

The Future Advice Programme

Access to justice is an essential part of a free and fair society. This means that citizens, above all those facing disadvantage and discrimination, should be able to assert their rights and to hold others to account. Not-for-profit legal advice services, established on the principle that access to justice should not hinge on one's financial resources, therefore play an indispensable role at the critical juncture between individuals and the public and private bodies with which they interact. Yet these services are under increasing pressure, pummelled by rising demand, far-reaching cuts in public funding, the impacts of welfare reform, and increased competition for resources. The resulting situation has been characterised by some as a "perfect storm".

The Future Advice programme was established by the Baring Foundation in 2012 to help the legal advice sector negotiate this increasingly difficult environment and to place it on more sustainable footings. The programme is split into three strands: the Providers Fund, in collaboration with Comic Relief and The Diana, Princess of Wales Memorial Fund, to support innovative organisations testing promising new ideas, the Strategic Fund to help create a more supportive policy and funding landscape for advice, and the Learning Programme, in collaboration with Unbound Philanthropy, to help capture and spread the lessons widely.

This bulletin forms part of a series intended to serve as action papers for the Future Advice programme. Each bulletin offers an outline of the major themes and innovations that are currently being explored by grantees in the Providers Fund. We hope that they will offer other practitioners a starting point for new projects, guidance on how they might replicate or adapt existing models to fit their own organisation, and highlight potential pitfalls and challenges that will need to be taken into consideration.

Charging for advice - what's the idea?

The focus of this bulletin is on advice agencies working to develop a model for charging clients a fee for their services.

The concept of Law Centres and advice agencies charging for advice is controversial. The purpose of these providers has in most cases been to provide high quality independent advice to people in need without charge.

However, charging some clients a fee for services might:

- i. Enable people to obtain advice at a reasonable cost which they might not otherwise receive
- ii. Enable providers of advice to retain valuable specialist advice skills which might otherwise be lost

It is of significant interest to agencies and others to ascertain whether there is a clear demand for the not-for-profit sector to provide privately funded advice services and whether there is a particular model which might be suitable for replicating elsewhere.

In common with other projects being funded, this topic feeds into the discussion about long term sustainability. No political party has pledged to bring back social welfare law into the scope of legal aid funding and it appears unlikely that this will happen in the foreseeable future, if ever.

There is some evidence of demand for charging services. For example, South West London Law

Centre's volunteer programme review in December 2012 stated that:

'The reports reveal high levels of client satisfaction with the service they received from volunteers, with overall satisfaction levels at

88 per cent. 92 per cent of those responding to the question said that they would recommend the service to friends or family in a similar situation and 38 per cent of service users said they would be prepared to pay a small amount for the advice they received.'

What are the projects?

Islington Law Centre

Islington Law Centre has established a charging arm. The project started in 2011, at which time the professional regulator, the Solicitors Regulation Authority (SRA), prohibited Law Centres from charging for advice. The Law Centre applied for permission to the SRA to waive this rule. However, there was no known previous experience of the SRA granting such a waiver to a Law Centre and so they were unsure whether a waiver would be granted and, if so, when.

Around the same time, the Law Centre also decided to apply for authorisation as an Alternative Business Structure (ABS) in case the waiver was not granted. (An ABS is an entity that must have (i) a non-lawyer owner or manager; and (ii) at least one lawyer manager). The SRA said that it would decide on the waiver before assessing the ABS application. After some chasing, the waiver was eventually granted in December 2012 and the Law Centre decided not to pursue the ABS application.

The legal entity of the charging arm is a Community Interest Company (CIC) with Islington Law Centre as its single shareholder. The centre, known at the time of writing as Islington Legal Community Interest Company, is opening in the summer of 2013 and will commence working in the categories of immigration and employment. It plans to open an education department next year.

It had an initial preference to charge clients on an hourly rate basis instead of using fixed fees. This is because it felt that charging by the hour is fairer than fixed fee agreements given that under a fixed fee model some clients effectively subsidise other clients. However, it recognises that many clients prefer to pay fixed fees.

It is planned that immigration work will be charged using a mixture of fixed fees and hourly rates. Employment advice will be charged on a contingency fee basis and education instructions will probably be accepted on a fixed fee basis.

Rochdale Law Centre

In March 2012, senior staff from Rochdale Law Centre opened a separate legal entity known as Rochdale Legal Enterprise. The Legal Enterprise was formally opened by Lord Bach in April 2012.

The service offers advice and services in the areas of immigration and employment. Immigration services are charged on a fixed fee basis. Employment services are paid using conditional fee agreements. This project is particularly timely given that most immigration and employment advice went out of scope from the legal aid scheme on 1st April 2013.

Like Islington, the Legal Enterprise has been established as a Community Interest Company. However, the CIC is not wrapped up within an ABS. It is owned by the directors, with a written agreement that all surpluses are either re-invested or passed to the Law Centre.

What are we learning?

As so few organisations have commenced a charging service, it is premature to draw firm lessons. However, observing the Islington and Rochdale projects, together with a number of other ventures not funded by the Future Advice programme, has identified areas where particular attention must be directed when considering implementing a charging model.

Choosing services to be provided

In deciding which types of law to provide a charging service for, regard should be given to the demand for different types of law in the local marketplace. The categories of law most often mentioned by agencies are employment, education and immigration.

A view could be taken that there is a gap in the market for the provision of education advice, (e.g. appealing school admission decisions) but consideration should be made about why that gap exists in the first place. Is there really sufficient work to keep a caseworker busy? That decision will depend very much on local market conditions.

There is little doubt that there is demand across the country for employment advice. Many advice agencies talk of receiving significant numbers of queries from potential clients that were hoping to get advice free of charge. Given that clients will have expectations of free advice (clients will

probably be unaware of any charging pilot) it is likely that many potential clients will be unable or unwilling to pay for advice.

Arguably, the area with the most demand for privately funded work is immigration. Before the legal aid scope cuts, there were thousands of solicitors firms and other organisations providing a service to their local community. The non-solicitor industry is especially large – around 2,000 organisations are regulated by the Office of the Immigration Services Commissioner (OISC).

Immigration legal aid providers have been devastated at immigration work being taken out of scope of the legal aid scheme. However, some providers in the private sector view this as a business opportunity as the demand for privately funded work will increase. One way of measuring the demand for immigration advice in a local area is by looking at the number of law firms and OISC registered organisations in the vicinity.

Debt is another area that some agencies are keen to explore. Community Law Service (Northampton & County) offers a fixed fee debt management service at a lower price than private sector providers.

Persuading clients to instruct the agency

Retailers often talk about 'the offer'. They see their biggest challenge as getting potential customers to walk in the door. They try tactics

such as offering some products at a loss in the hope that most customers will see something else they would like to buy.

Similarly with law, the biggest hurdle is getting potential clients to make an appointment. Once a meeting has been arranged, there is a good possibility of persuading the client to instruct the agency. For this reason, many organisations offer the first meeting free of charge. This not only helps the client to decide whether they trust the advisor, it also enables the advisor to ascertain whether the client has got prospects of receiving a good outcome in their case. Other agencies charge a low fixed fee for the first meeting.

Organisations may choose to compete on price or quality or a mixture of both. Care should be taken to consider what the key selling points are and how to communicate them. We return to this area when discussing marketing plans.

Charging Models

There are four main methods of charging that agencies can consider when setting their prices.

The most common method is the hourly rate. If a competitor is charging £150 per hour, a competitive advantage may be gained if the agency charges a rate of £100 per hour. In fact, it might be wise to consider reducing it just to below the psychologically important £100 barrier.

Over the past few years however, the demand for fixed fees has risen significantly and clients are increasingly expecting to pay a definitive fee in order to achieve certainty about costs.

Fixed fees are usually set with regard to the fees of competitor organisations in the local area. Adjustments are usually made in order to reflect the agency's costs and market position. For instance, an immigration firm operating on Chancery Lane in central London will charge a much higher fixed fee than an agency in Barking Road in east London.

The third type of fee is the conditional fee agreement, or no win, no fee. This is an agreement whereby the organisation only receives a fee if the client receives money. Typically, a firm may charge 33% of the damages awarded. Operating such agreements requires care. The organisation will need to enter into a written agreement with the client confirming authority to proceed. Rochdale Legal Enterprise opted for no win, no fee whereby it retains 25% of any damages awarded to the client. The obvious risk is that the agency will only receive income if the caseworker wins the case! Another issue is that most awards of damages are relatively low (e.g. in the low thousands) and this will need to be factored in when preparing the budget and cash flow forecast).

The fourth type of fee, spurred on by The Law Society's publicity, is sometimes referred to as 'A La Carte' or 'unbundling.'ⁱ Some organisations are seeking to find a unique selling point by selling blocks of time to clients. The idea is that the client usually has conduct of the case but buys small chunks of the lawyer's time in order to, for example, advise on a particular point of the law or to review completed documents. An example of this is Barcan Woodward Community Law (previously known as Bristol Law Shop) which charges £10 for every five minutes of the lawyer's time. Organisations considering this will need to research this option carefully and be aware of what might go wrong, for example confusion about who is responsible for each stage of the case and who is liable if the case goes wrong. The Law Society has written a good practice note about unbundling.ⁱⁱ

Business Skills and Planning

If the person managing the fee charging project has relevant experience from private practice or has led similar ventures in the past, they will have gained a set of business skills which will help them to foresee what challenges lie ahead. If not, it is wise to seek a mentor from private practice. Key individuals may wish to use their own contacts to find a suitable mentor or, if the

agency is providing immigration advice, assistance could be sought from LawWorks. Alternatively, a trustee might be a suitable sounding board.

Most organisations feel fairly comfortable with preparing a standard business plan. However, a plan which is written for the purposes of implementing a charging service may be more challenging. In common with other business plans, the plan will cover many of the following areas:

- Executive Summary
- Business Details
- Activities of the Business
- Legal Form of Business
- Professional Advisors
- Key People Details
- Client Groups Served
- How the Services will be Provided
- Market Size
- Risk Analysis
- Competitor details
- Strengths, Weaknesses, Opportunities & Threats (SWOT) Analysis
- Services Description
- Complaint Handling
- Recruitment & Development Plan
- Financial Requirements & Financing the Project

The marketing plan can either be part of the business plan or it may be a stand-alone document.

Assuming that the strategy is sound, the most important section of the business plan is the section which lists the objectives and explains how the objectives will be achieved.

Many organisations present this action plan as a table or spreadsheet. The action plan should specify the objective, what action is required, who is involved in delivering the action, the cost/benefit and deadline dates. In other words: what, how, who, why and when.

Marketing the Service

The project will not be successful unless the potential customers are aware of the organisation's service. A marketing plan covering the following areas is, therefore, crucial.

Existing clients

It is much cheaper to attract business from

existing clients or to obtain recommendations from clients than it is to attract new clients. Therefore, consider writing to all clients seen by the service over say the past 18 months and inform them of the new services.

Client care/closing letters

Organisations can also consider amending the client care or closing letter templates to inform clients about the new service.

Quality

Providing an excellent service to clients will represent the cheapest form of marketing work i.e. word of mouth.

Posters/Leaflets

It can be very good value for money to instruct a designer to produce eye catching posters, leaflets and business cards that can be posted in the reception area and given to business and network contacts.

Promotional Items

Low cost promotional items such as pens and coasters are usually not thrown away by recipients until the end of their useful life. Very cheap pens should be avoided though, in case clients draw an intended conclusion about the corresponding quality of the service.

Networking

All successful businesses rely to some extent on networking. It is wise to do as much networking as possible. Ensure that everyone in the organisation's network knows about the project. Visit Chamber of Commerce events, community events, schools and media outlets.

Social Media

The project could be announced through social media such as LinkedIn and Twitter. Updates and good news should be communicated regularly.

Web

The amount of resources that are available to spend on a website will depend upon budget. Anywhere between £50 and £50,000 can be

spent! The quality of free or very cheap WordPress (open source) templates has significantly increased over the last few years and it is possible to design and build a fairly respectable website for between £1,000 and £2,000.

Search Engine Optimisation (SEO) and Pay per Click can be valuable but expensive tools. A good starting point is to attend a SEO course in order to understand some elements of what search engines look for when ranking results. This will help with ensuring that the content of the website assists with achieving a good search result ranking.

What are the challenges?

Incorporating fee charging into the Culture of the agency

Culture change is amongst the biggest challenges that a not-for-profit advice service may face. Many staff will not feel comfortable with the idea of charging clients. Indeed some staff will have joined the organisation in part because they feel strongly that people who cannot afford to pay a high street lawyer deserve free advice. Everyone in the sector agrees with this view. However, if a decision is made to embark on a charging project, it is important to explain the basis upon which the decision was made to pilot a charging project.

Amongst the reasons why agencies are considering introducing charging models are:

- increasing access to justice for those that are able to afford a relatively modest charge
- Retaining specialist skills in the organisation
- Using fee charging alongside free services to avoid staff having to reduce their working hours
- Contributing cash or surpluses to subsidise the advice agency

It may be worth considering asking all members of the team to brainstorm ideas for income

generation and debate the pluses and minuses of fee charging. If the entire team is dead set against the idea, it is unlikely to succeed!

Resolving the question of premises

Where to deliver the fee charging advice from has been a keen point of debate. Rochdale Legal Enterprise felt it was important to deliver the advice from a building separate from the Law Centre (it is two doors away down the High Street). This enabled the Law Centre to develop a clear and separate identity for the Legal Enterprise. It also avoided potential confusion at the Law Centre over which clients belonged to which organisation.

At the time that Rochdale Law Centre established its Legal Enterprise, it was not possible for Law Centres to charge for advice. The options were either to establish a separate organisation or to apply to the Solicitors Regulation Authority for permission (a waiver) to charge for advice. At the time that Rochdale Enterprise Centre was established (April 2012), no Law Centre had successfully applied for a waiver and it later became clear that it would take several months for a waiver application to be processed.

If a Law Centre or an advice agency with solicitors wishes to charge for services on its own premises under its own name, there are less regulatory hurdles now. However, an agency considering this route still needs to take advice from, amongst others, its representative body, the Charity Commission and the SRA (if they employ solicitors). Community Law Service (Northampton & County) is an example of a service which offers a not-for-profit fee paying service under the same legal entity as the free advice service.ⁱⁱⁱ

Finding the necessary time and resources

It takes significant time and resources to get these projects off the ground. Most have been managed by senior managers at advice agencies

who were already busy with a multitude of other tasks. A fee charging project is unlikely to work unless there is someone in the organisation who is able to devote significant time to it. That person will also need significant support from staff within the organisation, the trustees and others such as representative bodies and mentors.

Managing cash flow

Most of the agencies providing legal aid services that collapse do so not because they are necessarily running up losses but because they run out of cash. Carrying significant sums of work in progress (unbilled work) can lead to the agency becoming unable to pay its short term liabilities (e.g. salaries).

Agencies that decide to charge hourly rates must keep a very close eye on work in progress and ensure that the organisation is disciplined in ensuring that payments on account are received from clients at regular intervals. Agencies must be tough and refuse to continue working on a matter until a payment on account had been received from a client. This problem does not arise with fixed fees as the agreed fee is paid at the outset.

A cash flow forecast must be prepared at the outset and monitored monthly.

Complying with regulation

Agencies that charge for services have more regulation to comply with! For agencies with solicitors, a clear understanding of the SRA Handbook is essential. Whilst solicitors must be familiar with the SRA Handbook irrespective of whether they are charging for their services, clients who are being charged often have higher expectations and are more likely to complain to the Legal Ombudsman if they are dissatisfied with the service received. Therefore, it is recommended that client care and complaint procedures are reviewed to ensure that they are robust and comply with the latest version of the

SRA Handbook. At more than 500 pages in length, this cannot be described as a light read. However, it must not be avoided. Arguably the most important section is the Code of Conduct – 30 pages that set out the SRA's approach to regulation. In version 7 of the Code of Conduct, the SRA states:

'Outcomes-focused regulation concentrates on providing positive outcomes which when achieved will benefit and protect clients and the public. The SRA Code of Conduct (the Code) sets out our outcomes-focused conduct requirements so that you can consider how best to achieve the right outcomes for your clients taking into account the way that your firm works and its client base. The Code is underpinned by effective, risk-based supervision and enforcement.'

There has been some debate about whether agencies and Law Centres are regulated by the SRA. Lawyers with practising certificates are regulated by the SRA. However, Law Centres and advice agencies as entities are not. This anomaly of solicitors being regulated but not their organisation will change at some point. Section 15 (4) of the Legal Services Act (2007) states:

'All not for profit organisations involved in the provision of reserved legal services to the public will need to be licensed once a transitional period of protection is brought to an end.'

This transitional period is due to end in April 2015 although this date may change.

Clients are able to complain about solicitors to the profession's complaints handling body (the Legal Ombudsman) but arguably not about caseworkers as they are not employees of a solicitors firm or partnership. For further information about this see:

<http://www.legalombudsman.org.uk/aboutus/>

This can lead to confusion about client care and complaints handling procedures. It is strongly recommended that systems for client care and complaints handling are identical, irrespective of

whether a lawyer or non-lawyer has had conduct of the case. It is also recommended that the complaints handling policy is provided to the client at the outset of the case including details of how to contact the Legal Ombudsman if the client is dissatisfied with the handling of their complaint. This information should be contained in a document that the client is likely to read, such as the client care letter.

Complying with SRA Accounts Rules

The SRA Accounts Rules are contained in the SRA Handbook and can also be found online.^{iv} The main purpose of these rules is to keep client money safe. Examples of client money are payments on account of costs, and damages or compensation received on behalf of a client.

Most Law Centres do operate a client account and it is the responsibility of a senior solicitor to ensure that the SRA Accounts Rules are being complied with. However, it is not always essential for a charging service to operate a client account, and if an agency is able to function without a client account, then there is significantly less regulation to comply with. For example, if the charging service operates a fixed fee service where the level of the fee was not dependent upon the transaction being completed, it would be feasible to operate without having a client account. This is confirmed at 12.7 of the Accounts Rules which states, amongst other things, that office money includes:

'money paid for or towards an agreed fee'

Rule 17.5 provides useful guidance about what constitutes 'an agreed fee'.

'A payment for an agreed fee must be paid into an office account. An "agreed fee" is one that is fixed – not a fee that can be varied upwards,

nor a fee that is dependent on the transaction being completed. An agreed fee must be evidenced in writing.'

It is essential that where a client account is operated, up to date understanding of the SRA Accounts Rules is maintained. The Institute of Legal Finance and Management provide regular training on the Accounts Rules.

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Further Reading

SRA Handbook:

<http://www.sra.org.uk/solicitors/handbook/welcome.page>

Keep up to date with SRA regulation by subscribing to their update service:

<http://www.sra.org.uk/sra/news/update.page>

Law Society practice notes often offer useful guidance for lawyers:

<http://www.lawsociety.org.uk/advice/practice-notes/>

References

- i <http://www.lawsociety.org.uk/news/press-releases/lawyers-respond-to-legal-aid-crisis-by-unbundling-legal-services-for-clients/>
- ii <http://www.lawsociety.org.uk/Advice/Practice-notes/Unbundling-family-legal-services/>
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