



## Setting Up Fee Charging Services

Report on the Islington Community Law Firm:  
Setting up a Law Centre Trading Arm -  
Strategies and Challenges



### Introduction

In the face of major cuts to legal aid provision, in 2011 Islington Law Centre set about investigating the potential for a new legal structure that would provide a trading function to support the Law Centre services and its clients. This would be done by providing alternative services accessible to at least some low income clients, and by helping to share staff costs with the Law Centre, enabling areas of expertise to be maintained. This report is a summary account of how the Law Centre went about the process, what decisions were made and the reasons behind those decisions.

Recommendations for any similar process are touched upon as a result of some of the lessons learned.

### Initial triggers

The debate about trading from the Law Centre (IsLC) extends back a period of ten years during which the Law Centre had requests to undertake paid work, particularly in immigration. Discussion re-surfaced as the implications of provisions in the Legal Aid Sentencing and Punishment of Offenders (LASPO) Bill emerged and recognition of the substantial areas of provision that would go out of scope. Staff and some trustees started discussions to seriously consider a service that would have to find payment from clients.

In mid-2010 the Law Centre was assisted by London Legal Support Trust to match with a private firm offering pro bono support to build sustainability of a Law Centre in the face of legal aid cuts. Hogan Lovells, Solicitors, offered a range of business strategic thinking, particularly their expertise into linking into contacts in the social investment world and in how to use and understand that world. They also put IsLC in touch with a volunteer with a business background who gave help to write a business plan to develop sustained social enterprise work after LASPO would come into effect.

The Law Centre Director, Ruth Hayes, considers that there were two significant catalysts; a major grant offered by the (Big Lottery) Transition Fund, as well as a grant from the Barings Foundation. A grant from the London Legal Support Trust brought further interest and contacts.

The Transition Fund was a one-off programme requiring advice agencies to identify how they would transition from public service income streams to new income generation. IsLC successfully bid for £287,000, awarded in March 2011. In the view of the Director this was a very important trigger. These funds gave some real time for her to develop plans and enabled capacity building by buying in the time of a new position of a temporary Assistant to support her work, as well as allowing the creation of the new post of Practice Manager. With this support, the Director could work more flexibly. It also meant that work was shared across a number of people, allowing her some space to concentrate on working with the Board and staff on the new company development.

IsLC was subject to a major cut in Legal Aid and Local Strategic Partnership funds, and know that they were fortunate to gain significant Transitional Funding; most similar organisations were awarded in the region of £70,000. The funding awarded was linked to the scale of the cuts to statutory funding, and IsLC was badly affected due to the ending of a number of central Government grants to areas of economic deprivation.

The grant delivered to the Law Centre enabled time and funds for:

- Development of ideas for alternative methods of service delivery.
- Staff to undertake training in areas of work, new to them and with potential for longer Term funding for example, housing law and mediation.
- Training in exploring new opportunities & new ways of working.
- Developing volunteering and pro bono activity.
- Manager's time to develop the new business model, with some bought in assistance.
- Potential redundancy costs: in the event there were no redundancies.

## The decision to start a Trading Company

There were complex factors in coming to a decision; the best structure, the areas of advice work, finance structuring and modelling, and the rationale behind getting start up investment. This project needed to be funded outside the Law Centre and at first the focus was on setting up a social enterprise or social investment structure. The models of a charitable company limited by guarantee, a company limited by shares, and a Community Investment Company (CIC) were considered. Following debate, the Law Centre decided to use a CIC model mainly because the profile preferred was a community facing company, branding as a Social Enterprise could be established and because of the facility to lock in assets for future community benefit.

With pro bono support from the City firm Hogan Lovells, the Law Centre Director attended seminars and one to one meetings with Social Enterprise investors. Advice from those in this sector and potential investors indicated that investment in a Community Investment Company (CIC) would be unlikely to come at the first start-up stage.

The reasons were several and included:

- That a CIC company would be too limited in terms of the financial return on investment for Social Enterprise investors.
- That a number of investors did not generally like the CIC structure as the asset lock was considered potentially restrictive.

- The need to clarify whether the purpose of the Social Enterprise was to generate income to subsidise IsLC or that the objective was to meet social law need in its own right.
- Potential investors were concerned about how low income clients would fund their legal advice and the implications for the company to have a market.

Also of concern in the planning stage was a perception that there was little investment interest in this model of social enterprise delivery of a structured programme, unless it grew on a larger scale. The Director explains this in terms that Government finance and programmes for social enterprise investment does not appear to fit well with Law Centre objectives and ideas. They target new innovation and ideas delivered by the single social entrepreneur - the pioneer idea. For investors, the new company appeared to be delivering something that is too similar to that offered by private firms and was not innovative or unusual enough to be attractive at first.

However, this last point was qualified to the extent that, once the company did start trading and illustrated there was a market for services, it would become attractive and there might be potential to scale up.

The Law Centre Director recognised that the known social enterprise programmes were either for a decent rate of financial return for business start-up and then a yield, or for returns on investment by a model of 'payment by results'.

## Change in Focus

A significant shift was then made to move away from a focus on a new company that was reliant on investments and delivering a financial return for investors. Some investment by external supporters interested in social return may come later, once the model was proven, but attention shifted to the potential for income generation by building services to provide for the shortfall following Legal Aid restrictions.

The Trustees decided to plan for a CIC company as a subsidiary of the Law Centre for the reasons that:

- They had had responses that a few investors may offer funds if the Company were a CIC or a charity as it gave confidence that the money would remain for public benefit.
- This would be a way people could donate, who wanted to support the social value of providing a service for people who were on low income.
- A CIC rather than a standard Trading Company provided staff with confidence the project would hold to social values.
- The Law Centre had the services of a large number of volunteers who were keen to be involved in new services. With a CIC model, volunteers would be donating time to a social delivery model; with an ordinary investment model the issue was they would potentially be working unpaid to give other people a financial return on money invested.

Also of concern were the long term future and the ability of Law Centre values to steer the direction of the new company. This was not for dogmatic reasons of control; the main drivers were to avoid setting up competition in the future. As a result, consideration was given to the alternative Limited Company Trading Arm.

However, it was considered that this could result in problems, should future decisions of the Trading Arm management result in the new company bidding against the Law Centre in open

commissioning rounds. With competition from the Company the Law Centre may find it harder to retain and secure contract revenue. It may also prove more difficult to share overhead costs and staffing expertise.

## Formation of the CIC and development of objectives

The momentum to press on in setting up the CIC was driven by:

- The intention to further the Law Centre mission to offer good quality advice at affordable rates and to ensure that people are treated fairly.
- The sustainability of all services in the Law Centre, not simply Legal Aid services. The free legal services would continue in the Law Centre but with no major funding stream to help grow them after April 2013. In the absence of chargeable services, the concern was that staff skills and casework areas, particularly in non-asylum immigration, education, employment and discrimination, would 'wither on the vine'.
- The anger felt by Trustees and staff at what was happening to legal services and the impact on their people.

## Development stage, people involved, levels of involvement

The Transition Fund, together with other grants, enabled time and money to organise and attend essential planning and building meetings including getting everyone at the Law Centre around the table. This included a crucial structured planning and development half day meeting hosted by Hogan Lovells with Trustees and staff.

The amount of unpaid time put into building the plan by all involved, has been unquantifiable and significant. In the view of the Director, the project would not have happened without that unpaid time, as well as the very significant pro bono contribution from Hogan Lovells.

Once the legal structure was clear, it was decided that the initial areas would be immigration, employment and education. These areas were chosen from IsLC intelligence on local need and resource shortfalls and skill sets in the current staffing. These three areas were ones that would be likely to attract clients of different means and ability; they would, on the whole, be a different group from those traditionally using the Law Centre, particularly in education.

The next stage focused on staff structure, consultation and management of staff expectations. No staff member expressed lack of interest in the project, or in being considered for the CIC work. Some staff were understandably concerned around which staff members would be affected, how they would be chosen, what areas of work would be involved and whether transfer to work in the CIC would be voluntary. Specialist help and advice came from Hogan Lovells Employment Team.

All areas had considerable planning but in particular, strategies for staffing, consultation and future training were examined.

### 1. Staff structure

The initial structure for the new company was built into the business plan:

- The compliance COLP/ COFA roles; to be undertaken by the Centre Director and one of the Law Centre's solicitors.

- New role of Solicitor in immigration work to be filled by external recruitment to draw in commercial experience.
- Full time Administrative/Development post to be filled by external recruitment.
- Other Supervision and Caseworker roles were then able to be filled externally or internally although it was anticipated in the first year (Year One) that staff would be shared with the Law Centre either on a consultancy or a secondment basis, according to need.

Based on a charging model that estimates billing approximately 1,050 hours per year, the plan is to employ one full time solicitor in Year One, three additional solicitors or caseworkers in Year Two and a fifth solicitor or caseworker by Year Five.

## 2. Consultation

The debate as to whether to seek to fill all posts from transfers of Law Centre staff or from a mixture of external and internal recruitment addressed the following issues:

- At least some of the new company workers need to have a slightly different set of skills and experience to that essential to Law Centre service delivery.
- A recognition that the CIC needs a skill set that matches the different approach; understanding commercial and fee-charging environment does not come automatically.
- The wish to enable the existing Law Centre staff to have choice, rather than no choice, in moving to the new service as it is essential not to start with workers who felt they had no choice in transfer to a new posting.
- It gives current staff time to consider options rather than having to make an early decision to take a new posting.
- It enables current staff to consider undertaking an employment contract with both services (i.e. part time with each) where appropriate but this would not be a requirement.

Over a period of time, in the view of the Director, it is possible that staffing by dual contract employment will be the exception not the rule; that is, there will be a gradual move to work solely with either company but not with both.

## 3. Training for the new future

Staff development was enabled by the funds from the Transition Fund; this included several staff undertaking mediation training, as well as staff developing skills in areas of law such as in housing.

## Reaching a decision

Once the staffing structure was established, the momentum gathered. By approximately the eleventh month into the project, the active Project team included Ruth Hayes, Centre Director, Lindsay Edkins, from the Trustee Board, the Chair of the Board and the team from Hogan Lovells.

As each stage of the decision-making progressed, the project developers went back to Trustees to report, consult and identify barriers and advantages in the decisions, what was needed and the outcomes.

Following extensive discussion amongst Trustees, it was decided to go for the Trading (Charging) Company to be constituted as a subsidiary model of the Law Centre company.

The Trustees made the decision on the constitution of the Board with a primary aim to give it a clear identity. It adopted an initial limit of three directors of the CIC, a cap of two Directors who are also Law Centre Trustees (they are the solicitor & barrister members). The plan is that once the Company starts trading, the Board will grow in numbers and recruit experience of those who work or are active in Social Enterprise companies.

A major work area developed across the following areas:

- The CIC had to be registered with the Solicitors Regulation Authority (SRA) as an Approved Business Structure (ABS) unless a waiver was given. The Law Centre also needed to have a waiver, or to register as an ABS, as the owner of the CIC.
- An ABS application was then submitted at the same time as the waiver requests. There were some delays as the SRA wanted to first take a view on the waiver requests before progressing the ABS application.
- After the initial stage of ABS application, the SRA agreed to grant a waiver to allow the CIC to trade without requiring it to be registered as an ABS. This also meant that the Law Centre did not need to become an ABS and these changes needed to be absorbed in the business plan.

## Financial planning & costing, business planning and use of experts

The decision to go ahead was made in June 2012, and the financial business model for the charging company proposed:

- A subsidiary trading arm of the Law Centre that is a Company Limited by Guarantee and a Community Interest Company.
- A minimum start up funding target of £150,000; by September 2012, £90,000 had been raised from donations (including City firms) and grants.
- Estimated revenue in excess of £400,000 in Year 2 and of £500,000 in Year 3.
- With gross margins from 32% (Year 1) through to 45% in the following four years.
- A small net surplus by Year 3 which could be used to grow the business or to support specific needs at the Law Centre.

Expenses and general overheads have been modelled to support three to five (full time equivalent) solicitors and/or caseworkers. These margins were considered necessary in order to meet the new company's overheads and to quickly build a sustainable business model.

A separate issue was whether to tender for a Legal Aid contract; the tender programme was due to open imminently in September 2012 for face-to-face work. It was decided for the CIC to bid for an asylum contract but not a housing contract. However, that bid was withdrawn as the delays in SRA registration meant that it was unlikely that the Company would be ready to start trading on 1st April 2013, the contract start date.

The decision was made to retain the focus of the original objective planned for the new company which was to build services to provide for the shortfall following Legal Aid scope restrictions and to provide for those no longer eligible for Legal Aid. The Law Centre would bid for Legal Aid contracts, particularly with the intention of maintaining specialist experience, assisting with capacity to deliver the core work including housing and asylum work in the Law Centre and to provide some base for seed work for other funding streams.

## External support

The involvement of an outside facilitator with a high level of knowledge was substantial and played a significant part in gaining momentum. Other pro bono firms gave levels of advice and support but the main input from Hogan Lovell was crucial, along with funding from Barings to pay for the Centre Director time.

During staff consultation and Trustees planning sessions, Hogan Lovell hosted and facilitated:

- An information session for staff and Trustees together.
- A meeting for the Directors of the CIC and Law Centre Trustees together, covering all planning and business aspects.
- A presentation on separate branding and clarity of brand messaging, to CIC Directors with the Law Centre Chairperson.

Further, active introductions for the CIC Chair and Law Centre Director to potential Social Investors gave inspiration, insight and information.

The Director considers that the company structuring and registration process was one of the most resource-intensive parts of the project. The ABS application was extremely time consuming, as it became apparent that the process of new ABS registration, at least in the first few years of SRA regulation, was not designed to accommodate this type of application. The result was a considerable administrative burden for Trustees.

## Learning points and recommendations

This is a project involving a cultural shift that was initially instigated by external factors and not entirely from the choice of the Law Centre; inevitably it produced considerable unexpected aspects during the start-up phase. The Centre Director considered the learning points gained and what she would recommend to others in a similar position in the future and described the main ones as:

### 1. Allocation of time

- A major issue was the volume of work and the limitation on giving priority to the CIC work over Law Centre work.
- The level of work required for the Law Centre Director will usually be active, immediate and urgent, compared to the future planning role.
- Ideally to enable her in the CIC role to be more pro-active, she would for future projects recommend a regular day per week allocated to CIC work.
- Introducing temporary administrative support to support the Director's Law Centre work was essential
- The volume of work created by the SRA applications was significant and unexpected. This involved forms, job descriptions and Criminal Record Bureau checks and intense reviewing and double-checking of forms for accuracy. In other words, a large paper administration trail.

Whilst the main message for others is not to underestimate the time involved in the SRA work, the Director recognises that this stage may be quicker for new entrants as the landscape has changed.

A waiver may be granted more easily and a new company may not need to embark on the ABS route.

## 2. Planning

- To resolve the staffing structure more quickly by starting the process to select the COLP/COFA roles at an earlier stage, if possible. These roles in the CIC are placed with an employment solicitor who has business accounts experience.
- To increase the time involved in meeting with other agencies and apply for a larger figure in funding applications. Additionally, for IsLC, preparing the branding took longer than was originally expected.
- To approach arrangements to set up the banking profile at an early stage. This can be complex and take extra time as the traditional banks are unaccustomed to dealing with an unusual structure; in the case of Islington, this is a Trading Arm that is also a form of solicitors' practice with a client account.
- The advantage of putting more time into spreading the profile and future plans of the new Company would be in attracting future work once set up, with the expectation that the new company is then a known brand because of the early ground work.

## 3. Market testing

Business advisers recommended investigating the market. The Centre Director took the first discussions to Toynbee Hall, which is an East London settlement delivering several community services and with a significant advice role. Toynbee Hall managers were at the time in the process of considering new markets and there was a potential for a co-ordinated approach.

However, after considering the options and what could be tested, the Director's conclusion was that it would be difficult to gain any information of real value from a market testing exercise in the local area. Reasons included:

- Many current practitioners are at the cheaper end of the private practice market and they are not transparent about their fee levels.
- Conducting local market testing would not give the Law Centre information that would be comprehensive, as the sample size would have been too small to make accurate predictions.
- The problem of testing a service that is like-for-like. The CIC plan was for a strong emphasis on quality and transparency. The feedback from community organisations was that there were real concerns about quality and expertise in other outlets. For the CIC, there is a substantial cost to staff training, access to reference materials and experienced staff. So it was not necessarily expected that the CIC would be cheaper than some existing provision; more that it would be better value.
- The market is unpredictable and there are expectations that private practice firms behavior (in similar areas of law) were likely to change following the LASPO Act implementation.

## Current position

As at November 2013, the Trading Arm has completed the branding and promotion of objectives in public. It has a name; Green Roots Community Law Firm. There have been positives in that the



planning stage has opened up new opportunities for trading through making contacts with organisations that want to be referrers and promoters of the service. Recruitment for the external positions started in October 2013.

The staffing model for the first year is as originally planned: a part time Director, up to three Solicitor/Caseworker posts and a full time development and operations role.

Currently the time dedicated to the CIC work by the Director and Supervising Solicitor totals between one and two full time days per week equivalent. The Director considers that any organisation going down the trading route should not underestimate the time to start-up, particularly where the lead people are not working on the project full time.

## Future interests

The CIC is almost ready to start trading. Future interests to develop as part of the business plan include:

- Employment work using conditional fee agreements whereby the client pays costs only if s/he wins.
- Research into the feasibility of insurance cover for clients to enable other civil litigation areas to be undertaken.
- Investigating lawyer-led mediation in employment advice, with the cost of mediation being covered by the employer. This again is an uncertain market with the advent of Employment Tribunal fees for employees and it needs considerable research.

## Conclusion

Although the first planning stage of the CIC took much longer than anticipated, the Law Centre Managers and Trustees are satisfied that this was a project they needed to continue to support. The unprecedented changes in the political, economic and social context of public service legal advice, the rising demand for advice and representation and the major reduction in former long term income streams have caused an unstable environment, impacting on the policy framework and advice partnerships of the Law Centre. Providing a different and much needed service and a wider client base, via the work of the CIC, will contribute, it is hoped, to bringing more stability to the future of the Law Centre.

There will be further developments of Green Roots Community Law Firm and the needs of clients are forever changing.

In respect of other Law Centres that are taking steps to develop new income streams for casework, Islington Green Roots is willing and able to advise and the Law Centres Network will continue to support and assist.

**Islington Law Centre Director with LCN Development Team: November 2014**