

THE RISING IMPORTANCE OF THE FAMILY ADVISER: MESHING FAMILY REQUIREMENTS WITH PROFESSIONAL ABILITY

MICHAEL PERKINS¹

THE INITIATIVE

The Financial Planning Association², in launching its Accredited Estate Planning Strategist (AEPS) designation³, has signalled to the community and the financial planning profession that deeper personal and family engagement between financial planners, their clients and other associated professionals is to be expected as more planners embrace private wealth management services as the focus of their professional practice and business model.

Private Wealth Management is an inherently multi-disciplinary professional occupation recognised globally through the work of the Society of Trust and Estate Practitioners (STEP⁴). The establishment of the AEPS designation provides a framework for financial planners to practice in an integrated client advice led environment in which they can act either as:

- the lead adviser and advocate of the interests of their client in addition to their primary professional discipline , or
- the contributing financial planning professional to a lead advisor led engagement in which another estate advisory professional has the client leadership role

This article explains the estate professional practice context of this new education path now operating for financial planners.

THE CHALLENGE

Ageing delivers increasing complexity in affairs management to clients, their families and broader connections. Professional advisers are increasingly challenged to deal with family and social issues surrounding their clients concurrently with problems requiring the skills provided by their primary professional discipline.

Whilst many clients are self-directed in their activities, increasingly they are recognizing that objectives such as these, creates complexity they cannot resolve and manage on their own:

- “ I want my money to last to my grandchildren”
- “I am a business owner and am concerned in this downturn about being sued; how can I protect my capital and provide security for my family?”
- “ I am spending my money on my wife and myself, the kids can simply have whatever is left over when we are gone; just break up what’s left evenly between the kids as simply as possible. Please help us have fun and fulfilling life, for as long as it may last.”
- “I have spent all my life building up the family business. Times have been good too us. My children are running the business but my wife and I still own all the shares. How do we balance the interest of ourselves and our children? How do we manage our estate for ourselves and our bloodline?”

¹ Lecturer in estate planning, Faculty of Law at the University of Technology Sydney. Special Counsel, Diamond Conway Lawyers, Sydney. Technical Services Manager, Estplan Pty Limited.

² See <http://www.fpa.asn.au/> All web sites cited in this paper were last visited on 20 March 2010.

³ <http://www.fpa.asn.au/estateplanning/>

⁴ http://www.step.org/PDF/Step_Explained.pdf

- “My affairs are in a mess, can you help sort me out”
- “I am getting old and do not know who to trust, can you help me manage my affairs?”
- “I have done well in life but have no family. I want to use the money I have made to give back to the community, how do I do this?”

In responding to these client objectives, advisers need to establish the scope of their role and the scope of engagement permitted by the client. The service model to which financial planners are trained when working to the AEPS designation takes a client risk approach to understanding the immediate concerns and complexities around clients.

The initial professional engagement risks considered in an estate planning engagement by an advisor include:

- Identity
- Capacity
- Cognitive Ability
- Territorial and jurisdictional connections
- Cultural and Social context and connections
- Budget
- Timeframe
- Client expectation of the advisers role and ability to service the engagement.

Against this must be set the inherent limitation in an engagement set by the client’s objectives, risks and priorities. These may be discovered by using the following risk areas as discussion points with clients:

- Personal and Family Representation and Succession
- Family Continuity, Governance and Legacy
- Wealth Preservation, Enhancement and Transfer
- Business Ownership and Control
- Financial Security and Compliance.

In turn the wealth of a client or family needs to be understood as encompassing the following dimensions⁵:

- Financial
- Spiritual
- Human
- Family
- Structural
- Societal

The wealth level or social status of a client is no indicator of the level of complexity with which a relationally focussed estate advisory professional may be faced. Consideration of the points outlined above in simple cases, will justify the analysis by the adviser that the case at hand is in fact simple. Use of these discussion points allows more complex situations to be identified at the earliest possible time in an engagement.

⁵ Following Jaffe, *Journal of Financial Planning*, April 2003, p.80 et seq.

The ability of the client to deal with and afford professional services that deal with all the complexities with which they may be faced is an issue that must be faced at the initial point of client engagement. Advisers must exclude responsibility for issues and roles that may be able to perform for which the client is not prepared to engage them.

CLIENTS ARE LOOKING BEYOND ADVISER TECHNICAL ABILITY

How advisers present themselves to clients will in large measure determine how a client perceives the value the adviser can be to them. There is no single ethical model of professional practice.

The legal profession provides some useful exemplars that are relevant to other professionals in the estate advisory sector.

A recognized breakdown of the ethical modalities of legal practice is⁶:

- *An adversarial advocate* - The advocate of the client's interest above all else other than the duty to the court and rule of law
- *A "responsible" lawyer* - This person shows autonomy from clients and private interests to provide impartial representation. This practitioner places the rule of law as the lodestone to which the client's affairs must respond
- *A moral activist* - Promoting social and political justice
- *A relational lawyer* - Taking responsibility for people communities and relationships. Relational lawyers are characterised by serving the best interests of clients and others in a holistic way that incorporate moral, emotional and relational dimensions of a problem into legal solutions.

Estate advisers, including financial planners, need to reflect on how these methods of practice apply to themselves and their scope of professional responsibility. In my experience, estate advisors are most effective when their personal values and their ethical model of practice coincide.

Where clients are seeking to implement or change in their affairs management strategies, it is professional advisers at the moral activist or relational lawyer end of the spectrum who are most successful in attracting and holding this work.

Estate and wealth advisory firms who want to grow the socially responsive dimension of their practice need to consider how they ensure the right type of advisers are engaged to this practice. Being a big biller or a great networker will not generally be enough. Clients will normally want to work with the adviser with whom they feel the greatest empathy; technical ability comes second.

WE MUST ASK OURSELVES: WHAT IS THE CLIENT PREPARED TO ASK FOR?

In our engagement with clients we must identify ourselves as advisers and listeners, not just technical service providers. Our primary role in this work is to help clients evaluate relevant choices for the management of their affairs that can achieve their objectives.

Clients need to be educated to the need for this consultative approach. The role of professionals needs to be understood more broadly in the community as having both a change agency responsibility for the client as well as a professional service result component (e.g. the value of a lawyer cannot be measured by the weight or complexity of the document produced). This more holistic approach is already accepted in relation to medical practitioners and health care professionals. As the professions that operate within the business of private wealth management increasingly focus on the socio economic outcomes of their work, we can expect to see collaborative, multi disciplinary professional practices

⁶ Parker, Christine and Adrian Evans, *Inside Lawyers Ethics* (Thomson Canada, 2003).

emerge that focus as their primary business value on increasing the inherent sustainability and wellbeing of families.

The FPA's initiative in establishing its AEPS designation and associated educational pathways is a major contribution to the development of cross disciplinary practice in the private wealth management business.