



Risk Management - Money Issues

Introduction

Law Centres need to review and assess the risks they face. Managing risk effectively is an important part of ensuring that each Law Centre will be able to continue to serve its local community. The risks faced by each Law Centre will depend on its size and the complexity of its operations.

Law Centre trustees will be carrying out risk assessment and management as part of their annual review. Larger Law Centres may be required to include risk reviews in their annual reports to the Charity Commission. This briefing aims to help staff and trustees identify the major risks that arise in relation to money issues so that they can put appropriate systems and procedures in place to minimise, mitigate and manage those risks.

The briefing has a section on general money issues facing all Law Centres and draws heavily on guidance provided by the Charity Commission. It also includes some additional information which is particularly relevant to Law Centres which operate fee charging services.

The LCN seeks to help and guide, but this is not intended to be a complete guide to what Law Centres need to do. Each Law Centre is working in a different environment and may have further issues to consider.

Money issues

Issue	Potential impact	Mitigation
Budgetary control	Decisions made on inaccurate financial projections/reports Inability to meet commitments/objectives Poor cash flow	Direct links from business plan to budget Timely and accurate reporting Accurate costing Procedures to review income /expenditure/cash flow/control costs <ul style="list-style-type: none">• See LCN Office Manual• See 'File Management', 'Supervision' and 'File Review' below
Reserves policy	Damage to relationship with funders/wider community if policy is not justifiable	Link policy to business plan and budget Review policy in light of Charity Commission guidance <ul style="list-style-type: none">• See 'Further Information' below

Issue	Potential impact	Mitigation
Cash flow	Lack of funds to meet commitments Impact on operations	Adequate cash flow projections Identify pressure points Good information flow Monitoring and reporting arrangements
Dependency on income sources	Severe if a significant income source is lost	Adequate reserves Diversification of income streams <ul style="list-style-type: none"> • See 'Charged-for Services' below
Pension commitments	Underfunded defined benefit scheme Impact on future cash flow Failure to meet dates for payment Regulatory action or fines	Use of actuarial valuations Review money purchase schemes Review admission and administration controls
Fraud, dishonesty or error	Financial loss Reputational damage Staff morale damage Damage to client relations Breach of SRA principles/negative outcomes Regulatory action	Review financial controls & procedures Strong supervision <ul style="list-style-type: none"> • See 'Supervision' and 'File Review' below Segregate duties Authorisation limits Anti-fraud and bribery policies <ul style="list-style-type: none"> • See LCN Office Manual
Charged for services	Subsidy from core funding if pricing fails to cover costs Breach of SRA principles/negative outcomes Regulatory action	Market testing Budget variance reviews <ul style="list-style-type: none"> • See 'Further Information' below • See 'Regulation' below

File opening and file management

Most Law Centres need to report on the numbers and types of case which they open in order to meet funders' requirements, so good file management is a basic element of financial risk management. Usually, a Law Centre will need to open a file for every case which goes beyond one off advice. You need to be able to list how many cases there are overall and the caseload of each caseworker.

Both Lexcel (Section 7.3) and the Specialist Quality Mark (Section E1.1) require you to be able to produce detailed lists of open and closed cases and this would include funding type. Cases funded from different sources must be kept separate from each other so that it is clear what the funder (or client if running a charged-for service) is paying for. You would need to add private paying and insurance to your matter categorisations if applicable.

Supervision

Supervision is a crucial part of risk management. Good supervision will help to ensure that targets are met and that files comply with funders' requirements. Supervisors need to have an overview of the caseload of each caseworker and the balance between different types of work. It can be very important for caseworkers to meet targets for particular funders but, in order to maintain

high professional standards, supervisors also need to ensure that they are not under undue pressure to take on too many and/or too complex cases.

It can help to discuss caseloads in team meetings so that caseworkers can support each other and everyone is clear about the Law Centre's policy in respect of taking on different types of case. It is a good idea to clarify that staff are expected to adhere to the Law Centre's policy in respect of accepting instructions from clients and they are not authorised to accept instructions except in compliance with the policy.

Any cases taken on outside the policy may not comply with the SRA Code of Conduct and could result in disciplinary action for any staff members involved. For example a solicitor opening a case in their own time, away from the Law Centre, would not be authorised as a sole practitioner or have professional indemnity insurance.

Supervisors often get to know the people they are supervising quite well and so they can tailor supervision to the individual. This also helps them identify if their colleague is struggling or may have a problem, even if the person themselves is reluctant to raise the issue. For example, if someone is clearly under pressure but this does not make sense in comparison to their workload, you need to find out why and explore ways to reduce their stress at work.

Supervision will typically include some or all of the following:

- Checks on incoming correspondence/documentation whether hard copy or email
- Checks on outgoing correspondence/documentation whether hard copy or email
- Team meetings to discuss cases taken on, recent developments, successes and challenges, cases concluded, training
- One to one supervision sessions – formal and/or informal
 - Reviews of caseload for workload and complexity
- File reviews.

File reviews

File reviews are extremely valuable as they give the supervisor the opportunity to consider a sample of their colleague's work in detail, from legal, procedural and file management perspective. All funding types need to be included, not just legal aid, so that over the course of a year a representative sample of each person's work is file reviewed.

Charged for services

Legal aid cuts have caused significant access to justice issues which has increased demand on Law Centres at a time when alternative sources of funding have also reduced. Need far outstrips available funding and Law Centres have found themselves in the difficult position of having to turn clients away, due to their policy of only providing services free of charge, even though people told them they would be happy to pay. This is an additional pressure for Law Centre staff but to provide an unauthorised service, outside the Law Centre's policy, even if in their own time, could have serious consequences. It would not be covered by the Law Centre's professional indemnity insurance, could lead to disciplinary action and if a solicitor, to an investigation by the SRA.

In the current climate some Law Centres have concluded that it is better to provide high quality social welfare law services at reasonable fees than to deny people a service altogether. In addition, ‘charged for’ services have enabled the Law Centres to retain the expertise of staff in scarce social welfare law disciplines.

There are policy and practice issues to work through, and having done so, some Law Centres have created charged-for services such as; advising on compromise agreements and other employment matters, providing immigration advice, and obtaining damages in housing disrepair cases which are outside the scope of legal aid. These services increase access to legal advice and produce generally relatively small but useful additional funding, which is ‘unrestricted’ in charity accounting terms and can be used to further the Law Centre’s wider aims.

At first sight, accepting payment from clients appears to introduce new risk factors which Law Centres need to take into account. However, on closer examination they can be seen as an extension of risk issues facing all Law Centres, whether or not they are charging for services. These can be prevented or mitigated by operating effective supervision, robust financial authorisation and monitoring systems, acting in the client’s best interest and safeguarding the Law Centre’s reputation in the community. Law Centres operating charged-for services will need to review their procedures accordingly. Key issues are set out below.

SRA requirements

The main requirements relating to fee-charging services are to be found in Chapter 1 of the Code of Conduct ‘*You and Your Client*’:

No.	Requirement	How met
1.1	Treat clients fairly	Equality and diversity policy/clarity about charging policy and fees
1.6	Fee agreements that are legal	Client care letters
1.7	Inform clients of regulation and protection	Client care letters
1.8	Limitation of liability and minimum cover	Client care letters
1.9	Inform clients of right to complain and how	Client care letters
1.10	Details of Legal Ombudsman	Client care letters
1.11	Dealing with complaints	Complaints procedure, client care letters
1.12	Retainer information required	Client care letters
1.13	Best information on likely costs	File management procedure, client care letters
1.14	Info on client’s right to challenge bills	Client care letters (if appropriate)
1.15	Account for financial benefits received	Client care letters if referral fees are paid or received (prohibited in legal aid work)
1.13	Cost-effectiveness of action to be taken	Case management procedures
1.14	Advising possible changes to fees	Client care letters
1.15	Warning about payments (disbursements)	Client care letters
1.16	Methods of payment	Client care letters
1.17	All relevant information on CFAs	Must be compliant where CFAs are used

No.	Requirement	How met
1.20	Treatment of financial benefits	Client care letters if referral fees are paid or received
1.21	Disbursements limited to actual amounts	Policy

Other regulators

If the Law Centre employs barristers or Chartered Legal Executives, it will need to take the relevant codes of conduct into account.

- Bar Standards Board Code of Conduct <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>
- CILEX Code of Conduct http://www.cilex.org.uk/membership/code_of_conduct.aspx

If the Law Centre is proposing to offer paid for immigration advice, it should check the OISC's website in relation to its obligations as a fee-charging service.

<https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>

Client care letters

As shown in the table above, client care letters are very important in demonstrating that SRA requirements are met. In addition to the LCN template letter, Law Centres may wish to read the Law Society Practice Note (the current version dated 26 March 2013 at the time of writing) <http://www.lawsociety.org.uk/support-services/advice/practice-notes/client-care-letters/>

It is always important to be clear in confirming the client's instructions in writing; but this is particularly important in private-paying cases where the Law Centre is providing 'unbundled' services, where the client is doing some of the work and the Law Centre is not taking responsibility for the entire case in the traditional way. You may need to specify what is not included as well as what is. Law Centres may wish to read the Law Society Practice Note (the current version dated 19 March 2015 at the time of writing) <http://www.lawsociety.org.uk/support-services/advice/practice-notes/unbundling-civil-legal-services/>

From October 2015, where a complaint is not concluded at the first stage, providers will need to tell clients of an ADR approved body which would be competent to deal with the complaint: this is in addition to the current and general information requirements about complaints to the Legal Ombudsman. More detail is in the Law Society note (para 1) here:

<http://www.lawsociety.org.uk/support-services/advice/articles/changes-to-client-care-information-and-leo-time-limit/>

Solicitors Accounts Rules

You will need to discuss your charging policy and proposed arrangements for collecting fees with your accountants. If you need to operate a client account, it will entail additional audit and reporting requirements, which is likely to increase accountancy fees.

If you operate a client account, the Law Centre will need to comply with the Solicitors Accounts Rules. The Law Centres Quality Manual provides guideline procedures for handling and accounting for money which will enable you to do so.

There needs to be clear understanding of the relative roles of the Supervising Solicitor, Finance Officer, Law Centre Director and Management Committee in relation to operating and monitoring financial transactions.

Client account

Money received from clients for fees generally needs to be paid into client account unless it is a fixed fee paid in advance of the work to be carried out, when it can be paid into office account. Money received to be paid out on the client's behalf as disbursements needs to be paid into client account. As a Law Centre itself is not an entity regulated by the SRA, a client account will need to be opened in the name of the principal solicitor (SAR 13.3)

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

If you operate a client account, all financial transactions need to be clearly recorded on the file as well as the client's matter ledger.

Handling money

Law Centres must have a clear procedure handling money before any transactions involving charging, taking money from clients and/or client account. A clear policy would: strictly limit the number of those who handle money and have access to it; and review the financial monitoring and supervision procedures regularly. Where there is little accountancy experience amongst staff, it is advisable to consult the Law Centre's accountant as to what constitutes a good practice and advice on training needs.

It is strongly advised not to accept payment in cash and only to accept payment by cheque and electronic means such as Paypal or electronic banking as this provides a clear audit trail.

Debt recovery

Law Centres do not want to be placed in a position where they have to pursue clients for unpaid fees and so they favour charging schemes which make this extremely unlikely, such as; fixed fees, damages-based agreements, conditional fee agreements and payment from insurance policies. Through these mechanisms payment is obtained in advance, or comes out of damages or from an insurance company rather than from the client direct.

Anti Money Laundering

Law Centres will want to satisfy themselves as to the identity of their client. However, most Law Centres will not be covered by the Money Laundering Regulations 2007 and so they will not need to obtain evidence of identity in the forms required under those regulations.

The Law Society's Practice Note dated 22 October 2013 (current at the date of writing) includes the following list of activities which are NOT covered by the regulations:

Activities not covered by the regulations

The Treasury has confirmed that the following would not generally be viewed as participation in financial transactions:

- preparing a home information pack or any document or information for inclusion in a HIP - it is specifically excluded under Regulation 4(1)(f)
- payment on account of costs to a solicitor or payment of a solicitor's bill
- provision of legal advice
- participation in litigation or a form of alternative dispute resolution
- will-writing, although you should consider whether any accompanying taxation advice is covered
- work funded by the Legal Services Commission (sic).

Lexcel

Law Centres which are accredited to Lexcel will need to review how they meet the following requirements in relation to charging policies and procedures. See the Law Centres Quality Manual for suggested procedures and wording.

No.	Requirement	How met
2.4	If appropriate, the department should have a procedure in relation to billing clients which should include: a: the frequency and terms for billing clients: b: credit limits for new and existing clients c: debt management	Procedure in the Office Manual and evidence of effective operation on files
2.5	Departments handling financial transactions should have a procedure which should include: a: the transfer of funds b: the management of funds received by the department c: authorisations	Procedure in the Office Manual and evidence of effective operation on files
5.1	The department must be encompassed by the organisation's risk management policy or have a policy that is particular to the department, which should include: a: a compliance plan, if relevant (not relevant to Law Centres as they are not authorised bodies with a COLP/COFA) b: a risk register c: defined risk management roles and responsibilities d: arrangements for communicating risk information	Consideration of the risks associated with handling money/charging policies, eg., reputational damage

No.	Requirement	How met
6.4	<p>Where appropriate, the department must give clients the best information possible about the likely overall cost of the matter, both at the outset and when appropriate, as the matter progresses. In particular practices must:</p> <ul style="list-style-type: none"> a: advise the client of the basis of the practice's charging b: advise the client where the practice will receive a financial benefit as a result of accepting instructions c: advise the client if the charging rates are to be increased d: advise the client of likely payments which the practice or the client may need to make to others e: discuss with the client how they will pay f: advise the client that there are circumstances where the practice may be entitled to exercise a lien for unpaid costs g: advise the client of their potential liability for any other party's costs. 	<p>Procedure in the Office Manual and evidence of effective operation on files</p>

Further sources of information

Charity Commission Guidance

Charities and Risk Management CC26

<https://www.gov.uk/government/publications/charities-and-risk-management-cc26/charities-and-risk-management-cc26>

And please note that charities need to report any serious incident to the Charity Commission.

<https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>

Law Centres Network Guidance

Briefings in the 'Setting up fee charging services' series, which Law Centres may find useful include:

- **Charities and trading** – deals with charity law rules and limits on the ability for charities to trade
- **Initial steps in planning a new service** – deals with testing what you want to do; internal and external challenges; next steps
- **Management implications for Law Centres** – deals with marketing, feasibility and competition; constitution and trustee authorisation; staffing; impact on existing policies; costs, cash flow and costs regimes; costs risks for clients and indemnifying clients; complaints
- **Template client care letter** – fixed fees and hourly rates
- **Reports from Islington and Derbyshire Law Centres about their experiences of setting up fee charging services**
- **The Law Centres Quality Manual** provides suggested wording for relevant sections of the Office Manual.

For more help, contact the LCN Development Team.

*LCN is very grateful to **Vicky Ling** for writing this guide.*

LCN Development Team March 2016