7 Questions to Ask Your Solicitor

1. Will I Win?

If your Solicitor cannot tell you without hesitation what **strategic/decision analysis tool** they use – walk away – and preferably give us a try.

Whether you and/or your Solicitor think you are going to win as a gut feeling is completely hopeless.

Our intuitive thinking is subject to biases that will lead us astray, no matter how much we think we are looking at the issue objectively.

However, it may surprise you, that when faced with all of the uncertainties inherent in complex litigation, many Solicitors still rely heavily on their gut feelings.

In fact, in our experience, most Solicitors rely on very little else or push the problem down the line onto a barrister – "Counsel's Advice."

We spend time with you understanding the complexities and uncertainties inherent in litigation using an accepted scientific method of analysis.

2. How much enthusiasm will you bring to my case?

Recently we were instructed on an "Appeal" – a case just lost by a specialist London based firm.

Value of subject matter - £118,000,000 estimated.

More importantly - client's life completely ruined.

As usual, nothing on the file that we would consider standard requirements:

- no carefully thought out witness and position statement,
- no fully detailed chronology
- no strategic analysis
- no discussion with client how all the pieces fitted together (so no way they could have extracted the client's actual instructions – how can you unless the client really knows what's going on)
- no meaningful or directional advice
- client expected to come up with own witnesses

- no investigation of opponent

Excellent detailed instructions to Counsel – but so what? As the case wasn't treated like the most important thing happening in their [Solicitors] life right now, the opportunity to do their best had already been missed.

Our mission is to apply our highly experienced specialised skills to treat our client's matters as if they were our own.

3. How will you build my case?

Short answer – together with you.

We have to be honest with you – we are not the cheapest show in town.

But we will make sure you:

- know what we are talking about and understand your position

  whatever you do from here - don't just hand over your case to your Solicitor – you are asking for trouble if you do

- understand how the law and facts work together

- understand how we work out the Court's likely response to your position

- are fully involved in building your best possible case

4. How Much Will it Cost

This is normally the first question we receive from clients, and in our experience, most Solicitors will be happy to "hazard a guess" at an early stage.

We can and will "hazard a guess" at an early stage if you instruct us to do so.

However, the correct method for answering this is to analyse and plan the case thoroughly and then work out the budget.

5. Will any of your past clients give me a personal reference for you to take on my case?

Ours will – please ask if you are not satisfied by the many testimonials on our website.

6. Will you be handling all of my work personally?

Beware of the huge internal pressures which may exist on fee earners to meet billing targets in "Big Firm & Co." This often means essential work, such as planning out witness and position statements, is passed down to less qualified staff who are being paid very ordinary salaries but for whom you are paying £100s of pounds per hour.

Another common problem on many files we have inherited from "Big Firm & Co." is that no-one gives meaningful directional advice – too much of an exposed position perhaps?

We don't have billing targets or office politics – our attention is focussed on your case.

7. How do I prepare for our first meeting?

Quick answer:

Write down everything you can remember and put a time against it. And then sort all your relevant documents into chronological order – not thematically. Give us your chronology and documents a few days before we meet.

Longer answer:

At the initial interview regarding a litigation matter, and particularly where disputes are highly charged, you might not be thinking objectively.

It may come as a surprise that in most instances the information you want to give and the information we want to receive, are often quite different.

Your presentation (this is blunt advice, but if you don't like hearing it as it is we may not be the trusted advisor you need) will normally be aimed at:

a) **Justifying yourself** – by demonstrating your position in the matter is justified.

b) **Receiving Recognition** - that your position is justified;

c) **Receiving Reassurance** - that your position is justified legally – i.e., the law/courts will uphold that position which feels to you to be the right one.

Our agenda is focused towards something quite different.

To highlight this, it is useful to provide an illustrative example from a typical litigation situation – the "battle of the forms."

A battle of the forms refers to a situation between two businesses when negotiating a purchase; each party wants to contract on its terms.

For example, A intends to buy goods from B on A's standard terms, B accepts the offer, but on their standard terms.

Battle of the forms disputes are notoriously tricky because ascertaining the terms of the contract the parties appear to have agreed is a matter of both construction and fact.

We are not able to give you any real-life examples from our practice management system but here is one we made up:

> *In your company, the office manager is free to phone up and order office supplies on the telephone from "Selpats."*
>
> *Confirmation of the order arrives with the goods themselves.*
>
> *Selpats terms and conditions are stamped on the back of the order.*
>
> *Your office manager ordered a supply of £5,000 worth of ink cartridges for your printers but, mistakenly, the wrong type.*
>
> *When they arrived, it was seen that they did not fit into the printers and had to be returned.*
>
> *Your office manager telephoned Selpats the same day the cartridges were delivered, but they said it was a special order – the printers you are using are obsolete – and they would not take them back.*
>
> *They referred you to their terms and conditions which are on the back of each order, and they said that these were incorporated into the contract.*
>
> *These state quite clearly in clause 8 (g) that once goods have been accepted and signed for Selpats has no obligation to take them back.*
>
> *When your office manager relays this sorry tale to you, you remember that some 3 years ago, when speaking to the sales manager of Selpats, you handed them your terms and conditions for receipt of supplies and told them you were only prepared to contract on that basis.*
>
> *You check your old file, and there are the company's terms for suppliers from 3 years ago.*
>
> *Clause 9 (q) says you must have an opportunity to inspect goods and have the unconditional right to return anything within 2 working days of delivery provided your company pays the cost of the return.*
>
> *Your office manager admits they signed the delivery form without looking in the boxes and checking.*

How can we start finding out what the legal answer is to the above situation?

We need a timeline – lawyers call it a chronology. We also need sight of all the relevant documentation.

You cannot get cost-effective answers if you come to see us before you have this information gathered together and appropriately organised.

If you recall a relevant document, but cannot find it, ensure you have searched every nook and cranny so that you can tell us, with confidence, that the document cannot be found. We need to know, in absolute terms, what documents exist or may have existed but are now lost or no longer in your possession.

Documents which may or may not exist can damage your case.

In addition to all relevant documents to the case, it is also important to build a chronology of the occurrences.

For example, in the case above, complete details about the initial conversation with the office supplier's sales manager, or as best as can be remembered, must be prepared. It is obvious that this is going to be crucial to the case.

You only have to think about it for half a moment to realise why – if events are not placed in date order; it is almost impossible for the mind to follow the story.

What we don't want in Court is one of those dramas where the time keeps jumping backward and forwards. The law is quite difficult enough. Simple chronological stories work best in Court.

The temptation for clients to sort their documents thematically or into categories is usually overwhelming. Particularly because most of your files will already be organised in this way.

Please ensure you resist it.

There is no need for you to break up your own files – you can simply photocopy them and then sort the resulting photocopies into chronological order. Documents make much more sense to the lawyer in time order and time runs like a book. With 1066 at the top of the pile and 2018 at the bottom.