

Study into the provision of legal services to small charities

Report for Legal Services Consumer Panel

In Association With Nicola Robert

November 2011



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Foreword by the Legal Services Consumer Panel

Since the Legal Services Consumer Panel was established in November 2009, we have dedicated ourselves to representing all those who lack buying power when needing to access legal advice. With a role to provide independent, evidence-based policy advice to the Legal Services Board about the interests of consumers on issues concerning the regulation of legal services much of our work relates to the everyday issues which most people encounter at some point in their lives, such as moving home or making a will. However, individuals are not the only type of consumer suffering an imbalance of power and knowledge in their dealings with lawyers. Small charities have a potentially wide range of legal obligations, not just in respect of charity and company law, but also as organisations dealing with employment disputes, health and safety, property matters and much more. Yet they may lack the knowledge, skills and experience to discharge these responsibilities effectively.

Commissioning this independent research is the Panel's first step towards understanding the legal needs and experience of this important group of consumers. Given the current focus on civil society and the large degree of upheaval in the sector, we felt that now was a timely moment to speak directly to small charities. Getting bad legal advice, or failing to access legal advice at all, can lead to serious consequences for small charities and, of course, have knock-on effects for those their valuable work seeks to benefit. We wanted to find out the extent to which small charities understand their legal needs and the strategies they use to work these out. We wanted to explore whether and what the barriers are to accessing legal advice and to highlight the levels of satisfaction among those bodies which do obtain legal help.

For us, five themes particularly stick out from the research:

- There is much to recognise and acknowledge – lawyers do carry out pro bono work, which is much appreciated by small charities. Furthermore, those charities who engage solicitors and other providers of legal advice are mostly very satisfied with the service they receive;
- Whilst free help is appreciated, this must be of sufficient quality – charity law can be highly specialised and complex and requires expert advice;
- Small charities are not a homogenous group, but differ in knowledge of their obligations and their ability to deal with these. The smallest charities find it most difficult to keep up-to-date and access help, potentially leaving themselves open to significant risks. There is a desire for solicitors, accountants and others with legal expertise to engage with them more, for example as trustees or through high quality pro bono work;
- Small charities are simply drowning in information. However, rather than try to re-invent the wheel, there is a need for better co-ordination and signposting to clear, targeted materials. Beyond this, small charities tell us that simplifying the charity and company laws that they must abide by would make the biggest single difference to making their work easier; and
- Cost presents the biggest barrier to engaging legal advice, although this appears to relate to fear about a lack of control over fees as much as the amounts quoted. Innovative businesses reading this research, including new entrants wishing to take advantage of reforms to open up the legal services market to greater competition, may well spot an opportunity to respond to small charities' demands for simple, fixed fee services.

Summary

We have defined small charities as having an income of under £1 million, which is consistent with the Small Charities Coalition and the Legal Ombudsman. This provides a good starting point, but we appreciate this research has not been able to cover the full variety of civil society organisations – such as unregistered charities, local community groups and social enterprises – who equally have important legal obligations but may also lack the resources to properly deal with them.

I am grateful to the MVA Consultancy team for producing a thorough and thought-provoking research report. This work has given us, and, I hope, others with an interest in these issues, a solid evidence base on which to take its findings forwards. The report provides some ideas about things where the Panel can take action, but we know that we will be unsuccessful if we try to pursue this agenda alone. Indeed, the recommendations rightly include a number of points that lie outside the remit and role of the Panel. We hope a wide range of stakeholders will reflect on this document and will wish to work in partnership with us and each other through positive action that will make a real difference.

The Panel recently presented the results of this research for the first time to a diverse group of charities, law firms, representative bodies, regulators, complaint-handling bodies and government. The extent to which the research chimed with personal experience, the high level of consensus and the enthusiasm and appetite to make good use of its findings, was very striking.

If you are interested in supporting us to help small charities access high quality and affordable legal services that meet their needs, we would very much like to hear from you.



Elisabeth Davies
Chair, Legal Services Consumer Panel

Summary

Introduction

The primary objectives of the research are to:

- provide an evidence base of issues facing small charities in identifying and accessing legal services and increase the Panel's understanding of the experiences of those who sought them;
- establish whether the legal advice received by small charities has been valuable/ led to positive outcomes for them;
- provide evidence to assist the Consumer Panel to influence and drive reforms within the legal system; and
- establish the current state of play, providing an accurate baseline against which to measure the impact of any future policy reforms.

The research uses an income of under £1 million to define small charities. Since 86% of the 161,978 charities registered with the Charity Commission in England and Wales have an income below £500,000, the majority of charities come under this definition.

Our research programme has sought the detailed views of 24 small charities through in-depth semi-structured telephone interviews undertaken by core members of the research team. This was followed by a series of structured telephone interviews with 812 small charities.

Detailed findings of the research are provided in this report. A summary of key findings and recommendations are provided below.

The nature and extent of the legal obligations experienced by small charities

Small charities have a wide range of legal obligations. All small charities and their Trustees have common basic obligations as described in the Trustees Act 2000 and the Charities Act 2006. The latter deals with the definition of charity, charitable purpose and public benefit to ensure that registered charity status is only provided to suitable organisations. The Trustees Act outlines the legal rules affecting the unpaid Trustees, who play such an important role in the direction and management of charities. These include their duty of care, investment powers, right to remuneration, acquisition of land and powers of delegation. Beyond these basic laws that apply to all charities and their Trustees, the most common legal obligations affecting small charities are investments, restricted income, working with children, young people and vulnerable groups, employment, property and gift aid.

The extent to which small charities are aware of and understand their legal needs

Summary

Our qualitative research suggests a mixed picture in respect of the extent to which small charities understand their legal obligations. Half the charities demonstrate moderate to comprehensive understanding and can identify the legislation that applies to them but equally the other half have limited or no understanding. It is possible that the level of legal understanding across the charity as a whole (especially at Board level) could be greater than this finding suggests, because this result is based on the knowledge of one single member of the organisation – albeit the one most responsible for legal matters.

Small charities clearly struggle to keep up to date with their legal obligations. In the qualitative research many said that they were not sure where to get advice from and that there is insufficient summarised and clear guidance available.

Charities with incomes of less than £250,000 are more likely than those with incomes in excess of £250,000 to have limited or no understanding of their legal obligations, and to take a reactive rather than proactive approach to seeking legal information and advice. This is concerning because 76% of registered charities in England and Wales have an income below £100,000 meaning that the majority of charities fall into this income category.

This finding has to be set against the fact that the extent and complexity of legal obligations tends to increase with income, and that charities with incomes under £50,000 present a much more limited range of legal obligations than other small charities. Nevertheless our research does show that some of the very smallest charities own property, have leases and restricted income, claim gift aid and work with children, young people and vulnerable groups. It is therefore likely that some of these smallest charities are insufficiently aware of some potentially high risk obligations. As one interviewee noted, there are major reputational risks associated with some obligations:

“For organisations that are built upon public trust in terms of money and the use of that money, for an organisation to be found guilty of any form of mistreatment to their staff or not looking after the beneficiaries of the services, it damages beyond belief proportionally”

Strategies used by small charities to resolve their legal needs

Solicitors are significantly more likely to be considered than any other service provider in the event of a legal issue (54% compared with 16% for the next most frequently cited provider). Many would use a solicitor as their first port of call (37%), though charities with incomes under £50,000 were less likely to do so (27%) than the charities with incomes in excess of £250,000 (45%). The next most significant providers are Trustees, the Charity Commission and national umbrella organisations.

Charities are much more likely to consider using a Trustee if they have a legally qualified Trustee on the Board. Charities with incomes in bands 3 and 4 (£250,000+) are more likely to have legally qualified Trustees. The qualitative research indicated the extent to which charities aspire to having a solicitor or accountant on their Board. As one charity noted:

“We’re very fortunate – our kudos means we have well qualified people on our Board but they are hard to come by. Every charity wants a solicitor and accountant on their Board because they cannot afford to pay for advice.”

If there are insufficient numbers of these professionals volunteering for the smallest charities in income bands 1 and 2 (less than £250,000) many organisations could be missing out on critical free advice.

Summary

The qualitative research stressed the important role played by the Charity Commission, national umbrella organisations and local infrastructure organisations in the provision of accessible, cheap or free legal advice. However, government funding cuts and economic pressures may reduce the ability of these organisations to support charities to the same extent in the future.

The majority of small charities are confident about seeking legal advice. However the qualitative research revealed some nervousness about approaching solicitors with one interviewee describing the process as “daunting”.

Charities are adept at obtaining legal advice as cheaply as possible. In addition to using personal networks and Trustees’ knowledge gleaned from other organisations, charities will also often obtain reduced rate or pro bono advice from solicitors. Only 32% paid full rate for their solicitor compared to 24% who paid reduced rate and 20% who received pro bono advice.

The types of services charities currently seek

The most common areas requiring legal advice are property, changes to the charity’s constitution or legal structure and general employment matters. Small charities vary their advice provider depending on the type of need they have. Solicitors and Trustees are more likely to be consulted for property issues, changes in legal structure and employment matters, whereas accountants are more likely to be consulted for fund accounting and tax issues.

Legal advice tends to be sought irregularly rather than routinely. Very few charities have sought advice on more than four occasions in the past three years.

The motivations and barriers in the choice of a service provider

The most important motivation for choosing a service provider is their knowledge of the individual charity and their perceived expertise (34% each). Three quarters of respondents felt that there were no barriers to accessing providers, but those that did identify a barrier were most likely to mention cost.

‘Knowledge of the individual charity’ and ‘perceived expertise’ are both strong motivators for charities seeking legal advice from Trustees, underlining their important role in the provision of free, high quality legal advice personalised to the needs of the individual charity. ‘Knowledge of the individual charity’ is also strong motivator for charities seeking legal advice from umbrella organisations but their ‘perceived expertise’ is less likely to be a motivator than it is for some other providers. By contrast charities are more likely to choose to use a solicitor because of their ‘perceived expertise’ but not for their ‘knowledge of the charity sector’ or ‘value for money’. In fact cost is more likely to be a barrier to using solicitors than it is for any other service provider. Thirty six percent of charities who named solicitors as one of their first two ports of call when seeking legal information or advice said that cost was a barrier/drawback to using them. Forty eight percent of people who had used some alternative to a solicitor in the last three years said this was because of the cost of solicitors or the availability of free information elsewhere. The prohibitive cost of using a solicitor was also mentioned with great strength of feeling in the qualitative research.

The research therefore suggests that lack of money means that some charities are unable to access solicitors. This is concerning because they are the providers with the highest perceived expertise. On the occasions that charities used alternatives to solicitors in the past three years almost half indicated that this was due to cost or the availability of free advice elsewhere, suggesting that they would have

used a solicitor if they could have afforded it. The Legal Services Consumer Panel may wish to consider how to tackle this at a policy level.

Extent to which legal advice has led to positive outcomes

The vast majority of interviewees in the qualitative research who had used legal services found that the advice received had helped them achieve positive outcomes. Highly positive comments were received about solicitors, including “nothing needed to be improved”. The quantitative research also asked about the usefulness of advice provided by solicitors and found equally high levels of satisfaction, with three quarters of respondents finding the advice extremely or very useful and only 7% being dissatisfied or very dissatisfied. This suggests that appropriate and timely legal advice can be of great value to small charities.

Factors which drive satisfaction/dissatisfaction with provision of legal services

The quantitative research revealed extremely high levels of satisfaction with the service received from solicitors - 84% were satisfied or very satisfied and only 4% were dissatisfied or very dissatisfied. However the qualitative research also teased out some concerns in respect of their speed of response, ability to advise on more specialist areas and transparency over costs. The desirability of having fixed cost advice was mentioned several times.

The introduction of alternative business structures for legal services may help charities in future because some of the new business models such as Quality Solicitors, High Street Lawyer and Face2Face Solicitors, emphasise a consumer friendly fixed fee approach. There may be a place in this market for a provider that focuses on cost effective charity specialist advice. Competition from these new providers will in turn force traditional firms to rethink their marketing and pricing strategies which could also be to the benefit of small charities.

The quantitative research was ambiguous about whether respondents were satisfied with the value for money provided by solicitors. Only 8% would be motivated by value for money when choosing a solicitor compared to another advice provider, but when rating the value for money actually received from their experiences with solicitors, two thirds were either very satisfied or satisfied and only 7% were dissatisfied or very dissatisfied. It could be that respondents answered the first question thinking more about relative cost than value. Alternatively it could be that the value of a solicitor is only truly appreciated once they have helped a charity with a specific problem and demonstrated their expertise. This ambiguity over value for money may be something that solicitors wish to address in their marketing communications with small charities.

Experience of small charities in complaining about legal services

Whilst only 14% of charities knew explicitly about the complaints system for legal services, three quarters had some level of awareness that there is such a system, and the qualitative research indicated that charities were confident that they would be able to find out where to go to make a complaint using the internet.

Only 14 of the charities interviewed (2%) have had reason to make a complaint about legal services. However, of these, over half (8 charities) felt it was not dealt with to their satisfaction.

Information which may help charities with regard to their legal needs

It is clear that there remains a gap for simple, concise information. While there is a wealth of detailed and complex information available, constraints associated with time and resources mean that much of this is overlooked. The 24 charities involved in the qualitative research provided the following suggestions with regard to provision of legal information for small charities in the future:

- simple, concise information to help small charities know when to seek advice and where to go for it;
- a simple, high level written outline of legal obligations and liabilities, with an indication of the knock on effects of certain actions;
- accessible interpretations of the various Acts and legislation that charities are subject to, particularly the Charities Act and Trustees Act;
- a dedicated help line or email service for legal issues, available to all charities; and
- a directory of local solicitors who offer charities advice on a reduced rate or pro-bono.

Key conclusions

The research reveals that even the smallest charities have a wide range of legal obligations. However around half of our qualitative sample had a limited or no understanding of what these obligations are. These charities were not sure where to get advice from and considered that there is insufficient clear, summarised guidance available.

The research also reveals that whilst solicitors are the most likely provider of legal information and advice to be selected for their expertise, the cost of their service is perceived to be a significant barrier to them being used. Thirty six percent of charities named cost as a barrier to using solicitors. With three quarters of charities in England and Wales having incomes of less than £100,000 this raises significant concerns, particularly because they are also the charities:

- less likely to have a legally qualified Trustee on the Board;
- less likely to have a full understanding of their legal obligations; and
- possibly more likely to feel daunted about accessing legal advice.

Agenda for the Legal Services Consumer Panel

Taking into account the wider findings in the report, we provide below an agenda for the Legal Services Consumer Panel which would assist small charities in identifying and accessing the most appropriate legal information and advice to meet their needs.

The Legal Services Consumer Panel's role is to represent the interests of consumers by providing independent, evidenced-based advice to the Legal Services Board. This includes the interests of all consumers who lack buying power, including individuals, small businesses and small charities. It does not have decision-making powers, but seeks to influence decisions made by others about the regulation of legal services. This is the Panel's first piece of work relating to the charities sector.

1. Focus on the legal advice needs of the majority of charities (i.e. those that have less than £100,000 of income) rather than just consulting with larger charities which are not representative of the sector. This inevitably means giving support to the Charity

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- Commission and umbrella/ infrastructure organisations providing informal free or cheap legal advice.
2. Encourage provision of concise, easy to read guides of the main legislation affecting charities, aimed at charities who have no or very little existing knowledge and few if any staff.
 3. Encourage charities to become more aware of:
 - their legal responsibilities and the importance of staying abreast of them;
 - the benefits of accessing relevant training courses to raise their level of understanding of their legal obligations;
 - the benefits of recruiting a trustee with legal knowledge; and
 - the importance of making provision for legal fees in their budgets and on their funding applications.
 4. Encourage more of the legal profession to:
 - recognise small charities as a key consumer of legal services;
 - address charities' concerns about the value for money provided by lawyers and respond to charities expressed demands for transparent pricing structures, fixed fees for services etc., and
 - address charities concerns about lack of clear, concise information and respond to charities expressed demands for provision of accessible guides to legal obligations and changes in legislation.
 5. Acknowledge the substantial contribution already made by members of the legal profession to small charities in their capacity as unpaid trustees; but also encourage more trusteeships in the very smallest charities by making the profession aware of the benefits both to the charity in the form of free, accessible advice and to the trustee in the form of valuable non executive career experience.
 6. Demonstrate to the legal profession the benefits of undertaking pro bono work for small charities. This could include creating incentives, such as recognition of such work as Continuing Professional Development, and provision of awards for providers. (We draw attention to new charity National Pro Bono Centre that was created in 2010 to channel pro bono requests from individuals and community groups to the Bar Pro Bono Unit and LawWorks. Law Works helped 40,000 individuals but only 350 charities last year).
 7. Put measures in place to ensure that pro bono work provided to charities is of sufficient quality. For example, if provided by trainees or junior staff, ensure that it is sufficiently supervised; monitor level of satisfaction with the service, advice and information provided; ensure the necessary skills are being provided at the outset, etc.
 8. Encourage the Government to recognise:
 - the implications of funding cuts to the Charity Commission and umbrella/infrastructure organisations who are likely to have to reduce the amount of free advice available to small charities;
 - that the ability of local specialist charities to be involved in the delivery of services may be reduced if they are unable to access the free/cheap legal advice provided by these organisations.

Summary

1 Introduction

1.1 Introduction

1.1.1 In July 2011 the Legal Services Consumer Panel commissioned MVA Consultancy to undertake a research programme to provide evidence on the challenges small charities face in identifying and accessing the legal services they need. This report provides the findings of the research programme, and is structured as follows:

- Chapter 1 provides a detailed context to the study and outlines the study aims and objectives;
- Chapter 2 provides information about the methodology adopted and describes the profile of charities who took part in the research;
- Chapter 3 provides the main findings of the research programme relating to charities legal obligations, their awareness and understanding of their legal needs, their views of accessing different types of legal information and services, and their approach towards and confidence in seeking such advice;
- Chapter 4 provides the main findings of the research programme relating to charities actual legal requirements in the last three years, their experiences of legal services during this time, and their perceived future legal needs; and
- Chapter 5 provides our key conclusions and recommendations.

1.2 Study Context

Background

1.2.1 The charity sector is evolving and changing, and with that so too are the legal obligations of individual charities. There has been a blurring of service delivery boundaries between the state, corporate business and charities in recent times and increasingly charities are overlapping with other types of organisation leading to more complex legal arrangements. In addition, at a time of economic downturn, the voluntary sector, now estimated to be worth over £35 billion a year, is likely to suffer from decreased donations and reductions in public spending. Many charities have now diversified their income streams and typically undertake a wide range of complementary activities. This means that charities are subject to numerous areas of law and are, therefore, important consumers of legal services.

The Legal Services Act 2007

1.2.2 The legal services landscape is also changing rapidly and becoming more varied. The Legal Services Act seeks to liberalise and regulate the market for legal services in England and Wales, to encourage more competition and to provide a new route for consumer complaints. The Act created the Legal Services Board to promote its regulatory objectives. The Act also relaxes the tight ownership restrictions on legal businesses meaning that for the first time non-lawyers can invest in and own these businesses. Commonly dubbed "Tesco Law," these alternative business structures are expected to shake up the traditional legal services market with new consumer friendly approaches such as fixed fees, online tools and choice between a wide range of providers.

The Legal Services Consumer Panel

- 1.2.3 The Legal Services Consumer Panel was set up to represent the interests of consumers. It provides independent, evidenced-based advice to the Legal Services Board, enabling the Board to make decisions that are shaped around the needs of users. The Panel has legal powers to publish its advice and the Board has a legal duty to explain its reasons if and when it disagrees with this advice.
- 1.2.4 The Panel has a remit to represent the interests of the many different consumers of legal services. However, they prioritise consumers who are less able to give voice to their own interests. This often happens when the specialised nature of legal services creates an imbalance of power between consumers and lawyers.
- 1.2.5 The Legal Services Consumer Panel is keen to explore the experiences of small charities in accessing legal services, and their understanding of and attitudes towards them. They are interested in knowing if the legal advice received by small charities has been valuable and led to positive outcomes for the charity. This research project will provide an evidence base of issues facing small charities in identifying and accessing legal services and will increase the Panel's understanding of the experiences of those who sought them. This evidence will assist the Consumer Panel to influence and drive reforms within the legal system.

Small charities and the wider charity sector

- 1.2.6 The UK charity sector is a significant part of the economy. With net assets of £96.6 billion and income of £35.5 billion, it employs 668,000 paid staff in 171,000 organisations¹. At 30th June 2011, there were 161,978 charities registered with the Charity Commission which is the regulator for England and Wales (there are separate regulators in Scotland and Northern Ireland). Of these 44% have an income lower than £10,000, 31% have an income between £10,001 and £100,000, and 11% have an income between £100,001 and £500,000. Only 6% have an income in excess of £500,000. The remaining 8% have not yet provided their income to the Charities Commission. The Small Charities Coalition uses an income of under £1 million to define small charities. Using this definition, the majority of charities in England & Wales are small. However charities may have a low income but high net asset value, or in the case of charities dependent on volunteers a low income but relatively high level of activity, so income is not the only indicator of size and complexity.
- 1.2.7 The charity sector is now often referred to as civil society and increasingly charities are overlapping with other types of organisation leading to more complex legal arrangements. Examples of this include social enterprises, GP co-ops and mutuals.
- 1.2.8 Another significant driver of change is the government's 'Big Society' agenda seeking to shift power from politicians to people. This has, among other things, involved the transfer of public assets to voluntary organisations (e.g. art galleries, village halls, etc), and increasingly involves charities delivering public services for government. There has been much speculation as to what 'The Big Society' means from a legal perspective for a variety of groups, including small charities, and the extent to which this constitutes charitable activity and whether this may be inadvertently changing what charities are. As such, the move

¹ 2010 Civil Society Almanac written and published by NCVO

towards localism is going to create greater legal complexity for charities moving into the future.

Legal advice needs of small charities

- 1.2.9 With charity donations decreasing during the recession and reductions in public spending rapidly taking hold, charities are finding themselves under increasing pressures to diversify their income streams (for example by providing contracted services, trading or charging fees), merge and collaborate with other charities or face the possibility of going under. Such moves have a variety of different legal implications and mean that small charities are more likely to have needed or sought legal advice in recent times.
- 1.2.10 Many small charities therefore undertake a wider range of activities than may be expected given their income level. This means that small charities, are subject to numerous areas of law which relate to:
- the structure of the organisation;
 - the right to operate as a charity;
 - governance;
 - safeguarding vulnerable groups;
 - employees, workers, volunteers and other staff;
 - services and activities;
 - funding and fundraising;
 - finance and tax;
 - property; and
 - health and safety.
- 1.2.11 Charities, for example, must have appropriate contracts and trading structures. Government funding is increasingly provided by means of contracts for services (rather than grants) and some charities are now subject to 'payment by results' conditions which increases their need for legal advice. Any trading that is not for primary purpose (e.g. charity shops) will typically be channelled through a subsidiary trading company to avoid large tax exposures. Although in general charities do not pay tax, there are complex laws in respect of gift aid, corporate sponsorship and benefits to donors which must be complied with to avoid significant tax exposure. Charity VAT regulation is a further area of substantial financial risk and is subject to a range of complex case law. Fundraising for specific purposes creates an obligation between Trustees and donors which is subject to Trust Law. Failure to spend these restricted funds in accordance with the donors' wishes can lead to a breach of Trust.
- 1.2.12 Charities can be constituted in different ways, each of which have a bearing on their legal and regulatory requirements. They could be a Trust, an unincorporated association or a Company Limited by Guarantee. As the scale and complexity of a charity's activities increase so will the financial risk and personal liability of the trustees. Thus employing staff, contracting to deliver services or owning land and investments can all increase risk and liability. The main advantage of a company is that it offers trustees and members some protection from personal liability so it is an increasingly common structure for charities to adopt. Incorporated charities

1 Introduction

are subject to the Companies Act as well as the Charities Act. This places additional reporting and compliance obligations on the organisation and its directors who have specific duties under company law and are legally liable for their actions. A new legal structure, a Charitable Incorporated Organisation, will be available from the end of 2011. It should provide some of the benefits of being a company, but without some of the burdens, and a number of charities may wish to seek legal advice about the best structure for their purposes. Charities are regulated by the Charity Commission which ensures their legal compliance, but depending on their activities may also be subject to other regulation; for example the QAA (Quality Assurance Agency for Higher Education) regulates standards in universities and the Commission for Social Care Inspection regulates standards of social care.

- 1.2.13 A major piece of legislation affecting charities is the 2006 Charities Act which aimed to modernise charity law in response to the growing diversity of charities on the ground. This Act expanded the list of charitable purposes and provided a definition of public benefit which is the central requirement to be entitled to operate as a charity. The legislation has led to an increased amount of legal activity in fee charging charities because it includes the requirement that the opportunity to benefit must not be unreasonably restricted by the ability to pay any fees charged. The recent Charity Tribunal judgement on fee charging private schools has not entirely resolved how to interpret this area of law and may lead to more charities seeking legal advice in the future.

How small charities access legal advice

- 1.2.14 While cost is no doubt a barrier to charities seeking legal advice, there appears to be a lack of clarity on the legal requirements of charities. This raises the question of whether some small charities are aware of, and understand, their legal obligations. There is much anecdotal evidence that Trustees are unaware of the full range of their legal obligations. Ascertaining the extent to which this is the case is a key area of interest for this study.
- 1.2.15 Some small charities will seek free legal advice. Some may be able to access pro-bono advice from a regulated solicitor, either through personal contacts or an intermediary such as LawWorks. However some will turn to other sources of advice. For example they will consult friends, volunteers, the Charity Commission, umbrella organisations (such as NCVO, ACEVO, IoF and CFDG) and the internet. This begs the question of whether the quality of the advice they are receiving is fit for purpose. Also, there are concerns about whether access to that advice may decrease due to current budget cuts.
- 1.2.16 The Charity Commission must cut its budget by 33% before the end of 2014. It's Chief Executive, Sam Younger, recently outlined that it will do this by focussing on compliance rather than advice and by encouraging charities to be more self-reliant. They hope that the umbrella organisations will increase their advice giving role, but recognise that their ambition to do this may be greater than the resources they have available. This could reduce the options for charities seeking free legal advice.

1.3 Research Objectives

- 1.3.1 In July 2011 the Legal Services Consumer Panel commissioned MVA Consultancy to undertake a research programme involving both qualitative and quantitative surveys with small charities. The primary objectives of the research are to:

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- provide an evidence base of issues facing small charities in identifying and accessing legal services and increase the Panel's understanding of the experiences of those who sought them;
- establish whether the legal advice received by small charities has been valuable/ led to positive outcomes for them;
- provide evidence to assist the Consumer Panel to influence and drive reforms within the legal system. For example, reforms relating to the treatment of complaints to the Ombudsman, or the extent to which the Solicitors Regulation Authority (SRA) regulates the 120,000 solicitors in England and Wales; and
- establish the current state of play, providing an accurate baseline against which to measure the impact of any future policy reforms, i.e. whether the reforms have made a difference to consumers.

1.3.2 The specific aims of this research programme are to establish:

- What is the nature and extent of legal needs experienced by small charities, e.g. charity law, employment, property issues?
- To what extent are small charities aware of and understand their legal needs?
- What strategies do small charities use to resolve their legal needs (e.g. ignore, instruct a solicitor, talk to a relative/friend, representative/umbrella body help lines, unregulated agencies such as HR consultancy firms, etc.)?
- If they choose to take help from legal services providers or others, what types of services do small charities currently seek?
- What motivates a small charity to choose a particular service provider?
- What barriers do small charities perceive in meeting all of their legal needs from the current legal services providers?
- Has the legal advice provided to small charities been valuable/ led to positive outcomes?
- What drives small charities' satisfaction/ dissatisfaction with the provision of legal services?
- What changes would be needed to help improve small charities' satisfaction in areas where they are currently dissatisfied?
- What experience, if any, do small charities have of complaining about legal services?
- What information might help small charities with regard to (potential) legal needs and how would they like this information to be delivered?

2 Methodology

2.1 Overview

- 2.1.1 The Legal Services Consumer Panel requires both an in-depth understanding of the issues facing charities and statistically robust research findings which can be used to influence policy. We therefore adopted a research programme with a two stage approach. Phase One involved qualitative interviews with a sample of charities which represented a wide range of different sized small charities; charities that operate within different sectors, and charities who have and have not used more formal legal services. This provided an opportunity to probe for really in depth responses as well as inform questionnaire design for the second phase. Phase Two was a quantitative survey, providing statistically robust results and comparisons between different segments.

2.2 Sampling frame

- 2.2.1 MVA were given permission by the Charity Commission to use a random sample of 7500 small charities (with an annual income under £1 million) from their database of registered charities in England and Wales. This was supplemented by an additional 3000 charities with an income of between £250,000 to £1 million, which brought the total number of charities in sampling frame to approximately 10,500.

2.3 Phase 1: Qualitative Research

- 2.3.1 The qualitative phase of this study, which took place in July and August 2011, began with a review of existing research and of the results of the LSCP initial scoping study.
- 2.3.2 The qualitative phase consisted of in-depth interviews, with the person who had responsibility for legal issues, in a sample of 24 small charities. The sample was drawn from the sampling frame described in section 2.2. Interviews were undertaken by core members of the project team using a semi-structured interview guide.
- 2.3.3 Not all charities have the same complexity of legal needs. The activities and/or structure of certain charities, regardless of their size, dictate the nature and extent of their legal obligations. The income of a given charity is not necessarily a good indicator of need and the assumption cannot, therefore, be made that higher grossing charities are more likely to receive and pay for legal advice compared to smaller charities. As such, it was necessary to consult with a mix of charity types as well as different sized charities, in order to understand the differences in legal needs and experience across the spectrum of charitable organisations. Quotas were therefore set on location (England/Wales); income and different types of charity. These quotas were all achieved and are provided in Table 2.1.
- 2.3.4 The interviews were designed to gain an in depth understanding of the precise challenges the charities were facing in identifying and accessing the legal services they need. The topic guide focused on awareness, understanding and needs of individual charities; their experiences of legal services; experiences of the complaints system and future legal needs. The topic guide is provided in Appendix A

Table 2.1 Quotas set and achieved for Phase One: Qualitative Research

Size (Income)	Quota set and achieved	Primary purpose	Quota set and achieved
£0 - £9,999	3	Small community based activity	4
£10,000 – £49,999	4	Education or research	3
£50,000 - £249,999	5	Art, Culture, Sport, Recreation	4
£250,000 – £499,999	6	Religion	3
£500,000 - £1m	6	Health	3
		Social services	2
		Other	5
Total (all)	24	Total (all)	24

2.4 Phase 2: Quantitative Research

- 2.4.1 Following the completion of the qualitative phase (week ending 19th August), the design of the quantitative questionnaire commenced. This was heavily informed by the preliminary findings of the in-depth interviews.
- 2.4.2 The fieldwork, which consisted of a 20 minute CATI survey with a sample of 800 small charities, was undertaken between 5th to 19th September 2011. The questionnaire is provided in Appendix B.
- 2.4.3 The quantitative research phase was undertaken with key decision makers (with regards to legal issues and legal services) within the charities. This phase of the research allowed us to quantify small charities' understanding of, attitudes towards and experiences of legal services, and provided results and comparisons between segments which are statistically robust.
- 2.4.4 As per the qualitative research, it was important to engage with a diverse range of charities of different types and sizes. As there are fewer charities in the highest income bands, equal sized quotas were set on the four income bands to ensure significant differences between charity sizes could be identified in the analysis. Within each income band a random sample of charities was selected for interview. The final data were post weighted to reflect the actual number of charities in each band on the Charity Commission database, thus ensuring the final sample was representative of all registered charities in England and Wales. Table 2.2 shows the quotas set, the achieved sample and the weighting factors.

Table 2.2 Quotas set and achieved for Phase Two: Quantitative Phase

Income band	Set quotas	Achieved sample	Registrations in database	Weighting factor
£0 – £49,999	200	211	49,772	1.33
£50,000 – £249,999	200	200	84,182	2.37
£250,000 – £499,999	200	201	6,211	0.18
£500,000 – £1m	200	200	3,615	0.10
Total (all)	800	812	143,780	

2.4.5 The breakdown of 'registrations in the database' in Table 2.2 were provided by the Charity Commission. It should be noted that 12,030 charities registered with the Charity Commission have no incomes recorded and could therefore not be categorised. These charities were excluded from the overall total of registered charities used to weight the data.

2.4.6 The figures provided throughout the report are based on weighted data. Weighted and unweighted bases are provided at the bottom of each table.

2.4.7 Where totals are more than 100% this is either due to rounding or because respondents can give more than one answer to a question.

2.5 Profile of charities in Phase Two: Quantitative Phase

2.5.1 The first level of analysis involved generating descriptive statistics for the sample as a whole and for specified sub-groups of the sample. This section describes the characteristics of the weighted sample of charities in the quantitative survey.

Income Band

2.5.2 The majority (58%) of registered charities in England and Wales who report their income to the Charity Commission and who have an income less than £1 million, fall within the £50,000 to £249,999 income band, and just over one third (35%) have an income of less than £50,000. There are significantly fewer charities within the two highest income bands (7% in total). The breakdown of charities by their income band is provided in Table 2.3.

2.5.3 Throughout this report we have referred to charities' by income bands 1-4. The level of income under each of these bands is shown in Table 2.3.

Table 2.3 Charity profile by income band

Income band		Percentage (%)
Income band 1	£0 – £49,999	35%
Income band 2:	£50,000 - £249,999	58%
Income band 3:	£250,000 – £499,999	4%
Income band 4:	£500,000 - £1m	3%
Total		100%
Weighted base (all)		812
Unweighted base (all)		812

Type of Charity

2.5.4 One third of charities in the survey undertake ‘small, community-based activities’, and another third are involved in ‘education or research’, A quarter are involved in ‘arts, culture, sport, or recreation’, almost as many are involved in ‘health’, and the same number again in ‘social services’. Further classifications are provided in Table 2.4. Note, many charities described their activities as falling under more than one of these categories.

Table 2.4 Charity profile by type of charity

Type of charity	Percentage (%)
Small community based activity (e.g. village hall, PTAs)	34%
Education or Research (including child care/education, adult education, culture and language associations)	33%
Arts, Culture, Sport, Recreation (e.g. arts and music organisations, sports and social clubs)	25%
Health (including health care, health promotion and education)	23%
Social Services (e.g. day care, community or residential care, counselling and mediation, lunch clubs)	23%
Religion (including religious organisations or religious culture)	15%
Housing (e.g. Housing Associations, tenants and residents associations, hostels/homelessness, house improvements or repairs)	11%
Employment and Training (health and safety, IT training etc.)	8%
Information, law, crime, and civil rights (e.g. law centres and CABx, general financial or debt advice, equal opportunities and racial harmony)	7%
Environment (e.g. natural and build environment, recycling, pollution)	6%
Transport (e.g. community transport, shop-mobility)	2%
Other category	10%
Weighted base (all)	812
Unweighted base (all)	812

Note: some charities are involved in more than one of the above

Other charity characteristics

2.5.5 Other interesting characteristics of the sample include:

- 16% of charities are part of larger national charities. Those with incomes of less than £50,000 are more likely to have this type of relationship with another organisation (25%); and
- 21% of charities have committee members or Trustees who are trained solicitors, either active or retired. This is more common in the two higher income bands (over one third).

Table 2.5 Charity profile by other characteristics

	Overall Percentage (%)	By Income Band			
		Band 1 £0- £49,999	Band 2 £50,000- £249,999	Band 3 £250,00- £499,999	Band4 £500,000 - £1 m
Part of a larger national charity	16%	25%	11%	11%	14%
Weighted base (all)	808	277	475	35	20
Unweighted base (all)	809	208	200	201	200
Committee members or Trustees who are trained solicitors, either active or retired	21%	13%	24%	42%	37%
Weighted base (all)	808	277	475	35	20
Unweighted base (all)	809	208	200	201	200

3 Charities Awareness and Understanding of their Legal Needs, and Views of Accessing Legal Information and Services

3.1 Introduction

3.1.1 This chapter provides the findings of both the qualitative and quantitative surveys. The surveys are reported together, with qualitative findings providing added insight to the quantitative findings in each of the sections. The chapter is divided as follows:

- Section 3.2 examines charities awareness and understanding of their legal service needs;
- Section 3.3 looks at the range of legal obligations which small charities have;
- Section 3.4 seeks to understand the views of small charities in accessing different types of legal information and services, what motivates them and what they perceive the barriers to be; and
- Section 3.5 examines small charities approach to seeking legal information and their confidence in doing so.

3.2 Awareness and understanding of legal needs

3.2.1 Small charities' legal service needs depend on the range of activities they undertake and on the structure of the organisation. Seeking legal services requires the charity to be aware that they have a legal obligation in the first place. The qualitative phase of our research sought to ascertain, through detailed questioning, how aware small charities are of their legal obligations.

3.2.2 The findings suggest a very mixed picture. One half of the charities had at best a limited understanding of their legal obligations. However, the other half showed a moderate understanding of their obligations and a few of these were able to demonstrate a comprehensive knowledge. Whilst no statistically significant results can be drawn from the small sample size in the qualitative research, Table 3.1 indicates that charities with incomes over £250,000 are more likely to demonstrate moderate or comprehensive understanding of their legal needs than those with incomes under £250,000. This has significant policy implications because a very large majority of charities in England and Wales fall into the two smaller income bands.

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Table 3.1 Level of understanding of legal obligations (Qualitative Survey)

Level of understanding	Overall number of charities	By Income Band			
		Band 1	Band 2	Band 3	Band 4
		£0-£49,999	£50,000-£249,999	£250,00-£499,999	£500,000 - £1 m
None	3	1	0	1	1
Limited	9	5	2	2	0
Moderate	9	0	3	3	3
Comprehensive	3	0	0	1	2
Total (all)	24	6	5	7	6

- 3.2.3 The link between the level of awareness and income level could be a reflection of ability to pay for advice. However other factors could also be at play such as the overall skill level of the people involved with the charity (be they Trustees, staff or volunteers) and the ability of larger charities to attract Trustees with a formal legal background. In the quantitative survey only 13% of charities in Income Band 1 have committee members or Trustees who are trained solicitors, compared to 42% of income Band 3 and 37% of charities in income band 4.
- 3.2.4 When the activities of each charity in the qualitative research were reviewed, it was evident that all but one of the charities with no or limited understanding had obligations of which they ought to be aware. These obligations ranged from a basic understanding of charity and trust Law to more specific operational rules concerning employment, tax, property, health & safety and safeguarding vulnerable groups. The latter legislation is relatively recent (2006) and was frequently omitted when interviewees reviewed their legal obligations suggesting that some charities are not up to date with new legislation.
- 3.2.5 Although this finding is worrying, it is probably unrealistic to expect a single interviewee to demonstrate a complete awareness and understanding of legal needs in the course of a one hour discussion. Legal knowledge is often spread across several individuals. As such actual awareness levels across an entire Trustee Board or organisation may be slightly better than indicated here.
- 3.2.6 For example one of our interviews was with the manager of a children’s nursery. She showed detailed understanding of safeguarding and employment legislation having attended several courses on the subject. However she showed little awareness of trust or charity law. In this case it is likely that her Trustees will be expecting her to focus on operational legislation while they take responsibility for overarching Charity and Trust Law. In other examples interviewees who showed limited awareness indicated that other Trustees knew a lot more about certain legal areas than they did.

3 Charities Awareness and Understanding of their Legal Needs, and Views of Accessing Legal Information and Services

3.2.7 More positively, our interviewees had a good self awareness about their level of legal knowledge. Table 3.2 shows that three quarters of those with no or limited understanding knew that this was the case. This means that in future if they become aware of a legal situation, they should be in a position to recognise that they need to seek advice.

Table 3.2 Interviewees self awareness about level of legal understanding (Qualitative Survey)

Level of understanding	Awareness Level: Accurate	Awareness Level: Inaccurate	Awareness Level: Not known	Total
None	1	2		3
Limited	8	1		9
Moderate	8		1	9
Comprehensive	3			3
Total (all)	20	3	1	24

3.2.8 Charities in the qualitative research relied on a range of other people and organisations to advise them of their legal obligations including any changes in legislation. The most common were the Charity Commission, local infrastructure organisations (e.g. CVS or Voluntary Action), national umbrella organisations (e.g. NODA – National Operatic and Dramatic Association - was mentioned by a theatre), larger parent or affiliated charity (e.g. the British Dyslexia Association and RNIB were mentioned by charities dealing with the same issues at a local level), accountants and solicitors.

3.2.9 This range of information providers and the vast quantity of advice that they produce means that many charities find it difficult to sift through the information and identify what could be relevant to their own situation. One interviewee explained: *"we try to [stay up to date] but there isn't a system that ensures we do."* Staying up to date is even more of a challenge for small charities because they often rely on voluntary and time-pressed Trustees to monitor legal obligations. As one charity manager commented: *"To be honest we are actually drowning in information. The Charity Commission already produce so much – it is not physically possible to read any more. When I submit my annual return to the Charity Commission they will give me a list of information that the Trustees should read - 'yeah right!' I have enough trouble getting them to read for the Trustee meetings!"*

3.2.10 The Charity Commission maintains regular contact with charities thanks to the annual return process and has established itself as an advisor as well as a regulator in recent years. This may explain why so many charities mentioned the Charity Commission as their main source of legal information and updates. However, this result may change in the near future. The Charity Commission's recent strategic review, in response to a planned 33% funding cut, announced a retreat into a regulatory role. By developing partnerships with umbrella

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organisations the Commission will reduce and maybe altogether stop one-to-one advice and in future may only make its materials available on-line.

- 3.2.11 National umbrella and local infrastructure organisations evidently perform an important role for many small charities that lack the resources to employ their own support functions. The theatre mentioned above said of NODA: *"They are excellent, provide factsheets and we can ask them specific questions"*. One village hall in Suffolk obtained a wide range of legal support and information from Suffolk ACRE (Action with Communities in Rural England) and SAVO (Suffolk Association for Voluntary Organisations). This support included the option to have one hour of free legal advice. In Wales an interviewee mentioned the guidance received from the WCVA (Wales Council for Voluntary Associations). Another interviewee said:

"I've also worked very closely with the PCVS (Peterborough Council for Voluntary Service), our local one is very good at running different courses and they have a group that comes in specifically designed for charities and voluntary organisations. And it's not once every two months but they also do an update via an email system"

- 3.2.12 Interestingly accountants are cited more often than solicitors as being sources of information on legislation indicating that they may be better placed or more adept at providing updates. This could be because the annual accounts process gives them more regular contact with their clients. Positive comments about accountants included:

"[We have] just changed our auditors to charity specialists and part of the reason for this is that we wanted to make sure we're fully briefed on charity law and how that might affect our accounts"

"our accountant... is very good at telling us what our legal obligations are"

- 3.2.13 It is clear that many small charities depend on the alertness of their volunteers, Trustees and staff to stay abreast of changes. As one interviewee put it:

"it's always on my mind"

- 3.2.14 Another said:

"[You] have to be really alert in a small organisation....thinking...is that relevant to me?"

- 3.2.15 A typical scenario by which a small charity finds out about a legislative change is this one:

"People heard it on the news as part of the budget reporting so they came to me and said what about this? So I then looked online and found a chapter and verse on the government website that talked about the budget"

- 3.2.16 Finally several interviewees highlighted the sharing of information that occurs when Trustees have several different roles in different organisations:

"People are involved in different charities, so if one charity gets to hear about something the chances are it will cascade to other charities by word of mouth from the people who relate to a number of charities"

3.3 Range of legal obligations faced by small charities

- 3.3.1 The quantitative study assessed the actual range of legal obligations across all small charities. Table 3.3 provides a breakdown of the type of activities and legal arrangements that charities are involved with.
- 3.3.1 The areas where the majority of small charities have legal obligations beyond the basic requirements of being a registered charity are investments, restricted income, working with children, young people and vulnerable adults, and employment.
- 3.3.2 61% of all small charities have investments. This figure was fairly consistent across all income bands. Investments can lead to obligations under both the Charities Act and Trust Law. However the types of investment mentioned in the qualitative research were reasonably straightforward (deposit accounts and CCLA investment funds) suggesting that this area should not trigger many demands for legal services.
- 3.3.3 59% of all small charities fundraise for specific purposes giving rise to restricted income which according to Trust Law can only be spent in accordance with the donors' wishes. Compliance with Trust Law is particularly important for Trustees because they could be held personally liable for any breach. As such this was a regular concern for many of our interviewees in the qualitative research.
- 3.3.4 57% of all small charities work with children, young people and vulnerable adults giving rise to obligations under the relatively new Safeguarding Vulnerable groups Act (2006). This figure was even higher in the larger charities (77% in Income Band 3 and 80% in Income Band 4) but with 43% of the very smallest charities also recording its relevance it is a significant responsibility.
- 3.3.5 Over half (51%) of all charities employ one or more staff members. The variation between large and small charities is notable. The large majority of charities in the two higher income bands employ staff, 90% and 95% respectively, in clear contrast to charities in the smallest income band where just 7% employ staff. The figures suggest that charities with higher incomes will have more obligations in relation to employment law, while smaller charities tend to be more dependent on volunteers for day to day running.
- 3.3.6 Contracts to provide services are much more common in the bigger charities. Over half of charities in the Income Band 3 (55%) and 60% of Income Band 4 have contracts to provide services, while only 32% of charities in Income Band 2 and 5% of Income Band 1 do so. Those charities that provide services under contract are obliged to adhere to contract law and many will wish to have their contracts reviewed by a lawyer to avoid potentially costly errors.
- 3.3.7 Dealing with the administration of grants is also an area of responsibility that is more likely to affect the higher income bands, with 71% of charities in Income Band 3 receiving grants to undertake their work, compared to 22% of charities in Income Band 1.
- 3.3.8 Charity VAT regulation is a further area of substantial financial risk and is subject to a range of complex case law. However, the findings indicate that just 18% of all charities surveyed are VAT registered and VAT did not emerge as a significant issue in the qualitative research.

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- 3.3.9 49% of charities own property with this figure increasing with the Income Band. The government's 'Big Society' agenda is seeking to shift power from politicians to people. This has, among other things, involved the transfer of public assets to voluntary organisations (e.g. art galleries, village halls, etc). While it is not known whether this policy has impacted on the levels of property ownership reported in this research, it is an area of change going into the future.
- 3.3.10 These results show that the range of legal obligations appears to increase with the charity's income size. The step change in the number of legal obligations is greater between Income Band 1 and 2 than it is between Income Bands 2 and 3 and 3 and 4 suggesting that the legal obligations of the very smallest charities may be less extensive.

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Table 3.3 Activities and legal obligations by income

Activities and legal obligations	Overall	Income			
		Band 1 £0- £49,999	Band 2 £50,000- £249,999	Band 3 £250,00- £499,999	Band 4 £500,000 - £1 m
Investments	61%	58%	64%	50%	66%
Fundraise for specific purposes	59%	55%	60%	70%	60%
Works with children, young people and/or vulnerable adults	57%	43%	63%	77%	80%
Employs staff	51%	7%	73%	90%	95%
Property	49%	37%	54%	68%	68%
Gift aid	45%	23%	56%	60%	63%
Grants	44%	22%	55%	71%	64%
Contracts to provide services	24%	5%	32%	55%	60%
VAT registered	18%	5%	24%	33%	31%
Non-primary purpose trading	17%	8%	22%	17%	29%
Leases property to another organisation	16%	14%	18%	19%	21%
Has any intellectual property to protect	15%	2%	21%	26%	31%
Permanent endowment	13%	13%	14%	8%	13%
Loans	5%	1%	6%	9%	16%
Weighted base (all)	808	277	475	35	20
Unweighted base (all)	809	208	200	201	200

Note: most charities have activities and legal obligations in more than one of the above

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3.4 Accessing legal information and services

- 3.4.1 Charities were asked, if a legal issue arose which required them to seek legal information or advice, where would be the first place they would consider seeking information or advice from. They were then asked to name one further place they would consider seeking information or advice from. The results are provided in Table 3.4.
- 3.4.2 Solicitors are significantly more likely to be considered as one of the two named places people would seek information or advice from than any other provider, being cited by over half of all charities (54%), with 37% indicating it as their first port of call. Charities in Income Band 1 were less likely, at just 27%, than those in the other three bands, to consider a solicitor as a first port of call. For charities with incomes over £50,000, there does not appear to be a correlation between income and higher use of solicitors. These findings are consistent with the qualitative research in which half the interviewees also named solicitors as their first port of call. Charities who are part of a larger charity are less likely to use solicitors (33%) than all charities (54%).
- 3.4.3 The next most significant providers (in terms of being the first or second place people would seek information or advice from) are Trustees, the Charity Commission and national umbrella organisations. Sixteen percent of all charities indicated that they would consider asking Trustees and committee members for legal advice, with 14% of all charities choosing them as their first port of call. Charities are much more likely to consider using a Trustee if they have a legally qualified Trustee or committee member on the Board. Of the 21% of charities who have Trustees or committee members who are trained solicitors, 49% would approach them first. Charities in Income Band 3 and 4 were more likely to approach a Trustee in the first instance which may be linked to the fact that these charities are more likely to have trained solicitors on their board.
- 3.4.4 Sixteen percent of charities named the Charity Commission and 13% identified umbrella organisations as the first two places they would seek information or advice from, though charities in Income Band 1 were much more likely to approach the Charity Commission (12%) and umbrella organisations (11%) as their first port of call than those with higher incomes. They are also far more likely to ask advice from friends (8%) than those in the higher income bands (1% or less). This is consistent with the finding that these charities are less likely to use a solicitor and suggest that charities in income band 1 may have substantial financial (and possibly cultural) barriers to accessing solicitors.
- 3.4.5 Conferences, charity press and payroll bureaus were not mentioned as one of the two places people would seek information or advice from. Of interest, only 5% of charities would use the internet for advice, with just 2% indicating it as a first port of call. Respondents commented that while there is a wealth of material available online, it can be difficult to identify what is relevant and factual.
- 3.4.6 Of the 29% of respondents who indicated they would go to other sources for advice, 37% indicated they would go to their Head Office/National body for advice, 22% would consult with their Parish or local council, and 16% would use the Citizens Advice Bureau. Table 3.5 indicates the breakdown of response. Charities in Income Band 1 were significantly more inclined to consider approaching a head office or national body for advice though this could

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simply reflect the fact that their size makes them more likely to have this type of relationship with another organisation.

- 3.4.7 The quantitative survey showed no significant difference in the choice of advice providers made by charities based in rural locations and those based in urban locations, although one interviewee in the qualitative survey suggested that legal professionals living in rural communities may be more likely to provide pro-bono advice to local charities.

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Table 3.4 Service providers' charities would seek legal information or advice from

Advice provider	Would consider seeking legal advice from as 1 st port of call	Would consider seeking legal advice from as 1 st or 2 nd port of call	First port of call for legal advice by income band			
			Band 1	Band 2	Band 3	Band 4
			£0-£49,999	£50,000 - £249,999	£250,000-£499,999	£500 - £1m
Solicitor	37%	54%	27%	42%	46%	45%
A Trustee	14%	16%	13%	15%	20%	21%
Charity Commission	8%	16%	12%	5%	2%	3%
Umbrella organization ²	8%	13%	11%	7%	6%	7%
Free legal advice offered as part of a membership	4%	7%	2%	5%	3%	3%
Internet search ³	2%	5%	2%	2%	3%	4%
Friend	3%	4%	8%	1%	0%	0%
Accountant	2%	3%	1%	2%	1%	0%
Informal network	1%	3%	1%	2%	0%	1%
Volunteer	1%	1%	0%	1%	1%	1%
Advice related website from a trusted source	0%	1%	0%	1%	0%	1%
Payroll bureau,	0%	0%	0%	0%	0%	0%
Charity Press or similar	0%	0%	0%	0%	0%	0%
Conferences	0%	0%	0%	0%	0%	0%
Other sources of advice	20%	29%	23%	19%	17%	16%
Total	100%	NA	100%	100%	100%	100%
Weighted base (all)	812	812	281	475	35	20
Unweighted base (all)	812	812	211	200	201	200

² (e.g. NCVO, ACEVO, Institute of Fundraising, Charity Finance Directors Group)

³ (i.e. general Google/Bing/Yahoo searches)

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Table 3.5 Other advice providers' charities would consider approaching

Other providers	Would consider seeking legal advice from as 1 st or 2 nd port of call	Band 1	Band 2	Band 3	Band 4
		£0-£49,999	£50,000 - £249,999	£250,000-£499,999	£500 - £1m
Head Office/ National Body/ Foundation/ Federation	37%	61%	24%	13%	15%
Council/Parish Council	22%	28%	20%	10%	12%
Citizen Advice Bureau	16%	5%	24%	15%	6%
Legal advice Officer/Law Information Centre	9%	2%	14%	13%	13%
Insurance Company	7%	2%	10%	8%	12%
Human Resources Company/Employment Law Specialist	3%	0%	2%	23%	29%
Other (includes Union, bank, hospital)	4%	2%	5%	4%	6%
Total	100%	100%	100%	100%	100%
Weighted base (all)	242	81	145	9	6
Unweighted base (all)	236	61	61	53	61

Motivation for using an advice provider

3.4.8 Charities were asked (unprompted) to indicate what factors would be the prime motivators for them using the service providers which they had previously named as being their first or second port of call. Knowledge of their (the charities') organisation and perceived expertise were cited as the main motivational factors (34% each). Knowledge of the charity sector (23%) and past experience of using a provider (22%) were also highly regarded as motivational factors. Value for money was the next most important factor (18%). These findings were all consistent with our qualitative research.

3.4.9 Of the 16% of charities who indicated that they would go to a Trustee for advice, slightly higher numbers commented that they were motivated by their knowledge of the organisation (40%) and their perceived expertise (39%). Surprisingly Trustees' knowledge of the charity sector was not a prime motivator possibly indicating that education is required to support the development of Trustees' wider understanding of the context in which they operate.

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- 3.4.10 The advice providers most likely to be consulted because of their knowledge of their organisation and of the overall charity sector were umbrella organisations and the Charity Commission. Of the 13% who would consult with an umbrella organisation, 62% noted this was linked to their knowledge of their organisation and 56% felt that their knowledge of the charity sector would motivate them. These figures are 49% and 55% respectively for the Charity Commission. This maybe explains why umbrella organisations play such a significant role in raising awareness of charities' legal obligations. However their perceived expertise was lower at only 28%.
- 3.4.11 By contrast perceived expertise was the most significant motivation for using a solicitor, a finding that also came through strongly in our qualitative interviews. Of the 54% of charities who would consider using a solicitor for advice, 45% cited perceived expertise as a reason. Past experience of using them (28%) was also mentioned as a key reason. However, knowledge of the charity sector scored very low as a motivating factor for solicitors (12%), and they had the lowest score of all providers for value for money (8%).
- 3.4.12 Accountants were more likely to be chosen than solicitors because of their knowledge of the organisation and charity sector, probably because of the regular and detailed contact that they develop with charities during the annual account preparation and review process. However charities are much less likely to go to them than solicitors because of their perceived expertise. However, as the base numbers are low this finding should be viewed with caution.
- 3.4.13 Of those who stated that they would use free legal advice offered as part of a membership, 31% would be motivated to use them because of the value for money they offered. However perceived expertise of this service was unlikely to be a motivating factor in choosing to use it. Other providers that would be used because they are perceived as offering value for money are friends (54%) and the respondents' informal networks (53%). Again, level of expertise was not a motivating factor for use of informal networks.
- 3.4.14 Our qualitative research revealed that if an informal network is extensive it can be of great value to the charity. One respondent explained how after 30 years of work in the field:
- "you develop a network of peer support"*
- 3.4.15 Interestingly, speed of response was not indicated as a main motivator (6%) – other than for the 5% who would use the internet to get legal information or advice - even though this came out quite noticeably in the qualitative phase as something charities look for in their advice providers.
- 3.4.16 The requirements of a funder or grant giver were low on the list of priorities for choosing a provider, with only 2% of all charities indicating it as a motivator.
- 3.4.17 As conferences, payroll bureaus, advice related websites and charity press were not indicated as important sources of legal advice; they have been omitted from Table 3.6 which illustrates the main motivations for choosing an advice provider.

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Table 3.6 Motivations for choosing an advice provider

Motivation	Type of advice providers											
	Total	A Trustee	Volunteer	Friend	Informal network	Solicitor	Accountant	Charity Commission	Internet search	Umbrella organization	Free legal advice	Other sources of advice
Knowledge of your organisation	34%	40%	42%	18%	29%	21%	31%	49%	7%	62%	33%	40%
The perceived expertise	34%	39%	22%	35%	2%	45%	21%	26%	20%	28%	15%	26%
Knowledge of the charity sector	23%	21%	23%	18%	17%	12%	29%	55%	4%	56%	24%	13%
Used the provider before	22%	17%	0%	0%	30%	28%	29%	7%	22%	20%	15%	27%
Value for money of the service provided	18%	23%	16%	54%	53%	8%	10%	9%	22%	18%	31%	27%
Need for external/independent advice	6%	5%	0%	0%	11%	10%	5%	0%	8%	5%	5%	3%
Seriousness/riskiness of the issue	6%	6%	0%	7%	0%	10%	0%	2%	0%	5%	0%	3%
Speed of response	6%	7%	0%	11%	0%	3%	10%	2%	55%	0%	0%	6%
Requirement of funder or grant giver	2%	0%	12%	0%	0%	1%	10%	5%	0%	3%	7%	2%
Other	4%	13%	3%	4%	0%	2%	0%	0%	25%	1	0%	6%
Weighted base (all)	812	133	11	36	22	440	25	132	42	104	53	239
Unweighted base (all)	812	161	9	25	19	471	16	103	59	113	52	234

Note: some charities named more than one of the above motivating factors

Barriers, difficulties or drawbacks

3.4.18 Charities were asked (unprompted) if they considered there to be any barriers, difficulties or drawbacks in using any of the advice providers which they had mentioned as their first or second port of call.

3.4.19 Of note, the majority of respondents (73%) felt that there were no barriers to accessing the various service providers. Friends, Umbrella Organisations and the Charity Commission were most likely to be considered as having no barriers to access, difficulties or drawbacks (88%, 87% and 86% respectively).

3.4.20 Of those who commented on barriers, difficulties and drawbacks, cost was cited as the main concern when using legal advice providers. Across the range of advice providers cost was most often cited as a barrier to accessing solicitors (36%) and accountants (19%), a finding that was strongly echoed in the qualitative research. Interviewee comments about high costs included:

"the perception is as soon as you speak to a solicitor or a legal professional it becomes very expensive"

"I'm always worried about the cost, with some justification I think"

"With the kind of finances we have locally, you could very easily wipe out the entire assets of the charity if you got involved in a legal process. So the first and foremost consideration I would think would be cost"

"Cost, cost is a massive thing, there should be a lot more pro bono work out there"

"A lot of smaller solicitor firms are in it just for the money, they seem to revel in taking action that possibly isn't necessary and charging the earth for it... Many small charities suffer from huge legal bills"

3.4.21 This issue has significant policy implications because it means that some consumers are unable to access the correct level of expertise due to lack of finance. A striking example to emerge from the qualitative research was of a community organisation in income band 3. A dispute with a former employee went to an Employment Tribunal. The employee was able to use a barrister because they were in receipt of legal aid but the charity had to represent itself. The interviewee felt that the association was extremely disadvantaged as they were unable to pay for that level of support. It culminated in a 10 day hearing where the interviewee represented the charity against a barrister in their own arena.

3.4.22 Lack of expertise was felt to be a barrier to using more informal advice providers such as informal networks (22%) and internet searches (13%). Of those who would use internet searches for advice, 19% also feel that there is too much information to sift through to find what they need, with 16% unsure of its reliability. These findings seem to support the rationale for such a small number (5%) of respondents willing to use the internet for legal advice.

3.4.23 The qualitative research revealed two further interesting findings. Firstly, if using Trustees for advice there is a concern that:

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"They are not strictly speaking independent and we may be considered negligent in not getting external advice"

- 3.4.24 However, the interviewee added that because the Charities Act gives Trustees certain obligations and duties this risk is reduced. Secondly, if a charity relies too heavily on informal networks, these networks could disappear when individual members of staff and Trustees leave the organisation potentially putting the charity in a vulnerable position or a situation where they have to purchase legal advice.
- 3.4.25 Of interest, a number of areas were not felt to represent barriers. Namely advice providers being difficult to find, lack of choice, time required to brief them and reliability.
- 3.4.26 As conferences, payroll bureaus, advice related websites and charity press were not indicated as important sources of legal advice; they have been omitted from Table 3.7 which outlines the main barriers to accessing an advice provider.

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Table 3.7 Barriers, difficulties and drawbacks to using an advice provider

Barriers	Type of advice provider											
	Total	A Trustee	Volunteer	Friend	Informal network	Solicitor	Accountant	Charity Commission	Internet search	Umbrella organization	Free legal advice - part of a membership	Other source
No/none	73%	79%	75%	88%	65%	60%	66%	86%	68%	87%	75%	79%
Cost	16%	4%	21%	0%	0%	36%	19%	0%	0%	2%	5%	9%
Lack of expertise	5%	6%	3%	7%	22%	1%	15%	4%	13%	2%	6%	8%
Speed of response	3%	1%	0%	0%	22%	2%	0%	6%	0%	5%	5%	5%
Advice not tailored to my charities specific needs	3%	7%	0%	4%	0%	2%	0%	4%	9%	2%	0%	3%
Reliability	2%	3%	0%	4%	1%	0%	0%	3%	16%	2%	5%	0%
Too much information to sift through to find what you need	1%	0%	0%	0%	0%	1%	0%	2%	19%	0%	0%	0%
Time required to brief them	1%	2%	1%	0%	0%	1%	0%	0%	0%	0%	0%	1%
Difficult to find	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	1%
Lack of choice	0%	0%	0%	0%	0%	0%	0%	0%	6%	0%	0%	0%
Others (specify)	1%	3%	0%	0%	0%	1%	0%	1%	1%	2%	5%	1%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Weighted base (all)	812	133	11	36	22	440	25	132	42	104	53	239
Unweighted base (all)	812	161	9	25	19	471	16	103	59	113	52	234

Note: some charities named more than one barrier

3.5 Approach to and confidence in seeking legal advice

Approach to seeking legal advice

- 3.5.1 Charities approaches to seeking legal information are provided in Table 3.8. Over half (52%) of all respondents only seek legal advice when an issue presents itself which may affect the charity. Charities in Income Band 1 and 2 (53% and 52% respectively) were more inclined to take this approach than those charities in the two highest income bands (44% and 32% respectively).
- 3.5.2 Of interest, a further 27% of charities in income band 1 felt that they did not need to seek legal advice at all. This finding is not altogether surprising because the Charity Commission register includes a large number of very small charities which perform a fairly limited range of activities which may not even be occurring on a regular basis. For example running a village hall, offering a support group or giving financial assistance to local people in need. Most of these charities will be entirely run by volunteers and will not be continually changing or innovating thereby reducing the need for regular legal advice. Nevertheless, the qualitative research also revealed that awareness and understanding of legal obligations is noticeably lower in these very small charities and that many of them have legal obligations that they may not fully understand. In the qualitative research charities in Income Band 1 were subject to a range of legal rules beyond the basic requirements of the Charities Act and Trustees Act. Some of them had leases, owned property, claimed gift aid, had restricted income and worked with vulnerable groups. This all points to the fact that as consumers of legal services this group of charities could be being overlooked.
- 3.5.3 The numbers citing that they actively seek out legal information or try to stay abreast of legal matters which affect them steadily increases with the increase in Income Bands. For example just 7% in income band 1 actively seek advice, which increases to 32% in Income Band 4.

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Table 3.8 Approach to seeking legal information by income band

Approach to seeking legal information and advice	Overall	Band 1	Band 2	Band 3	Band 4
		£0-£49,999	£50,000 - £249,999	£250,000-£499,999	£500 – £1m
I actively seek out legal information and advice in order to stay abreast of legal issues which may affect the charity	14%	7%	17%	21%	32%
I try to stay abreast of legal matters which may affect the charity but could benefit from doing more	22%	13%	26%	32%	33%
I only seek legal advice when an issue presents itself which may affect the charity	52%	53%	52%	44%	32%
I don't need to seek legal advice	13%	27%	6%	2%	4%
Total	100%	100%	100%	100%	100%
Weighted base (all)	812	281	475	35	20
Unweighted base (all)	812	211	200	201	200

3.5.4 Table 3.9 shows that, of the 16% of charities who are part of a larger national organisation, 31% stated that they do not need to seek legal advice. This suggests that charities rely on their parent organisation to provide them with relevant legal information without them needing to seek it themselves.

3.5.5 Having Trustees or committee members who are trained solicitors, either active or retired, also has a slight impact on the approach charities take to seeking legal advice with the numbers indicating they actively seek it or try to stay abreast of it (20% and 26% respectively) being higher than the average for all charities (14% and 22% respectively). They were also more aware of the need for legal advice in the first place.

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Table 3.9 Approach to seeking legal information by those charities that are part of larger national charities and those who have members who are solicitors

Approach to seeking legal information and advice	Overall	Part of a larger national charity	Committee members or Trustees who are trained solicitors, either active or retired
I actively seek out legal information and advice in order to stay abreast of legal issues which may affect the charity	14%	8%	20%
I try to stay abreast of legal matters which may affect the charity but could benefit from doing more	22%	15%	26%
I only seek legal advice when an issue presents itself which may affect the charity	52%	46%	49%
I don't need to seek legal advice	13%	31%	6%
Total	100%	100%	100%
Weighted base (all)	812	130	169
Unweighted base (all)	812	125	231

Confidence in seeking legal advice

3.5.6 Table 3.10 shows how confident charities feel when it comes to seeking legal advice. The majority of respondents felt completely confident (34%) or very confident (30%), while only 3% said they were not at all confident. When considered by income band, small charities were slightly less likely to feel completely confident or very confident, and slightly more inclined to say they were not at all confident. However the difference noted was small.

3.5.7 The qualitative research revealed slightly higher levels of nervousness about seeking legal advice particularly when approaching solicitors. Four out of 24 interviewees (17%) used phrases that suggested a lack of confidence including:

"challenging"

"a little tricky"

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"I wouldn't know where to start"

"a little bit daunting....lawyers are on a different strata to us mere mortals"

Table 3.10 Confidence in seeking legal information or advice by income band

Level of confidence	Overall	Band 1	Band 2	Band 3	Band 4
		£0- £49,999	£50,000- £249,999	£250,000 - £499,999	£500,000 - £1m
Completely confident	34%	29%	37%	31%	38%
Very Confident	30%	29%	30%	32%	37%
Confident	26%	32%	22%	24%	18%
Have some confidence	8%	6%	10%	10%	8%
Not at all confident	3%	4%	2%	2%	0%
Total	100%	100%	100%	100%	100%
Weighted base (all)	812	281	475	35	20
Unweighted base (all)	812	211	200	201	200

3.5.8 Being part of a larger charity does not appear to have influence on charities' confidence in seeking legal information. However, for charities with committee members or Trustees who are trained solicitors, their propensity to say they are completely confident (47%) is significantly higher than the average (34%).

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Table 3.11 Confidence in seeking legal information or advice by charities who are part of larger national charities and those who have members who are solicitors

Level of confidence	Overall	Part of a larger national charity	Committee members or Trustees who are trained solicitors, either active or retired
Completely confident	34%	24%	47%
Very Confident	30%	32%	31%
Confident	26%	28%	16%
Have some confidence	8%	10%	5%
Not at all confident	3%	6%	1%
Total	100%	100%	100%
Weighted base (all)	812	130	169
Unweighted base (all)	812	125	231

4 Charities Legal Needs in the Last 3 Years

4.1 Introduction

- 4.1.1 Chapter 4 provides the main findings of the research programme relating to charities actual legal requirements in the last three years, their experiences of legal services during this time, and their perceived future legal needs.
- 4.1.2 As in the previous chapter, the qualitative and quantitative surveys are reported together, with qualitative findings providing added insight to the quantitative findings in each of the sections.
- 4.1.3 The chapter is divided as follows:
- Section 4.2 examines charities use of a range of services for legal information or advice in the last 3 years, and their reasons for their choice of provider;
 - Section 4.3 examines charities use of solicitors, their payment arrangements and satisfaction with these services;
 - Section 4.4 examines experiences of making complaints; and
 - Section 4.5 considers small charities' future needs.

4.2 Charities use of a range of services for legal information or advice in the last 3 years

- 4.2.1 Charities were asked how many times they had sought legal information or advice from a range of advice providers in the last 3 years. The findings are provided in Table 4.1.
- 4.2.2 In the last three years, 39% of charities have used a solicitor one or more times which is substantially higher than that of any of the other advice providers. In addition, 28% have used an accountant, 24% have used internet searches, 23% have approached the Charity Commission, and 20% have asked Trustees, 16% have used umbrella organisations; 13% have used advice related websites from a trusted source and 11% have used informal networks.
- 4.2.3 Solicitors were also the most common source of advice or information used more than once in the last three years (13%) and the internet was the most common source of information used more than four times in the last three years (12%).
- 4.2.4 Conferences, payroll bureaux and charity press were used sparingly over the last three years by charities as a source of legal advice and information. This ties in with the findings in Table 3.5 which indicated that these advice providers would be less likely to be used for future needs.

Table 4.1 How often charities have sought legal advice in the last 3 years

Advice provider	Used Once	Used 2 to 3 times	Used 4+ times	Never	Total	Weighted base (all)	Unweighted base (all)
Solicitor	16%	16%	7%	61%	100%	812	812
Accountant	8%	12%	8%	72%	100%	812	812
Internet search	5%	7%	12%	76%	100%	812	812
Charity Commission	11%	9%	3%	77%	100%	812	812
Trustee	6%	7%	6%	80%	100%	812	812
Umbrella organization	5%	5%	6%	84%	100%	812	812
Advice related website from a trusted source	4%	4%	5%	87%	100%	812	812
Informal network	4%	4%	3%	89%	100%	812	812
Free legal advice offered as part of a membership	3%	2%	3%	92%	100%	812	812
Friend	2%	3%	2%	93%	100%	812	812
Volunteer	2%	3%	1%	94%	100%	812	812
Conferences	2%	3%	1%	94%	100%	812	812
Payroll bureau	1%	2%	0%	97%	100%	812	812
Charity Press or similar	0%	1%	1%	98%	100%	812	812
Other source of advice	1%	2%	0%	97%	100%	812	812

4.2.5 Looking more closely at the use of solicitors over the last three years, of the 39% of charities who have used them, 43% have used them for property issues, 24% have used them for changes to their legal constitution or legal structure, and 19% have used them for general employment matters. Table 4.2 sets out the full range of advice sought.

4.2.6 Of the 28% of charities who have used an accountant for legal advice or information in the last three years, 47% used them for issues relating to fund accounting, with 27% having used them for tax and regulation issues. This shows there is a fairly clear preference to use accountants for matters relating to accounting and tax.

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- 4.2.7 Charities who sought legal advice or information from Trustees in the last three years did so primarily for reasons related to changes in their constitution or legal structure (30%), general employment matters (30%) and for issues relating to property (27%).
- 4.2.8 These findings show that small charities vary their advice provider depending on the type of problem they have. Several interviewees in the qualitative research mentioned that the choice would depend on the nature of the need showing a good understanding of the most appropriate provider in each case. For example, one interviewee generally uses Law Call but for employment problems goes to ACAS because they provide quicker responses, solid advice and have a good website. Another explained:

"It depends on the issue. If I'm trying to make sure that the Trustees are protected from any criticism, then having advice which is formal...is very helpful...the questions and answers on the charity commission website may be enough for general reassurance that we're heading in the right direction. But as soon as anything is more controversial...and in the case of commercial partnership then you are meant to show that you have sought legal advice and the Trustees have been advised that they are a suitable partner"

Table 4.2 Reasons for using main advice providers in last 3 years

Reasons for using:	Solicitor	Accountant	Trustee
Property (i.e. purchase, sales, leases)	43%	4%	27%
Changes to the Charity's Constitution or legal structure	24%	18%	30%
General employment matters (for example contracts, recruitment, discipline)	19%	7%	30%
Contracts	7%	1%	7%
Fund accounting	2%	47%	1%
Insurance issues	2%	0%	1%
Health and Safety	2%	0%	2%
Employment tribunals	2%	1%	4%
Tax and regulation (for example VAT, Gift Aid, tax reclaims)	2%	27%	3%
Intellectual property	2%	1%	2%
Discrimination	2%	0%	1%
Fundraising/ public collections regulations	1%	3%	2%
Pension matters	1%	0%	2%
Criminal offences	0%	0%	0%
Other	24%	25%	25%
Weighted base (those who have used the service in the last 3 years)	320	225	163
Unweighted base (those who have used the service in the last 3 years)	442	260	237

Note: some charities named more than one reason

- 4.2.9 On the occasions that charities used alternatives to a solicitor in the last three years, respondents were asked to indicate (unprompted) the reasons they did not go to a solicitor. Almost half (48%) of charities indicated that this was due to cost or the availability of free advice elsewhere. Almost one third (30%) of respondents felt that there were no barriers which prevented them choosing a solicitor, they simply chose another provider. Table 4.3 outlines the reasons charities did not seek advice from a solicitor.

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- 4.2.10 These responses again reveal that very small charities in Income Band 1 may have greater difficulty in accessing advice. They are less likely to be able to afford a solicitor, but at the same time they also less likely to find it easy to access the information elsewhere (9% compared to 15% of small charities overall). This could be due to lack of capacity or resources and is a further indication that as consumers of legal advice the smallest charities (incomes under £50,000) may be less well served than small charities overall (incomes under £1 million).

Table 4.3 Reasons you did not seek advice from a solicitor

Reasons for using an alternative to a solicitor	Overall	Band 1	Band 2	Band 3	Band 4
		£0-£49,999	£50,000-£249,999	£250,000 - £499,999	£500 - £1m
Cost/free information elsewhere	48%	41%	49%	46%	53%
No barriers	30%	30%	30%	36%	29%
Information available elsewhere easier to obtain	15%	9%	17%	12%	18%
Have the knowledge in-house	14%	17%	14%	10%	15%
Information available elsewhere more reliable	9%	9%	9%	2%	7%
Solicitor may not understand the particular issue / charity issues	7%	6%	8%	7%	5%
Have the knowledge within our parent charity	3%	9%	1%	3%	3%
Too much time commitment needed to explain the problem to them	1%	2%	1%	1%	2%
Don't trust solicitors	1%	3%	1%	0%	0%
Would not know where / how to find a suitable solicitor	0%	2%	0%	0%	1%
Other	1%	2%	1%	3%	3%
weighted base (those who have used an alternative to a solicitor in the last 3 years)	465	88	328	31	18
Unweighted base (those who have used an alternative to a solicitor in the last 3 years)	556	66	138	177	175

Note: some charities named more than one reason

4.3 Use of solicitors in the last three years

- 4.3.1 Charities that have used a solicitor in the last three years were asked how their most recent use of a solicitor was paid for. Table 4.4 shows that one third (32%) of charities have paid for solicitors' advice at full rate, 24% having paid at a reduced rate and 20% of charities were in receipt of pro-bono services. These findings are consistent with the qualitative research. Of interest, just 7% of charities of the smallest charities (compared to 20% of all small charities), received bro-bono advice, however 25% of these charities have used a free service such as LawWorks (who are themselves a charity)
- 4.3.2 In the qualitative research a couple of interviewees stressed the pro bono support that they had received from local solicitors as a result of them being a local charity serving the community.

"I think because he's part of the local community he sees it as his contribution to the work of the hospice"

- 4.3.3 Another commented:

"We've been very fortunate since the charity was established in '86 that we've always had access to free legal advice. The relationship developed because of local connections and legal professionals who had links to the high school. It's a local charity and a lot of young people who went to the high school benefitted from it. So these professional bodies saw great benefit for their own children and those from the local area. We've always had this sort of advice so we've never, ever paid for legal advice"

Table 4.4 Payment method for most recent use of a solicitor

Payment method	Overall	Band 1	Band 2	Band 3	Band 4
		£0- £49,999	£5,0000- £249,999	£250,000 - £499,999	£500 -£1m
Paid for at full rate	32%	29%	33%	30%	39%
Paid for at a reduced rate	24%	25%	22%	31%	37%
Pro-bono	20%	7%	22%	20%	17%
Free service but not a no win, no fee arrangement	9%	25%	8%	5%	4%
Some other way	5%	14%	4%	7%	2%
Through insurance	2%	0%	2%	4%	2%
Through a no win, no fee arrangement	0%	0%	0%	0%	1%
Don't know/can't remember	11%	11%	12%	7%	6%
Weighted base (those who have used a solicitor in the last 3 years)	320	37	240	27	16
Unweighted base (those who have used a solicitor in the last 3 years)	442	28	101	152	161

4.3.4 Charities that have used a solicitor were also asked how useful they found the advice they received in achieving their goals. As outlined in Table 4.5, over three quarters of charities found the advice either extremely useful (44%) or very useful (33%), and 96% found it at least moderately useful. There was no significant different difference between charities of different incomes.

Table 4.5 Usefulness of the advice received

Usefulness	Overall	Band 1	Band 2	Band 3	Band 4
		£0- £49,999	£50,000- £249,999	£250,000 - £499,999	£500,000 -£1 m
Extremely useful	44%	32%	46%	45%	47%
Very useful	33%	43%	32%	36%	35%
Moderately useful	18%	21%	18%	18%	14%
Slightly useful	4%	4%	5%	2%	2%
Not at all useful	0%	0%	0%	0%	1%
Total	100%	100%	100%	100%	100%
Weighted base (those who have used a solicitor in the last 3 years)	320	37	240	27	16
Unweighted base (those who have used a solicitor in the last 3 years)	442	28	101	152	161

4.3.5 Charities that have used solicitors in the last three years were also asked how satisfied they were with the service they received. The vast majority (84%) were either very satisfied or satisfied and this varied little by charity income.

4.3.6 These findings were consistent with the qualitative research although the latter also teased out a number of concerns over service levels. Several interviewees felt the process was too slow; one commented that he:

"thought the process would be quicker and easier. It seemed to sit on our solicitor's desk"

4.3.7 Others issues noted included:

"I'd like an unsolicited response and more proactivity rather than having to chase them"

"non response and slow response to phone call and letters"

4.3.8 Lack of transparency over cost was also a concern with one interviewee being presented with a final bill that was different to the quote and another complaining that no upfront price had been supplied. Finally one charity had used a small local firm only to find that they were not expert enough for the matter in hand.

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4.3.9 Some of the comments about solicitors revealed a degree of anger. One interviewee complained:

"The numbers of letters I've written and then sent to them to send off with their letter head at the top, and then get charged £500 for that letter when I've had to write it, to me that's not value for money"

4.3.10 Another felt that better bonds need to be created between the legal profession and small charities so that:

"A) charities don't feel like they're being ripped off and B) you don't alienate charities and stop them from using legal services"

Table 4.6 Satisfaction with the service received from the solicitor

Satisfaction	Overall	Band 1	Band 2	Band 3	Band 4
		£0- £49,999	£50,000- £249,999	£250,000 - £499,999	£500,000 - £1 m
Very satisfied	56%	50%	57%	57%	57%
Satisfied	28%	36%	28%	26%	25%
Neither satisfied nor dissatisfied	12%	14%	11%	16%	14%
Dissatisfied	2%	0%	2%	2%	2%
Very dissatisfied	2%	0%	2%	0%	1%
Total	100%	100%	100%	100%	100%
Weighted base (those who have used a solicitor in the last 3 years)	320	37	240	27	16
Unweighted base (those who have used a solicitor in the last 3 years)	442	28	101	152	161

4.3.11 Charities were asked how satisfied they were with the value for money of the advice that they received from the solicitor. Over two thirds were either very satisfied (45%) or satisfied (20%). Only a small number of charities indicated that they were either dissatisfied (4%) or very dissatisfied (3%) with the value for money they received. This is an interesting finding because in an earlier question, value for money was less likely to be a motivator for choosing a solicitor than for any other provider, and cost was more likely to be a barrier to using a solicitor than for any other service provider.

4.3.12 The qualitative research showed that although charities struggle to afford solicitors they are usually very pleased with the advice. Positive comments included:

"did what I expected"

"nothing need to be improved"

"brilliant"

"gave clarity and confidence that what we are undertaking is being done in the right way"

4.3.13 One charity *"Sought out a person that was very experienced in employment contracts and she completed the very complicated contracts as expected"* suggesting that the best value for money can be achieved when the most appropriate solicitor with the correct skills is instructed to do the job.

4.3.14 Several charities were unsure how to find the most appropriate solicitor for their needs. *"I don't know if there's any body set up that specialises in providing legal services to small charities. If there is that would be helpful for us to know. Otherwise we might just go to someone in the high street who might not be very familiar with charity law and charitable case law."*

Table 4.7 Satisfaction with value for money

Value for money	Overall	Band 1	Band 2	Band 3	Band 4
		£0- £49,999	£5,000- £249,999	£250,000 - £499,999	£500,000 - £1 m
Very satisfied	45%	36%	48%	43%	34%
Satisfied	20%	36%	18%	21%	22%
Neither satisfied nor dissatisfied	27%	21%	28%	26%	35%
Dissatisfied	4%	4%	4%	8%	5%
Very dissatisfied	3%	4%	3%	3%	4%
Total	100%	100%	100%	100%	100%
Weighted base (those who have used a solicitor in the last 3 years)	320	37	240	27	16
Unweighted base (those who have used a solicitor in the last 3 years)	442	28	101	152	161

4.4 Awareness and experience of the complaints system for legal services

- 4.4.1 All charities were asked how aware they were of the complaints system for legal services. Three quarters (76%) of all charities were at least somewhat aware that there is a complaints system, although only 14% were explicitly aware of the system. Almost a third (30%) of charities in Income Band 1 stated that they were not aware at all that there is a complaints system compared to almost half as many (17%) in Income Band 4.
- 4.4.2 Of those that are aware there is some sort of complaints system, only 2% have had reason to make a complaint about legal services. Of the very small number of charities who have made a complaint about the legal system (14 charities), 59% (8 charities) felt it was not dealt with to their satisfaction. There were no significant differences in likelihood of complaining or satisfaction with the way it was dealt with by charity income.
- 4.4.3 In the qualitative research interviewees were confident that they would be able to find out where to go to make a complaint using the internet. None, however, had ever made a complaint.

4.5 Future needs

- 4.5.1 As illustrated in the previous sections, the research has revealed a number of gaps in legal services for small charities. The two biggest issues facing charities is knowing when to seek advice and where to go for it. A number of charities made reference to these gaps:

"the gap is the knowledge and awareness of the range of different organisations that you can go to seek that information. You've mentioned some that I didn't know about, or ever thought about"

"we just don't know with any sense of reliability, we have no first point of call"

"We've seen that we've got gaps in our understanding of what our legal needs are and how we would deal with a legal issue if it came up"

"we don't have a relationship with anybody we feel we can turn to if we have a problem"

- 4.5.2 The quantitative and qualitative research has demonstrated that many small charities do not realise what their liabilities are or what the implications of their actions could mean legally. Indeed, it was acknowledged by some respondents that they are too optimistic about any potentially negative outcomes of their activities and simply hope that things will work out in the end. Such an approach will put charities on a dangerous footing in the future as greater regulation is brought forward for the third sector.

- 4.5.3 It is clear that there remains a gap for simple, concise information. While there is a wealth of detailed, and arguably over complex information available from various sources should charities wish to seek it out, constraints associated with time and resources mean that much of this is overlooked. Respondents commented that:

"it is too long to read, something critical could be buried in it and we would miss it"

"To be honest we are actually drowning in information. Charity Commission already produce so much and it's not physically possible to read any more"

"Need less not more but it should be absolutely pertinent information delivered in writing, in bullet points"

- 4.5.4 Charities interviewed in the qualitative research made the following suggestions about legal information which could be provided, to help them be more empowered, and help them ensure that their activities are legally sound:

- a simple written outline of legal obligations and liabilities, with an indication of the knock on effects of certain actions, produced at a high level. Such information should provide the headings but not the details;
- accessible interpretations of the various Acts and legislation that charities are subject too, particularly the Charities Act and Trustees Act as these have direct relevance to all registered charities;
- a dedicated help line or email service for legal issues, available to all charities, for straightforward queries. This would also have benefits in terms of speed of response and would allow for signposting to other providers; and

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"A cheap helpline would be fantastic; pay £100 and get x free mins of legal advice; you could call and say 'can I just run this past you?'"

- a directory of solicitors, at a local level, who offer charities advice on a reduced rate or pro-bono. Even if such solicitors acted as a first port of call, this would still be useful.

5 Conclusions and Recommendations

5.1 Key conclusions

- 5.1.1 The primary objective of this research is to provide an evidence base of issues facing small charities in identifying and accessing legal services, and to increase the Panel's understanding of the experiences of those who sought them. This evidence base can be used to assist the Consumer Panel in influencing and driving reforms within the legal system, and to provide an accurate baseline against which to measure the impact of any future policy reforms.
- 5.1.2 Our research programme has sought the detailed views of 24 small charities through in-depth semi-structured telephone interviews, followed by a series of structured telephone interviews with 812 small charities. Detailed findings of the research are provided throughout this report and key findings are summarised at the beginning of the report.
- 5.1.3 The research reveals that even the smallest charities have a wide range of legal obligations. However around half of our qualitative sample had a limited or no understanding of what these obligations are. These charities were not sure where to get advice from and considered that there is insufficient clear, summarised guidance available.
- 5.1.4 The research also reveals that whilst solicitors are the most likely provider of legal information and advice to be selected for their expertise, the cost of their service is perceived to be a significant barrier to them being used. Thirty six percent of charities named cost as a barrier to using solicitors. With three quarters of charities in England and Wales having incomes of less than £100,000 this raises significant concerns, particularly because they are also the charities:
- less likely to have a legally qualified Trustee on the Board;
 - less likely to have a full understanding of their legal obligations; and
 - possibly more likely to feel daunted about accessing legal advice.

5.2 Agenda for the Legal Services Consumer Panel

- 5.2.1 The Legal Services Consumer Panel's role is to represent the interests of consumers by providing independent, evidenced-based advice to the Legal Services Board. This includes the interests of all consumers who lack buying power, including individuals, small businesses and small charities. It does not have decision-making powers, but seeks to influence decisions made by others about the regulation of legal services. This is the Panel's first piece of work relating to the charities sector.
- 5.2.2 In this context, taking into account the wider findings in the report, we provide below an agenda for the Legal Services Consumer Panel which would assist small charities in identifying and accessing the most appropriate legal information and advice to meet their needs.
1. Focus on the legal advice needs of the majority of charities (i.e. those that have less than £100,000 of income) rather than just consulting with larger charities which are not representative of the sector. This inevitably means giving support to the Charity

Commission and umbrella/ infrastructure organisations providing informal free or cheap legal advice.

2. Encourage provision of concise, easy to read guides of the main legislation affecting charities, aimed at charities who have no or very little existing knowledge and few if any staff.
3. Encourage charities to become more aware of:
 - their legal responsibilities and the importance of staying abreast of them;
 - the benefits of accessing relevant training courses to raise their level of understanding of their legal obligations;
 - the benefits of recruiting a trustee with legal knowledge; and
 - the importance of making provision for legal fees in their budgets and on their funding applications.
4. Encourage more of the legal profession to:
 - recognise small charities as a key consumer of legal services;
 - address charities' concerns about the value for money provided by lawyers and respond to charities expressed demands for transparent pricing structures, fixed fees for services etc., and
 - address charities concerns about lack of clear, concise information and respond to charities expressed demands for provision of accessible guides to legal obligations and changes in legislation.
5. Acknowledge the substantial contribution already made by members of the legal profession to small charities in their capacity as unpaid trustees; but also encourage more trusteeships in the very smallest charities by making the profession aware of the benefits both to the charity in the form of free, accessible advice and to the trustee in the form of valuable non executive career experience.
6. Demonstrate to the legal profession the benefits of undertaking pro bono work for small charities. This could include creating incentives, such as recognition of such work as Continuing Professional Development, and provision of awards for providers. (We draw attention to new charity National Pro Bono Centre that was created in 2010 to channel pro bono requests from individuals and community groups to the Bar Pro Bono Unit and LawWorks. Law Works helped 40,000 individuals but only 350 charities last year).
7. Put measures in place to ensure that pro bono work provided to charities is of sufficient quality. For example, if provided by trainees or junior staff, ensure that it is sufficiently supervised; monitor level of satisfaction with the service, advice and information provided; ensure the necessary skills are being provided at the outset, etc.
8. Encourage the Government to recognise:
 - the implications of funding cuts to the Charity Commission and umbrella/infrastructure organisations who are likely to have to reduce the amount of free advice available to small charities;
 - that the ability of local specialist charities to be involved in the delivery of services may be reduced if they are unable to access the free/cheap legal advice provided by these organisations.

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For more information visit www.mvaconsultancy.com

Abu Dhabi

AS Business Centre, Suite 201, Al Ain Road, Umm al
Nar, P.O. Box 129865, Abu Dhabi, UAE
T: +971 2 510 2402 F: +971 2 510 2403

Birmingham

Second Floor, 37a Waterloo Street
Birmingham B2 5TJ United Kingdom
T: +44 (0)121 233 7680 F: +44 (0)121 233 7681

Dublin

First Floor, 12/13 Exchange Place
Custom House Docks, IFSC, Dublin 1, Ireland
T: +353 (0)1 542 6000 F: +353 (0)1 542 6001

Edinburgh

Second Floor, Prospect House, 5 Thistle Street,
Edinburgh EH2 1DF United Kingdom
T: +44 (0)131 220 6966 F: +44 (0)131 220 6087

Glasgow

Seventh Floor, 78 St Vincent Street
Glasgow G2 5UB United Kingdom
T: +44 (0)141 225 4400 F: +44 (0)141 225 4401

London

Second Floor, 17 Hanover Square
London W1S 1HU United Kingdom
T: +44 (0)20 7529 6500 F: +44 (0)20 7529 6556

Lyon

11, rue de la République, 69001 Lyon, France
T: +33 (0)4 72 10 29 29 F: +33 (0)4 72 10 29 28

Manchester

25th Floor, City Tower, Piccadilly Plaza
Manchester M1 4BT United Kingdom
T: +44 (0)161 236 0282 F: +44 (0)161 236 0095

Marseille

76, rue de la République, 13002 Marseille, France
T: +33 (0)4 91 37 35 15 F: +33 (0)4 91 91 90 14

Paris

12-14, rue Jules César, 75012 Paris, France
T: +33 (0)1 53 17 36 00 F: +33 (0)1 53 17 36 01

Woking

Dukes Court, Duke Street, Woking
Surrey GU21 5BH United Kingdom
T: +44 (0)1483 728051 F: +44 (0)1483 755207

Email: info@mvaconsultancy.com

Offices also in

Bangkok, Beijing, Hong Kong, Shenzhen and Singapore

mvaconsultancy