ASG Guidelines for the Conduct of Solicitors

Whereas the choice of English law and English jurisdiction may have been regarded as the automatic choice for international business contracts in the past, the same is no longer true today. The competition from other jurisdictions is growing all the time and the most frequent criticism levelled against England is the high cost of resolving disputes here.

Both judges and arbitrators have noted what they perceive as deteriorating standards of conduct amongst solicitors and they have pointed out the link between this and the increasing cost of litigation. Whilst it might be argued that the judiciary and arbitrators should adopt a greater robustness in dealing with solicitors' conduct, it is for the profession to try to correct this state of affairs. If the following guidelines are followed, it is to be hoped that the standing of the English legal profession will be enhanced and that the attraction of England for the resolution of disputes restored to the benefit of all.

1. Always remember that you are meant to be looking after your client's best interests and that running up unnecessary costs is very unlikely to be in their best interests.

2. Although you must follow your client's instructions, provided these do not conflict with your professional duties, do not hesitate to advise your clients when you think that following their instructions will not be in their best interests particularly with regard to costs - it may be too late to try to explain this when you have submitted a higher bill than the clients were anticipating.

3. Whilst you are expected to argue your client's position forcibly, do not be over-aggressive and definitely do not be abusive. Over-aggression and abuse only serve to harden the resolve of the recipient and encourage retaliation. Whilst you might enjoy a good fight and even find it amusing, it is unlikely to confer any benefit to your or your "opponent's" clients who will certainly not find it amusing when they discover you have been conducting a slanging match at their expense. If you feel you must try to score points off another solicitor, do it in your own time and not in your client's time.

4. If you are unhappy with the way in which your "opponent" is dealing with a matter, try speaking with them in a calm sensible manner. If this does not work or you feel uncomfortable in making such an approach, speak with the responsible partner in your firm or the head of your department. They may well be able to have a quiet word with their opposite number in order to rectify the situation.

5. If you consider that the other side is being dilatory then by all means resort to the powers which the courts and arbitrators have to make Orders but before doing so try to discuss the matter with your "opponent". If a sensible timetable can be agreed so much the better. This will avoid the incurring of unnecessary costs.

6. When you are instructed on a new matter, try to weigh up the merits of your client's position at an early stage with a view to considering whether an early settlement, if it can be achieved, is likely to be in your clients best interests. Do not look at every new instruction which you receive in terms of the number of years work it will provide to you or the amount of fees it will generate for your firm.

7. Do not engage in unnecessary correspondence. It is pointless to copy in arbitrators on all inter-party correspondence - the arbitrators are not interested in it and are understandably frequently irritated by it. It just inflates your costs to your clients and the Tribunals' fees in the reference. If your "opponent" insists on copying in the arbitrators a quiet word with the Tribunal will usually result in their seeking to halt the practice. Whilst inflating your time-sheets might appear to be personally expedient, it is likely to be expedient in the short term only. If you personally, and your firm generally, obtain a reputation for high costs both are likely to suffer. Further more, it is likely that it will add ammunition to the detractors of the English legal system resulting in more legal work being directed elsewhere.

8. Remember that the courts and arbitrators have a wide discretion as to the awarding of costs and have powers to order that wasted costs be borne by the solicitors themselves rather than by their clients. There is evidence to suggest that those powers are becoming more widely used and an Order for your firm to bear the costs themselves is not likely to enhance your position within your firm.