



Setting Up Fee Charging Services

Management implications for Law Centres

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 Law Centres and outlines the practical implications for Law Centres' Trustees, managers and staff.

The LCN seeks to ensure the accuracy of the details contained within this guide but it is not intended to be a complete guide to the subject or the legal regulations.

The guide contains:

- Management considerations.
- Issues for Law Centres and their clients to consider.

Management considerations for Law Centres

These can include:

- **Constitution:** It may be necessary to change the Law Centre Constitution to allow you to provide a service. This may take some time if the permission of the Charity Commission is required. Charging services at reasonable rates to one group of people means that Law Centres can offer provision that maintains the Law Centre charitable commitment to access for poor clients. Some income streams are set up to charge third parties, such as housing associations, for advice delivered to individuals; others charge the client direct.
- **Charging:** With recent relaxation of the Solicitors Regulatory Authority (SRA) Rules there is no regulatory restriction on Law Centres to charge individuals and groups for advice. Charity law allows charities to trade provided that the trading falls into one of the categories of primary purpose trading, ancillary trading or non-primary purpose trading that does not involve significant risk to Law Centre resources.
- LCN recommend that you read the LCN Briefing for Law Centres on Charities and Trading which can be found on the Members section, Income Generation Guides, of the LCN website, referenced at the end of this guide.
- **Marketing, feasibility and competition:** Questions for management discussion include:
 - Is there a client market for this work and where will it come from?
 - Has the Law Centre investigated the rates of charges that are used by other providers?
 - Has the Law Centre calculated the charging rate required to cover the costs of the caseworkers and overheads and any work conducted before developing a service that attracts a fee?

- **Trustees:** It seems obvious to state, but the Law Centre Trustees must have agreed to the extension to charging for work. It is a decision for the Law Centre as to whether the Trustees have that debate after or before the Law Centre undertakes a feasibility study to identify whether there is a market for this work.
- **Indemnity Principle:** Law Centres may have a policy of always offering a client an indemnity against the other side's costs. There is a restriction on giving indemnities in the changes to charging granted by the SRA.

When a Law Centre maintains the principle of always offering an indemnity to any client, this could attract major difficulties. For example, in Conditional Fee Agreements (CFA), which cover work in a costs based jurisdiction, there is doubt arising from case law as to whether the Law Centre solicitor can give an indemnity against the other sides' costs to a client under a CFA and still collect costs when that client is successful. LCN recommend that the Law Centre take advice on any decision to offer client indemnities before considering any new service that is in a costs-based regime.

- **Staffing:** The worker(s) involved will need to be have ability and skills so that they are:
 - Sufficiently experienced to be able to advise on the new service, on charging rates and the area of work.
 - Sufficiently experienced and objective to be able to advise on the merits of the case on the basis of the information available.
 - Aware of the differences in working in a new arena, the issues that must be advised upon e.g. adverse costs and willing to advise on those robustly.
 - Aware of protecting the Law Centre and its Professional Indemnity Insurance.

Other management issues include:

- If there will be only one worker working on this stream of income, what if they leave or are not available for some time? Will the Law Centre be able to refer the fee-charged case elsewhere?
- If none of these are certain, will this need training or new recruits and how will that be financed?
- **Referrals policies:** Managers need to consider whether policies cover this work or will they need a review?
- **Client Issues:** These can be different for charged for work: for example, how will the Law Centre identify the client group and ensure equal treatment as well as access for poor clients? Which staff will have the conversation with clients about charging services?
- **Protocols within the Law Centre:** Are there any internal protocols required specifically for this service that attracts a fee? Do all staff including reception workers understand what is involved? Is the Law Centres process for Client conflict checks robust and has it been reviewed before starting this work?
- **Costs:** Any new service needs financing: fee-charging services can include start up and revenue costs such as extended professional insurance indemnity, new offices, accreditation, collection costs such as credit card arrangements, client account charges. Further advice is available in the LCN Briefings on Income Generation Guides, referenced at the end of this Guide.

Strengths and weaknesses of case

- Typically, the relative strengths and weaknesses of a case may only become clear after an action has started and once an opponent's position has been made clear after the exchange of statements. Therefore, it is only at this time that a full risk assessment of costs in a court (or sometimes a tribunal) case can be made. However, by this time the method of fee payment should already have been agreed between the Law Centre and client and how far the client will take the case. The Law Centre should build into the service stages for review of costs, risks and benefits to the client.
- In certain types of service, Insurers are involved; for example where a home insurance policy is providing cover for the legal advice on disrepair work. In other services, such as Conditional Fee Agreements, Insurers will only provide insurance after a risk assessment has been carried out; early risk assessment is not absolute and not a science and may not, at the start, accurately reflect the true position.
- Where Insurers are involved they may have different views about a risk assessment and may assume that the risk is much greater than it actually is. The involvement of and the approach taken by the Insurers must be understood from the start of any new service delivery.
- Where costs are a risk, Law Centres will need to have a strong and robust legal risk assessment procedure to assess the merits of each case. The considerations for solicitors assessing the risk of costs are the same as for any non-insured case, and the advice to clients must be careful and considered.

Costs, cash flow and costs regimes

- There are cash-flow implications of entering into any fee-paying service and interim billing is an essential. However in certain types of service such as Damage Based (No Win-No Fee) Agreements in employment work, the absence of interim billing may mean there is a need to finance the possibly substantial costs which can be tied up in any long running and uncertain litigation. This needs to be managed for example by planning to take a mix of shorter and longer cases.
- The problem of the pre-issue work and costs of investigating the claim are sometimes not included in insurance backed cases. The Law Centre has to consider the extent to which the client is going to be able to pay for this part of the costs, if the client will be charged or if this part of the work is unfunded and the impact of including these costs is managed in the overall budgeting of the organisation.
- In respect of a no costs jurisdiction, the general rule is that each party pays its own costs, irrespective of which party wins the case. A successful client may still have to pay his/her own legal fees from any damages awards. This will need to be included in the substantive advice to clients and also in the way in which the Law Centre handles successful awards. For example, it is in the interests of the Law Centre to have an agreement that damages awards are sent to the Law Centre for onwards transmission to the client.
- In a costs jurisdiction the client is exposed to risks of costs being awarded against them if the case is lost. This is why in certain types of case insurance is essential. However there

may be circumstances when the insurance cover is not available or is limited in what will be paid out; for illustrations, see Law Society Guidance¹. It is also recommended that the Law Centre seeks advice or help from experienced solicitors in any service in which staff have not previously engaged.

Complaints

- Advisers are therefore recommended to be vigilant when considering all cases and particularly insurance-backed cases and how these are arranged with the client. Often there are recommended sample client care paragraphs and agreements in the Law Society Practice Advice that advisers can use, examples are in both footnotes below² and are available from LCN.
- 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 in the on the LCN website. For more help including suggestions of external resources, contact LCN.

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¹ Conditional fee agreements guidance, May 2013, from the Law Society: <http://www.lawsociety.org.uk/advice/articles/new-model-conditional-fee-agreement>

² DBA Guidance pre-2013: The Law Society Practice Note 2011 'Damages-based agreements Regulation 2010' <http://www.lawsociety.org.uk/advice/practice-notes/damages-agreements-regulations-2010>