

Why do clients often **spend too much on legal advice?**



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Introduction

All parts of the construction supply chain need legal advice when considering procurement methods, negotiating contracts, managing disputes and addressing ad hoc issues as they arise. That advice should help reduce risk, maximize value and preserve working relationships and business reputations.

However businesses often spend too much on that legal advice. This e-Paper sets out the reasons why we say that and identifies some solutions.

But why are we, a specialist construction law firm, advising against spending too much on legal fees and thereby identifying ways to reduce what you pay us? The truth is that we pride ourselves on being an ethical law firm. **Honesty and transparency** are at the heart of who we try to be. We regularly hold internal meetings about “what else” we can do to offer more value to our clients and that includes us questioning our pricing.

We are also not afraid of losing some profits by telling you the things contained in this e-Paper. We are confident that you will see that we really do have our clients’ best interests at heart, that we do things differently to other law firms, and that we are always looking for ways to improve our clients’ journeys. You will see that you save money through us. For these reasons we think you will be even happier with our service and then tell your contacts and colleagues to instruct us.

10 reasons why clients often spend too much on legal advice

1 **Poor client records**

Lawyers spend a lot of time looking at their clients' records in order to find the information they need to give their advice, to compile evidence and to provide documents to 3rd parties, such as an opponent, an expert or a Court. In many respects a lawyer's advice and effectiveness can only be as good as the records it is given by the client. So the more shortcomings there are in a client's records, the longer a lawyer will have to spend putting them into proper order, and looking for the information it needs (often in vain), thereby wasting time and incurring unnecessary cost. It will also likely mean the advice has gaps in it and the client's position is weaker.

Therefore records sent to a lawyer should always be these things as far as possible: (i) electronic and delivered by secure and intuitive software/platform held in sensible file sizes (ii) complete: the lawyer should be sent everything it needs and those obviously key documents in particular, eg the contract, payment notices and relevant correspondence (remember that correspondence can include emails, texts, social media messages etc). Think about relevance and ask if you are unsure (iii) in good condition: ie legible, not with bits missing off the side or copied upside down (iv) with minimal duplication: eg of attachments (v) organised sensibly: ie chronologically and in helpfully structured and titled folders/subfolders and (vi) with any damaging documents included: don't withhold documents that you think harm your position, as we need to be aware of them too.

Good records don't just help the lawyer and save cost, clients also have legal obligations to retain good quality records that they cannot avoid for example health and safety records.

Good records also assist the construction project to run smoothly in the first place and thereby help limit the role of lawyers, for example, by having to deal with later disputes, because a good audit trail reduces the scope for confusion and lack of clarity.

Little client understanding of the contract

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Lawyers don't expect clients to understand every nuance of a contract, but at least a working knowledge of it will save time and cost both before and after instructing a lawyer. In a sector known for a high volume of disputes, it is particularly sensible.

However it is not uncommon for a client to have little or no understanding at all of the contract/s that it has entered into, even the most common JCT forms. But that then raises the risk of various things happening: eg that the client has entered into a bad bargain, that it will not correctly administer or comply with the contract and that there will be a dispute. That means that it is then more likely to need a lawyer, and when it instructs one, it will need the lawyer to explain what the contract provides for. All of these things will increase a client's legal spend.

Sometimes a client won't even know what contract they have entered into (if they have entered into one at all) and/or will have lost it.

Poor or little contract knowledge also often arises where there is no formal written contract and the lawyer must then piece it together out of, for example, email exchanges and WhatsApp conversations. Or the contract may be an oral one or one that is part oral, part written.

All of these different scenarios will likely mean that a client will need lawyers more often, and when it instructs them, it will need the lawyer to spend longer working out what the contract is and explaining it to the client. That means more cost.

Sometimes more dangerous than a client who knows little or nothing, is a client who thinks it knows a lot about the contract, but does not. Misplaced confidence can lead to expensive mistakes.

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Little client understanding of the law

As with some knowledge of the contract, it is also helpful if a client has at least some understanding of construction law. That way it will be likely to perform the contract more effectively and avoid some mistakes. It will need lawyers less. But when it does need a lawyer, it won't need everything being explained to it about the law. This is again a cost saving.

For example, a client should have a working knowledge of adjudication, the statutory payment regime and the right to suspend performance. These are important and commonplace construction law topics, and the subject of a great deal of problems on projects and hence disputes. A client that knows its basic rights and obligations in these areas, and can avoid the many pitfalls therein, will save a lot of money on legal fees.

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Unclear client objectives and instructions

It is important that a client has clear objectives when it instructs a lawyer. That will save the lawyer time having to try and work out what they are, or asking the client to first decide what they are. Without objectives it won't know how to achieve them or recognize success/failure in that regard.

It may of course be that a client's objectives are muddled, the wrong ones or simply unrealistic. If that is the case, then a lawyer will have to help the client unpick the objectives and adopt other achievable objectives.

Once appropriate objectives are in place, they must then be kept under review and adjusted later on if circumstances demand it.

Clear objectives mean that everyone can work efficiently. That will mean that lawyers' time and cost are kept at a reasonable level.

As with objectives, so too client instructions generally should be as clear as possible. For example in a dispute try to take the emotion out of a situation where possible and focus on what needs to be done. Anger, for example, often leads to unclear instructions.

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Client not understanding legal fees

Another common cause for excessive legal fees, is where a client does not understand legal fees and hence they balloon out of that confusion. They are sometimes not the easiest thing to get to grips with, and as lawyers are rarely cheap, amounts can soon start to stack up.

So ensure that you understand for example: different legal fee models, types of disbursements, legal expenses insurance and when a client can recover fees from an opponent. Obviously a lawyer plays a big part in ensuring that the client has the information it needs to understand those things and make the best decisions in connection with them. The client will also need reminding from time to time. All the information cannot just be given at the outset and then forgotten about by the client, although a great deal of the information will be set out in the lawyer's Letter of Engagement and/or Terms of Business. The client must read those documents carefully and any queries raised promptly.

Legal fees are more complex and often largest in disputes, and there are additional rules that apply to legal fees then, and the client must understand them to. For example the rules surrounding Part 36 settlement offers.

One thing that a client must understand and which will arise from day 1, is that there are different models for a lawyer charging a client. There is the norm, ie billing by way of hourly rates. But there are alternatives such as retainers (a monthly fee for a monthly allocation of hours, often at a discount), fixed fees and alternative fee arrangements (eg no win no fee). Client and lawyer must discuss and select the model that works best for both of them in the particular circumstances. A client should not just passively accept the model presented to it by the lawyer.

A good understanding of legal fees will allow a client to save legal fees.

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Late or delayed client instructions

Clients often come to a lawyer too late in the day. They have held back, thinking that the matter can be dealt with without taking legal advice, and not wanting to incur the cost of doing so. However sometimes the first is not simply realistic, and the second is a false economy. By the time that the lawyer is instructed, it is then simply too late for the lawyer to add much value. If there is a dispute, there may now be no time to help launch what was a good claim, or time to defend a weak one. An example of the former is where a limitation period has expired and the claim is now time-barred. An example of the latter, is where the time for serving a Pay-Less Notice has passed.

In these situations the legal fees that are then incurred at the last minute, often yield little benefit back to the client, because options are now limited or gone, and scrabbling around rushing to mitigate the problem, is very inefficient. This is almost always money badly spent. So go to your lawyer on time. If in doubt about when that is, go too soon, rather than too late, because a lawyer can always tell you it's not needed yet.

In terms of delayed instructions, as opposed to late instructions, lawyers almost always work best and deliver most value, when working relatively quickly and hitting short term deadlines. The reasons for that are various, for example: they have to (eg it's an adjudication), it puts pressure on an opponent, and it keeps decision-making focused. If months pass between instructions when days only was the request of the lawyer, memories fade and impetus is lost, and so more time is spent refreshing memories and getting back up to speed later. Again more legal cost.

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Not instructing the right lawyers

Construction law is a niche, unlike say Corporate law, and it is also relatively complex. It has its own suites of standard form contracts and established amendments, its own Legislation (eg the Housing Grants, Construction & Regeneration Act 1996 as amended), its own Court (the Technology and Construction Court), its own way of procuring and delivering projects (ie the supply chain), its own form of rapid dispute resolution (adjudication) and so on. In addition there are other areas of the law that regularly come into play when advising on construction matters, eg health & safety, landlord & tenant, and

environmental law.

For these reasons construction lawyers are not numerous, and good specialist ones, are fairly thin on the ground.

With the above in mind, a client has to decide whether it needs to instruct a good specialist lawyer or not. Alternatives include lawyers who just do a bit of construction law from time to time, those who in reality are commercial property lawyers, and those working in the unregulated sector and hence only able to advise on some areas of construction law (eg not litigation).

The answer we think is that it's horses for courses. There is no one size fits all. In the same way that you don't need a very experienced lawyer when sometimes a junior one will do. It's important though to get the decision right, because if your lawyer doesn't have the expertise that you need, you may pay a high price.

We are specialists.

Not using lawyers effectively

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This point overlaps a little with others but that is no bad thing. A client must use a lawyer effectively or it won't make the best use of it and will waste money.

This is especially the case with using a lawyer because the law is complex and lawyers are not cheap. So there is the potential to quickly spend significant money and see little return.

Therefore be organised, efficient, clear, ensure that the best person in your organisation to do so is giving the instructions, know who can/will give evidence if needs be, and so on. Make your lawyer's life easier and it will do the same for you. There is reciprocity in the lawyer/client relationship. Just as when you go to see a doctor and have limited time for the appointment, you will go prepared, clear on symptoms and your requirements. Prepare beforehand and reflect afterwards. Make sure you leave each contact with your lawyer with clear action points and timescales. If you are unclear on anything, ask. If you need something in writing, for example because you need to disseminate legal advice internally to others, ensure that you get it in writing not just verbally.

Likewise prioritise. Don't spend the same amount of time with your lawyer on something worth £100 and £100,000.

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Explain who you are

Make sure that your lawyer properly understands your business, ie what you do, for whom, how, where and who the key individuals are. It doesn't take long. A lawyer that knows its client will better know how to advise it and ensure that the advice resonates. Advising a faceless organisation allows for none of the important personalising and other tailoring, that makes advice especially valuable. This will save you cost in the long run.

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Not following the lawyer's advice

Finally, follow the advice. It is not uncommon to see a client spend a great deal of money and invest a great deal of time in legal advice, only then to follow only some or none of it at all, for whatever reason. At the very least if you are minded not to follow the advice, discuss that fact with your lawyer, so that together you can sense-check that decision.

9 Key Action Points

- 1. Keep good records**
- 2. Have a working knowledge of the contract**
- 3. Have some knowledge of the law**
- 4. Have clear objectives and give clear instructions**
- 5. Understand legal fees**
- 6. Instruct the right lawyers**
- 7. Use lawyers effectively**
- 8. Explain who you are**
- 9. Follow advice**

If you have any questions or comments on this e-Paper, or ideas for other papers, please contact us at

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If you need our advice on anything, please get in touch, we would be delighted to help. If you finds this e-Paper helpful please follow us on [LinkedIn](#).

Please note that nothing herein constitutes legal advice.

