The Truth About Solicitors In Ireland

The Insider’s Guide To Finding The Right Solicitors for You

FLOR McCARTHY
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By

Flor McCarthy

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Introduction

The purpose of this book is to help you to find the right solicitor for you by telling you about the things you need to look out for.

Whether you’re looking for a specialist in personal injury or medical negligence claims or a lawyer practicing in some other area of law, the general principles that you need to follow are the same.

The first thing you need to know is what to avoid; you don’t want to find this out by a bad experience. Once you know what the most common sources of complaints are you can tell what you look out for and how to select someone suitable for you who is not going to have you joining the ranks telling the bad lawyer stories.

So, the format of this book is to explain a little bit about how the legal profession works and identify the common problems that some unfortunate clients have experienced. I then explain how you might go about avoiding these and the characteristics that you can look for in advance that will help you to do so. Finally, I look at the question of legal fees and issues such as “no win no fee” litigation.

In the end you will have to use your own good sense and judgment to make sure you select the right person for you, I hope this book will help you in doing so.

Finally, everything in this book is general information only and nothing in this book is legal advice. The only advice that I will give you is, when it comes to something as important as your legal business; you should use a qualified professional.

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I hope you find this useful.

Flor

28th January 2013

P.S. Before you finish, make sure you go to www.flormccarthy.com and join my mailing list to be alerted when my next book is coming out and to get access to lots of useful free resources.

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Not All Solicitors Are the Same

The legal profession is often compared to a duck pond, everything appears to glide along smoothly on top of the water but if you look under the surface you will see an awful lot of furious paddling going on. To the outsider all solicitors are the same.

Most people’s experience of solicitors is based either on the limited interaction they, or someone they know, have had with a solicitor or on what they see on the news when a solicitor is reported as having done something wrong.

But not all solicitors are the same; how do you tell the difference between them? How do you tell the geese from the swans and avoid the plain old lame ducks? This is what this guide is designed to do for you.

Often your need for a solicitor may arise in difficult circumstances, when you’ve got a lot of things to worry about. For example, when you’ve suffered personal injuries as a result of an accident that wasn’t your fault; when you find yourself the victim of medical negligence or when someone has died. Marketing people call this a distressed purchase but then again to marketing people (say, the marketing people who advise solicitors firms) you’re a prospect and as long as you remain a prospect they will seek to entice you with all kinds of statements about what wonderful lawyers they are and what great results they can obtain for you. Bear in mind however that as soon as you give them your business you cease to be a
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prospect and become a mere client, you’re now on the hook and all the shiny promises made to get you in the door may begin to look at little tarnished.

Of course what should happen is that as soon as you become a client (the legal profession’s own special word for what you really are: a customer) you become the most important thing in the world to them: the person that they’re in business to serve. So when looking for a solicitor, look beyond the smart brochures, the slick ads and the shiny promises and try to get a feel for what it would be like to be a client of the solicitor in question.

In particular, choose someone who shows some sign of caring about your problem and how they can help you solve it.

This might seem an odd choice of first and most important attribute when choosing a solicitor when you consider that the available information on most legal firms will start off telling you how expert they are, how experienced they are and even how great their service is.

But that’s precisely the point, most solicitors are more concerned about telling you about how great they are than asking you what you need; how you want it. And then giving it to you. The legal profession is no different to any other business in this respect but many lawyers treat it like the first rule of business, i.e. that it’s not about them, it’s about you (the customer) somehow doesn’t apply to them.
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So first off, look for someone who shows some understanding of your pain or problem and demonstrates some clear ways in which they can help you in a way that works for you.

Taking this to its logical conclusion, your guide should also be structured in this way. But I may not know you or what your particular concerns might be and I won’t be so arrogant as to presume. However, I can do this in reverse and start with what I might guess you don’t want.
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The Things You Definitely Want To Avoid

The Independent Adjudicator of the Law Society of Ireland does pretty much what her title suggests. She publishes an annual report in which she analyses the nature of complaints made to the Law Society about solicitors in that period. If we look at the results of some of her reports, we can extrapolate some of the things we can be pretty certain you don’t want.

In the reports, complaints to the Law Society are broken down into three main categories, excessive fees, inadequate professional services and misconduct.

Before going any further, let’s put some of the numbers in context so we have an idea what we’re talking about. There were 1,745 complaints in 2008, 1,754 in 2009, 2,117 in 2010 and 2,622 in 2011. So, pretty similar levels in 2008 and 2009 with a 20% increase in 2010 and a further 23% jump in 2011.

Of those complaints excessive fees comprised 10% in 2008, 11% in 2009, 6% in 2010 and 4.5% in 2011; inadequate professional services comprised 31% in 2008, 24% in 2009, 16% in 2010 and 11% in 2011 and misconduct comprised 59% in 2008, 65% in 2009, 78% in 2010 and 84% in 2011.

Given that lawyers are notorious for their fees, I bet you thought complaints about excessive fees would have comprised a bigger proportion of the overall total; so did I. I will deal with the question of fees later in the guide, it’s vitally important but shouldn’t rank in your first tier of criteria (and I’m not just saying that because I’m a lawyer, as I’ll explain later.)
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Misconduct comprised the lion’s share of complaints and it would appear that the increase in complaints in 2010 and 2011 involved a lot of extra misconduct (overall complaints went up 20% and 23% year on year but misconduct went up 44% and 34% in the same years). Misconduct involves the types of complaints of the most serious nature. The bulk of these related to undertakings (69% in 2010 and 74% in 2011) which involves when solicitors give written promises to other solicitors or to banks to do things which they then don’t do. Very bad instances of inadequate professional service can amount to misconduct, along with things ranging from failing to hand over client’s files to other solicitors and conflicts of interests, to the type of things for which you tend to see solicitors in the news such as failing to account for client’s money and dishonesty or deception.

Misconduct is at the extreme end of the scale and we can take it as a given that you don’t want a solicitor that is likely to be guilty of misconduct. I’ll come back to that in a little more detail later.

For now, given that we are looking at choosing a professional to take care of important business on our behalf, let’s focus on the category of complaints relating to inadequate professional service in deciding the type of things we definitely wish to avoid.

Complaints in relation to inadequate professional services are broken down in three main categories of (i) delay, (ii) failure to communicate and (iii) shoddy work with any not fitting into those three categorized as others.

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In 2008 41% of the complaints in the area of inadequate professional services related to delay. Delay accounted for 41% of complaints in 2009, 43% in 2010 and 33% in 2011.

Shoddy work accounted for 28% in 2008, 32% in 2009, 25% in 2010 and 34% in 2011.

Failure to communicate was responsible for 22% of complaints in 2008, 19% in 2009, 22% in 2010 and 19% in 2011.
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The Three Deadly Sins: Delay, Shoddy Work and Failure to Communicate.

So, the breakdown of the figures over the last three years is pretty consistent. Roughly 40:30:20 between delay, shoddy work and failure to communicate over the last four years, with the remaining 10% being made up of the others.

There’s a lesson for solicitors here: if they just got on with it, did what they’re supposed to do and explained to their clients what was happening, they’d eliminate 90% of the sources of complaints in this area.

But as we made clear at the outset, we’re not concerned about solicitors; we’re interested in you as a potential client. What do these figures tell you?

40% of the people who felt strongly enough to complain about their dissatisfaction to the Law Society about their solicitors’ inadequate professional services did so as a result of delay.

Therefore, we can safely assume that the majority, if choosing a solicitor again, would look carefully to avoid one who might add to unavoidable delays or create delays in the first place.

30% of those people regretted that their solicitor’s work was shoddy, so again we can assume that those people if choosing again would have looked for a solicitor with a higher level of competence.
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However, 20% of those people just felt that their solicitors just didn’t let them know what was going on. A fairly basic requirement and an easy one to fulfill you might think; but evidently not by some in the legal profession. You can be sure if those people were selecting another solicitor they would be anxious to know that they’d be kept informed.

So, in choosing your solicitor, you definitely want one who won’t cause or add to delay, who’s able to do his or her job properly and who’ll keep you informed about your business. How do you do that?

Avoiding Delay

Delay is usually the result of inefficiency or neglect. At their most serious delays can cause very serious irretrievable harm. If you’ve suffered a personal injury as a result of an accident or been the victim of medical negligence the general principle is that you must bring your claim within 2 years or else you will never be able to. If you do your bit and instruct a solicitor in good time to bring this claim for you, and the solicitor then delays and fails to do so on your behalf, your personal injury or medical negligence claim will be lost through no fault of your own. You will not be given any allowances for the fact that it was not your fault that the time had elapsed.

You may be able to sue the solicitor for professional negligence as a result, but this is a fraught and difficult process which will involve another stressful legal case

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on top of an earlier stressful legal case, neither of which were your fault. Better avoided if possible.

So how do you avoid delay and ensure that important deadlines like statutory time limits are not missed? You develop systems to ensure that this can't happen. Your solicitor should be highly organized and this should be obvious from everything that they do and every aspect of your experience in dealing with them. If they can’t take the trouble to take this care about the aspects of their business that you can see, what do you expect is going on behind the scenes.

A proper risk management system is the most basic thing a solicitor should have and most will be obliged to have this now for insurance purposes; it’s essential practice. But the better ones will go beyond just ticking boxes to comply with insurance requirements and will incorporate the systematic approach to running their organization efficiently in every aspect of what they do. They will use IT intelligently and appropriately to minimize risk in their business (and when it comes to your case, their business is your business).

Risk management in solicitors’ practices in Ireland has been a buzz word in recent years following a huge number of professional indemnity insurance claims arising out of the collapse of the property market. For the most part, there is now one unified system of risk management in Ireland run by the Institute of Legal Research and Standards. At a minimum your solicitor should be accredited by such a recognized body, but this really should be a minimum.

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You should expect to see more than the bare minimum, when you ask about it or enquire on their website it should be something that they are able to provide you with detailed information on, and it should be fairly obvious from dealing with them that they are organized and have good systems in place.

In the end, problems arising from delay are really just a symptom of shoddy work, so a lot of what I have to say under that category will be relevant in spotting how to avoid potential sources of delay as well.

Avoiding Shoddy Work

The second highest area of complaint was shoddy work. I find it surprising that this is only the second highest, as to me, the most important aspect of the relationship between you and a solicitor is that they can (and will) take care of you to a professional standard that you are entitled to expect and insist upon. If they fail to do this, there is a fundamental failure on their part to honour their side of the bargain.

So how do you ensure that you are not the victim of shoddy work by a solicitor? Well the first thing you look to are their qualifications. They must be a qualified solicitor, that’s a given. But again, like with risk management, just because they have met the minimum standard required to be able to set up in practice isn’t enough. It is necessary but not sufficient.
If you are looking for a solicitor for a particular problem, the best way that you can protect yourself against shoddy work is by choosing a specialist. The fact that the solicitor has decided to focus on one or a small number of specialist areas of practice, means that they are serious about what they do and are much more likely to have relevant experience in that area.

So, in the first place you look for specialist qualifications. Most solicitors will have a primary degree, that’s usually the basic entry requirement. It needn’t be a law degree; some of the best solicitors come from a non-legal background. Indeed, there are many excellent solicitors who never did a university degree and who trained entirely on the job, but these are rarer nowadays and most will have this basic element.

On top of this you might expect to see post graduate qualifications. The basic law degree is usually referred to by the letters BCL or LLB, depending on where they went to college. Some might have both as the LLB qualification could sometimes be obtained by doing an additional year after the BCL in some colleges. After that the next post graduate qualification you might expect to see is a Master’s Degree which in the legal world is referred to as an LLM. Look to see what they chose to specialize in; is it relevant to what they are doing today?

Of course many will have changed tack considerably from college years ago and may not practice in the area in which they originally obtained their degree; many of
the best will not have come from a legal background in college at all. But the level of academic foundation is often a useful indicator.

After that, post qualification or professional education and training is vital, particularly when you are looking for a specialist. All solicitors must do a certain minimum number of Continuing Professional Development (CPD) hours, some dread this and see it as something that has to be gone through to fill a regulatory requirement. But some, the better ones, take their CPD seriously and have been doing it since long before it became a mandatory requirement. Some specialists will go further than the bare minimum of CPD points and will attain additional specialist professional qualifications in the course of their legal careers.

For instance in the area of probate and estate planning, the recognised qualification is a Trust and Estate Practitioner (for which an individual is entitled to use the letters TEP after his or her name). Similarly in the related area of tax planning the specialist qualification is to be an Associate of the Institute of Taxation in Ireland (an AITI now also referred to as a Chartered Tax Adviser (CTA)). In order to be able to use either designation the solicitor must have obtained additional specialist qualifications and adhere to the standards of each organisation.

Similarly, in the area of personal injury and medical negligence litigation, the recognised specialist qualification is the Diploma in Civil Litigation run by the Law Society of Ireland.
The area of specialist qualification ties in with the area of membership of specialist organisations. Following on from the examples above, you can only become a member of the Society of Trust and Estate Practitioners or the Institute of Taxation in Ireland if you have the appropriate qualifications.

Often, membership of professional organisations will give the solicitor access to a worldwide network or professional skill and experience. The Society of Trust and Estate Practitioners is based in London and is a truly international organisation in the field of trust and estate planning.

In the field of personal injury and medical negligence litigation, membership of international organisations such as the Association of Personal Injury Lawyers (APIL) and the Association for Victims of Medical Accidents (AvMA) are good indicators of a specialist practitioner in those areas.

So, check if the lawyer is a specialist in the area that is relevant to your problem, see that they have additional specialist qualifications in the field and are members of the appropriate specialist organisations.

Does the solicitor practice primarily in this area of law? Is this area of law the primary focus of their professional practice and is the solicitor and his or her firm structured to facilitate them in doing so? If the solicitor works in a firm does the firm have lawyers dedicated to particular functions or does everybody do a bit of everything? If the solicitor works alone, do they work exclusively in this area?
Publications are also a very good indicator of a specialism or an interest in a particular area. So, check if the solicitor has been published. Does he or she write articles or contribute to professional journals on this area of law? Does he or she blog regularly in this area? A clear record of writing focused in this area of specialism will give you a good indication of the solicitor's level of knowledge of the field and their commitment in this area. Obviously, the ultimate publication is a book on the subject.

The fact that a person has chosen to practice in a particular specialist field is a good sign. However, on its own it's not enough. You also need to be sure that person is good at what they do.

How do you tell if the solicitor is a good one? Ask someone for whom they have acted previously. If you do not know anyone for whom they may have acted previously, ask them if they are able to provide you with any testimonials or recommendations by previously clients. Satisfied clients who have paid for the solicitor’s services in the past will be one of the strongest indicators of the solicitor’s ability.

Experience is also a vitally important factor. Now, you don't necessarily need a tribal elder; the notion that the grey beard who has seen it all will always carry more weight in court or with colleagues isn't necessarily reliable. You need someone who is interested in lifelong learning and professional development, but who has also seen enough regular action at the highest level in the profession to be
ABLE TO DEAL WITH WHATEVER CONFRONTS HIM OR HER ON YOUR BEHALF EFFECTIVELY AND IN YOUR BEST INTERESTS.

HOW DO YOU TELL IF A SOLICITOR IS EXPERIENCED AND HAS THE RIGHT KIND OF EXPERIENCE?

LOOK FOR A RESUME OR CV. THEY MAY HAVE PROVIDED ONE ON THEIR WEBSITE OR MAY HAVE ONE AVAILABLE IF YOU ASK. IF THERE IS ANY RELUCTANCE IN PROVIDING YOU WITH A BIT OF BACKGROUND ON THEIR EXPERIENCE AND QUALIFICATIONS IN THIS AREA, YOU HAVE TO WONDER WHY. AGAIN PUBLICATIONS ARE IMPORTANT HERE. LOOK TO SEE IF THERE IS ANY EVIDENCE OF PUBLICATION IN PEER REVIEWED PROFESSIONAL JOURNALS, PROFESSIONAL ARTICLES IN THE PRESS OR PROFESSIONAL BLOG POSTS WHICH GIVE YOU A FLAVOUR OF THE LAWYER’S COMPETENCE AND EXPERIENCE.

ON THE OTHER HAND THERE IS LITTLE POINT IN EXPECTING A LAWYER TO HAVE WON EVERY CASE THEY HAVE EVER TAKEN ON OR TO HAVE SATISFIED EVERY CLIENT. IF YOU EXPECT THAT YOU'RE NOT BEING REALISTIC AND ANYONE WHO TELLS YOU THEY HAVE EITHER CAN’T BE TELLING YOU THE WHOLE STORY OR CAN’T HAVE HANDLED MUCH LITIGATION. ACHIEVING THE BEST OUTCOME FOR CLIENTS IN THE GIVEN CIRCUMSTANCES IS THE EXPERIENCED LITIGATOR’S EXPERTISE.

STRAIGHT AND OBJECTIVE ADVICE MAY NOT ALWAYS BE WHAT EVERY CLIENT WANTS TO HEAR. RECOGNIZING THE WEAKNESSES IN A CASE OR THE VULNERABILITY IN A POSITION AND ADVISING A CLIENT OBJECTIVELY IS MORE IMPORTANT THAN BEING GUNG HO WHEN THE CASE IS OPEN AND SHUT. THEREFORE, EVERY LAWYER WHO PRACTICES IN LITIGATION WILL HAVE BEEN INSTRUCTED IN CASES THAT WERE UNSUCCESSFUL AND WILL ALSO HAVE HAD CLIENTS WHO DIDN’T LIKE THEIR
advice and decided to shoot the messenger. You need to use all of the available information to judge whether these cases are the exception or the rule.

Avoiding Failures in Communication.

The third main area of complaints related to the area of failure to communicate. And this is perhaps the most annoying on a day to day basis from a client's point of view (and remember that client is going to be you, if you’re the one who’s likely to be in the market for a solicitor.)

Even without going to the point where things have gotten bad enough to complain to the Law Society, the most frequent complaints you hear about solicitors is that they never return phone calls, they keep you waiting when you are go to see them, they never provide you with regular updates and when they do write or talk to you they use such confusing and pompous language that it seems designed to do nothing more than make them seem important.

Well, this is possibly the easiest one to spot in advance. Read what they’re saying already in their communications and listen to how they talk.

Look to see how the solicitor communicates with the outside world at present. A good communicator in one area is a very good start and a good indicator of someone who is likely to follow through on this in all areas of their business. Do they have a website, is it helpful and easy to access and understand? Is it in plain English? Is the information designed to be useful and helpful to you or does it just to
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talk all about them? Do they have a blog? Do they use social media? Are their web, blog and social media presences updated regularly? Are they approachable and easy to contact when you make contact with the office? Is the communication culture good throughout the office when you phone or call to the office in person?

And, when you do move towards thinking about engaging them do they give you commitments about the levels of communication and service that they will provide you with?

You will need a good flow of information from your solicitor about your case as it goes along in language that you will understand. But much more importantly than that you will need to be sure that your solicitor will listen to what you are saying and understand what is important to you; either to fully understand the nature of what you have suffered, the injuries you have experienced or the way in which you would be comfortable in progressing the case.

Unfortunately lawyers are sometime characterized as self-important loud mouths; the last thing you want is someone who, whenever you meet them, only wants to tell you about how great they are and what a great job they are doing for you and does not show any interest in what you have to say. This is relatively easy to spot from the start and it is something you should be looking out for very closely.

How do you tell if your solicitor is someone who will listen?

Well this is something that you can only test by talking to them but it is something you should be conscious of from the start. Do they listen to what you
have to say? Do they encourage your input and ask questions that appear to understand what you have told them? Are they writing down what you say? Are they really listening or are they just waiting for their turn to talk next? Do they retain what you tell them or do you find yourself being asked for the same information over and over again?

While this guide is all about helping you understand how to identify a good solicitor (or perhaps the other way around, how to avoid the bad ones) it is also important that you are realistic about your expectations. Communication is a good case in point.

You are entitled to expect that you will be kept informed, that someone will get back to you reasonably promptly and that you will be spoken and written to in plain English; on the other hand, you should not expect that you can call up your solicitor at the drop of a hat and always expect to see him or her, or that you can just drop in unannounced and expect an appointment. Being able to do this is not necessarily in your best interests. Why am I saying this? Is this not just another solicitor trying to keep things the way they like it?

Well, to understand my point here, you need to think about the first two areas of complaints, delay and shoddy work. These generally stem from lack of organisation, inefficiency and lack of specialist knowledge. If your solicitor is willing to be called out of whatever he or she is doing at any stage during the day to answer the phone or to pop down to reception, it is extremely unlikely that he or she is going to be
able to give the necessary attention to what you would like him or her to be getting on with: your work.

Of course, there is a very simple way around this; at the outset your solicitor should give you a clear understanding of how things are likely to progress and when you can expect to hear from him or her. Once you receive these regular updates you know things are going along the lines originally envisaged. If you need to speak to them, you arrange to set up a call to do so, when you will call them at a pre-arranged time or they call you at a time that suits you. If you need to meet them, you make an appointment that is convenient for both of you. This is a two way street, they need to be open to communicate with you but you need to ensure that they do so in such a way that they are working on what you need done efficiently and effectively in the background.

There is one very important exception to this system and this is if the matter is genuinely URGENT. If that happens call them or call into the office. Explain that it’s urgent and that you need to speak to someone as soon as possible. Tell the person you are speaking to why it is urgent. But remember the story of the boy who cried wolf. If you keep ringing up requesting to be put through to someone urgently, and it doesn’t turn out to be urgent, don’t expect to be taken seriously when it actually is.
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Why The Focus On Complaints?

So why am I telling you all this? Why focus on the cases where people made complaints about their solicitors? Well the people who ended up making the complaints did so after their experience with their solicitor. Therefore, they found all of this out after it was TOO LATE.

Most people have very little interaction with the legal profession and try to keep it to a minimum, for the most part this is an entirely sensible approach. However, because people’s interaction with legal matters happens infrequently and in what may be otherwise traumatic or unusual circumstances, they sometime chose poorly in selecting a solicitor.

They may go back to the guy they dealt with before, their “family solicitor” or the guy nearest them. If the guy you dealt with before, your “family solicitor” or the guy down the road is the best solicitor for the job, use him or her. If not look a little more closely before you choose the person who is going to be handling some of the most important business you are ever likely to have to deal with. You may not get a second chance and you may have a long and hard road to satisfaction if you find yourself in the situation of one of those people who found the only thing left for them to do was make a complaint to the Law Society or sue their former solicitor.
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Misconduct

What I have been examining here are the main categories of reasons for complaints against solicitors for poor levels of basic service. But bear in mind these are just the minor complaints.

There is another category which goes far beyond complaints for delay, shoddy work, failure to communicate, over-charging or any of the other day to day kinds of bad legal service: that is misconduct.

Misconduct by a solicitor is where that solicitor goes beyond being merely inefficient or slipshod and actually starts doing things that he or she shouldn’t or failing to do things that he or she really should.

The most common and serious form of misconduct involves taking client’s property or money and using it for other purposes.

Some of the highest profile cases of legal misconduct in Ireland in recent years involved solicitors in the property boom. They operated in a system where solicitors were buying property for clients with mortgages while at the time they could also act for themselves where they were mortgaging their own properties. (The system has changed since as a result.) In some of these cases, the same properties were used many times for different mortgages without the old mortgages being repaid. Clients who purchased, moved into and were paying back the mortgages on their houses had no idea that the house had never actually been
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registered in their names and that it was actually being used as security for loans to other people.

In many other cases of misconduct, the misuse by the solicitor of the client’s property is more direct, it doesn't involve property. The solicitor holds money in cash for the client and decides to use it for their own purposes.

While these stories attract a lot of attention (and they appear with a depressing frequency) it is worth bearing in mind that they still remain a tiny minority of solicitors.

These cases make me extremely angry because this behavior by a minority is a fundamental breach of trust by a member of the profession of which I am part which hurts real, innocent people.

And in the final analysis everything is dependent on trust. If you don't trust your solicitor, there is little point in having one. The relationship is completely based on trust, and this trust must flow in both directions. What I have been focusing on in this guide is telling you about how to spot better or worse solicitors, but all of that assumes that the one you are dealing with is basically honest in the first place.

But there is another way of looking at this, and it leads us nicely into the next question that we are about to consider: fees. One of the most basic things that you should be clear on when you engage a solicitor is the business model. In order to
make money a solicitor must run a profitable legal practice. If they don't, you have to wonder how they are keeping the show on the road.

The classic cases of misconduct arise where the solicitor starts to get into financial difficulty and starts to “borrow” from the client account to tide things over. Some practitioners have sympathy for other solicitors in cases like this; saying “there but for the grace of God go I”. I’m afraid I don’t share this point of view.

I have every sympathy for a colleague who has business or financial difficulty, but, when they cross that line, it is simple theft and they have breached a fundamental trust that damages the entire profession.

But, the corollary is that in order to avoid finding themselves in this situation, solicitors must run successful and profitable practices, and must charge properly for the work that they do. If they don’t and you can’t see what’s supporting the smart offices and lavish lifestyle, you might wonder if someday you’re going to end up hearing about this on the nine o’clock news.
Fees and Charges

I said I’d come back to fees; the cost of the service is of course vitally important. But it is not the primary consideration. For instance when you are purchasing a property you’re taking a risk on the largest financial transaction you are every likely to be involved in, the day you buy is the day you sell; if it isn’t right on the day you buy it you may not be able to sell it on the day you want to or at all.

Similarly when selling a property, particularly in the extremely difficult current property market, if a problem arises with the transaction, you may lose a purchaser and find yourself trying to re-sell in a falling market. With this in mind, you really have to wonder if the solicitor you want for the job is the one whose only distinguishing characteristic is that he or she is crazy or desperate enough to do it for the cheapest price in the market.

The law requires solicitors to furnish clients with certain basic information on fees and charges at the outset of any matter. However, this is approached by many members of the legal professional as a regulatory requirement only and not a matter of good business sense. Therefore, many solicitors will do the minimum of what is required of them to comply with the regulations but will not give you any meaningful or in some cases, comprehensible, information on what this is about to cost you.
Now in fairness, many of the types of things people need solicitors for aren’t easily quantifiable at the outset in terms of the amount of work that will be required, the complexity or the time that will be involved.

But many are and in those areas you should be able to get a clear fixed price at the outset. That price may be based on some assumptions and a particular scope of what is included but it should be easy to obtain and understand. If you’re not getting it, you should wonder why not. Similarly, if they’re not explaining to you clearly why it’s not possible and also explaining to you clearly what the charging structure will be, again you should be scratching your head.

In matters where it is not possible to quantify what will be involved in advance, there are a number of options:

You may be comfortable to work on a time basis, where you agree an hourly rate with the solicitor in advance and he or she records the time spent on your behalf. In this situation you should be looking to see that there are different hourly rates for each person who will be dealing with the matter on your behalf depending on their levels of skill or experience, you can then select who you wish to deal with primarily in order to get the best value for money. You might like all your work to be handled by the senior partner personally, but are you prepared to pay for that on a routine case that could be handled by a competent more junior person?

If you have agreed to work on a time basis, you should be able to agree and set milestones with your solicitor, i.e. you may wish to be notified when a particular

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limit has been reached or each time the total value of the work done has increased by a pre-determined amount. For instance, you may specify a total limit which you are willing to spend of €2,500 or request to be notified every time you have incurred €1,000.

In litigation cases, such as personal injury and medical negligence claims, you need to take particular care to ensure that the basis of the charges are made clear from the outset. In fairness to the solicitor, the first thing that you need to be clear on here is that you are engaging someone to do work on your behalf for which you are the first person liable to pay. It is your case not the solicitor’s and you are the person primarily responsible for it.

You may feel that if you have a case and it is likely to succeed that the costs of the case should be paid in full by the unsuccessful party. Well, unfortunately, it is not always that simple and you need to understand how that works in order to get the best deal with your solicitor at the start.

The first point you need to remember, and this is a key point in litigation generally, is that you need to be able to recover what you may be entitled to from the party found liable. In taking any litigation you need to know how you’re going to get paid. This applies to your damages for the injuries you have suffered and the losses and expenses you have incurred as well as any award of legal costs you may obtain from the other side.
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The most obvious thing to look for here is to ensure that the party who is liable for your claim is insured and their insurance covers what they may be liable to you for. You may be awarded millions in damages and costs by every court in the land up to and including the Supreme Court but if the unsuccessful party can’t pay, not only will you not collect your damages but you’ll also be responsible for your own legal costs, unless you have a clear agreement in writing with your solicitor to the contrary. We’ll come back to this point in the context of “no win no fee” litigation in a moment.

Assuming the party responsible for what happened to you is what lawyers call a good mark (i.e. they can pay) don’t always assume that they’ll pay immediately. Generally speaking, if the party responsible is insured, their insurance company won’t hang around too long once the case is finally settled or determined in court and they will pay what has been agreed or awarded. (Though, if there is an appeal even this may be delayed.)

However, if your claim is against some other individual or organization even though that individual or organization may be well able to pay, they may not do so just because a court order has been made against them. It may be necessary to take further action against them to enforce the order and obtain payment.

This will involve further legal action and additional costs, many people find this difficult to understand and unfair because they have already been successful in court. However, this is a very real fact of life in any kind of litigation where you are
not dealing with a straightforward, properly insured party and you should be very clear on what is involved. Again, it goes without saying here that whoever you are considering instructing to act on your behalf should explain this to you clearly.

Similarly, while you may obtain an order for costs against the unsuccessful party to the litigation, unless the costs can be agreed, the amount of the costs to be paid on foot of that order will have to be assessed. Currently the system for assessment of legal costs is called taxation and is dealt with by a court official similar to a judge called the Taxing Master of the High Court. (At the time of writing in January 2013 major changes to the system of regulation of solicitors are proposed but not yet enacted. These proposed changes include reform of this system of assessment of legal costs.)

This process of taxation of costs involves further work and it may warrant engaging an expert in legal costs called a legal cost accountant to ensure that the maximum amount is recovered. Government stamp duty is payable on the taxed costs before they are recoverable. The position on the costs associated with all of this needs to be clearly agreed with your solicitor and understood by you before you agree to proceed.

Finally, after all of that, the legal position is that the order for costs made against the other side will only cover some of the costs of the litigation. The unsuccessful party is only obliged to reimburse you for the bare minimum required to bring the case, any other work over and above this bare minimum is not recoverable from the
other side and remains payable by you to your solicitor unless you have some written agreement with them to the contrary.

“No-Win No-Fee” Arrangements

A solicitor may be willing to take your case on what is technically called a contingent fee arrangement, or in plain English, a “no-win no-fee” basis. A sensible solicitor is unlikely to take your case on a “no-win no-fee” basis unless he or she believes it would be worthwhile for you to take it in the first place; is confident about being able to achieve a successful outcome for you and is equally confident about the ability of the other party to pay the damages and costs that you may be awarded as a result.

Therefore, “no-win no-fee” arrangements will only be possible in certain types of cases and you should never assume that this applies in your case unless you have a signed agreement in writing in place to this effect. If it is your understanding that your case is being taken on a “no-win no-fee” basis you should insist on written confirmation to this effect before you start and you should be very clear that you understand the terms and conditions associated with the arrangement.
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How to Find The Solicitor That’s Right for You

What you don’t want is a solicitor who is likely to expose you to delay, shoddy work, not keep you informed or not provide you with a straight deal on fees. You don’t want to find this out after you’ve decided on who you wish to have looking after some of the most important work you’ll ever have to get done.

So, in choosing a solicitor you need to look for:

➢ Someone who is organized and systemized and is clearly managing the risks associated with dealing with your case efficiently. Look for standards and systems that go beyond the bare minimum requirements. And remember this is a just a business, the practice should look (and be run) like a good business.

➢ Specialist qualifications and membership of specialist organisations that are relevant to your needs. For example, in personal injury and medical negligence cases look for someone who has a Diploma in Civil Litigation and is a member of the Association of Personal Injury Lawyers or the Association of Victims of Medical Accidents. In probate and estate planning cases, look for a Trust and Estate Practitioner who is a member of the Society of Trust and Estate Practitioners and who may have additional qualifications such as tax and be a member of the Institute of Taxation in Ireland.
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➢ Someone who is effective and experienced. Look to see publications in their area of specialism. Expect some background on their experience. If you don’t know anyone who has used them previously, they should be able to provide you with testimonials from other satisfied clients that they have worked with.

➢ Someone who shows a clear commitment to open and transparent communication with you in plain English. Someone who is willing to explain how things will work and commit to levels of service and communication that give you confidence.

➢ Someone who will give you upfront, clear and transparent information on fees and charges; in writing and in terms you understand.

I hope you found this book useful. If you would like some additional assistance in finding the right solicitor for you please go to www.flormccarthy.com, join my list and allow me to help you.
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About the Author

Flor McCarthy is a solicitor specialising in the area of commercial law and the area of probate, trusts and estates. His commercial practice consists mainly of commercial litigation, commercial property and SME commercial advisory work. In the area of probate, trust and estates, Flor deals with wills and estate planning for clients; complex probate and administration of estate cases; the creation and administration of trusts and probate and trust disputes and litigation.

Flor has over 15 years’ experience and has an extremely busy and diverse practice. He works closely with clients as a key adviser in solving and avoiding legal problems. In commercial litigation Flor has acted in a wide variety of cases at all levels in the Circuit Court, the High Court, the Supreme Court and in the Commercial Court. He was centrally involved in a landmark case that changed the law in relation to judgment mortgages in Ireland. He has vast experience of commercial conveyancing and acts for property developers, professional landlords, farmers, wind-farm developers, investors and property owners throughout Ireland. He has extensive experience of probate and trust matters of all sizes and description and in probate disputes and litigation.

As well as having a general law degree and being a practicing solicitor for over 15 years, Flor has a masters’ degree in his specialist field of practice: commercial law.

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Flor McCarthy is a Chartered Tax Adviser (CTA) and an Associate of the Institute of Taxation in Ireland (AITI) (in tax matters he focusses exclusively in the area of gift and inheritance tax (otherwise known as Capital Acquisitions Tax (or CAT)).

Flor has a diploma in trust and estate planning from the Law Society of Ireland, he is a registered Trust and Estate Practitioners and is a member of the UK-based Society of Trust and Estate Practitioner, the recognised international representative body for practitioners specialising in this area.

Flor is also admitted as a solicitor in England and Wales and he is a notary public for the County of Cork.

Flor is an enthusiastic blogger and is active in social media (please say hello!). He writes a very popular regular e-mail which you can subscribe to at www.flormccarthy.com.

He regularly publishes articles both in his areas of specialism as well as in topics of more general legal interest. He has published articles in the Irish Law Society Gazette and the Southern Star. He has been interviewed in the Sunday Business Post and on national and local radio.

Outside of work Flor is married to Mags and has five young kids. He spends most of his time shouting and being ignored. He loves gardening, growing nice things to eat, cooking them well and eating them in good company with plenty of wine. The rest of the time you’ll usually find him either reading or staring vacantly into space.

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One Last Thing

Before you finish, make sure you go to www.flormccarthy.com and join my mailing list to be alerted when my next book is coming out and to get access to lots of useful free resources.

Thanks for reading,

Flor