



## Setting Up Fee Charging Services

### Briefing for Law Centres on Charities and Trading

There are a range of issues and common questions that Law Centres raise when considering options for developing new sources of income that involve either direct client charging or third party charging. This guide addresses questions raised by Charity law rules and the limits on the ability for charities to trade.

Charity law allows charities to trade provided that the trading falls into one of the following categories:

- Primary purpose trading;
- Ancillary trading; and
- Non-primary purpose trading that does not involve significant risk to the resources of the charity.

Note: non-primary purpose trading that does not involve significant risk to the resources of the charity is normally understood to include trading within the terms of the 'small scale exemption'.

#### 1. Primary purpose trading

Primary purpose trading is trading which contributes directly to one or more of the Objects of the charity as set out in its governing document (Memorandum and Articles of Association).

Examples given are:

- Provision of educational services by a charitable school (e.g. Eton , Harrow etc) in return for course fees.
- Holding of an art exhibition by a charitable art gallery in return for admission fees etc.

The profits from primary purpose trading are exempt from corporation tax if the profits are applied solely to the purposes of the charity.

Note: charities must pass the 'public benefit test' particularly where they charge high fees (*see separate section on Public Benefit towards the end of this Briefing*).

#### Law Centres and Primary Purpose trading

Many Law Centres have objects that state:

The Objects of XX Law Centre are:

- To relieve poor persons in the designated area by providing such persons with legal services which they could not otherwise obtain through lack of means;

- To advance education in the laws of England and Wales from time to time in force for the public benefit; and
- To advance such other charitable purposes as the directors at their absolute discretion may from time to time determine.

Or similar wording.

## Charging the public for legal advice

Although the Objects state ‘to relieve poor persons’, a Law Centre may still provide advice and charge for it, as primary purpose trading, providing that the ‘poor’ are not excluded from benefiting.

The Law Centre Trustees will need to determine what constitutes ‘poverty’ and set criteria by which clients can be assessed. . The Charity Commission has not provided a definition of poverty nor set absolute criteria, which if met, could poverty be said to exist. But according to the Charity Commission’s own guidelines, people in poverty can include people who have the financial means to pay something for the advice they receive.

A Law Centre that charges reasonable fees for its legal services for people with moderate means is likely to be treated as undertaking primary purpose trading. One solution could be, for example, a sliding scale of fees with those who are better off subsidising the cost of services to those who have limited means; there are precedents for charities applying a sliding scale of fees and so the Charity Commission should accept this as primary purpose trading.

A Law Centre would be advised to do a benchmarking exercise to consider the fees charged by local commercial firms for the same quality of advice; charges that a Law Centre is considering are likely to be less; this is relevant to the clause in the Objects, ‘providing ... legal services which they could not otherwise obtain through lack of means’.

However some Law Centres may have Objects in their Articles that state that they provide **free** advice.

For example:

- ‘The relief of financial hardship by the provision of free, independent legal advice and assistance to persons who, through lack of means, would otherwise be unable to obtain such advice.’

In this case, the Law Centre may apply to the Charity Commission to change the Object clause or it may be able to provide legal advice for a fee under another clause within its Objects. LCN advises Law Centres to seek legal advice.

## Provision of training

The provision of training services will be primary purpose trading where a Law Centre constitution includes in its Objects the ‘advancement of education’, or ‘to advance such other charitable purposes’. A Law Centre may charge reasonable fees for training to organisations or to individuals as primary purpose trading.

In all cases, Law Centres are advised to check their Memorandum and Articles of Association to ensure that there are no clauses that prohibit permanent trading **in furtherance of their charitable objects**. Permanent trading means frequent and regular trading as well as long term.

## 2. Ancillary Trading

Ancillary trading contributes indirectly to the successful furtherance of the purposes of the charity. This is treated as part of primary purpose trading for both charity law and tax purposes.

For example; the sale of food & drink at a training event.

## 3. Non-charitable trading (Non-primary purpose trading)

Non-charitable trading is trading which does not further the Objects of the charity but which is undertaken to raise funds to be applied for charitable purposes, for example, the sale of t-shirts, mugs, pens etc. Such trading will be subject to corporation tax unless it falls within the small scale exemption.

Some Law Centres will have a clause in the 'Powers' section of their Memorandum & Articles that states that they can raise funds but must not undertake 'any substantial permanent trading activity'. Whilst this clause prevents Law Centres from undertaking substantial non-charitable trading, it does not prevent primary purpose trading (unless this is explicitly stated), nor non-charitable trading under the small scale exemption (*see below*).

### Small scale exemption for non-charitable trading

Unless prohibited by its governing document, any charity can carry on small scale, non-primary purpose trading, and be exempt from corporation tax on the profits, provided that the profits are applied for the purposes of the charity. Such small scale trading should not involve any significant risk to the resources of the charity.

In order to qualify for the small scale exemption within a given chargeable period, either:

- The annual turnover of the relevant non-primary purpose trading of the charity must not exceed the relevant threshold during the chargeable period; or
- If it does exceed the relevant threshold, the charity must have had a reasonable expectation at the start of the chargeable period that it would not do so.

The annual turnover limit is:

- £5,000; or
- If the turnover is greater than £5,000, 25 % of the charity's total incoming resources, subject to an overall limit of £50,000

The profits from small scale trading are exempt from corporation tax if the profits are solely applied to the purposes of the charity.

### Small scale exemption and Law Centre trading

If a Law Centre wishes to raise funds by non-charitable trading so that it can continue to provide services to those on low incomes, it can do so under this small scale exemption up to an overall limit of £50,000.

Such activity is permissible provided that the total income raised is less than £50,000 in a year, or it had a reasonable expectation that it would be less at the beginning of the year, provided that such activity does not put the resources of the Law Centre at significant risk. The profit from non-charitable trading, under the small scale exemption, will not be subject to corporation tax provided that they are used for the purposes of the Law Centre.

## Mixed charitable and non-charitable trading

Where the trading is all charitable or all non-charitable the tax treatment is fairly straightforward.

Where an activity involves both charitable and non-charitable trading the tax position must be calculated as if there were two entirely separate trades. So the income and expenditure must be apportioned accordingly.

## 4. Charities and Public Benefit

The Charity Commission has issued new guidance on public benefit and fee charging following a decision of the Upper Tribunal on educational charities charging high fees:

<http://www.charitycommission.gov.uk/detailed-guidance/charitable-purposes-and-public-benefit/>

and this is the specific guidance on public benefit and fee charging:

<http://www.charitycommission.gov.uk/detailed-guidance/charitable-purposes-and-public-benefit/public-benefit-running-a-charity-pb2/annex-c-charging-for-services/>

Trustees of Law Centre charities must ensure that the poor are not excluded from benefit. 'The poor' is a relative term and may include people of modest means. If a Law Centre introduces fees for its services, the Trustees must consider whether the fees charged are more than someone of modest means can afford or they must ensure that the poor can benefit. Such a service must be more than minimal or tokenistic.

Law Centres may have a free service running alongside its charged for service or it may introduce a sliding scale of fees, with a subsidised service for those on low incomes. Section 1 (Primary purpose trading) above describes the ways in which services may be provided which would be considered primary purpose trading and of benefit to those in poverty.

If a Law Centre is planning to undertake substantial trading activities, the LCN advises that specialist legal advice be sought.

For further guidance on these and other management considerations, see the LCN Briefings on Income Generation Guides and Setting Up Fee Charging Services, including 'What To Do Next' that are found on the LCN website.

**LCN Development Team 2014**