of the materials was also valued – a clear principled ethical approach.
- And they liked it being a one-stop shop for a trustee advice

However it was also felt that there were some weaknesses or gaps in the Governance Hub provision in relation to social enterprise issues:

- There was a general feeling that it was OK as far as it goes; but it seemed to be just a resource on the web or a toolkit - raising important questions about how to roll it out and implement it. This led to questions about how to use it and whether it needed intermediary support or facilitation for boards who wanted to improve.
- There has been some comment about implied criticism of National Hub work (in the Hubs Review Durning Report) – some people don't know its resources are out there; and there may be a gap between an information-based web resource and direct support required.
- It was felt that the materials are often better for larger, more formal more professional organisations and the needs of smaller organisations are less well catered for. Small local organisations can struggle: 'they have often had a bad experience in the past [with advisors].....say with Business Link'. And one reaction to this is to try to develop or link up with their own network which will give them support over an extended period.
- One senior manager (with some echoes in other comments) argued that we shouldn't over-professionalise boards, passion and enjoyment come first. Others mentioned fears that the Code could make things too formal.
- Managing **stakeholder** relations – it is important to differentiate between single and multiple stakeholder organisations. And for example, there needs to be better coverage of **membership issues**.
- **Channels** of information/support: there is a need to recognise the importance of codes coming via trusted constituencies/umbrella bodies: e.g. CUs Code and Worker Co-op Code which is being developed; it may be better for the Hub to influence or support those processes; and link/signpost its website to those developments.
- **The language** of voluntary organisations and charities may be off putting to some groups; and so the materials may need to be revised to fit the language of other types of social enterprise using different legal structures (e.g. "Directors" versus "Trustees" as board members.)
- Some aspects of the code (e.g. no personal benefit, etc) are not so relevant to other structures like mutuals/co-operatives. And such organisations would want to emphasise their **own distinctive elements** such as the 7 co-operative principles.
- **Entrepreneurial activities** impacting on governance; this is a key challenge for social enterprise, but generally it is under-emphasised in Hub materials – for example supporting principles for Trustees (Principle 2: The Board in control) emphasise: compliance, internal control, prudence, managing risk, equality and diversity – whereas a more entrepreneurial perspective might emphasise exploiting assets to maximise social benefits to stakeholders. And the case studies (on the website) are not generally addressing trading issues. Another implication of a strong entrepreneurial orientation is that some people were looking to more enterprise-like boards and for example looking for ways of paying board members.

- **Phase of development:** do Codes fit well at all stages of organisational development? For example, in the startup/development phase it may be that only some principles apply, but the full code is more relevant when the organisation is up and running.
- As a **measure of how governance is addressed** in a related sector, consider the comprehensive level of support for school governance is funded; including a recruitment service: School Governors' One-Stop Shop; and Governonet – a website for school governors; similarly for the National Housing Federation's 'Get on Board' service, etc. The Governance Hub's "Get on Board Campaign" is a much smaller scale recruitment initiative.

Advice linked to legal form: mostly people are aware of voluntary sector support; but typically 'they ask for support networks within the sector' (including peer to peer).

CLGs and CICs: Although umbrella (lead) bodies often provide some legal support (quite extensive in the case of Co-operatives UK), and sometimes provide governing document templates (Social Firms for CLGs). Nonetheless this is not always well known: 'templates or models of governing documents do not seem to be around much', blank forms are around of course but one that is filled in 'a worked example' is lacking and 'the level of detail that could be put in those boxes is another thing again.' So for example putting a risk management structure in place is one thing 'but the level of detail required is quite another thing.'

I&PS – although templates exist and are supplied by umbrella bodies such as Co-operatives UK, there are still some problems to overcome: one community co-operative found 'an amazing ignorance in the public sector of the I&PS. With accountants, they had to argue 'it is not a company it is an I&PS'. And one of the water companies 'would not connect them to the mains supply because they did not recognise the I&PS form; and people on the committee were being asked to give personal guarantees.'

From resources to practices: Translating a good set of resources into a set of good governance practices requires a set of interlinked processes: awareness raising, linking with drivers for change (federal bodies, local agencies, managers and chairs), mechanisms of improvement: codes of good practice, training, role models, etc. At the same time it needs linking with capacity building generally so that development priorities for both governance and management are properly balanced and coherently addressed.

7 Recommendations

The following are recommendations to the Governance Hub, its successor and national bodies responsible for governance support in this sector to enable them to better support the good governance of social enterprises:

1. If the Governance Hub and its successor are going to better meet the needs of social enterprises it will need to find a way of *differentiating and tailoring its resources* to reflect the needs of different types of social enterprise and the issues they face. This will involve both adapting the language used to reflect that used in the particular types of social enterprise and considering some issues in more depth.

2. The Hub and its successor should consider developing *better information and support* for social enterprises on the following topics:
 - *overseeing commercial activity and managing business risks*
 - *legal and governance structures for trading subsidiaries*
 - *the governance of multi-organisation partnerships*
 - *membership issues* e.g. maintaining an active and committed membership, developing members so they have the skills to serve on the board
 - *user involvement*, including how to involve users in governance issues and increase accountability to users
 - *the governance of smaller organisations.*
3. The Hub and its successor should explore developing *closer relationships with umbrella bodies and local agencies* that support different types of social enterprise to achieve enhanced support for social enterprises. This might include umbrella bodies adapting and contextualising Governance Hub resources to support governance in their area, ensuring there is better signposting of each other's resources, and developing possible pathways of support related to different types of social enterprise.
4. Many social enterprises are likely to need face-to face advice and support if they are to use many of the Governance Hub resources effectively. An important priority will be to work to *strengthen links with governance advisers and consultants* working at local, regional and sectoral levels, and provide them with appropriate training and support.
5. The Hub and its successor needs to consider more *active strategies for improving governance*; for example joining with infrastructure bodies and regulators to raise awareness of the importance of governance, promoting the opportunities for different groups to become involved in governance, particularly under-represented groups such as young people, and providing training and development opportunities.
6. The Hub and its successor should explore the possibility of aligning good practice codes of governance and other standard governance advisory materials amongst third sector umbrella bodies, by drawing out common principles and standards which would form the basis for different versions for different types of social enterprise (as suggested in 1 above).

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Appendices

Appendix 1. Interviews, Focus Groups and Question Themes

Phase 1: Interviews: Governance Advisors (umbrella bodies, professional advisors)

1. Co-operatives UK
2. DTA
3. Health
4. Fair Trade
5. Social Firms
6. Trading VCS
7. Regional Groups
8. Leisure Trusts
9. Social Enterprise Coalition
10. Supporters Direct
11. ABCUL (credit unions)
12. Green (Community Recycling Network)
13. Inclusion (Centre for Social Inclusion) – work integration
14. Professional advisors

Phase 2: Focus Groups

From segments 1-8 above.

Question Themes in the Research

1. (For members of umbrella bodies) What is your organisation's constituency/membership – type, size, age, types of legal structure?
2. What are main *legal and governance structures* used by social enterprises in your segment of the sector?
(This may be difficult to answer if there is a lot of variety. If this is the case you might try to get them to describe some of the different types that show the range.)
Probe:
 - typical legal structures employed.
 - do these social enterprises have a 'typical' membership
 - typical size and composition of board
 - how regulated
3. What do they see as main/typical governance problems and challenges?
Probe:
 - *board recruitment*: are there problems 'recruiting/electing' people with the right skills and experience. Are there areas of expertise that are commonly lacking?

- *board roles*: are some roles problematic for the board to fulfill (safeguarding values and mission; shaping strategy; risk assessment; ensuring effective performance; ensuring board operates in responsible and accountable manner; maintaining an effective board; compliance with external (government) demands and measures;)?
 - are there problems in *managing relationships with management* – e.g. boards becoming a rubber stamp or conversely interfering too much?
 - are there problems in *managing relationships with funders* (e.g. funders in public contracts)?
 - are there *adequate opportunities for board member training and development*?
 - are there problems managing the *tension between social and business goals*?
 - are there problems managing *member relations and involvement*?
 - are there problems managing the *demands of different stakeholders and regulators*?
4. i) What *governance support/advice/training* is available to social enterprises in your ‘field/area’? Who are key sources of support/advice/training? (What sorts of issues do they help on and when? What resources/advice is most useful? *(Collect any good materials)*).
- ii) What are the main *gaps in provision*? How could these be best filled?
5. i) Are you aware of Gov. Hub services, web site and materials?
- ii) Do you use or recommend any of the Gov. Hub services, materials etc.
- iii) How relevant do you find Governance Hub resources/services? In particular how relevant is their ‘code of practice for boards’ and ‘the standards for trustees and management committee members’. How could they be adapted to better meet the needs of social enterprises?
- iv) Do you use or recommend any other services/ resources from the voluntary sector or elsewhere, e.g. the Charity Commission advisory materials (Hallmarks of good charity); Small Business Advice, etc.

Appendix 2 Useful Resources

This brief review draws on an examination of printed or web materials publicly available from social enterprises umbrella bodies and allied organisations, toward the start of the research. This does not attempt to capture the totality of what the social enterprises sector is doing in terms of advice and guidance around governance. It offers a picture of the kinds of activities and resources available.

Governance as an issue has often not been addressed as a discrete area within practitioner guides, policy discussion or research documents. It has more frequently been considered alongside, or within, management or quality issues. In this sense the **Governance Hub** resources and networks, such as the **Charity Trustee Network**, provide exceptions. However more recently there has been a greater focus on governance with organisations either increasing the emphasis on this issue or developing good practice guides or codes. There are increasing mentions of the need for, and importance of, good governance in third sector organisations and, indeed, this underpinned the development of capacity building work including the Change-Up programme and the development of Hubs, like the Governance Hub. At the same time the public services delivery agenda – with social enterprises seen as an important component – was being set out in national policy documents such as in the **Social Enterprise Action Plan: scaling new heights’ (2006)**. Meanwhile, **Partnership in Public Services: an action plan for third sector involvement (Cabinet Office) (undated)**, as the name suggests, sets out the policy around third sector involvement in service delivery with some case studies and six or seven mentions of ‘governance’ as important. It also mentions citizen governance of such organisations, although without elaboration. Locally developed research (for example the Social Economy work in Bristol) also drew attention to governance in reports with a wider scope.

Within the social enterprise field, as in the broader third sector, there is now much activity around good governance. At one level advice and good practice is spread through (a) day-to-day advice, regional or national field workers, through training events, conferences and peer-to-peer learning; governance may be part of a whole mix of issues in such activities. Secondly, social enterprise bodies have sometimes taken a more formal approach by developing or adopting (b) codes of practice around governance; thirdly at other times (c) quality processes linked to standards expected of organisations in a given federation have been a container for development around governance. Alternatively quality demands imposed by the specifications in tender for contracts with public bodies have been important. Another approach (d) has been to focus on the governance issues arising from legal requirements or quasi-legal regulation. Hence governance requirements may be entailed in reporting requirements arising from the structural form of the organisation (Industrial and Provident Societies, companies, CICs or charities). Additionally requirements may arise through the regulations, recommended practice or inspection regimes in a given sub-sector. So social enterprises engaged in childcare, care work, recycling or managing a building will be subject to particular and at times, rigorous demands which ultimately require accountability through governance mechanisms. While the emphasis may be different between social enterprise sub-sectors, it is likely that all social enterprises’ modes of governance are affected by blends of all the above approaches. It should also be pointed out that at times the desire to improve governance is

closely related to (e) the values and mission of organisations, for example it may be entailed in commitments to be transparent in its dealings, or to be democratic or accountable - socially or environmentally – for its work to stakeholders or citizens. Thus improving governance is often an internally sought rigour for social enterprises.

Co-operatives UK published its **Code for Corporate Governance** and now a code specifically aiming at worker co-ops is being prepared for launch in 2008. In ABCUL a code for credit unions is also being developed with a similar deadline. **Social Firms UK** have publications such as their ‘values-based checklist’ which look at the characteristics of Social Firms and discusses the importance of how the organisations should be run and what they believe in. The new ‘Star Social Firm’ quality mark for members of the Social Firms federation will now take into account a demonstration of good governance.

Community Matters, with their specialism in the management of community buildings, have had a long interest in roles of trustees in their Information Sheets series but more recently they have been developing a Quality Assurance/Development Tool (‘VISIBLE Communities’) which was piloted in the early part of 2007. It looks at the framework that should assess the work of Community Matters members and sets out requirements around governance.

Both **Bassac** and the **Development Trusts Association** have developed tools and processes which hold governance implications: Bassac’s ChangeCheck²³ is a resource for examining long term strategic development and impacts; the DTA Health check is an organisational diagnostic tool. The quality process, PQASSO (**Charities Evaluation Service**), also has a component dealing with an organisation’s governance.

Within the **Social Enterprise Coalition**, concern for governance has paralleled advice on legal structures and responsibilities; in addition there have been related developments on impact measurement and the broader management of social enterprises. **Keeping it Legal** (Bates, Wells and Braithwaite Solicitors and Social Enterprise Coalition) considers the main issues around the legal frameworks relevant to governing a social enterprise. Collaborations with other organisations (such as the Governance Hub and Co-operatives UK) including through the existing research project are also taking place.

Another approach has been to place more emphasis on decisions taking place locally which draws in a wider agenda of ‘localism’ and thus considers governance beyond the organisational boundary. The materials of **CAN DO (Scarman Trust)** illustrate some of this emphasis focusing on community development and aspirations for the importance of decentralisation of decision-making.

²³ ChangeCheck: A practical guide to assessing the impact of your community organisation, by Chris Church and Steve Skinner (2007)

The influence of the procurement agenda on the governance of social enterprises, particularly with the need to ensure probity in the disbursement of public money, can be seen at the regional level through the work of **SEEM** and their **BEST** initiative (**B**enefiting the **E**conomy and **S**ociety **T**hrough Procurement). In the South East region **SEEDA** has also touched on governance in its procurement work around social enterprises. Meanwhile organisations such as **RISE** in the South West have taken a lead role in researching and improving the infrastructure and delivery of advice, support and guidance given to social enterprises including on governance.

• Resources, frameworks and guides

(* indicates a publication specifically focusing on social enterprises)

*ABCUL (forthcoming 2008) *Good Governance Code*, (www.abcul.coop)

Akpeki, T., & Temkin, T. (2004) *Getting Value from Consultants: a practical guide for trustees*, London: NCVO.

Baker Tilly & Charity Finance (2007) *Voluntary Sector Governance Survey 2007*, Charity Finance, 3 Rectory Road, London SW4 ODX.

Church, C. & Skinner, S., (2007) *ChangeCheck: a practical guide to assessing the impact of your community organisation*, London: Bassac.

*Bates, Wells & Braithwaite Solicitors with Social Enterprise Coalition (2006) *Keeping it Legal*, 2nd Edn, (www.socialenterprise.org.uk).

Charity Commission (2004) *The Essential Trustee: what you need to know*, (www.charity-commission.gov.uk).

Charity Commission (2004) *'Hallmarks of an Effective Charity – CC60'*, Version April 2004, (www.charity-commission.gov.uk).

*Co-operatives UK (2005) *Report of the Corporate Governance Review Group*, May 2005 (www.cooperatives-uk.coop)

*Co-operatives UK (2005) *Corporate Governance Appendices to the code for consumer co-operative societies in membership of Co-operatives UK*, May 2005 (www.cooperatives-uk.coop)

*Co-operatives UK (forthcoming 2008) *Corporate Governance for Worker Co-ops* (www.cooperatives-uk.coop)

*Cornforth, C. (2003) *Roles of the Governing Body: adapted from Governance & Participation Project Development Toolkit*, November 2003, Manchester: Co-operatives UK.

Community Matters (2007) *VISIBLE Communities*, (www.communitymatters.org.uk).

Community Matters (2007) *Information Sheets series on roles of trustees*, (for members) (www.communitymatters.org.uk).

The DTA Healthcheck (community enterprise development tool, designed to help boards and staff review performance and strategy) from website:
<http://www.dta.org.uk/activities/>

Governance Hub (2005) *Learning to Fly* (Governance Hub June 2005) (www.governancehub.org.uk)

Governance Hub (2006) *Standards for Trustee and Management Committee: national occupational standards*, (pocket guide) April 2006, Workforce Hub hosted by NCVO, (www.governancehub.org.uk)

Governance Hub (2006) *Good Governance: a code for the voluntary and community sector*, (summary), (www.governancehub.org.uk)

- *Governance Hub & Co-operatives UK (2007) *Governance and Organisational Structure* (www.cooperatives-uk.coop)
- National Hub of Expertise in Governance (2005) *Good Governance: a code for the voluntary and community sector 1st Edn.*, ACEVO, Charity Trustee Networks, ICOSA, NCVO on behalf of the National Hub of Expertise in Governance. (www.performancehub.org.uk).
- NACVA's (2006) *NAVCA Performance Standards*, (www.navca.org.uk).
- NCVO/Development Trusts Association (2004) *A training Needs Analysis of Board Members Governing Social Enterprise Activity*, London: NCVO/DTA March 2004.
- New Economics Foundation (2003) *Quality and Impact Tools Project: needs analysis key findings*. (www.neweconomics.org)
- Performance Hub (2006) *Trustee and Management Committee National Occupational Standards Pocket sized edition*, London: Performance Hub (hosted by NCVO in England, April 2006).
- SEEM (2007) *Social Enterprise East Midlands BEST Procurement: "Social Enterprise and the Public Sector, a practical guide to law and policy"*. (www.seem.uk.net).
- *Social Enterprise Coalition (2004) *Unlocking the potential: a guide to finance for Social Enterprise*. (www.socialenterprise.org.uk).
- *SEEDA (2005) *ESF Co-financing specifications 2005-2007. 4.3 Encouraging SME Development & Growth Procurement training for Social Enterprise Growth: development of a procurement training initiative to support social enterprises to develop the skills to tender for contracting*. (www.seeda.co.uk).
- SEEDA (2005) *Co-financing specifications 2005-2007: Identifying and meeting emerging skills gaps: Social Audit Training for Social Enterprise Managers*" (www.seeda.co.uk).
- *SFEDI (2007) OP11 Work with a board in a social enterprise. Web published by Small Firms Enterprise Development Initiative: (SFEDI) <http://www.sfedi.co.uk/standards/business-enterprise-standard/op11-work-with-a-board-in-a-social-enterprise>
- SKILD (2006) On-line exercises around governance (www.navca.org.uk)
- *Social Firms UK (2007) *Values-Based Checklist: a tool for plotting progress*, (www.socialfirms.co.uk).
- *Social Firms UK (forthcoming, 2008) *Star Social Firm Quality Mark*, (www.socialfirms.co.uk).

• Policy, discussion documents and publications

(* indicates a publication specifically focusing on social enterprises)

- *Baker Brown Associates Report (2002) *Business support services for Social Enterprises* (for Bristol City Council) (www.socialeconomybristol.org.uk)

Cabinet Office (undated) *Partnership in Public Services: an action plan for third sector involvement*, HM Cabinet Office.

Cornforth, C.J., Edwards, C. (1998) *Good Governance: Developing Effective Board and Management Relationships in Public and Voluntary Organisations*, CIMA Publishing.

Jones, P. (2006) *Chairs of Voluntary and Community Organisations – support and learning needs*, Report for Governance Hub, September 2006, (www.governancehub.org.uk).

Department of Health (2006) *No excuses. Embrace partnership now. Step towards change!* Report of the third sector commissioning task force' July 2006 (www.dh.gov.uk).

Office of the Third Sector (2006) *Partnership in Public Services: an action plan for third sector involvement*, London: Office of the Third Sector.

*RISE (2007) *RISE Business Support Project (Evaluation): final report*, April 2007, prepared by Co-active, www.rise-sw.co.uk).

*Office of the Third Sector (2006) *Social enterprise action plan; Scaling new heights*, London: Office of the Third Sector.

Social Economy Bristol (undated) *Community development and the social economy*, report on support and resources to the social economy organisations (www.socialeconomybristol.org.uk).

• Organisations

(* indicates a publication specifically focusing on social enterprises)

ABCUL (www.abc.ul.coop)

ACEVO (www.acevo.org.uk)

Bassac (www.bassac.org.uk)

Scarman Trust (www.thescarmantrust.org)

Charity Trustee Network (www.trusteenet.org.uk)

Charity Commission (www.charity-commission.gov.uk)

Charities Evaluation Service (www.ces-vol.org.uk)

CIC Regulator (www.cicregulator.gov.uk)

Community Matters (www.communitymatters.org.uk)

Community Recycling Network (www.crn.org.uk)

Co-operative College (<http://www.co-op.ac.uk/>)

Co-operatives Research Unit, Open University (<http://technology.open.ac.uk/cru>)

Co-operatives UK (www.cooperatives-uk.coop)

Development Trust Association (www.dta.org.uk)

Department of Health Social Enterprise Unit
(www.dh.gov.uk/en/Policyandguidance/Organisationpolicy/Commissioning/Socialenterprise/index.htm)

Directory of Social Change (www.dsc.org.uk)

Employee Ownership Association Employee Ownership Association
(www.employeeownership.co.uk)

Ethnic Minority Foundation (EMF) and the Council of Ethnic Minority Voluntary Organisations (CEMVO) (www.emf-cemvo.co.uk)

Fairtrade Foundation (www.fairtrade.org.uk)

Football Club United of Manchester: <http://www.fc-utd.co.uk/index.php> (Good Supporters Direct website)

G&P: Governance and Participation Project (www.gandp.org.uk)

Governance Hub (www.governancehub.org.uk)

Inclusion (formerly CESI) (www.cesi.org.uk)

Institute of Chartered Secretaries and Administrators (ICSA) (www.icsa.org.uk)

National Housing Federation (www.housing.org.uk)

NAVCA (National Association for Voluntary and Community Action)
(www.navca.org.uk)

NCVO (www.ncvo-vol.org.uk)

New Economics Foundation (www.neweconomics.org)

Open University Business School (www.open.ac.uk/oubs)

RISE (www.rise-sw.co.uk)

SKILD (see www.navca.org.uk)

Social Economy Network (Northern Ireland) (www.socialeconomynetwork.org)

Social Enterprise Coalition (www.socialenterprise.org.uk)

Social Enterprise London (www.sel.org.uk)

Social Enterprise Network (www.networks.nhs.uk)

Social Enterprise Unit (www.cabinetoffice.gov.uk/third_sector/social_enterprise)

Social Firms UK (www.socialfirms.co.uk)

SpoRTA Sports and Recreation Trusts Association (www.sporta.org)

Supporters Direct (www.supporters-direct.org)

VIRSA (Plunkett Foundation) (www.virsa.org)

WOCCU (World Council for Credit Unions): <http://www.woccu.org/>

Professional Advisors:

Bates, Wells & Braithwaite

Wrigleys (Malcolm Lynch; Leeds) Wrigleys together with Unity Trust Bank publishes quarterly "Social Economy".

Cobbetts Solicitors (Cliff Mills; note that Cobbetts have got together with Capstick to bring their social enterprise expertise together with the latter's health sector expertise)

Hempsons (Ian Hempseed, especially for health issues)

Appendix 3. CICs: the Community Interest Company

This is a new variant of existing forms of company: CLG (Company limited by Guarantee) or CLS (Company limited by Share).

The distinguishing features of the CIC are:

- In order to become a CIC, a company has to satisfy a community interest test, confirming that it will pursue purposes beneficial to the community and will not serve an unduly restricted group of beneficiaries. The test is whether a reasonable person could consider the CIC's activities to benefit the community - it is therefore wider and simpler than the charitable test of public benefit;
- Companies of a particular description may be excluded from CIC status by regulations; thus political parties, companies controlled by political parties, and political campaigning organisations are excluded in this way;
- CICs are not able to have charitable status, even if their objects are entirely charitable. However, charities (and all other organisations except political parties) are able to establish CICs as subsidiaries;
- Each CIC is required to produce annual accounts and an annual community interest company report containing key information relevant to CIC status. The report is placed on the public register of companies;
- CICs have an asset lock - that is, they are ordinarily prohibited from distributing any profits they make to their members;
- However, CICs that are limited by shares have the option of issuing dividend-paying "investor shares". The dividend payable on such shares is subject to a cap;
- When a CIC is wound up, its residual assets are not to be distributed to its members, as in the case of a normal company. Instead, they should pass to another suitable organisation that has restrictions on the distribution of its profits, for example another CIC or a charity;
- The Regulator approves applications for CIC status, receive copies of the community interest company reports and police the requirements of CIC status, including compliance with the asset lock. He has close links with the Registrar of Companies. The key role of the Regulator is to maintain public confidence in the

CIC model. He aims to impose the minimum necessary regulatory burden on CICs, but has powers to investigate abuses of CIC status and to take action where necessary, for instance to remove directors, freeze assets or apply to the courts for a CIC to be wound up. He also sets the cap on CIC dividends.

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