

Legal highs and lows: is your adviser providing good value?

From discounted fees and pro bono work to caps and hourly rates, Ian Allsop asks whether current fee structures add up.

LIKE ALL sectors, charities face a host of legal issues and require advisers to keep them out of trouble. As such, a charity will often not just rely on one legal firm for all of its law compliance requirements but use several, with different firms engaged for different specialisms. Fortunately, civil society is well served by a range of outfits offering highly regarded advice, especially on charity law. There are big firms that operate on a national basis as well as smaller, regional specialists, seemingly to suit all budgets and location.

Over 500 entries (175 unique firms) are listed in the annual reports and accounts of the top 350 charities identified by the haysmacintyre / *Charity Finance* 100 and 250 Indexes, and the most-used firms are collated in figure 1. However, while the SORP requires charities to list those organisations from whom they are taking professional advice, including “solicitors”, the figures may not give the whole picture. This might be because the charity did not need advice during the relevant accounting period, or it listed the lead lawyer involved in operational delivery but not those working on discrete technical areas. In certain instances, the charity may simply have made an unintentional omission.

For these reasons, figure 2 provides an alternative perspective from the *Chambers UK* guide. Chambers & Partners compiles rankings of the quality of legal firms’ departments based on interviews with clients and assessments of work completed, and the firms in the top three tiers are listed here.

Ultimately though, a firm’s fit for a particular charity may come down to more than its position on a ranking list, whether due to their particular expertise, focus on a certain size of charity, or that old chestnut – price.

FEES

There is no doubt that legal expertise can come at a cost. *Charity Finance* recently surveyed a small sample of charities with a range of incomes, and while the findings are by no means definitive, the headline figures offer an interesting snapshot. For example, the average total spend on legal fees in the past year was £11,752, while the average hourly rate paid to main legal firms’ partner-level staff was £218, with the firms’ other solicitors receiving £133.

“The complexity and cost of a problem has no relation to the wealth of a client”

It is somewhat of a cliché that lawyers charge too much, but for charities, the balance between paying for necessary expertise that will enable effective operation, while at the same time not diverting valuable resources away from beneficiaries, is particularly acute. Some 82 per cent of respondents to our survey felt they receive good value for money, but individual comments included “lawyers are too expensive for the ordinary man”, “legal fees are really too expensive for what we get”, and “legal services are expensive and more than most charities can afford”.

So how do the leading charity sector law firms counter these accusations?

Anne-Marie Piper, senior partner at Farrer & Co, suggests that it is a truth universally acknowledged in the legal world that the complexity (and thus, indirectly, the cost) of a problem has no reference to the size or wealth of the client.

“English charities are subject to an onerous regulatory and fiscal regime and often work in legally complex areas which can account for significant fees. Others are infrequent users of lawyers and so find the fees higher than they anticipated. We often provide itemised fee estimates, and

FIGURE 1: NUMBER OF CLIENTS AS DISCLOSED IN ANNUAL REPORTS AND ACCOUNTS OF TOP 350 CHARITIES

■ BWB leads the way for the number of large charity clients ■

1	Bates Wells Braithwaite	47
2	Farrer & Co	44
3	VWV	27
4	Withers	17
5	Stone King	15
6	Bircham Dyson Bell	14
7	Anthony Collins	13
=8	Bond Dickinson	9
=8	Charles Russell Speechlys	9
=8	Winckworth Sherwood	9
11	Mills & Reeve	8
=12	Clifford Chance	7
=12	Gowling WLG	7
=12	Russell-Cooke	7
=15	Eversheds	6
=15	Wilson	6

Source: haysmacintyre / *Charity Finance* Charity Index

willingly look at where getting your lawyers to do part of a job is a ‘nice to have’ rather than a ‘must have.’”

Philip Kirkpatrick, partner and head of charity and social enterprise at Bates Wells Braithwaite (BWB), recognises that charities are under constant pressure to manage their costs, which means his firm has to work as efficiently as possible for them. “We benchmark our fees so far as possible against other firms and recognise that we are in a competitive market. The market dictates all the costs to which law firms are subject, from lawyers’ salaries, to premises and insurance costs and so on, but using retainer and blended rate arrangements [where clients are given a single hourly rate that averages out the rates for lawyers of different ranks within a firm], we are able to give clients a high degree of certainty over the cost of legal services and help them budget effectively.”

Chris Priestley, partner at Withers, points out that higher hourly rates do not automatically mean a higher final bill. “Experienced lawyers who are focused on a specialist area will be able to do work quickly and correctly. A lawyer offering a lower charge-out rate, but with less specialist experience and support, will invariably take longer and often deliver work which doesn’t necessarily offer the best solutions, requiring further work to be done.”

DISCOUNTING COSTS

In our survey, nearly two-thirds of respondents said they either don’t receive, or don’t know if they receive, a discount for being a charity (figure 3). Priestley says he would be surprised if there was a lack of awareness among his firm’s clients because finance-related communications make it clear if they are receiving a discount.

But do such discounts risk compromising quality of service? He believes this is not the case in his firm because the same lawyers do the work, whether at a discount or not. “We don’t pass discounted work to regional offices (we don’t have any) or to junior lawyers, but to the most qualified person for the relevant task. The target metric for our lawyers’ performance and remuneration is based on total hours, rather than fees.”

Kirkpatrick states that BWB offers competitive discounted rates for charities, and that it is important to the firm’s reputation that standards of services are maintained. “Our clients come to us because of our reputation for expertise and high quality service. They would not return if they did not receive it and we rely on our reputation absolutely to maintain and grow our business.”

“When VAT is added we pay more than private sector businesses”

By contrast, Stone King does not offer discounted rates. Tim Rutherford, partner and head of the firm’s charity and social enterprise sector group, says: “As more than half of our work involves advising charity and social enterprise clients, we are not able to provide a discounted rate for particular charities. This distinguishes us from many, primarily corporate, law firms that have high headline rates which they discount for charity clients. However, across the sector group in the firm, our rates are set at an appropriate competitive level.”

Piper says Farrer & Co also does not have a formal policy of discounted rates for charities, although they may be applied on a case-by-case basis. “That said,” she adds. “The rates applicable to charity lawyers within the firm are generally lower than those of lawyers in other parts of the firm. And the fee we charge is not relevant to the quality of service we provide; we do the best job we can do for all our clients.”

Susan Gent, general counsel at Royal Academy of Arts and spokesperson for Lawyers in Charities, concludes that whether some seemingly discounted rates actually represent a real discount is a moot point. “You can’t really ensure that a discount won’t compromise service, all you can do is manage the external lawyers accordingly, and if they don’t come up to scratch then not use them again. I would rather have a fixed overall fee that is stuck to.”

Even with a discount, some charities feel they are still paying over the odds. One respondent to our survey

FIGURE 2: CHAMBERS CHARITY LAW FIRM RANKING

■ Out of six bands overall, three firms have achieved band I status ■

Band 1

Bates Wells Braithwaite
Farrer & Co
Stone King

Band 2

Bircham Dyson Bell
Withers
Wrigleys

Band 3

Anthony Collins
Blake Morgan
Charles Russell Speechlys
Hempsons
Mills & Reeve
Russell-Cooke
VWV
Wilsons

Source: Chambers UK guide

comments: “While they may discount their fees for us as a charity, when VAT is added (which we can’t reclaim) we pay more than private sector businesses, albeit the firm receives less. We are often paying for peace of mind, using law firms as insurance that we’re doing the right thing in relation to employment, leases and so forth.”

GLASS CEILING

Another respondent thinks that in the face of tightening income in the charity sector, legal fee levels are starting to reach a glass ceiling. However, Piper says that this is “sadly not” the case, just as there is “no glass-ceiling on the legal problems charities face”.

She points out that many lawyers will work to a capped or fixed fee arrangement which can take some of the uncertainty out of the process. “We have hourly rates like most law firms, but these are a guide. We understand that charities, like our other clients, value certainty in their costs and so we are always willing to explore fixed and capped fee arrangements. We believe in discussing fees at the outset so that both sides

have a common understanding about the likely complexities (or otherwise) and costs of the case.”

Rutherford at Stone King concurs. “In relation to capping fees, we are always open to discussing with clients their appropriate budget for a project and then making sure we keep within that where possible. We prefer to work to a cap as opposed to a fixed fee, as this is fairer for the client.”

Kirkpatrick at BWB says that lawyers and clients sometimes need to be imaginative in working out how best to get work done at a price that works for both sides. “We set hourly rates by reference to the market and affordability, but are always willing to discuss rates and capping or fixing fees. Many clients begin new projects believing that the work will be relatively straightforward, whereas it often turns out not to be. Caps or fixes will be based on the work that everyone expects at the outset needs to be carried out, and unexpected issues will tend to be charged for.”

PRO BONO

Over a quarter of respondents to our survey receive pro bono work. But can this be a problem if charities don’t get the level of attention, service and expertise that they might if they are paying? Gent from Lawyers in Charities says that in her experience pro bono is most often offered by firms which are not really charity specialists. “It is not usually possible for charity law firms to give pro bono advice to their clients as it would be unsustainable for them. This leaves firms which are not specialised in charity law, and I have seen a number of instances where wrong advice has been given as a result. Charities need to think carefully about which pieces of work they procure on a pro bono basis and realise that urgent, important matters are usually not suited to pro bono work.

Rutherford confirms that Stone King falls into this charity-specialist category. “Given the number of charities and social enterprises that we act for, and the fact that this is the material core of our client base, we are unable as a general rule to provide pro bono services. We do, however,

encourage all members of the firm to volunteer with charities and to provide their expertise by taking up trustee positions.”

Priestley says that Withers’ policy on pro bono work is to offer it in limited, time-specific situations to charities which could not otherwise afford legal advice. “Our provisos are normally based on the size and position of the charity.”

“It is very hard to evaluate whether the advice you receive is the best advice”

Piper comments that as with discounts, Farrer & Co looks at pro bono requests on a case-by-case basis. “Although we do participate in pro bono schemes, our preference is for our lawyers to contribute to the sector by active engagement with bodies (such as the Charity Law Association) addressing legal issues that affect a large number or wide range of charities, rather than help a smallish number of charities with their cases.”

A commitment to pro bono work has always been at the heart of BWB’s ethos, according to Kirkpatrick. “Not only do we carry out a lot of pro

bono work, we also signpost pro bono support from others. Indeed, we have a long history of sponsoring initiatives in this area, as shown by the creation of LawWorks by our founder, Lord Andrew Phillips. We work pro bono for three types of client: small organisations that cannot afford legal fees at all; organisations with which BWB lawyers have particularly close relationships; and projects that have sector-wide implications.”

ASSESSING VALUE

As mentioned above, a clear majority of respondents to our survey felt that they get good value for money from their legal adviser, but this can be a tricky thing to assess. As one puts it: “How do you decide if it was good value for money? Usually you take legal advice on the basis that you have to.”

Piper agrees that this is a very genuine problem. “As anyone who has ever used a professional from another discipline knows, it is very hard to evaluate whether the advice you receive is the best advice. There are also issues here about the different approaches taken by lawyers. Some lawyers are keen for their clients to tackle difficult or inconvenient laws

FIGURE 3: CHARITIES AND THEIR LEGAL FEES

■ Most charities feel they get value for money, although some aren’t sure if they get a discount ■

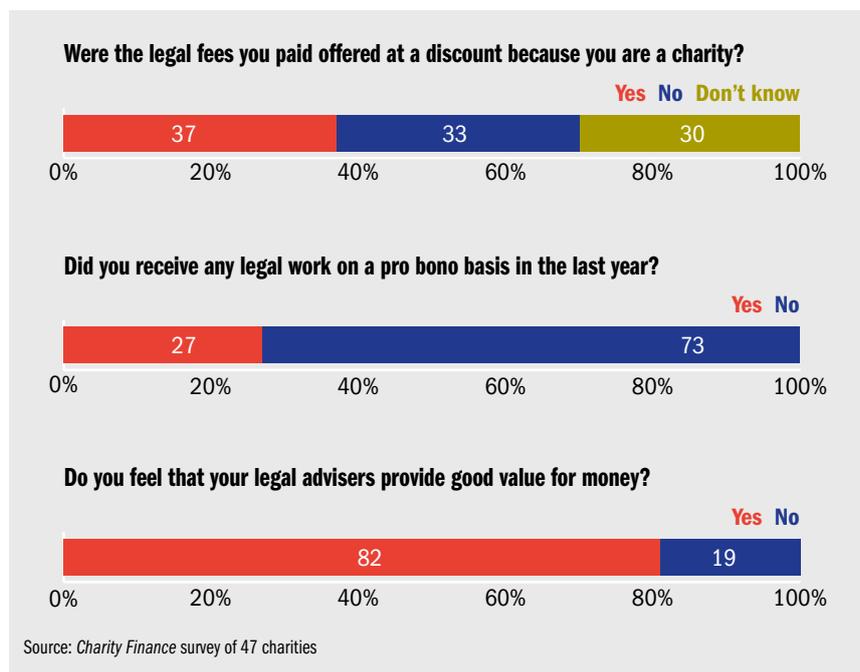
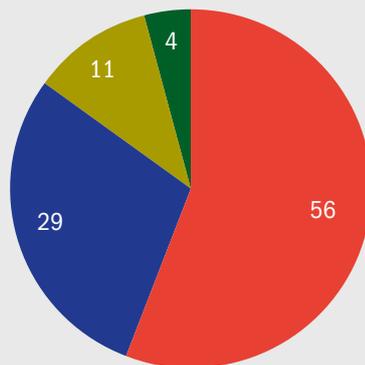


FIGURE 4: CHOOSING A LEGAL ADVISER

- More than half are very confident in their selection skills ■

How confident are you that you have the right skills within your charity to choose the best legal adviser? (%)



Very Somewhat Not very Not at all

Source: Charity Finance survey of 47 charities

or regulations head on. Others, like us, will never encourage a client to fight a case if there is a perfectly acceptable work-around (unless, that is, the client wants to blaze a trail)."

For Kirkpatrick, this largely depends on the type of charity. "Large charities that have in-house lawyers or experienced purchasers of legal services are adept at judging this question. Otherwise, value can be assured through competitive tendering, although it is likely that many firms will be willing to commit to an in-depth competitive tender process only for significant pieces of work or if they

do not already have enough work."

Rutherford says: "To assess whether a charity is getting the quality and value of service they should be from their legal adviser, they could ask themselves: are their queries and requests dealt with promptly and as quickly as practicable? Do they feel that they are treated like a valued and respected client by their legal adviser? In any matters that arise, do they receive knowledgeable advice that is appropriate for their organisation? Do they feel supported in their decision-making? And are the issues communicated in a way that is easy to understand?"

TAKING IT IN HOUSE

At what size does it become viable and efficient for a charity to have its own internal legal team? One respondent comments: "We are disappointed in the lack of pro bono work available and the high rates considering that largely we do the majority of work and they are providing the formalised service. We are now considering creating an internal legal department given the annual cost and flow of work."

"Are queries and requests dealt with promptly and as quickly as practicable?"

Lawyers in Charity has around 250 individual members that work for 100 of the largest charities. Gent says that being able to have in-house expertise depends on the needs of the charity, but as a starting point, a £5m turnover charity needing internal

legal advice could consider having an in-house lawyer for a couple of days per week.

Rutherford agrees that the decision should be driven by the type of work the charity does. "If the charity regularly engages in legacy management or operational activity (such as housing), it may be appropriate to have an internal legal team".

Piper says she usually sees an in-house team in charities with a £10m turnover, although she stresses this is a huge generalisation. "Once a grantmaking charity is set up and has its policies in place, it may have little regular need for lawyers. On the other hand, if a charity works in an area which is legally complex, then even a smallish charity might have or need a legal team.

"Another approach is to look at the charity's average spend on external lawyers, relative to the salary cost of an in-house function. However, this can be misleading, as an in-house team will need to instruct out in areas it does not have the skills to cover personally."

Priestley adds that it is necessary to take a nuanced view of what an in-house team can offer. "Charities are often complex structures, and have a need for a breadth of advice, but should assess whether they need specialist in-house lawyers focused on their core activities and external advisers for more general issues, and vice versa. It's worth noting that in-house teams also deliver other benefits, including strengthening the charity's governance and compliance capabilities." ●

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