

IPAV Members Can Now Talk Directly To Top Irish Barristers



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The Irish Bar is changing and innovative barristers now recognise that their professional client base extends far beyond solicitors. Many auctioneers and property service providers are still not aware that their own profession can obtain the cost-effective services of Irish barristers without the need to instruct a solicitor first.

The Bar Council of Ireland's Direct Professional Access Scheme rules which confer this right, in force since 1990, apply automatically to auctioneers who are members of an approved professional body. The Institute of Professional Auctioneers and Valuers in Ireland is one such body and its members are authorised to have direct professional access to members of the Bar of Ireland.

Used correctly, the ability to go direct to counsel can be a useful and cost-saving device. But what is the right situation in which to bypass the services of a solicitor?

The key to this is an understanding of the kind of work Irish barristers undertake. While barristers are primarily perceived as advocates, it is worth remembering that most are also pre-eminent in their chosen fields of legal expertise. Specialist barristers - experienced in, for example, business and commerce law, property, tax, fraud or international dispute resolution - can be hired ad hoc or become part of a team led by or working alongside auctioneers on any project which might benefit from their involvement.

Nature of dispute

As to the type of case that is appropriate for Direct Professional Access, the first consideration is the nature and complexity of the dispute. Where there is voluminous documentation, a lengthy history and a catalogue of disputed facts, it may well be that the case will benefit from the management and day-to-day supervision of a solicitor. On the other hand, in a situation where the subject-matter is self-contained and the issues clearly defined, or where it is thought that a properly-drafted legal document will be enough to secure the desired result, an auctioneer will most likely find it more cost-effective to involve counsel directly.

There are many barristers whose work practices are concentrated entirely on property-related legal matters, such



as landlord and tenant, construction, mortgages and NAMA and many other barristers whose areas of legal expertise such as tax, debt collection, commercial contracts, professional negligence/misrepresentation and finance law are likely to be highly relevant to property service providers.

One particular field which can benefit from a direct relationship between an auctioneer and barrister is providing advice on the legal issues that have arisen with multi-unit developments. Many barristers are very familiar with the relevant legal issues and advise developers, owners and property management agents on the powers of management companies, the holding of AGMs, annual service charges and long-term building investment funds (sinking funds).

Another legal area that is of significant interest to auctioneers is the EU Directive on the Energy Performance of Buildings which has come into effect in Ireland by way of the European Communities (Energy Performance of Buildings) Regulations 2006. The effect of the legislation is that building owners must provide a building energy rating (BER) certificate to prospective buyers or tenants on sale or letting. There are exemptions for certain categories of buildings, such as protected structures and temporary buildings, but the net effect is that whenever a building is sold or let, a BER certificate will be needed. The owner or developer of the building will need to engage the services of a BER assessor, who will issue a certificate. Failure to comply with



these provisions could hinder or delay the legal completion of the sale/letting or any future sale/letting.

Barristers are also able to offer expert legal advice to landlords granting leases of between ten and twenty years in length on the implications of Section 47 of the Civil Law (Miscellaneous Provisions) Act 2008 which extends the opt-out provision of all tenants of business premises provided the tenant has obtained independent legal advice and signed a deed of renunciation. Additionally, many barristers are also qualified arbitrators with many years experience in dispute resolution matters relating to rent reviews in commercial leases, property and construction disputes and can be engaged directly by auctioneers and valuers.

Many auctioneers might feel uneasy about the process of finding appropriate counsel, or uncertain about conducting negotiations on counsel's fees or service standards. These need not be daunting tasks. Once a particular barrister has been identified as being appropriate and available, he or she can be contacted directly by telephone or email. So far as the negotiation of fees is concerned, this can be done on the basis of an hourly retainer, a fixed, capped or tapered fee or, in the case of court hearings, an all-in "brief fee". The client is entitled to transparency and is entitled to know how much time a particular piece of work will take and why.

Ultimately, the process should be made easier by the fact that it is in no one's interests for the client to be represented by the wrong barrister. Barristers will be at pains to ensure that the right counsel for a given matter is found and, if the brief is better directed to a different barrister or to a solicitor, will say so. Barristers themselves are under a duty to say if they do not think they are the right individual for a particular case, or if they think that the involvement of a solicitor is necessary.

Fees

As for fees, with stiff competition between practitioners there can be few easier markets in which to "shop around" than the Irish Bar and barristers are often happy to work for appropriate fees proposed by clients. And the fact that the overheads of most sole-trader barristers are lower than those of solicitors' firms means that clients can obtain a comparable or often much

higher level of experience at a significantly lower hourly rate. Savings of up to two-thirds the cost of comparable solicitors are common.



The cost advantages of using barristers without a solicitor have been judicially recognised. In *Agassi v Robinson* [2005], the tennis star, Andre Agassi, employed tax experts who in their capacity as members of the Chartered Institute of Taxation had licence under the Direct Professional Access Scheme to instruct counsel direct. The Senior Costs Judge acknowledged that by engaging barristers directly, the costs were one-third what they would have been had solicitors been instructed.

Many counsel now see the traditional solicitor-barrister route as being only one of many different ways to attract work. With a large number of practitioners covering a wide range of disciplines, and an ethos of approachability which is shared across the Irish Bar, many are trying hard to take the mystique out of Direct Professional Access.

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