

# Chapter 1

## Introduction

*“The chief difference between a profession and a trade or business, is that in the case of a profession its members sacrifice a certain amount of individual liberty in order to ensure certain professional objectives. In a trade or business the conduct of each individual is avowedly regulated simply by the general rules of honesty and regard to his own interest.”*

A.V. Dicey, 1867

*“We trust our health to the physician, our fortune and sometimes our life and reputation to the lawyer and attorney. Such confidence could not safely be reposed in people of a very mean or low condition. Their reward must be such as may give them that rank in the society which so important a trust requires.”*

Adam Smith, 1776

*“The importance of the professions and professional classes can hardly be overrated. They form the head of the great English middle class, maintain its tone of independence, keep up to the mark its standard of morality and direct its intelligence.”*

H. Byerley Thomson, 1857

*“The first thing we do, let’s kill all the lawyers”.*

Dick from Henry VI, Pt II, William Shakespeare.

Buying services from professional advisers is not like buying a tin of beans. “Tesco” law may be talked of, but for most specialist legal and accountancy services price is only one of many considerations. In 2009, the UK legal services market was

worth £20 billion. Accountants account for even more spending. Since 2003, the biggest five legal firms have increased revenue by an average of 38 per cent. In 2008, the High Court criticised one big firm for racking up £5.2 million in fees on a five-day trial over patents on the Blackberry device (although they did win the case for their client). The court thought the bill was astonishing for a 15-month period in which two associates charged more than 2,250 hours each.

Another big case was the £50 million in fees for a big firm on behalf of Tajikistan in dispute over corruption at an aluminium smelter owned by the state. This would be 2.7 per cent of the country's gross domestic product in a state where the average monthly wage is £32. However, if the lawyers were not worth it clients would go elsewhere or indeed to other countries to obtain better value. Some services became commoditized in the 1990s and early noughties such as conveyancing "farms" – but most services can't easily be provided in that manner. The principal difficulty for the buyer is knowing who will provide good services of a kind that they do not understand, for – if they understood the law (or accountancy or whatever services are being bought), they would not need the services in the first place. Therefore, the purchasing decision is often made on "soft" grounds (for example, they like the person). Whilst it is good to work with those with whom a rapport can be built up, most buyers of these services tend to use a range of factors in their decision to purchase.

These include:

- **Price** – such as hourly charging rate.
- **Location** – some want lawyers near their offices.
- **Reputation** – a leading UK expert in a particular field, although more expensive per hour, may spend one tenth of the time on the matter than someone who is supposedly much cheaper but has to research every point from scratch.
- **Direction** – from an investor, the board or a historical connection.

The aim of this report is to provide guidance in choosing and using lawyers and other professional advisers and to help ensure clients better understand the process and what exactly they are buying. It seeks to improve the relationship between adviser and client.

## Quality of advice

Most professionals are required to be members of what are effectively regulatory bodies and professional associations. Solicitors are members of the Law Society, which has delegated regulation function to the Solicitors Regulation Authority (SRA). Professions are made up of ordinary people, with the faults and differences that are evident in any job. Some will have greater competence than others – for instance, they may be especially clever or knowledgeable about their particular area. Most professions require that members sit what can be very difficult professional examinations, so, in general terms there should be a basic level of competence common to all within a particular profession. However, mutual recognition of professional qualifications under EU law has meant that some people will have qualified in the one of the 27 EU member states where it is easier to qualify. Furthermore, not all professionals will have equal competence even amongst those who have passed the same local examinations, so caution must be exercised.

Going to a recognized large professional practice can ensure that the individual used will have attained high academic standards, because those firms will only recruit the cream of the profession: good ‘A’ levels, first or upper second class degrees, etc. There are, of course, high flyers in smaller practices, but it can be harder to spot them. In any event, professional examinations were, for many professionals, undertaken a significant number of years ago. Have they kept up to date with changes in their particular field?

A number of professions stipulate that individuals practising in that profession regularly attend courses to keep up-to-date with recent developments. Learning that your professional adviser is speaking at a leading conference or has written the principal textbook in the area upon which you go to him for advice, certainly gives comfort to the client and is highly likely to indicate that the professional’s knowledge is deep.

It may be that state-of-the-art, up-to-the-minute advice is really unnecessary for you. You may just want your factory premises conveyed or your books audited. Most professionals would pass the quality test in such cases.

## Ability to communicate

A clever professional does not necessarily make a good adviser. There is no disadvantage in brains and knowledge of the subject area; indeed, such knowledge is essential and what companies and individuals are paying for when instructing professional advisers. However, the professional must also have adequate personal skills, and be able to communicate well, whether orally or in writing, in order to pass on the information upon which advice has been sought in a way the client can understand.

Those wishing to instruct professionals should also ensure that their adviser is a person who relates well to other people. Is he excessively shy or domineering? Does he or she look at you when you speak to them and allow you to finish your sentences? Does he contribute fully to discussions or is he too reticent to offer significant views? Does he understand what you say to him and do you understand his answers?

## Offering advice

Equally important is the extent to which the adviser is able to apply his knowledge to your particular situation and think laterally as to how a problem can be accommodated or overcome. With age, professionals improve their skills at thinking round problems and offering solutions. Some never learn and are content to spend the whole of their professional lives churning out quotations from the law, or whatever the relevant field. Avoid such individuals at all costs; their advice may be useless to you.

## Customer care

Professionals provide services to companies and individuals. They are one of the service industries and ought to adopt all the standards and concern for customer care that most large retail and other concerns have adopted in recent years. This is not always the case. You have a right to be treated with respect and deference. The client is always right. If the client is wrong, there are ways of telling him so without the discussion culminating in an argument.

Without the companies who instruct professional firms, the firms themselves would not exist. Professionals are there to assist those in business.

## The balance of power

Some professionals are officious and arrogant. They believe too strongly that they are always in the right. They can be pompous and overbearing. Clients feel intimidated and do not dare to contribute to discussions, fearing they will look foolish if they let the professional know that they have not understood a word he was saying.

The antidote is that the client should always remember who is paying the professional's fees. The client is buying a service. Getting off on the right footing can ensure that the professional relationship enjoys the right balance of power. If you feel intimidated by the plush offices of your professional advisers invite them to meet at your offices, though bear in mind that you will have to pay for them to come to you, including paying for their travel expenses and time spent travelling. This might, however, be worth paying for to ensure that you feel comfortable. Your time is likely to be very valuable too and it can be sensible in forging a good relationship with professionals for them to have sight of the premises or factory from which you carry out your business.

The vast number of people whom the professional brings along to meetings, which obviously increases the cost, may intimidate you. Consider informing the professional that you are not prepared to pay for non-essential participants at a meeting.

When meeting a professional adviser or speaking over the telephone for the first time, ensure that you establish the upper hand. If the professional begins talking in jargon or you cannot understand him for any reason, say so: firmly, but politely, explain that you require clear and simple advice and that you will always let him know when he can improve in this area.

Be authoritative even if you do not feel like it. Develop a firm handshake. Above all, stand up to these people. The fact that they have passed examinations and are allowed to apply a grandiose title to their activities does not make them any better than you are. You, and others like you, are the source of the professionals' supposed power and actual wealth. Without those upon whom such service industries depend, there would be no service provision at all. Treat professionals as equals, politely and 'professionally', and expect this treatment to be reciprocated. If it is not, go elsewhere.

Under no circumstances be daunted by supposed professional mystique. It should not exist. The professionals have services that you need. There are many professionals, all competing with each other to offer you services. They want

you to give them your business. Always bear this essential factor in mind in your relationships with professionals: they are there to serve.

## **The good professionals**

This report dwells on the negative side of professional relationships, because this is where help and advice are needed. It necessarily highlights areas where things can go wrong, such as: arguments over bills; unintelligible advice; and arrogant professionals. In so doing, it inevitably conveys the impression that professional relationships are difficult and unpleasant. In fact, in many cases professionals and their clients enjoy a happy and harmonious relationship to the mutual benefit of both parties. Many professionals thrive in business because they understand the needs of the client and have a good rapport with other people. They talk about problems before those problems grow into intractable disputes and always discuss bills and billing arrangements in advance so that the matter of fees is settled to the satisfaction of both parties.

If you enjoy a good relationship with your professional advisers, this report may still be of assistance, as there will almost always be at least one area in which the relationship can be improved. Bills can always be reduced, or different billing arrangements negotiated.

Do not assume that all professionals are difficult people with whom it will always be hard to establish a harmonious relationship. False preconceptions may lead to problems for both parties. Expecting a professional adviser to overcharge or offer impractical help and adopting an attitude of resigned expectation that this will be the case can lead to the very problem which is sought to be overcome.

## **Expect the best and negotiate upwards from the worst if necessary**

The assumption that you are a small and insignificant client of the professional adviser and cannot therefore expect a reply to correspondence for at least a fortnight is not the way towards a happy relationship with such advisers. Call the adviser if no response materialises, at least by way of acknowledgement to your letter, and make it clear when you expect to hear from him. Be conscious of your own importance and make that positive attitude come over in how you

speak and write to the professional adviser. Assert your self-confidence in your relationship with the adviser as much as you ought to in dealings with the clients of your company or enterprise.

By dwelling on problems with professionals, this report does give a warped picture of such relationships. However, there is no difficulty in being pleasantly surprised when you deal with professionals. Being forewarned of potential problem areas should ensure that you are able to obtain better value from all professional advisers, whatever their merits and whatever areas of weakness they suffer from in their professional dealings.

## The inadequate client

It ought not to be heresy in a report of this sort to suggest that clients, too, are capable of improvement. The emphasis in this report is on how to obtain better value from advisers; but this is a two-way process. There is much that a client can do to obtain better value for money:

1. Give clear and full written instructions to the adviser.
2. Tell him your commercial aims. Do not leave him to guess.
3. Be honest. There is no merit in lying, or massaging the facts, to those who are on your side and whom you are paying to advise you.
4. Instruct him positively and wholeheartedly. Show enthusiasm in your dealings with the professional adviser.
5. Respond to requests for information punctually and efficiently. Send all relevant papers (not just those upon which you can most easily lay your hands).
6. Raise problems early.
7. Pay the professional's bills on time.

**The example below illustrates the operation of professional relationships at their best and worst.**

John Smith telephones his solicitor, Septimus Dollar, when he reads an article in a trade magazine about a new EC health and safety measure that appears likely to have a significant impact on his business. Septimus knows nothing about this area of law. Very competent at advising on the basics of corporate law, the solicitor does not follow EC law developments and knows very little about UK health and safety legislation. John Smith says very little to Septimus. He does not explain how he sees the potential impact of the measure on his business or which of his products are in the relevant area. He just says that he wants some advice on what this measure is likely to mean for him. He gives no timescale for when he requires the advice, although he has an important board meeting in two days' time at which he is concerned that the issue may be raised, nor does he state whether he wants advice in writing or over the telephone.

Septimus has had a quiet week, mostly spent undertaking various nebulous marketing matters. Here is something to get his teeth into. He begins by involving his trainee and having him find all old, new and proposed legislation in the field. He sits down with all the relevant measures and produces a detailed memorandum on the measure concerned. This runs to 20 pages and considers the impact of the proposed new law over all business areas.

In fact, John Smith's employer is involved in only one of a considerable number of fields which are dealt with by the measure. Septimus did not think of telephoning John Smith to ask him for more information about what is required before proceeding.

John Smith telephones Septimus on the eve of the board meeting, asking if he yet has any advice for him. Septimus' memorandum is not ready. 'So what's it all about then, this new law?', John Smith asks.

Septimus, who has read the proposal carefully, finds it difficult to express himself over the telephone and has not really thought through the implications of the measure. He begins a long and involved explanation for the benefit of the client, which leaves the client no wiser. The client is promised the memorandum as soon as possible and when he is asked about the measure at the board meeting, is only able to say that he is seeking legal advice.



When he receives the memorandum the following week, it is so long he puts it away and never looks at it again. Two months later John Smith receives a bill for over £1000, representing the time, charged at £150 per hour, which Septimus has spent acquainting himself with this area. The client refuses to pay and a major argument ensues.

What should have happened is that Septimus, on being asked for advice, tells the client that this is not an area with which he is familiar and suggests that the client telephone the Health and Safety Executive, which could have informed the client of the practical implications of this measure for his area of business free of charge. Septimus could, alternatively, have obtained more specific instructions from the client about exactly what was required and within what timescale.

John Smith should have faxed through the article he had read advising him of the measure, which would have made it obvious what the only relevant point for his business was. John Smith should have asked for an estimate of the charges and requested a telephone call on the day before the conference with a short, one-page letter summarising the change as it affects the relevant area. Communication is at the heart of successful professional relationships. The above example illustrates how important it is for both parties to communicate effectively with one another.

## Action checklist

- Find out what professional fees you have paid over the last months.
- Assess your degree of satisfaction with the services performed – not only in terms of value for money, but also quality of and ability to communicate.
- Remember that you are the customer. Do not be intimidated by a professional adviser. Be authoritative and assertive.
- Be a good client — give clear instructions; tell your adviser your aims; be honest; show enthusiasm; respond quickly to requests for information; raise problems early; and pay bills on time.