The Gritty Reality of Social Investment: When your lawyer says “Is that really what you want to do?”

30 May 2016

Strategy area | Small and medium sized charity finance, Participation, Scale
Region | UK wide

What is the gritty reality of social investment? If I were being cruel I would start by misquoting a saying most frequently credited to the ancient Chinese philosopher Confucius “Life is really simple, but lawyers insist on making it complicated.”
So maybe Confucius didn’t specifically point the finger at lawyers but it can seem like that sometimes, and as we were putting together our first social investment deal it certainly felt that way at times.

Picture the scene – a small charity intent on doing its first social investment deal (a residential property backed scheme), seeking funding to back a new action learning project. They have already lined up two or three interested investors, the principal players in each are already bought in to the proposal, they can afford the sort of money being talked about and the broad commercial terms are agreed…… ‘that’s fantastic the assembled group agree – now let’s pass it to the lawyers to finalise the exact wording’. Just reading these words is enough to make my heart sink all over again at the memory of it all.

This was a new deal for us and a new deal structure for our investor partners. We had three sets of lawyers involved (ours and two others between the three investors) – whilst each firm bought specific skills and expertise to the table none of them had been involved in a scheme exactly like this before; and by like this I mean specifically social investment – where the deal wasn’t all about the money but also about what the money was enabling the charity to do.

As a general rule when consulting with your lawyer you need be as clear as you can be about exactly what it is you want to achieve, what are the commercial terms you are content with and the risks you are willing to take….because there are few things more worrying for anyone than when your lawyer says “Is that really what you want to do? I’m not sure this is necessarily the best deal, you could be exposing yourself to risks on this point……” I defy anyone not to have a moment’s self-doubt and hesitation when your lawyer says that to you. And I hate to say but there was an element of that going on – partly I felt as a result of lawerly showing off between firms if I am being honest (each wanting to outdo the others on issues around their particular
specialism be it property, charity law or banking) – but also each firm genuinely seeking to protect the interests (as they saw them) of their client, raising issues that had already been 'agreed' between the principals but perhaps had not been spelt out to them.

The result was a process that felt like it was unnecessarily prolonged; that a number of loops and revisiting previous agreements were made and it was only finally overcome when the principals all sat down together again – reiterated between themselves the broad terms and agreement they had reached originally - and then all agreed to instruct their lawyers that this was the deal and to complete the paperwork necessary to make this deal happen.

The good news is that this first deal has been great success. The other good news is that my trustees were determined that having spent significant time and a tidy sum on lawyers to make the deal a success, they wanted to get their monies worth. We have since completed a second social investment deal using the same template and will hopefully be finalising our third shortly.

Lawyers are not a necessary evil as some might think and as our experience shows – they can, and frequently do, add great value. However, I believe the nature of social investment, where there are multiple bottom lines or multiple objectives, means that being clear on your objective from the outset is crucial and then lawyers can help get that deal done!

By an anonymous charity CEO

Last updated | 30 May 2016