



Setting Up Fee Charging Services

Report on Derbyshire Law Centre:
Setting up Fee Charging Services -
Strategies and Challenges

Derbyshire
Law Centre

Introduction

Derbyshire Law Centre was originally set up in 1989 as Chesterfield Law Centre, to address the absence of specialist advice and assistance in social welfare law in the Chesterfield area.

The Law Centre developed over years, expanding into new areas of competency, developing a reputation for discrimination work, community care and engaging in partnership work with other third sector providers. It also built up work through outreach sessions across Derbyshire; starting new housing contracts in 2013 delivering through six different offices. In 2014 the Law Centre re-organised and became Derbyshire Law Centre to better reflect the work it now carries out across the County.

Its aims have consistently been to provide equal access to justice for all sections of the community by providing free legal services in social welfare law. These objectives it now continues across Derbyshire.

Impetus for working in a new income stream

Cuts in legal aid, as a result of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO), started to impact before their implementation in 2013. Centre staff began to consider setting up a separate trading arm to provide affordable fee paid services with any profits being ploughed back to the Law Centre so that it could sustain its commitment to free services. The trading arm would focus on areas that were no longer being funded by legal aid, or by other funding streams, such as, employment law.

The decision to start a new Company and planning

The Law Centre held a Business Planning day in 2011 devoted to discussion on charging for services with workers and management committee members. The Law Centre took advice from Voluntary Action Sheffield in 2011 and following further discussions, decided that the best option would be to set up a Community Interest Company (CIC); this was incorporated on 28 May 2012.

The reasons for this choice were primarily:

- The constitutional requirements of a CIC sent a clear message that the company would be of benefit to the community.
- The wish for a separate trading arm to draw clear boundaries between the free services of the Law Centre and fee paid services of the CIC.
- The reduction in risk for the Law Centre.

Any profit made would be reinvested in the Law Centre infrastructure to enable the Law Centre to continue to provide free legal advice to those who need it most.

In addition, Law Centre staff and committee were not comfortable initially with charging as part of the charity structure and there was a concern that the limitations on the level of such services, attached to all not for profit legal service providers, could restrict the ability to develop services in the future.

A working group was set up with both workers and management committee to take the project forward; the Law Centre employed a consultant to work with the working group and to assist research. Staff and management committee were involved and consulted in a series of meetings. This working group met every two months; formulated proposals, consulted on the recommendations with staff and took the results to the full Management Committee for decision and ratification.

The drivers for the Law Centre to complete this work were:

- To provide services to otherwise excluded client groups, including those who would not have been eligible for legal aid pre LASPO, but could not afford private practice fees.
- To mitigate the effect of legal aid cuts on those groups.
- To preserve jobs when legal aid cuts bite and continue to utilise caseworkers' specialist skills.
- The potential for a limited income stream for the Law Centre.

Consultation with external funders was considered as important. The Law Centre was concerned that funders could potentially view any initiative for new income from fee charging arena as a substitute for funding. Law Centre representatives approached Chesterfield Borough Council officers to outline the issues and objectives of their proposed plans and invited comments. Management Committee members played a large part in consulting with local councillors and key individuals within funding organisations. The intentions and need for paid services were clearly understood and the Law Centre received no opposition to the plans.

Progression

Progress developed through two stages. The first stage followed lengthy consultation and debate amongst staff and trustees. It was decided to use an external consultant to facilitate discussions and to put forward recommendations. The consultant Beverley Cross, from Voluntary Action Sheffield, worked with the Law Working Group, on the papers and forms needed to set up a Community Interest Company.

The Law Centre was then able to obtain funding from the Transition Fund to support the CIC/Law Centre in the development of ideas and business plan to deliver charged services.

The application was submitted to Companies House in early 2012 and the CIC was incorporated in May 2012.

With consultancy assistance from Matt Howgate the Law Centre then approached the Solicitors Regulation Authority to start discussions about making an application for the CIC to be registered as an Alternative Business Structure (ABS).

Rochdale Law Centre staff in discussion with staff offered useful advice, having gone down a similar route to set up new services.

LCN supplied advice and assistance on the regulatory issues involved in setting up the CIC as a trading subsidiary delivering legal services including being licensed as an ABS and the separate business rules.

These discussions became detailed and prolonged. In the meantime, in late 2012 the SRA agreed the request (negotiated through the Law Centres Network) of a discretionary waiver that enabled Law Centres, previously restricted to free services at point of delivery to clients, to charge for a limited level of services.

The announcement commenced the Law Centre's second stage of decision making and setting up services.

Direction change

In order to develop the CIC as a provider of regulated legal services the Law Centre had to apply to be an ABS. Whilst only three members of MC were required to be registered as directors of the CIC, all MC members were required to be registered as liable under the ABS structure. There was considerable unease amongst some MC members as to the additional responsibility and liability running an as yet untested ABS could bring. This unease about increasing corporate liability is reflected amongst other trustees/MC members on voluntary boards; in addition, in the case of Derbyshire Law Centre, some trustees represent external funders in a scrutiny role and are not there as community volunteer members.

Due to the agreement by the SRA to grant conditional waivers to members of LCN, the Law Centre decided to suspend the application for the CIC to become an ABS and moved forward in early 2013 to develop services through the waiver route.

Using the waiver was judged to be more effective to start a limited service at first, to be less costly and the Law Centre wanted to start the service to a new constituency without waiting for applications and potential delay.

One key enabler

There was one key enabler; funding to transition. The Law Centre was one of a number of partners benefitting from the Advice Services Transition Fund grant for the district of Chesterfield. The funding agreed for the Law Centre was dedicated to set up the infrastructure needed to develop the service, to seek advice on technical aspects and to release worker time to do the essential development work.

Starting up the service

The Law Centre successfully applied for coaching and business support from Growth Accelerator in 2014 (this is a government-backed service designed to support business development through coaching, workshops, information about finance and match funding as appropriate - a one off fee is payable). Law Centre staff found the support offered useful in providing guidance on business

development but was limited in other ways as the advisor had little knowledge of the legal advice sector.

With the structure and understanding in place and all Law Centre personnel committed, and against a back drop of increasing demand for work that was no longer in scope for legal aid, the Law Centre knew that it would take several months to start up. With a framework plan, policies, protocols, referrals, staff training and financial systems developed, the new service started in April 2014, initially in fee charging for employment advice and representation.

At the same time the Law Centre continues with encouragement from local and regional support to offer free initial advice and assistance in employment law. This extends to a level of casework service for individuals that fit criteria and who cannot afford other sources of help. This free service is supported by specific funding given to the Law Centre by local councils (Chesterfield Borough Council, North East County Council and Derby County Council to date) and complements other work.

Charging, costing and future interests

- Initial appointments are free; up to one hours' specialist advice plus, for 20% of those clients, up to 6 hours' casework time at the discretion of the employment Unit. Funding from local councils is provided for this service.
- Hourly rates are set at £104.17 + VAT (calculated on a full cost recovery basis).
- A service in Damage Based Agreements for employment cases (including discrimination where legal help is not available), where suitable, at 25% to 30% (inclusive of VAT), assessed upon risk, and values of case.
- This means that a successful client pays the costs of the law centre at a rate of 25% or 30% of damages awarded (inclusive of VAT) that are recovered.
- Fixed fee service for specific pieces of work; for example, drafting an application to an employment tribunal, preparing bundles for tribunal hearings. This allows clients to do some of the work themselves and keep the cost down.

All rates and scales will be kept under review.

Future interests are to roll out fee paid services in other areas and to investigate:

- Areas of social welfare law where there is no legal aid or alternative funding available in the future (for example; disrepair in housing, damages-only unlawful eviction claims, immigration work).
- Extending ways of delivery of employment work such as unbundled services where the client conducts some tasks and the Law Centre others.

The Law Centre was asked to reflect on the advantages and drawbacks of running the service from the existing Law Centre:

Perceived advantages of keeping the work in house:

- No need to recruit additional staff or change staff contracts.
- Minimal set-up costs.
- Savings in overheads.

- Smooth transition for staff and clients between free and charged-for service where used.
- Flexibility in referrals, taking on work of different kinds.
- Reduced risk for charged-for service starting up as a stand-alone new 'startup'.

Disadvantages of keeping charged-for work in house:

- Change in working practice in asking clients to pay for service.
- Marketing charged-for service alongside free service can be sensitive.
- Although all have been supportive so far, explaining regularly to funders and partners what the service is and the reason for it.
- Potential for financial risk taken by Law Centre; because the services are run by the same entity, the charged for service (if not viable) could in theory add risk to the other services.
- As a Law Centre, we are not able to access After The Event insurance due to Financial Conduct Authority regulations.

Conclusion

Although the first planning stage developing the CIC took much longer than anticipated, the Law Centre managers, staff members and Trustees are satisfied that this was a project they needed to continue to support.

Reflecting back on what the Law Centre learned

The Law Centre identified a few recommendations for others following this route which related mainly to the changing legal environment and maintaining the clarity of the objective of the Law Centre as a provider of free services.

Early problems encountered in registering the CIC as an ABS were to do with being pioneers in the early days of ABS registration; the SRA had yet to understand the nature of a CIC as this is not a usual vehicle for SRA registered entities.

The alternative route of providing a service via a Law Centre waiver and not via a trading arm became possible at the same time as discussions on CIC registration slowed. Thus the need to follow the ABS route melted away.

However the Law Centre still considers that there are many advantages in setting up a separate trading arm to deliver this type of work. Using a separate vehicle can provide a clearer distinction particularly for clients (but also for other stakeholders) between the free services provided by Law Centre and those charged for services of trading arm.

Furthermore, there are still concerns as to whether low income clients can realistically afford charged-for services in enough numbers to make this a sustainable source of income.

The other fundamental learning point was the time that it took for the organisation as a whole to embed the new service into its operation and its philosophy. There was a recognisably difficult cultural shift for the organisation as a whole, plus its members and staff to start charging for work whilst recognising that by doing so the Law Centre was able to keep a service (employment advice) that would otherwise have closed. The need for time to allow this shift to happen should not be underestimated.

Derbyshire Law Centre with LCN Development Team: November 2014