

CHAPTER 2

CONSULTANT PROFESSIONS

Having in the previous chapter arrived at the conclusion that there is a distinct group of activities within the wider professional sphere which may appropriately be called the consultant professions, we proceed to consider these activities, and their field of operation, in more detail. The field is that laid down in the basic proposition given on page 15, and may be more briefly described as 'health, rights and property'. The following table shows the main consultant professions operating in this field* —

HEALTH

Dentist
Optician
Pharmacist
Physician
Surgeon

RIGHTS

Barrister
Notary
Parliamentary agent
Patent agent
Solicitor

PROPERTY

(A) LAND AND BUILDINGS

Architect
Auctioneer
Building Surveyor
Civil engineer
Estate agent
Heating and ventilating engineer

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Land agent
Land surveyor
Landscape architect
Mining engineer
Quantity surveyor
Structural engineer
Town planner
Valuer

(B) MONEY AND SECURITIES

Accountant
Actuary

* Names of professions are those current in England. Similar activities else- where may have different names, e.g. Writer to the Signet (a solicitor) in Scotland. 17

Insurance broker
Loss adjuster
Mortgage broker
Stockbroker

(C) CHATTELS

Auctioneer
Chemical engineer
Electrical engineer
Mechanical engineer
Naval architect
Ship broker
Valuer
Veterinary surgeon

Compiling a table like this is a rash exercise, since it cannot fail to offend some people — from the advertising agent or public relations consultant, who finds himself omitted, to the animal lover who objects to veterinary surgeons being regarded as dealing with chattels. Such is the fate of the classifier. The reader may amuse himself by compiling his own table but it will not come out all that different. The important point is that the table given here relates only to the basic proposition, which is the core of the importance of professionalism. Other activities may qualify as consultant professions too, if they substantially satisfy the six tests given in Chapter 1 (see page 15). Activities within the field (health, rights, property) of the basic proposition may fail to qualify if they do not satisfy the six tests, and some will argue that this applies to occupations included in the above table, such as those of the stockbroker, auctioneer or estate agent. The Consultant in Practice

One of the essential characteristics identifying the consultant

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professions is a foundation in private practice, which exists where the professional man holds himself out as prepared to offer professional services on his own account, and sets up whatever may be necessary in the way of an office, consulting room, clerical staff and so on. He may do this on his own, or with partners on an equal footing with himself. His firm may have one office or several, but it will have a number of clients no one of which provides a majority of the work. Thus independence is secured.

The antithesis of private practice is salaried employment. It is possible for the conditions of employment to be such that there is little practical difference in the day-to-day work of the employed man and his professional brother in private practice. This is by no means always the case however, and nothing can remove the ultimate power of the employer to insist on his will being obeyed, with the sanction of dismissal in the background. As will appear in the course of this book, the essential qualities of the consultant professions — those which make them of peculiar value to society — can only be fully deployed in the conditions prevailing in private practice. The qualities came into being because the freedom and independence of private practice encouraged their growth. Once brought into being, these qualities of independence, impartiality, discretion and so on may flourish in employed service if the conditions are right, the employees concerned are alive to their responsibilities and their professional institutes are vigilant in support. Employed service can only be a second best however, at least within the consultancy field. The present tendency of most sizable organisations, from Government departments, local authorities and other public bodies to private commercial and industrial undertakings, towards setting up their own professional departments is regrettable. Many of these employees have no experience of private practice or the values it inculcates. The spread of this kind of salaried employment can only lead to the ultimate decay of qualities and attributes which are of great value to the public.

The origins of private practice are multifarious and often obscure. Many callings now ranking as separate professions originated with the Church. Under the parochial system established after the Norman conquest

and continued ever since, the English churchman has enjoyed a large degree of independence. The priests, many of them of Norman origin, who held themselves out as legal advisers in the twelfth and thirteenth century often did so as independent practitioners. The same is true of physicians, architects and others who, holding ecclesiastical preferment as securely as any property could be held in those turbulent days, held thereby the means of independence. Some it is true were

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PROFESSIONAL ETHICS members of the household of a lord or magnate, and were dependent on his pleasure, but this only reflects the origin of many professions as helping the individual to do what, if he were able, he would do for himself. Thus the advocate arose to do what, under our Norman kings, a man was obliged to do for himself unless he had express permission to appoint a deputy or "attorney". Similarly the predecessor of the modern surveyor, the land steward or seneschal, acted in relation to his master's estates as the master would himself have done if he had had the time and ability, and was accordingly required to be "prudent, faithful and profitable". (1) .

While the "professional" member of a great medieval household, such as the priest or steward, might plausibly be equated with the salaried employee of today, it is clear that the prized professional qualities did not develop in this milieu but, nourished by the growth of representative institutions, grew up later in the independence of private practice. The nature of these qualities, and the way they are upheld by the professional code, will be discussed in Part II. Mean- while we need to take a brief look at the representative bodies respon- sible for administering the code. A Band of .Brothers

The codes of conduct were all drawn up, and are administered, by bodies consisting wholly or mainly of members of the profession in question. This is of crucial importance. The reason is indicated in the opening words of Medical Ethics, published by the British Medical Association: "The entrant to the profession of medicine joins a frater- nity . . . " In 1947 the World Medical Association was formed "to unite the profession throughout the world in a single brotherhood" and one of the articles in the modern restatement of the Hippocratic oath produced by that Association states simply: "My colleagues will be my brothers."

Other professions are not always so explicit about this concept of brotherhood, though it is there in greater or lesser degree. It explains rules such as those forbidding undercutting of fees, the poaching of clients and the extremest forms of self-advertisement. It produces the helping hand for the raw beginner, the benevolent fund for brethren who have fallen on hard times, the practice of not charging a fellow- practitioner for professional services, and many other features. It en- courages professional bodies to arbitrate informally in disputes between members, and otherwise preserve harmony within the brotherhood. Most people gain strength from identification with a group, and the public benefit derived from the existence of strong professional groups,

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21 with pride in their calling, is, or should be, obvious.

Many different types of organisation exist to give expression to the concept of professional biotherhood. Some cover all aspects of the regulation of the profession, while others concentrate on particular features such as conduct and discipline. Some include all, or nearly all, members of the profession; others have only a small minority. A few are set up by Act of Parliament, but most are voluntary. The leading bodies have all however received some form of recognition by the State, whether by the grant of a Royal charter, or by the conferment of certain statutory powers, or at least by the inclusion of references to the body in legal provisions. There is one universal characteristic: the initiative in setting up the body and the guidance of its policy come from members of the profession and not from outside. A typical statement of the essential functions of the representative body of a consultant profession is provided by the Association of Consulting Engineers: "The Association is a ready medium through which its members can consult with each other on all matters of professional interest, and affords a means by which the procedure of the consulting profession may be co-ordinated and handed on to those entering its ranks. Experience has shown that matters are

constantly arising on which it is an advantage to Consulting Engineers to obtain the opinion of their colleagues in the profession. The Association provides this opportunity through its Council which keeps in touch with all matters affecting the profession, and puts its advice and assistance at the disposal of members in any matters of difficulty arising in the course of their practice. The Association is also a medium through which the public can be informed as to the standing, experience and qualification of its members. If any person requiring professional advice and assistance is in doubt as to whom to approach the Association is always willing to nominate one or more members specially qualified for the purpose.” (2)

It is not necessary for the purpose of this book to pursue the details of the ramifications of professional organisation. This task has recently been exhaustively tackled by Geoffrey Millerson in his book *The Qualifying Associations* and no attempt will here be made to duplicate his valuable work. All that we need do is to consider some of the leading organisations so far as is necessary to understand the philosophy and practical working out of consultant professionalism and its code.

The most fully-developed example of an all-purpose professional

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PROFESSIONAL ETHICS organisation is the Law Society, founded in 1826 as successor to a body dating from the early eighteenth century. Membership is voluntary, though almost all solicitors belong. The Law Society handles every aspect of the training, examination, practice and conduct of solicitors, operating through a council and numerous committees all manned by solicitors. Although enforcement of the standards of the profession is in the hands of what is technically a separate body, the Disciplinary Committee, its members are all past or present members of the Law Society’s Council and co-operation between the two bodies is extremely close. It is a general duty of the Council to see that no solicitor remains on the Roll if guilty of conduct which renders him unfit to do so, but ‘the function of the Council like that of an auditor is to be a watchdog and not a bloodhound’. (3)

The Law Society was incorporated by Royal Charter and has many statutory functions. Its objects are defined in the charter as ‘promoting professional improvement and facilitating the acquisition of legal knowledge’. Apart from its strictly professional role, it plays an important part in advising the Government on legislative proposals and in operating the legal aid and advice scheme. It has a large and skilful staff, and is looked upon as the leader in the field of inter-professional politics. Nevertheless the difficulty of sustaining such an all-embracing role is evidenced by the rise in recent years of the British Legal Association, founded to supply what a minority of solicitors felt was a lack of vigour by the Law Society in pressing its members’s claims.

The homogeneity enjoyed by solicitors is not shown by the other branch of the legal profession, the Bar. Here regulation of the profession is divided between the fourteenth-century Inns of Court, the General Council of the Bar, the Senate, the circuit messes and the Council of Legal Education. As one might expect from their antiquity, the four Inns of Court display features not characteristic of the usual run of professional institutes. They are unincorporated societies whose governing bodies, the benchers, are self-appointing and beyond any control by the ordinary members. Individualistic in origin, the Inns now act together on professional matters. The Bar Council was set up in 1895 to consider and take action on all matters affecting the barrister’s profession, including conduct, etiquette and discipline. It took over the duty, formerly exercised by the Attorney-General as head of the Bar, of drawing up rules of conduct. It has no disciplinary powers itself, but investigates complaints against members of the Bar and where necessary refers them to the benchers of the appropriate Inn. Since 1966 the Inns’ powers of examination and discipline have been delegated to the Senate, which consists of practising barristers

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23 (as to about two-thirds) and judges. The Senate normally gives effect to the rulings of the Bar Council, but is not obliged to do so. There is a right of appeal from the Senate to the judges sitting as a special tribunal.

The seven circuit messes, convivial in origin, supervise the conduct of their members while on circuit. Membership of one of the Inns of Court is compulsory for a barrister, but the Inn provides no professional service to (and demands no subscription from) its qualified members. It does however offer the hospitality of its Hall, at an economic price, and so maintains the ancient tradition that professional fellowship is best sustained over a meal. It also affords the use of a well-stocked library. The organisation of the Bar is substained, not by recent Parliamentary enactments, as in the case of solicitors, but by immemorial usage upheld by the courts. It has aroused the wrath of commentators such as Professor D.S. Lees, who stigmatises it as an intolerable private mono- poly. (4) Nevertheless it works in practice, and produces a uniform set of rules to govern conduct at the Bar. Some would say, with Professor Lees that the Bar is "riddled with restrictive practices". (5) Others would argue that the unparalleled standards of probity and ability of the English Bar testify to the value of their institutional framework, illogical though it may seem to be. The small number of practising barristers (a little over two thousand) perhaps justifies the somewhat informal professional structure.

Yet another type of professional organisation is illustrated by the medical profession. Here a voluntary representative body of recent date, the British Medical Association, is coupled with a statutory disciplinary authority, the General Medical Council. Round the peri- phery are older learned societies concerned with particular aspects of medical science, but occasionally superimposing their own, stricter, rules of conduct,

The B.M.A. has a remarkable history. It was founded in 1832 at Worcester as a merely provincial body. A hundred years later it had grown into what Carm-Saunders and Wilson described as "the most ably conducted and most powerful voluntary professional association that this country has ever known." (6) To this its unique constitution, with a representative body or "Parliament" of several hundred members, contributed. Its main object, "the maintenance of the honour and respectability of the profession", has been widely construed, and it has amassed a vast store of knowledge and experience which is freely available to its members. Though not directly concerned with ethics and discipline, it has a powerful influence on the General Medical Council's handling of these matters. Its membership of 70,000, of whom 50,000 live in the United Kingdom, gives it a strong voice in the

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The statutory counterpart of the B.M.A., the General Medical Council, was set up under the Medical Act of 1858. It keeps a register of qualified practitioners, prescribes educational requirements, lays down standards for drugs and medicines in its publication the British Pharmacopoeia, and administers the code of medical ethics. While entry on the medical register is not compulsory for practitioners its absence involves important disabilities. Fees cannot be sued for, certain medical appointments cannot be held, and possession of dangerous drugs is made unlawful. The Council is composed of forty-seven members, twenty-eight of whom are nominated by universities and professional bodies. Of the remainder, eleven are elected by the indi- vidual members of the profession and eight are Government nominees. Three out of the forty-seven are laymen.

A similar pattern of a powerful all-embracing voluntary association coupled with a statutory council enforcing discipline prevails in the architects' profession. The Royal Institute of British Architects was founded in 1834 and received a Royal Charter three years later. This recited the objects as being "for the general advancement of Civil Architecture and for promoting and facilitating the acquirement of the knowledge of the various Arts and Sciences connected therewith." The R.I.B.A. sees its activities as falling into two groups: "The first is the promotion of scholarship, the encourage- ment of architecture by awards and competitions, meetings and discussion; as well as public presentation of the im- portance of architectural values to social wellbeing. But, since the practice of architecture requires practitioners, and since most building design requires a professional service, the R.I.B.A. has always been the headquarters of the profes- sion, concerned to promote those qualities of efficiency and integrity in its members which society requires . . ." (7)

In 1931, at the instigation of the R.I.B.A., Parliament set up the Architects Registration Council of the United Kingdom. The Council maintains a register of qualified persons, and only those on the register may describe themselves as architects. There is no other consequence of registration. The Council is a large body. Of the sixty members thirty-three are appointed by the R.I.B.A. itself and the remainder respectively represent other professional organisations, bodies connected with the building trade, and the public. The Council lays down and enforces a code of conduct binding upon all registered architects.

So far in this section we have been discussing areas of the professional field where the organisation of the profession, and the intervention of

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25 the State, are at their most developed. In other areas the position is different. The multifarious surveyors' profession embraces land survey and mapping, valuation or appraisal of real estate, estate agency and land agency, auctioneering, quantity surveying, farm management, mining surveying, hydrographic surveying and aspects of town planning. It is scarcely surprising that there is no one professional body with claims to blanket coverage, and the State has so far refrained from interference. The leading body is the Royal Institution of Chartered Surveyors, whose membership comprises all the above-mentioned specialties but at around 20,000 covers less than half the practitioners in the field.

The Institution was founded in 1868 by practitioners who in the main were valuers in private practice. Their chief activity was as advisers to promoters of railway Acts and landowners affected by them. This resulted in the Institution's being located a stone's throw from the Houses of Parliament, on a site it still occupies today. The objects of the Institution are "to secure the advancement and facilitate the acquisition of that knowledge which constitutes the profession of a surveyor and "to promote the general interests of the profession and to maintain and extend its usefulness for the public advantage." (8) Although some attempts have been made by the profession to obtain the setting up of a statutory register of surveyors these were not resolutely pursued and were unsuccessful. More serious efforts were made to provide for compulsory registration of estate agents, and a number of Bills have been introduced in the House of Commons, so far without success. After the failure of the latest effort in 1966 a registration council was set up voluntarily as a company limited by guarantee. Although it began as a body having possibilities of welding together the ten different representative organisations which set it up, and thus creating a unified estate agency profession, the Estate Agents Council seems likely to do no more than act as a registration body without power to compel any agent to register — if indeed it survives at all.

Within the wide field of surveying the greatest prestige is enjoyed by the three bodies possessing Royal Charters. In addition to the R.I.C.S. these are the Chartered Auctioneers' and Estate Agents' Institute and the Chartered Land Agents Society. These, together with a fourth body, the Incorporated Society of Valuers and Auctioneers, operate a uniform code of conduct, though it is individually enforced by each body.

A similar pattern of numerous specialties, equally numerous representative bodies, and lack of state intervention is displayed by the engineers. Different institutions respectively represent civil engineers,

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PROFESSIONAL ETHICS mechanical engineers, structural engineers, electrical engineers and many others. An attempt has recently been made to introduce a uniform approach in matters of common interest with the establishment of the Federation of Engineering Institutions. A feature of the engineering scene is that most bodies aim above all to be learned societies, discussing and developing the techniques of the profession. The problems and interests of engineers as private practitioners are handled by yet another body, the Association of Consulting Engineers, incorporated in 1913. This is the sole example of a professional body formed to represent only those qualified members of other institutions within the same field who practise as consultants. Consulting engineers form only a small proportion of the membership of the major engineering institutions, and in the view of the Association "it is obvious that the rules of professional

conduct, as formulated by the Association, would not be applicable to the majority of the members of these Institutions.” (9) Like the surveyors, the engineers have toyed with the idea of obtaining an Act to provide for compulsory registration. The idea was not pursued, for the reasons usual in such cases — namely, lack of unity in the profession as to the contents of a Bill and unwillingness to face the necessary initial stage of allowing all practitioners to register whether qualified members of a professional body or not.

Within the field of accountancy there is less diversification and a closer approach to the kind of uniform structure displayed by the architects and solicitors. The leading body is the Institute of Chartered Accountants in England and Wales, formed by Royal Charter in 1880. In 1957 the Institute absorbed the second most important body, the Society of Incorporated Accountants and Auditors. Further amalgamations are contemplated which would give the combined body nearly as complete a coverage of the profession as that enjoyed by the R.I.B.A. in the case of architects.

The main aim of the Institute is to secure that its members provide the best possible accountancy service to the public. For this purpose it arranges for education and training, conducts examinations, encourages and develops new techniques in accountancy and lays down and enforces rules of professional conduct. It also advises the Government and other public authorities on accounting matters and pending legislation. The total membership is over 40,000; parallel bodies in Scotland and Ireland have approximate memberships of 8,000 and 2,000 respectively. The only other sizable body representing accountants in private practice is the Association of Certified and Corporate Accountants, with nearly 12,000 members.

There is no system of statutory registration for accountants, but

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27 persons undertaking certain types of accountancy work are required by law to be members of the Institute or one of the other bodies mentioned above. These include auditing of accounts of public bodies, joint-stock companies, building societies, etc., and reporting in connection with the observance by solicitors of rules as to keeping of accounts.

We have in this brief survey looked at the main professional bodies within the field of the consultant professions. A more complete list will be found in Millerson's book (10) and a more exhaustive description in Carr-Saunders and Wilson. (11) Enough has perhaps been said here to indicate the outlines of the way the consultant professions are organised to combine the brotherhood of their calling with service to the public.

The Code

The code of the consultant professions, so far as it forms a consistent corpus, embodies numerous individual rules or traditions, which can be arranged in a number of different ways. What is its essential nature? It clearly stands apart from the ordinary law, both criminal and civil, though there is a certain overlapping. A conviction for a serious criminal offence will lead to expulsion from the professional society, even though not arising out of the practice of the profession. A finding of negligence or misrepresentation by a civil court may well be held relevant in domestic proceedings for professional misconduct. Nevertheless, even though Parliament may have stepped in to regulate disciplinary procedures, as with solicitors and medical practitioners, and even though the courts will in all cases ensure that the rules of natural justice are observed, the professional code has up to now been distinct and separate. In essence it is the judgment of the profession on how members should conduct themselves, and this judgment has prevailed over different views from outside. Many, if not most, of its precepts are unknown to the general law, breach of them constituting neither crime nor tort. It binds the professional man because, in voluntarily joining the profession, he is taken to have agreed to be governed by its code as currently in force. Where, however, the professional organisation comes into existence after he has begun to practise, its code will not bind him unless he agrees. So in the case of *Hughes v ARCUK*, where Hughes had been in practice as an architect and house agent for some ten years before the passing of the Architects Registration Act, it was held he could not be struck off the register for refusing to give up his house agency work; “His case differs *toto coelo* from that of the new entrant who is admitted on

PROFESSIONAL ETHICS terms, written or unwritten.” (12)

Some professional people, misunderstanding its true nature, describe the code of conduct as “the club rules”. This equates it to something quite different, the body of rules of a private society or club, where a member who dislikes the rules will free himself from them by resigning, and be none the worse. This cannot apply to the codes of the great professional institutions, whose members have studied for years to gain their qualifications, and depend for their livelihood on continued membership. The public have an interest in rules of this importance, and will not easily suffer them to remain operative where they cannot be shown to be beneficial. Differing from ordinary law in being laid down by the profession itself rather than the state, the professional code has a force akin to law in its effect on the members of the professions, and through them on the public generally. This justifies public concern with its details, though not some of the current manifestations of this concern.

Professional rules approximate most nearly to law when the profession is, by law, a closed one. It may be appropriate or not that, as we have seen, the only really closed profession in England has for long been the law itself, though the dentists have recently achieved this position. A barrister with a High Court practice who transgresses his professional code and is disbarred has absolutely no opportunity of continuing to practise. An architect on the other hand, although his professional appellation is protected by statute, will find himself removed from the register but not prevented from practising. A chartered accountant will not even be removed from the register, because none exists, but will be disqualified from carrying out certain functions such as the audit of limited companies’ accounts. A chartered surveyor will suffer virtually no restriction of this sort, but will lose the prestige and authority which derives from membership of the leading body in his field; a surveyor still, he will no longer be “chartered”.

One way of subdividing professional rules is to separate those which are explicitly laid down in some detail and enforced by formal disciplinary proceedings from those which form the unwritten etiquette of the profession. Breach of the latter may be visited by nothing more than coldness and frowns from professional brethren, and loss of that mysterious thing called “face”. Many professionals, especially those with ambitions to rise in the hierarchy of their institute, dread this displeasure of their colleagues nearly as much as formal proceedings. Others, especially the sort who never attend a branch meeting or open their “journal”, are indifferent. Just as it is a question how far disciplinary sanctions should be backed by law, so it is debatable

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29 whether a particular rule should be enforced by penalties or left as mere “etiquette”. Since the latter is largely beyond the reach of reforming busybodies it has its attractions for those who like to see a profession with pride in governing itself.

A more elaborate sub-division of the code reflects the four different aspects of consultant professionalism: 1.

Rules arising from the fact that an expertise is involved. (a)

Rules regulating admission. These include restrictions on admission as a student (e.g. to those having at least two Advanced Level passes in the General Certificate of Education); requirements of entry into articles; control of syllabuses, either in examinations held by the institute itself or in those held by universities and colleges and carrying exemption from the institute’s examinations; and of course control of the level of competence considered adequate for admission. Rules may admit members in stages, full membership (usually that of a “fellow”) being deferred sometimes for years. (b)

Rules securing continued competence after admission. Little developed as yet, these rules would require periodical refresher courses, instruction in new techniques and possibly re-examination at intervals. They penalise acts of incompetence. (c)

Rules governing the method of obtaining advice. Examples are rules precluding advertising of specialties and those requiring access to a specialist to be sought only through a general practitioner. (d)

Demarcation rules, laying down the boundaries between different professions. 2.

Rules arising from frequent concern with intimate personal matters. (a)

Rules requiring a personal relationship between practitioner and client. The chief rules are those prohibiting practice as a limited company or (in the case of barristers and medical specialists) even prohibiting partnerships. (b)

Rules imposing strict confidence and discretion as to clients' affairs. (c)

Rules requiring courtesy and dignity to be displayed at all times. (d)

Rules preserving the client's freedom to choose a practitioner, and, so far as the public interest allows, enabling the practitioner to be equally free to reject a client.

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Rules arising from frequent concern with property of great value. (a)

Unimpeachable integrity and honesty, usually required to be vouched for before admission and supported by numerous practice rules, such as those requiring separate bank accounts to be kept for clients' monies or payments to be made into a compensation fund. (b)

Independence and impartiality. The practitioner must avoid any position where his own interests, or those of a person connected with him, may conceivably conflict with those of his client. Indeed he must subordinate his own interests to those of the client, who must come first in all things except where this would injure the public. (c)

Responsibility. The advice given must be that of the practitioner himself and he must take full responsibility for it. On matters beyond his competence he must procure another practitioner to give direct advice to the client on the same basis. The practitioner must back his advice with whole personal fortune, without limitation of liability. 4.

Rules arising from the fact that the profession is a brotherhood of long standing. (a)

The standing and repute of the profession must not be prejudiced. (b)

Fellow-practitioners must be treated with courtesy. (c)

Poaching of clients is discouraged. (d)

Advertisements exalting one's own abilities at the expense of one's colleagues' are prohibited. (e)

Competition on the level of fees ("undercutting") is restricted.

This classification distinguishes rules directed to safeguarding the standard of service offered to the public (categories 1 to 3) from those more concerned with relationships within the profession (category 4). It is on this distinction that the succeeding chapters of this book are based, Part II dealing in turn with the six essential qualities of the consultant, namely competence, humanity, discretion, impartiality, responsibility

and integrity, while Part III discusses matters more within the realm of internal professional relations. Enforcing the Code

The ultimate sanction for breach of the professional code is expulsion from the profession, or at least from that portion of it represented by the institution whose code has been infringed. The

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31 professions vary in their description of the offence. Many merely refer to "professional misconduct". The Medical Act of 1858 introduced the formula, still current, "infamous conduct in a professional respect". Other examples are: "Conduct disgraceful to him in his capacity as an architect", "conduct unbefitting a solicitor of the Supreme Court", and, "any act or default discreditable to a public accountant". Whatever the precise form of words the effect is usually the same. It was defined in 1894 by Lord Justice Lopes as covering an act done by a professional man in the pursuit of his profession which "would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency". (13) Another judge expressed it as "no more than serious misconduct judged according to the rules, written or unwritten, governing the profession". (14) Where a term such as "disgraceful" is used in the code of conduct the law will give it its natural and popular meaning, and will not uphold a finding of guilt based on giving it an artificial meaning condemning conduct which the ordinary person would not think disgraceful. (15) It will not be limited to acts done in the course of the profession, even if required to be "in a professional respect". A veterinary surgeon who also farmed was fined by magistrates for leaving eleven carcasses lying about the farm unburied. A finding of conduct disgraceful to him in a professional respect was upheld although the animals had been his own property. (16) Apart from actions falling within the general heading of professional misconduct, criminal acts of a serious nature, even though not committed in the practice of the profession, may result in expulsion. So too may breaches of specific rules of the profession such as those governing the keeping of accounts by solicitors.

Disciplinary proceedings are usually initiated as the result of complaints either by clients or fellow-members of the profession. The Law Society receives two hundred complaints a week about the conduct of solicitors; the vast majority are without foundation. (17) Most professional institutions will take pains to satisfy a complainant even if his complaint is unfounded. As Sir Thomas Lund, Secretary-General of the Law Society, has said: "It is far better for us to enquire into a complaint, even if it does mean that some solicitor has to turn up the papers and write a letter in explanation — it is far better that we should write a reasoned letter to the complainant than that a person should go round amongst his friends as a dissatisfied client, airing his misconceived grievances up and down the country, as used to be done." (18)

Professional bodies are also concerned, where this is legitimate, to avoid the institution of a formal disciplinary enquiry. Most bodies have established as part of their disciplinary machinery an investigating

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PROFESSIONAL ETHICS committee which looks into complaints not obviously groundless, invites the observations of the person against whom the complaint is made, and makes such other informal enquiries as are necessary. Only if the matter cannot be satisfactorily disposed of in this way will formal proceedings be initiated by referring the matter to the disciplinary committee. The medical profession has a Penal Cases Committee which sits in private to investigate complaints and also to look into convictions of medical practitioners for any offence. These convictions are in the normal course reported to the General Medical Council by the court concerned. If the Penal Cases Committee is satisfied that the matter is one of substance, but not sufficiently grave for the institution of full disciplinary proceedings, it will send a letter of warning to the doctor concerned. This may be done for example where he has been convicted of driving while under the influence of drink for the first time or has failed to visit or treat a patient or has issued a misleading professional certificate. (19)

A matter will not be referred to a disciplinary committee unless a prima facie case has been established against the accused. Indeed in the case of solicitors the accused is not even notified of the complaint unless a

prima facie case is established. (20) This is a salutary rule since it prevents a professional man—being alarmed by the possibility of disciplinary proceedings where in fact no sufficient evidence has been disclosed.

Disciplinary committees vary in their composition but are usually independent of the governing bodies of the profession in question. The disciplinary committee of the General Medical Council is typical of those constituted under Act of Parliament. Its full membership is nineteen, including two lay members. The majority of cases are however heard by nine members only. The committee normally sits in public and its procedure closely resembles that of a court of law. Witnesses may be subpoenaed and evidence given on oath. Accused practitioners are usually legally represented. (21) The disciplinary committee of the solicitors' profession is appointed by the Master of the Rolls from among present or past members of the Council of the Law Society. There is a maximum of twelve members, but normally the committee sits in divisions of three. Again, the proceedings resemble those in a High Court action, and parties may be represented by a solicitor or Counsel. The two tribunals differ however in that whereas the disciplinary committee of the General Medical Council normally sits in public that of the solicitors' profession invariably sits in private. Sir Thomas Lund gives as the reason for this privacy that "even if a case is thrown out it might do great damage to the solicitor against

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33 whom the complaint is made". (22) These statutory committee are masters of their own procedure, and of how they require facts to be proved. (23) They are not bound by strict rules of evidence, and the prior decision of a civil or criminal court on the same facts may be treated as proof; but any challenge to that decision must be heard. (24)

An example of a different form of disciplinary committee not established by Act of Parliament, is furnished by the chartered accountants. Under a Royal Charter of 1948 their disciplinary committee consists of twelve members of the Institute and each complaint is heard by a panel of five. The case is put forward on behalf of the investigation committee by a solicitor, Counsel only being employed in very complicated cases. A legal assessor sits with the disciplinary committee to advise on questions of law. The accused may present his own case or be represented by Counsel or solicitor as he wishes. Alternatively he may be represented by another member of the Institute. There is no power to take evidence on oath.

Most disciplinary committees have power to order the expulsion of the member found guilty of misconduct, or to impose a lesser penalty such as suspension for a period or reprimand or admonition. Before deciding on the punishment they will usually invite the accused or his representative to call attention to any mitigating circumstances, and to produce testimonials or other evidence as to character. The typical approach of the committee to the question of punishment is indicated in the B.M.A.'s publication *Medical Ethics*. "Under the Act the disciplinary committee are not called upon to punish, in any retributive sense. Their primary duty is to protect the public. 'Is it in the public interest to leave this doctor on the register?' must be the first question in their minds in difficult cases. Subject however to their overriding duty to the public, members of the committee may and do constantly ask themselves, 'What is in the best interest of the doctor himself?' " (25)

It may be added that such committees are, rightly, not unmindful of the best interests of the profession also.

An appeal usually lies from the decision of a disciplinary committee. In the case of disciplinary committees set up by statute the appeal is to the court. For solicitors an appeal lies to the Divisional Court and from there to the Court of Appeal and thereafter to the House of Lords. In the case of the Architects Registration Council disciplinary penalties are imposed by the Council itself, and an appeal lies to the High Court or (in Scotland) the Court of Session, whose decision is final. Disbarred barristers may appeal to a special committee of High Court judges, and

PROFESSIONAL ETHICS in the case of doctors appeal lies to the judicial committee of the Privy Council. The appellate court can go fully into the merits, and in fact rehear the case. (26)

Where the disciplinary procedure is not laid down by law an appeal, if it lies at all, will usually lie to a further body of persons drawn from the profession itself. Thus in the case of chartered accountants the charter of 1948 provides for an appeal committee consisting of the President and Vice-President of the Institute, if available, and three other members of the Council none of whom may have taken part in the previous proceedings. (27)

How far does the disciplinary procedure of the professions operate effectively to safeguard the public? It cannot be denied that the professions vary in the readiness with which complaints of professional misconduct are investigated and offenders brought to book. There is rarely any encouragement to the public to report misdemeanours to the professional body concerned, and often a reluctance to intervene between the professional man and his client. Naturally enough the staff of a professional body, who are usually the first to read letters of complaint, are inclined to be more sympathetic to the members whose servants they are than to outside persons. There is among members too a natural reluctance to contemplate that any colleague of theirs may have fallen short of the standards expected of him. Nor is very much done to remind members of their obligations by publishing details of disciplinary cases. There is a tendency to feel, that publicity given to members' shortcomings tends to lower the reputation of the profession generally. Nevertheless this argument scarcely justifies reluctance to publish details in the profession's own journal or in other media not likely to be read outside it.

Where the profession is closely regulated by statute, and the public has a major interest, publicity cannot be avoided. It is most intense in the case of doctors, whose disciplinary tribunals sit in public. Figures are thus easily obtainable, and in fact 316 doctors were erased from the medical register during the period from 1900 to 1963 on disciplinary grounds. Of these cases 83 were concerned with adultery or other improper relations with a patient, 57 with illegal abortion or miscarriage, 52 with drink or drugs, 29 with advertising or canvassing, 28 with fraud, false pretences or other dishonesty, and 67 with various other grounds. (28) In the case of chartered accountants during the period from 1962 to 1966 the number of complaints dealt with by the disciplinary committee other than in relation to overdue subscriptions was 109, of which 98 were found proved and 45 led to expulsion. 19 of the findings of guilt were in respect of convictions for larceny, fraud or other dishonesty and 27 were in respect of delay in attending to professional business. (29)