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In search of learned friends

A crowded and competitive legal market helps cost-conscious charities shop around for value, finds Diane Sim in our second annual legal survey.

Charity Legal Survey 2013

CHARITY FINANCE'S second annual Charity Legal Survey reveals a very positive state of affairs existing between charities and their legal advisers. Almost 95 per cent of the 150 charities surveyed are happy with the services provided by their main legal adviser and would recommend them to other charities.

With a broad range of specialist and generalist legal advisers at their disposal, charities enjoy the benefits of choice and a healthy level of competition. And if that wasn't enough, the increasing availability of pro-bono services provided by large city law firms as part of their corporate and social responsibility programmes puts the cherry on an already fairly appetising cake.

Competitive market

"The legal market is very competitive and there is lots of scope to shop around and test out a new firm. We have found the use of pro-bono lawyers invaluable this year," comments the head of legal services at a charity with annual income of £66m.

Amplifying just where the power lies in this buyer's market, the director of a charity with annual income of £1.4m comments: "If I were dissatisfied, I would move."

Of course nothing is perfect and although charities are very happy overall with the services supplied by their legal advisers, they still have some concerns. Unsurprisingly in

the continuing recessionary climate, the top gripe, shared by around a third of charities surveyed, is that legal fees are too high (see figure 15).

"The legal market is very competitive and there is scope to shop around"

Even here, however, the main concern is to do with affordability rather than value for money: over 75 per cent of charities say that their main legal adviser provides good or very good value for money, while 19 per cent rate it average and just 4 per cent consider it to be poor (see figure 13).

"It would be good if fees were a bit lower, not because they are too high compared to the rest of the market but because our budget is tight," says the CEO of a charity with annual income of almost £2m.

Concerns about the affordability of legal advice are particularly prevalent at small charities, which are generally less courted than their larger peers with offers of pro-bono advice. "The service we receive is good but it is expensive for a small charity," says the CEO of a charity with annual income of under £1m.

Keeping costs under control is a legitimate activity for charities large and small at any time, but in the current economic climate it is a major preoccupation and there are

a variety of strategies in evidence in this year's survey for managing down legal costs.

For large charities with access to in-house legal advice as well as external legal advisers, a common strategy is to shift the balance in favour of the former. The head of legal at a charity with annual income of over £200m comments: "We aim to develop our in-house expertise and to use external advisers smartly and sparingly, more often as a sounding board than for large-scale outsourcing. We find this more cost-effective and better suited to the needs of the organisation."

Another common strategy shared by charities of all sizes is to try and increase the proportion of pro-bono advice received. "In response to a question on how much the use of pro-bono services is likely to increase over the next few years, the head of legal affairs at a charity with annual income of around £250m says, "As much as possible".

There may well be circumstances where the use of internal or pro-bono services can be a cost-effective substitute or at least complement to paid-for external legal advice. Equally, however, there will also be circumstances where the services of a specialist lawyer with experience of other charities will be required.

Strategies put forward by both charities and their legal advisers for optimising the relationship and ensuring that the advice given is efficient, effective – and affordable – are set out on page 37.

Spoilt for choice

The huge choice of suppliers available to charities seeking legal advice is amply illustrated by the headline figures of this year's survey.

Figure 1 ranks the legal firms listed as main advisers in the annual reports of organisations in the

figure 1: Legal advisers to the top 350 charities

	Law firm ¹	100 Index ²	250 Index ³	Top 350	Law firm ¹	100 Index ²	250 Index ³	Top 350
1	Bates Wells & Braithwaite	24	27	51	CMS Cameron McKenna	4	-	4
2	Farrer & Co	15	22	37	DAC Beachcroft	1	3	4
3	Withers	15	2	17	Field Fisher Waterhouse	3	1	4
4	Veale Wasbrough Vizards	3	12	15	Lee Bolton Monier Williams	1	3	4
5=	Anthony Collins	6	5	11	Linklaters	3	1	4
	Bircham Dyson Bell	3	8	11	Pothecary Witham Weld	1	3	4
	Charles Russell	7	4	11	Radcliffes le Brasseur	1	3	4
8=	DLA Piper	8	2	10	Speechly Bircham	2	2	4
	Russell-Cooke	3	7	10	Taylor Vinters	-	4	4
	Wilsons	6	4	10	Weil, Gotshal and Manges	4	-	4
11	Trowers & Hamlins	-	9	9	40= Ashfords	2	1	3
12	Stone King	4	4	8	Brechin Tindall Oatts	2	1	3
13=	Capsticks	3	4	7	Harbottle & Lewis	2	1	3
	Eversheds	4	3	7	Harrison, Clark and Rickerbys	-	3	3
15=	Bond Dickinson	5	1	6	Harvey Ingram Shakespeares	-	3	3
	DWF	1	5	6	Herbert Smith Freehills	-	3	3
	Winckworth Sherwood	-	6	6	Hewitsons	3	-	3
	Wrigleys	1	5	6	IBB Solicitors	1	2	3
19=	Bristows	1	4	5	Irwin Mitchell	2	1	3
	Browne Jacobson	4	1	5	Maclay Murray and Spens	-	3	3
	Dentons	-	5	5	Mills & Reeve	1	2	3
	Geldards	1	4	5	Morgan Cole	2	1	3
	Hill Dickinson	1	4	5	Sackers & Partners	3	-	3
	Pinsent Masons	4	1	5	Shepherd & Wedderburn	-	3	3
	Wragge & Co	5	-	5	Shoosmiths	3	-	3
26=	Blake Lapthorn	3	1	4	Stephenson Harwood	2	1	3
	Brabner Chaffe Street	2	2	4	TLT Solicitors	-	3	3
	Brodies	-	4	4	Turcan Connell	1	2	3
	Clifford Chance	3	1	4	178 other firms with up to 2 mentions	67	140	207
					Totals	243	347	590

(1) The law firms above are the main legal advisers listed in the annual reports of charities in *Charity Finance's* Charity 100 and Charity 250 Indexes, supplemented by additional research on the legal firms used by members of the Charity 100 Index.

(2) The 100 Index includes charities with three-year average income greater than £48.7m.

(3) The 250 Index includes charities with three-year average income of between £16.6m and £48.6m.

Charity Finance Charity 100 and Charity 250 Indexes. The list has been supplemented by additional research for Charity 100 members which, when asked to verify their annual report listing, identified additional firms used as secondary advisers.

It shows that, between them, the top 350 charities use almost 600 legal advisers drawn from 235 different firms.

Similarly, the 150 charities surveyed in depth on the legal firms they use cite a total of 232 advisers

between them, drawn from 130 different firms. Just 115 of these, drawn from 62 different firms, are described by the charities surveyed as their principal legal adviser (see figure 3).

Although the market is highly fragmented, specialist firms that invest heavily in the charity sector – and derive a significant proportion of their turnover from it – feature prominently.

True to last year's form, the top two players, which stand ahead of the others by a sizeable margin, are

Bates Wells & Braithwaite and Farrer & Co, which are considered to be principal legal advisers by 51 and 37 of the top 350 charities respectively.

With over 3,000 charity clients, Bates Wells & Braithwaite boasts the largest dedicated charity and social enterprise team in the UK, which generates around 65 per cent of the firm's total turnover.

"The charity and social enterprise team consists of 29 qualified lawyers, including nine partners," says its joint head Philip

figure 2: Number of legal advisers used by the top-350 charities

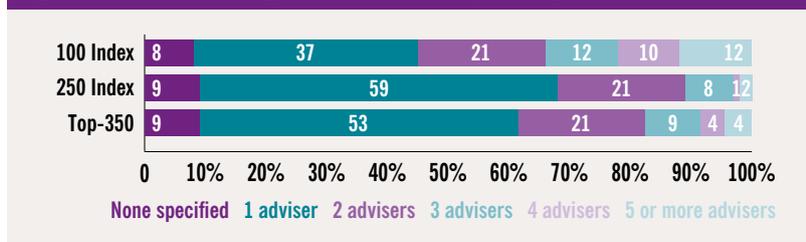


figure 3: Main legal adviser used by survey respondents

Number of clients	Charity income band				Total
	Above £20m	£5m – £20m	£1m – £5m	Below £1m	
Bates Wells & Braithwaite	9	3	5	–	17
Blandy & Blandy	–	5	4	5	14
IBB Solicitors	–	2	3	2	7
Farrer & Co	1	1	2	1	5
Russell-Cooke	1	–	4	–	5
Bircham Dyson Bell	–	2	1	1	4
Withers	2	–	1	–	3
Anthony Collins	–	2	–	–	2
Blake Laphorn	–	1	1	–	2
Mills and Reeve	1	1	–	–	2
Stone King	–	1	–	1	2
Winckworth Sherwood	–	1	1	–	2
Other firms	7	3	16	24	50
Totals	21	22	38	34	115

Kirkpatrick. “It can additionally call on the support of other fee-earners in the firm specialising in areas such as employment, property, dispute resolution, and public and regulatory law,” he adds.

Due to the breadth and diversity of its client base, Bates Wells & Braithwaite has built up expertise in specific segments of the charity sector including faith-based organisations, education, health, sport, environment and philanthropy. The firm works for many large charities including household names and umbrella groups but it also works for start-ups and small community groups, frequently in a pro-bono capacity.

“We want a fixed-fee service for discrete pieces of work”

Farrer & Co’s charities and social enterprises team has over 400 clients. It consists of “15 lawyers, who spend all of their time working for charity clients and a further 30 who spend most of their time working in this segment”, says Farrer & Co charity partner Anne-Marie Piper.

“The team can additionally call on other lawyers in the firm specialising in areas such as intellectual property, governance and commercial contracts,” she adds.

Highly experienced in dealing with large charities that have their own in-house legal teams, Farrer & Co has developed specialist expertise in areas that charities need but are unlikely to develop in-house.

It has a strong position in the area of public benefit, having acted for clients bringing the first public benefit case before the Charity Tribunal, and is currently advising the Plymouth Brethren.

It also has a leadership position in charity mergers, having advised on the creation of Age UK in 2009 and Cancer Research UK in 2002, and is currently utilising the expertise of its in-house banking and finance team to develop a leading-edge position in the emerging social investment arena.

Ranked third on the list of legal advisers to the top 350 charities is Withers. Its charities and philanthropy group advises both charities and donors, including entrepreneurs, companies and wealthy families.

With around ten lawyers focused exclusively on ‘non-contentious’ work for charities, the firm additionally boasts what it believes to be “the biggest charity litigation team in the UK staffed by two partners, 12 associates and two paralegals”, says Alison Paines, who heads up the Withers team.

The firm has a strong track record with charities operating in the education, healthcare and arts sectors. With offices in Italy, Switzerland, the US, Hong Kong and Singapore, as well as the UK, there is a strong cross-border element to much of the firm’s work, particularly in the areas of regulation, contract law, fundraising and tax-efficient philanthropy.

Following Withers is Veale Wasbrough Vizards, which is considered to be a principal adviser to 15 charities in the top 350. The

firm’s position in the ranking is based primarily on its strong position in the independent schools sector, where it has around 750 clients.

“The firm’s charities and education practice has grown by 20 per cent in each of the last three years and now accounts for around 35 per cent of turnover,” says Veale Wasbrough Vizards head of charities Con Alexander.

Over the same period the team’s client base has diversified: “Independent schools, which used to account for 75 per cent of turnover, now account for around 50 per cent, with the balance split fairly evenly between higher and further-education establishments, academies and charities active in other segments, such as health and social care, public service delivery and social investment,” says Alexander.

In-house resources

The number of charities that have set up in-house legal teams to deal – in the main – with day-to-day legal issues continues to grow.

Head of legal and company secretary at Age UK, Mark Harvey, says that the In-house Charity Lawyers Group, which he chairs, now has around 200 individual members, representing around 110 charities. This is up from 90 last year.

Among the 150 charities surveyed, 16 per cent have an in-house legal resource. Predictably most of these are medium to large charities with annual income ranging from £10m to £800m, though there are a handful of smaller charities affiliated to larger bodies that can use the latter’s legal advisory facilities.

There is no particular pattern in the type of charity that is likely to have an in-house legal team or in the type of work that it undertakes, save that it tends to be work of a recurrent nature. One common theme, notes

figure 4: Number of legal advisers regularly consulted by survey respondents

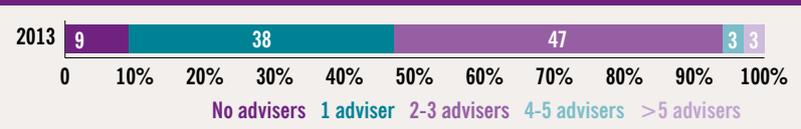
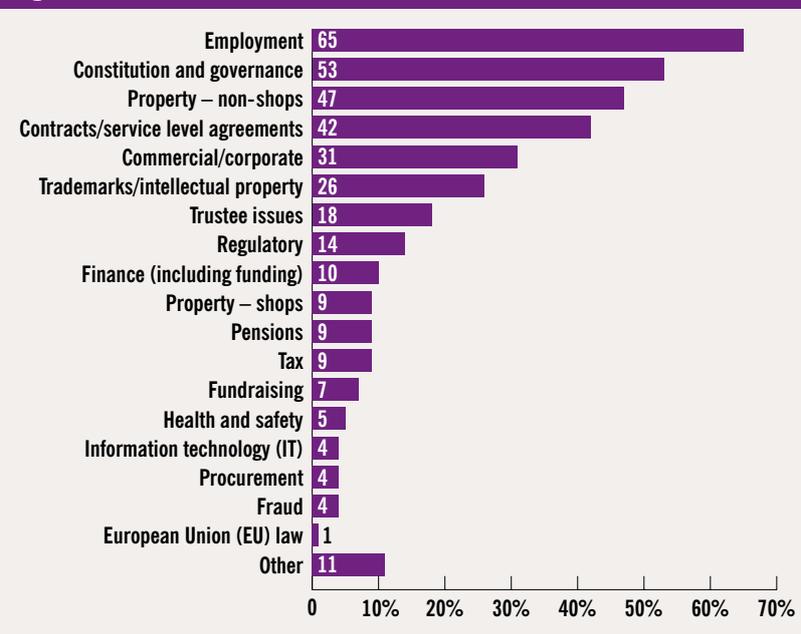


figure 5: What are the main issues on which you regularly seek legal advice?



Note: Survey respondents could specify up to five issues

Harvey, is that “very few in-house lawyers working at charities are actually charity lawyers”.

“Legal services need to take into account the growth of in-house lawyers at charities”

Clearly the presence of an in-house legal team impacts directly on the volume and type of work that is contracted out to external legal advisers. The vast majority of charities with an in-house legal team – some 76 per cent – undertake more than half of the legal work

required in-house, including 43 per cent who undertake more than three-quarters (see figure 7).

Comments made by charities and legal advisers suggest that the presence of an in-house legal team can add considerable value to the contracting-out process in areas such as initial briefings, instructions, fee negotiation and making practical use of the advice given.

“We are very happy with all of our providers. However, the quality of advice is improved if instructions come from the in-house legal team who are able to distil the information and issues,” comments the director of legal and governance at a charity with annual income of £13m.

Pro-bono advice

The availability of pro-bono advice from commercial law firms as part of their corporate and social responsibility programmes has increased in recent years, due in large part to the downturn in demand for legal advice from the corporate sector.

Just over a third of charities surveyed have received pro-bono advice over the last year, which – had it been charged for – would have cost in each case between £1,000 and £170,000.

Charity legal specialists tend not to feel threatened by the availability of

free legal advice to their core clients because it is generally being offered by firms that are not specialists in charity law and is therefore unlikely – in theory at least – to compete with the services that they offer.

In fact the elements of a large pro-bono project that require a knowledge of charity law are often referred to a charity specialist.

A recent example of this type of arrangement is the charity law element of the global restructuring of Save the Children International, which was subcontracted on a paid basis by Freshfields Bruckhaus Deringer to Stone King.

The availability of pro-bono services is a great advantage in a sector that would on the whole prefer to minimise spend on itself and maximise spend on services to beneficiaries. Problems can occur, however, when the charity-specific element of what appears to be a generic assignment is not recognised early enough and has to be unravelled later on.

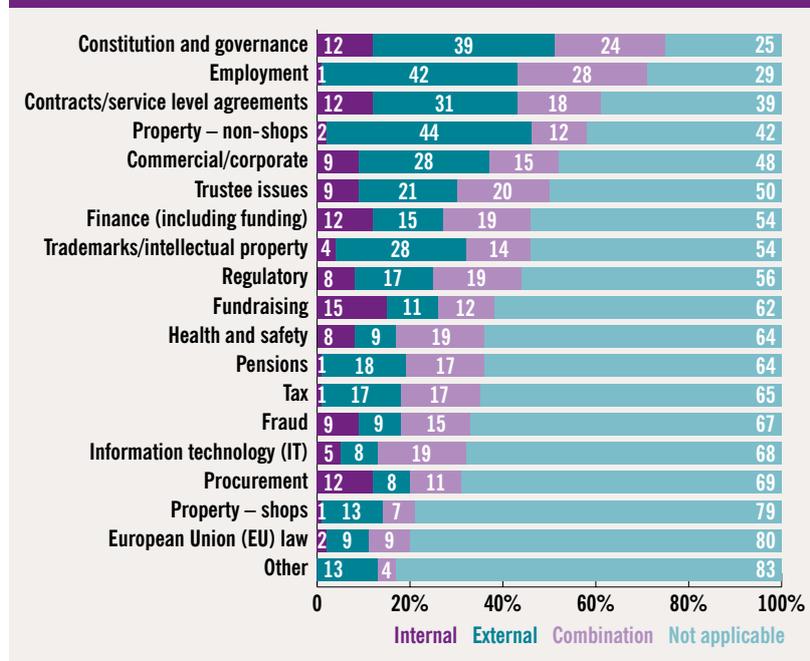
“There are very few issues that can be treated in standalone way, without reference to their regulatory underpinnings,” cautions Penny Chapman, head of charities and not-for-profit at Bircham Dyson Bell.

Other drawbacks relate to the low priority of pro-bono work relative to chargeable work, which means that the staffing of a pro-bono assignment can often leave a lot to be desired in terms of seniority and continuity.

All the specialist charity law firms encourage their staff to take up trustee positions at charities with which they feel an affinity. As well as supporting the sector, this acts as an aid to professional development as it helps staff understand and empathise with their clients.

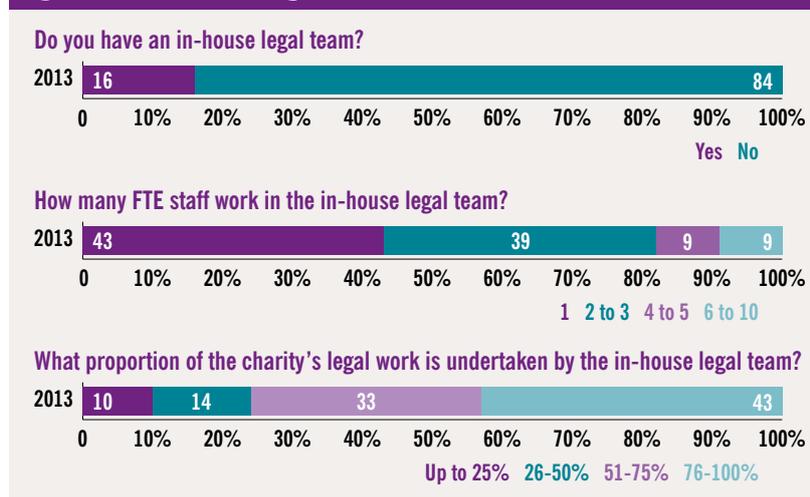
Other ways in which charity specialists support the sector include the provision of free initial

figure 6: Internal versus external sources of legal advice



Note: Survey respondents could specify all relevant issues, unlike figure 5.

figure 7: The in-house legal team



consultations, discounted rates relative to non-charity clients, free training sessions and other knowledge transfer initiatives.

However, most draw the line at acting for charities in a pro-bono capacity because it prevents them from treating clients equally and can therefore be divisive. “We want to keep our rates competitive for all our charity clients and we won’t achieve this by subsidising some at the expense of others,” comments Ann Phillips, charity partner at Stone King.

There are a handful of charity specialists which are an exception to this general rule. They tend to avoid conflicts by providing pro-bono services to charities which would not, in ordinary circumstances, be fee-paying clients. “We provide pro-bono services to small charities which simply can’t afford legal services, rather than the big household names that can,” comments Kirkpatrick at Bates Wells & Braithwaite.

Growth areas

Unsurprisingly in the current climate, much of the legal advice received by charities is focused on increasing their exposure to different sources of funding and maximising their chances of obtaining it.

Thus Kirkpatrick at Bates Wells & Braithwaite reports increased interest on the part of charity clients in social finance in its various forms, along with ‘crowdfunding’ or peer-to-peer fundraising.

Jonathan Burchfield at Stone King notes an increase in mergers between mid-sized charities, as they seek to strengthen their hand in bidding for local authority contracts.

“There has been a steady flow of merger activity but its pace has been slower than expected,” adds Jane Klauber, partner in the charity and social business team at Russell-

Cooke. “There are, however, plenty of joint-working arrangements, as charities join forces to compete in an increasingly competitive contracting environment,” she says.

“ We want to keep our rates competitive for all our charity clients ”

Along with increased levels of collaboration within the charity sector, Withers charity partner Chris Priestley notes increased levels of cross-sectoral collaboration, as charities team up with commercial partners with a view to enhancing

their fundraising activities. Priestley recently advised on Cancer Research UK’s collaboration with Channel 4, which broadcast its Stand Up to Cancer campaign at the end of last year.

Following the successful creation last year of the Canal and River Trust, which took over responsibility from the government for the inland waterways network of England and Wales, many legal advisers expect there to be more transfers of responsibility for public services to the voluntary sector, particularly in the health and social care and heritage sectors.

Mike Scott, head of charities at Charles Russell, notes increased

figure 8: Trustee involvement in legal issues



figure 9: How long have you been with your main legal adviser?

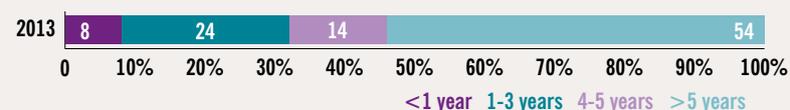


figure 10: How frequently do you formally review the services of your main legal adviser?

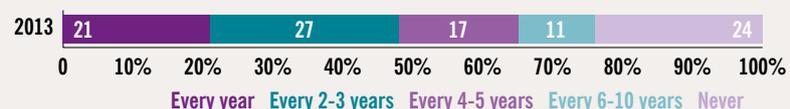


figure 11: Why did you choose your main legal adviser?

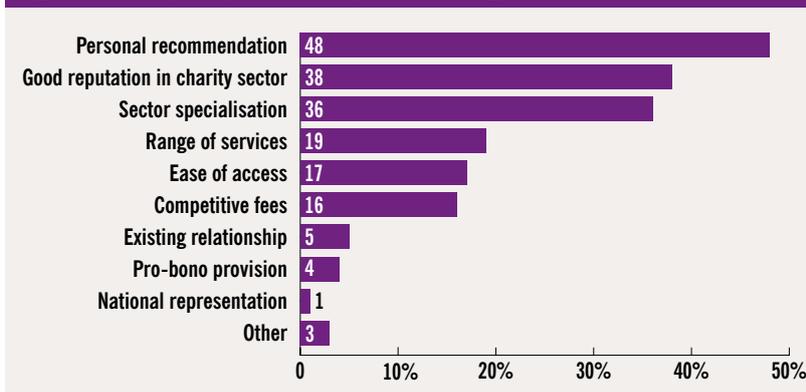


figure 12: How important are the following factors when selecting a legal adviser?



interest in commercial trading activity, as charities seek to supplement more traditional sources of income that are under pressure. “Charities increasingly need specialist advice in commercial areas such as data protection, intellectual property and IT solutions, both to support fundraising activity and the development of online educational tools.”

Several legal advisers surveyed report an increasing cross-border element to the work they undertake for charities, particularly in the education sector. “Many UK higher

education establishments are looking to expand their operations into Asia and the Middle East,” says Alexander at Veale Wasbrough Vizards.

“Cross-border initiatives require advice on regulatory, tax, contractual and fundraising issues”

Paines at Withers cites US universities setting up shop in the UK, and the more geographically dispersed activities of pan-national

organisations such as the International Baccalaureate Organisation. “These cross-border initiatives create the need for advice on regulatory, tax, contractual and fundraising issues,” she says.

Not just funding

There is also evidence of increased activity in more traditional areas, unrelated to funding streams, such as employment and governance.

According to the charities surveyed, the main area where they seek advice is employment matters and most look to external sources of advice for this (see figures 5 and 6). Klauber at Russell-Cooke notes strong demand from charities in this area but says that it may start to decline once staff bringing a claim against their employer have to start paying tribunal fees, which will be introduced later this year.

A related areas of particular concern to charities at present is pensions. Many charities running defined-benefit schemes are seeking advice so that they can change the contractual terms and deal with historic liabilities.

“Charities have been slow to address the issue of pension deficits and many are still running schemes that their corporate equivalents would have closed down years ago,” says John Ward, partner at Speechly Bircham. “Using a commercial law firm that has long experience of advising corporate clients of how to handle these issues can add real value,” he says.

Chapman at Bircham Dyson Bell notes increasing awareness on the part of trustees of the extent of their risks and responsibilities. “The regulator has banged the drum for good governance for many years but recent events have highlighted the extent and nature of the risks,” she says. ▶

Managing the process

With almost 95 per cent of charities happy to recommend their main legal adviser to other charities (see figure 14), overall satisfaction levels with the services provided are clearly high. Reservations expressed are mainly to do with fee levels, with charities concerned about affordability and – to a lesser extent – value for money.

The charities surveyed this year are fairly forthright in their views on how the situation might be improved. “We want a fixed-fee service for discrete pieces of work,” comments the legal counsel of a charity with annual income of £37m.

“We would like to see less doubling up of attendance at meetings, as this has contributed to higher fees,” says the director of finance and central services at a charity with annual income of £14m.

There are particular demands made by charities that have their own in-house legal teams. “Legal services to charities need to take into account the growth of in-house lawyers at charities and develop services that are better suited to in-house counsel, such as retainers, online precedent portals and the like,” comments the legal and governance manager at a charity with annual income of almost £16m.

In spite of calls from the regulator for charities to formally review all their external advisers regularly, the legal firms consulted for this year’s survey are generally unaware of any increased frequency or rigour in the review process, though as Philip Kirkpatrick at Bates Wells & Braithwaite notes, “a good FD will always be desk-reviewing and benchmarking their suppliers”.

And, as it is easy for a charity to have multiple legal advisers, a formal review does not necessarily have to precede a decision to switch, as it might for an auditor appointment.

As well as becoming more demanding, there are signs that charities are also becoming more organised in their dealings with their legal advisers, setting up panels of preferred providers with centrally-negotiated rates, service-level requirements and criteria for when they may be used. This has long been the case with large charities but the practice is becoming more widespread.

As charities have become more demanding, the competitive environment of the last few years has made their advisers far more amenable, notes Mark Harvey, who chairs the In-house Charity Lawyers Group.

Indeed there is plenty of evidence of initiatives taken by the legal advisers surveyed to provide low-cost advice to charity clients. Russell-Cooke, for example, has over the last few years directly supported the Peace HR website and telephone advice line that the London Voluntary Service Council provides to London’s 60,000-plus voluntary and community groups.

Veale Wasbrough Vizards has developed a dedicated helpline available for a fixed monthly fee to academies, to which around 60 of its

300 academy clients subscribe, says head of charities Con Alexander.

Many legal advisers recognise the need to be particularly adaptable when dealing with charities with in-house legal teams. “We scope out the objectives and how we can help and set out a menu of options based on cost. We’re very happy to take a ‘pick-and-mix’ approach to who does what,” observes Ian Hempseed, who heads up Hempson’s charities and social enterprise team.

Similarly, Farrer & Co charities partner Anne-Marie Piper observes: “It’s important to work as part of the team and identify the best way of fielding the work, which might be shared between the client, ourselves and other competent third parties.”

Other ways of ensuring that a project is run efficiently, suggested by Piper, include “making sure that everyone is brought up to speed and well-versed in the relevant papers and background before the first meeting. The advice given can be documented in compliance manuals and registers, so that it is durable and transferable, especially when supported by training.”

figure 13: How do you rate your main legal adviser?

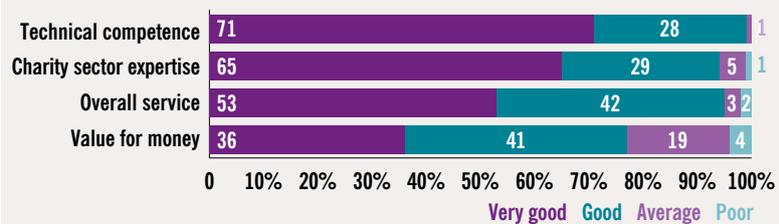


figure 14: Would you recommend your main adviser to other charities?

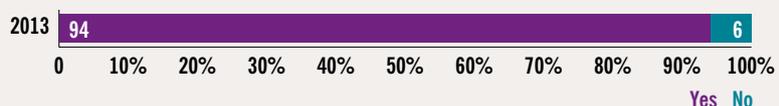


figure 15: Do you have any of the following problems with your main legal adviser?



figure 16: How do you expect your need for legal advice to change over the next three years?

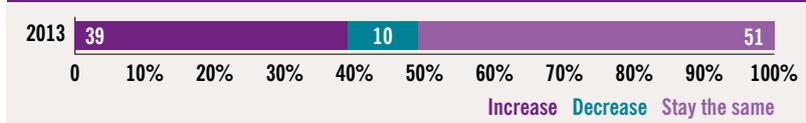
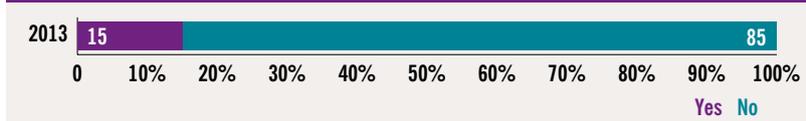


figure 17: Are you likely to switch your main external legal adviser over the next three years?



Recent events cited by Chapman include the recent publication by the Charity Commission on the requirements for serious incident reporting, fines levied by the Information Commissioner for charities breaching data protection requirements and reputation-management issues for charities beset by scandals such as those associated with Jimmy Savile.

Moira Protani, who heads up the charities team at Wilsons, predicts “an intensification of the regulatory climate for charities, with increasing compliance required in areas such as health and safety, data protection, freedom of information and increased involvement on the part of HMRC in charity regulation”.

“We anticipate increased involvement of HMRC in charity regulation”

A recent example of this is the Charity Commission’s inquiry into the Cup Trust, following HMRC’s concerns about the charity’s gift aid claims and its own concerns about the charity’s management.

Jonathan Burchfield, supported by his colleagues at Stone King, has recently been appointed by the Commission as interim manager of the Cup Trust, where he will be in charge of day-to-day operations and have all the power and duties of the trustee.

Specific sectors

Many legal advisers observe increased activity in the charities market.

The academies sector, for example, continues to grow rapidly. At the beginning of May the number of schools opting out of local authority control to become exempt charities had grown to 2,924, up from 1,807 last year.

The market for legal advice to the academies sector is very competitive, though there are well-established players such as Stone King, which has worked on over 500 conversions, Veale Wasbrough Vizards, which has worked on around 300, and Wrigleys, which has worked on almost 200.

“The rate of new conversions is beginning to slow down and most of our work is helping academies adapt to their role and responsibilities post-conversion, without local authority support,” says Wrigleys partner Sylvie Nunn. “While many are seeking advice on how to fulfil their day-to-day remits, others are seeking advice on mergers so that they can amalgamate into larger administrative units,” she adds.

Ian Hempseed, at Hempsons, believes that the transfer of industrial and provident societies and registered social landlords to the jurisdiction of the Charity Commission (provided that they are charitable) will further expand the market for charity-specific legal advice.

So it seems that a healthy degree of competition in an evolving charity legal market is set to continue well into the future. ■



Diane Sim is a research analyst at Charity Finance