

ANNEX 16

Commercial sources of funding

Introduction

The main commercial sources of funding for advice and legal support services are:

- commercial sponsorship;
- pro bono support;
- creditor payments;
- fee income;
- insurance payments;
- community banking.

This Annex provides further background on fee income, insurance payments and community banking (see Annex 17 for further background on pro bono support).

Fee income

Fee income is the main source of income for private practitioners other than legal aid. Although it is not appropriate (or possible) to charge fees for some aspects of social welfare law advice provision, such as debt or benefits, there is scope for charging for aspects of immigration work and employment work. Solicitor agencies in the not-for-profit sector, like Law Centres, are now allowed to charge for advice as a result of a recent change to the Solicitors Regulation Authority's Practice Framework Rules (2011)¹ and are using alternative business structures, such as community interest companies (CICs) or trading subsidiaries, or obtaining wavers. For example, Rochdale Law Centre has established a CIC, 'Rochdale Legal Enterprise', with the help of a grant from the Baring Foundation. The CIC will provide advice on immigration and employment cases and will donate any surpluses on this work back to the Law Centre.

Rochdale Legal Enterprise's employment work will be undertaken on a 'no win, no fee' agreement, which will take 25 per cent of the settlements or awards made to clients in employment tribunal proceedings. Contingency fee arrangements of this kind are another way of generating fee income, which can be used by both private sector and not-for-profit providers, although private sector providers typically charge a 30–35 per cent success fee.

1 Available at: www.sra.org.uk/solicitors/handbook/practising/content.page.

Calderdale CAB has established a social enterprise subsidiary called 'Advice Extra' which markets the CAB's services to employers, including Calderdale BC, who pay a fee to allow their staff to access the service – for example, for debt advice.

One of the challenges both the private sector and the not-for-profit sector face in generating more fee income is lack of expertise in business planning and marketing. There is also a danger that if organisations target people just above legal aid limits, they may find their clients are unable to pay (so it will be advisable to get payment up-front) or if they are being paid on a no win, no fee arrangement, this could affect their judgment as to when to settle a case, such as an employment tribunal. Because many lawyers have little experience of these situations, the Law Society has been developing guidance on this range of issues.

Outlook

There is likely to be some increase in fee income to the not-for-profit sector, but this is likely to be limited to just a few agencies and will only have a minor impact overall. The cuts in legal aid will mean a decline in income from social welfare law work for commercial firms and there is only limited scope for not-for-profit agencies generating fee income.

Insurance

As well as being provided on a stand-alone basis, legal expenses insurance is commonly included in motor policies and – increasingly – in household policies. When it is sold as part of another policy rather than as a stand-alone product, it is often presented as a free (or low cost) addition. Some people have as many as three different insurance policies which include legal expenses cover, but, more often than not, they are unaware that they have such cover.

Typically, cover is provided for the legal expenses that the policyholder may incur in most personal injury, consumer, property and employment disputes, as well as for any award of the other party's legal costs. Cover would not extend to welfare benefit or debt cases. Normally, there is a requirement that if a policyholder makes a claim for legal expenses, any legal action for which the expenses are incurred must have a reasonable prospect of success. The policyholder is also usually required to accept any reasonable offer of settlement.

When a policyholder puts in a claim under a policy of this type, most insurers will assess the dispute in-house and will then determine whether there is an arguable case. If the insurer concludes that the case has little prospect of success, it may simply notify the policyholder that it is not prepared to accept the claim.

Where the case appears more complex, or seems to have a good chance of succeeding, insurers usually appoint one of their panel of solicitors to consider the matter. These panels are set up by insurers to deal with cases on commercial

terms that are agreed in advance. The terms may be agreed on a ‘no win, no fee’ basis (where the solicitors expect to cover their costs through the costs awarded against other parties, if their client is successful) or on the basis of a set fee per case.

Legal expenses policies often give the insurer the freedom to choose which solicitors to appoint for advice and assistance up to the time where legal proceedings start – unless there is a conflict of interest. However, once proceedings start (when the legal ‘claim form’ is issued) – or if there is a conflict of interest – the law allows policyholders to choose their own solicitors. These policies are wide enough to include legal proceedings pursued and defended in tribunals – for example, employment tribunals – as well as proceedings in courts. Insurers sometimes have no objection to using a policyholder’s own solicitor, but for commercial and quality-control reasons, insurers often prefer to use their solicitors from their own panel.

By working with clients who have insurance for employment cases, not-for-profit providers can cross-subsidise their work with clients without insurance or without legal aid. One way of scaling-up these possibilities would be for local authorities and housing associations to negotiate block insurance agreements on behalf of their tenants, which included cover for legal expenses (on the same lines as some authorities are doing for gas and electricity). Where an insurance policy did not include this cover, they could use their purchasing power to insist that it was included or else take their business elsewhere. Insurance cover would also protect against disputes between tenants and councils/housing associations about communal problems, such as water ingress, which can involve significant costs to councils and housing associations.

Outlook

Although there is scope for making greater use of insurance, it is only likely to have a (minor) impact – and then mainly in the employment advice area. If it is to have a wider impact, there would need to be more concerted encouragement from bodies like the Local Government Association and the National Housing Federation, as well as a significant culture change amongst the general public.

Community banking

The idea of community banking or community finance goes by many names and has been gaining increasing prominence in the UK. At the core is the existence of financial institutions that have a remit that goes beyond maximising profit to include goals ranging from financial inclusion to local economic development. The goal is for different organisations to come together to be able both to support individuals with financial inclusion through advice, banking services, credit when needed and education, alongside projects to support lending to businesses and local economic development. There have been many

positive successes from such partnerships and many financial organisations in the UK work with advice agencies in delivering advice or have services in house that meet outcomes in debt and housing. For example:

- **Enterprise Credit Union** was the first credit union in the UK to succeed in replicating the Irish Money Advice Budgeting Service (MABS) model. Credit Union staff provide access to money advice, debt repayment services and budgeting and bill payment help. The growing popularity of MABS has led to housing association partnerships with Knowsley Housing Trust and the Riverside Group.
- **Lewisham Plus Credit Union** has developed and piloted ‘budget accounts’ to correspond with the roll-out of universal credit which help members manage their bills over the new monthly cycle of benefits payments (as opposed to twice-monthly as previously). They are working with a range of housing partners including registered social landlords and private landlords to help residents manage welfare reform changes and with debt advice.
- **Wessex Home Improvement Loans** provide home improvement loans for people who would otherwise be excluded from accessing funds but who need to address their house maintenance needs. They take referrals from 20 local authorities in the South West of England for essential maintenance, repairs and adaptations. They have a sustainable finance model which uses local authority capital to finance the repairs. This means the capital is available to be reused once it is repaid. They recently launched Wessex Resolutions to deliver free money advice services with a similar delivery model, so they take referrals from local authorities and often visit vulnerable clients at home to deliver high quality debt advice.

However, despite successes in supporting access to finance in the UK, credit unions and other such institutions still have a tiny market share of deposits. International comparisons show that the UK is still dominated by a small number of very large commercial banks. In contrast, in France co-operative banks have a larger share of the banking market than commercial banks, and Germany has a ‘three pillar’ banking system comprising commercial, co-operative and state-owned savings banks.² This means there is still a lot of progress yet to be made, but new changes to Financial Conduct Authority legislation means there is more scope to do this. There is also a need for the sector to become more financially sustainable and appeal to a more diverse client base.³ With the right support and partnerships in place there is potential to scale and stimulate positive competition across the financial services industry.

² *Stakeholder banks*, New Economics Foundation, 2012.

³ Jones and Ellison, *Community finance for London: Scaling up the credit union and social finance sector*, 2011.

Outlook

Although community banking is still on a very small scale in the UK, there is growing political interest in the concept, which, given the increasing unpopularity of the commercial banks, could result in it having a bigger role in helping address the issues of financial exclusion.