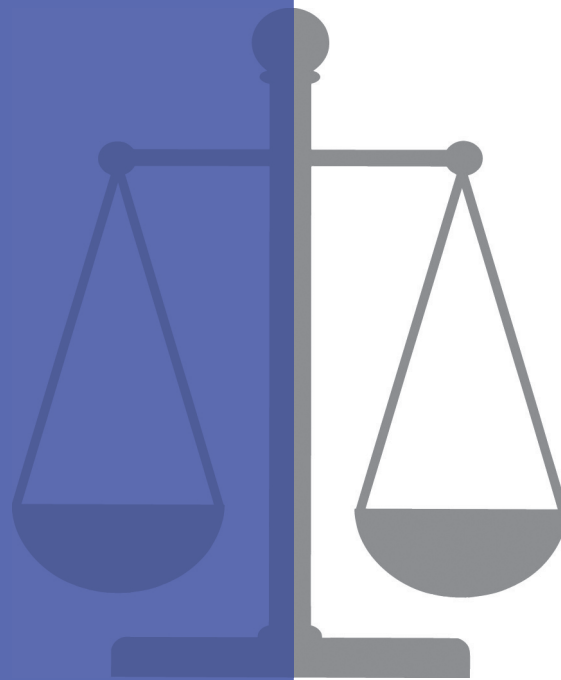


# **11th Annual Report** of the **Independent Adjudicator** of the **Law Society**



**Year ending 30th September 2008**

**Carol Ann Casey**  
**Independent Adjudicator of the Law Society**

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## FORWARD BY THE INDEPENDENT ADJUDICATOR

This is the eleventh Annual Report of the Independent Adjudicator of the Law Society and my second Annual Report which covers the period from 1 October 2007 to 30 September 2008.

I am charged with the responsibility for ensuring that the Law Society of Ireland handles complaints about its members in an effective and efficient manner, with reviewing the Law Society's response to claims made on its Compensation Fund, and with recommending any changes in the Law Society's complaints and claims procedures which are, in my view, necessary to maintain the highest standard.

Complaints are handled by the Complaints and Client Relations Section of the Law Society. Complaints centre on three key areas: inadequate professional services, overcharging and professional misconduct (see further details on page 5).

Compensation fund claims are handled separately by the Regulation of Practice Committee of the Law Society which are the Committee responsible for the adjudication of claims for grants out of the Compensation Fund made by or on behalf of clients of solicitors who claim to have sustained loss in consequence of dishonesty on the part of their solicitors or employees of their solicitors.

Allegations of financial irregularities by and large go through a different process within the Law Society and unless they are the subject of a specific complaint by a client such matters would be outside of my remit.

I believe in accountability and can stand over my adjudications and self-generated statistics, facts and figures on every matter I have examined. This is important for customer service and the value of my Office to the public.

This accountable year I adjudicated on 96 complaints and 1 Compensation Fund claim. 25 additional referrals have been outside of my terms of reference for varying reasons (for further details see section 5, page 23). I expect a considerable increase in compensation fund referrals to my Office over the coming year given the recent publicity attached to certain defaulting solicitors.

I deem the role of the Independent Adjudicator to be in the public interest as the incumbent cannot be, and is not a lawyer, thus meaning I am impartial. I believe that I have a good lay person's appreciation of the Irish legislative system and at the same time have an established human resource background which is invaluable to the role.

Upon taking office I devised my own code of ethics for the Independent Adjudicator role which was and is, first and foremost, to be neither an advocate nor an apologist, and secondly, to deliver my services and adjudications against the following charter which I believe are all essential for the adjudication of any complaint handling process:

- simplicity;
- speed of access and service;
- good communications;
- good customer care; and
- a core service which is delivered to a high standard.

To keep myself apprised and familiar with complaints and compensation fund matters, I attend, as an observer, at various Complaints and Client Relations Committee and Regulation of Practice

Committee meetings, and indeed on occasion at Solicitors Disciplinary Tribunal hearings. My attendance at the said Law Society meetings is integral to my role to ensure matters that can be referred to me are handled to my satisfaction and also from a self-educating perspective to keep myself abreast with current complaints, compensation fund and disciplinary matters.

Lay members participate in decisions made by the Complaints and Client Relations Committee and make continuous active contributions to the fairness of decisions. I have noted on many occasions that the last voice of decision very often rests with the lay attending member(s). In addition, each year the lay members of the Complaints and Client Relations Committee submit an annual report on their findings to the Law Society with which I have acquainted myself over recent years. At the time of writing this year's lay members report is awaited.

I openly welcome a significant change regarding the participation of lay members which will take effect on 1 January 2009 under the Civil Law (Miscellaneous Provisions) Act, 2008 as this will emphasise the importance and value of their role in client customer care. Up until now lay members participated in the Complaints and Client Relations Committee but were in the minority; however under Section 34 of the Civil Law (Miscellaneous Provisions) Act, 2008, from 1 January 2009 onwards the majority of members of any Committee charged with the consideration of overcharging and inadequate professional services complaints must be persons who are not solicitors.

I further welcome Section 39 of the Act which allows the Law Society of Ireland, for the first time, to direct a solicitor to pay compensation to a client (up to a limit of €3,000) for "any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided".

I have carried out the duties of the Independent Adjudicator position single-handedly and on a part-time basis with complete passion for delivering a professional, fair and impartial service, and therefore believe the proposed Office of the Legal Services Ombudsman should not be a substantial additional financial burden on members (solicitors and barristers) of either the Law Society or Bar Council. Furthermore, given that much of the proposed Legal Service Ombudsman's role is similar to what I currently do, I guesstimate that the appointment of an Ombudsman with one administrative assistant should be sufficient. Also in the case of solicitors I believe members will most likely incur levies to discharge the additional costs placed on the Law Society in fulfilling its obligations under Section 34 of the Civil Law (Miscellaneous Provisions) Act, 2008, as referenced above, which will effect from 1 January 2009.

Finally, I have established a professional relationship with the Law Society of Ireland, and whilst **always** being independent and impartial with clear boundaries, I would like to highly commend the work of the Complaints and Client Relations Section, led by Ms Linda Kirwan, and the Regulation of Practice Department, led by Mr John Elliot, who promptly oblige and facilitate the Office of the Independent Adjudicator.



Carol Ann Casey  
Independent Adjudicator of the Law Society

28 October 2008

## **Section 1**

### **REMIT OF THE INDEPENDENT ADJUDICATOR**

#### **Statutory governance**

The Office of the Independent Adjudicator was established by Statutory Instrument No.406 of 1997 – Solicitors (Adjudicator) Regulations, 1997 and Statutory Instrument No.720 of 2005 – Solicitors (Adjudicator) (Amendment) Regulations, 2005.

The holder of the Office cannot be a practising solicitor, a member of the Law Society of Ireland or a practising barrister and shall be independent in the exercise of functions of the Office.

#### **The Office of the Independent Adjudicator**

The Office of the Independent Adjudicator provides an independent forum to which members of the public may apply if they are dissatisfied with the manner in which the Law Society of Ireland has dealt with any complaint made by or on behalf of any client against their solicitor.

The Office of the Independent Adjudicator also deals with complaints about any decision by the Law Society concerning an application for a grant from the Law Society's Compensation Fund. Grants are made to clients who have suffered a loss due to a solicitor's dishonesty. Grants are not made in respect of losses that have arisen due to a solicitor's negligence.

The role of the Independent Adjudicator is:

- (a) to ensure that complaints about the conduct of a solicitor are dealt with fairly and impartially by the Law Society;
- (b) to review complaints about any decision by the Law Society concerning an application for a grant from the Law Society's compensation fund; and
- (c) to recommend any changes in the Law Society's complaints procedures which are, in the Independent Adjudicator's view, necessary to maintain the highest standards.

#### **Powers of the Independent Adjudicator**

Once satisfied that the complaint falls within the Office's terms of reference, the Independent Adjudicator will examine the Law Society's records, make whatever enquiries are considered necessary and may, if appropriate, direct the Law Society to either re-examine the complaint or make an application to the Solicitors' Disciplinary Tribunal, which may lead to the disciplining of a solicitor. The Independent Adjudicator may, if appropriate, also direct the Law Society to re-examine its decision concerning an application for a grant from the Law Society's Compensation Fund. The Independent Adjudicator can only deal with a complaint about the Law Society's handling of a complaint against a solicitor and cannot investigate at first hand a complaint about a solicitor.

The Independent Adjudicator cannot award compensation and cannot consider any matters which have been dealt with by the Solicitors Disciplinary Tribunal or, in the case of complaints about excessive fees, the Taxing Master. If a complaint is still under investigation by the Law Society, the Independent Adjudicator will await the Law Society's determination before dealing with any complaint made.

## Section 2

### CONSUMER INFORMATION ON MAKING A COMPLAINT ABOUT A SOLICITOR

#### Who can use the Independent Adjudicator

A client who is dissatisfied with the way in which their complaint has been handled by the Law Society, or who is dissatisfied with any decision concerning an application for a grant from the Law Society's Compensation Fund may, any time within the three year period of the Law Society's decision date, apply to the Independent Adjudicator.

#### Complaints the Law Society may investigate

The Law Society is permitted to investigate complaints against solicitors by or on behalf of clients alleging the following:

- a. **misconduct** as provided for by Section 3 of the Solicitors (Amendment) Act, 1960 as amended by Section 24 of the Solicitors (Amendment) Act, 1994 and by Section 7 of the Solicitors (Amendment) Act, 2002;
- b. the provision of **inadequate legal services** as provided for by Section 8 of the Solicitors (Amendment) Act, 1994;
- c. the charging of **excessive fees** as provided for by Section 9 of the Solicitors (Amendment) Act, 1994;

and includes any allegation, including an allegation for whatever reason has been withdrawn, where the Society considers that, in pursuance of its regulatory functions and in the public interest, the Society ought to investigate or continue to investigate.

#### What the Law Society cannot do

- Interfere with court proceedings to have a decision of a court overturned;
- Deal with complaints about the Garda Síochána, Barristers, Court Officials, Judges, etc.;
- Deal with complaints, particularly complaints of negligence, where legal action is a more appropriate remedy;
- Except in exceptional circumstances deal with complaints about a solicitor where the complainant is not the client of that solicitor. If the person is complaining about the behaviour of a solicitor who is acting for someone on the other side of a case or transaction the Society will require the person's solicitor to endorse the complaint;
- Deal with a complaint which does not relate to the professional services provided by a solicitor;
- Deal with a complaint of excessive fees arising out of a bill which issued more than five years ago;
- Deal with complaints of inadequate professional services which were provided more than five years ago;
- Deal with a complaint which is based on how the person's solicitor presented their case in court;
- The solicitors working in the Complaints and Client Relations Section will answer any queries the general public have about the complaints procedure, but they cannot give legal advice or provide legal representation.

## **Complaints and Client Relations Section of the Law Society**

The Complaints and Client Relations Section of the Law Society comprises of a team of investigating solicitors, with their support staff, whose sole function is to investigate alleged complaints against solicitors. The majority of complaints are concluded by this Section. Where they cannot be resolved or the investigation discloses serious matters the complaint is referred to the Complaints and Client Relations Committee for direction. For further details please see the statistics from pages 9 to 21.

For the last number of years ISO 9001:2000 has continually been awarded to the Law Society's Complaints and Client Relations Section following its annual audit. This authenticates to me that an independent accredited system supports the complaint handling process of the Law Society. I would like to formally commend, yet again, all members of the Law Society's Complaints and Clients Relations Section on receiving this accolade.

## **Complaints and Client Relations Committee**

The Complaints and Client Relations Committee consists of solicitors and lay members who oversee the work of the Complaints and Client Relations Section of the Law Society. There are two divisions of the Committee, both of which have the same duties and responsibilities. The solicitors on these committees give of their time voluntarily to adjudicate on complaints against members of the Law Society of Ireland.

The Committee generally meet every six weeks and to date at least one lay member must be present at every meeting. However, under Section 34 of the Civil Law (Miscellaneous Provisions) Act, 2008, which comes into effect on the 1 January 2009, the majority of members of any Committee charged with the consideration of overcharging, inadequate professional services complaints must be persons who are not solicitors. In addition, Section 39 of the Act allows the Law Society of Ireland for the first time to direct a solicitor to pay compensation to a client (up to a limit of €3,000) for "any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided".

The solicitors who are under investigation are often requested to attend to answer questions on the complaint(s) before them. As the Committee is there to assess the alleged complaint against the solicitor, clients are rarely in attendance, and where so is the case, they are never in attendance at the same time as the solicitor, as the Committee does not operate in an adversarial manner.

Where the Complaints and Client Relations Committee find that a complaint is justified there are a range of sanctions which they may direct and/or apply depending on the circumstances. Such measures allow the Committee to:

- instruct a solicitor to reduce, waive or refund fees to their client;
- direct a solicitor to rectify any error, omission or deficiency in the services provided;
- direct a solicitor to take such other action in the interest of the client as the Committee may specify;
- issue a reprimand to a solicitor;
- require a solicitor to make a payment (not exceeding €3,000) as a contribution towards the costs of the investigation;
- refer a solicitor to the Solicitors Disciplinary Tribunal.

Please see statistics of complaints from pages 9 to 21 inclusive.

When the Complaints and Client Relations Section of the Law Society notify the decision of the Committee to a client and solicitor they advise the client that if they are dissatisfied with the decision they can refer the matter to the Independent Adjudicator for her examination. I am happy that this is a fair process and that clients are openly advised of this right by the Law Society.

The Complaints and Client Relations Section can refer a matter to the Complaints and Client Relations Committee almost from the outset of a complaint and the Committee can decide to uphold a complaint and impose a sanction. That would complete the Law Society's involvement but it may not resolve the matter for the client. Where appropriate, the focus is on resolution and consequently the Complaints and Client Relations Section may monitor the progress of a matter for as long as necessary to ensure the client's business is satisfactorily concluded.

### **To go to the Independent Adjudicator or to the Solicitors Disciplinary Tribunal**

Apart from appealing a decision of the Law Society to the Independent Adjudicator, a client may choose instead to go directly to the Solicitors Disciplinary Tribunal. Indeed a client may go to the Independent Adjudicator and then apply to the Tribunal. However, a client may not go to the Solicitors Disciplinary Tribunal and then go to the Independent Adjudicator. Both options are defined below.

### **The Solicitors Disciplinary Tribunal**

The Solicitors Disciplinary Tribunal is a statutory body, constituted under the Solicitors (Amendment) Act, 1960 as substituted by the Solicitors (Amendment) Act, 1994 and amended by the Solicitors (Amendment) Act, 2002. The Tribunal, like the Independent Adjudicator, is wholly independent of the Law Society of Ireland. The Tribunal comprises of twenty solicitor members and ten lay members, the latter being drawn from a wide variety of backgrounds. Their remit is also to represent the interests of the general public. All Tribunal members are appointed by the President of the High Court.

### **The Independent Adjudicator**

In addition to the information supplied in the preceding section, the Independent Adjudicator can only deal with a complaint about the Law Society's handling of a complaint against a solicitor and cannot investigate at first hand a complaint about a solicitor. These powers are set out in Statutory Instrument S.I. No. 406 of 1997. Regulation 7 therein states

"In administering the Scheme, the Adjudicator shall (subject to Regulation 9) be empowered:

- (a) to receive and to examine or investigate any complaint in writing made to him by or on behalf of a solicitor against the Society, concerning the handling by the Society of a related complaint about that solicitor made to the Society by or on behalf of that client".

For further details please see the Remit of the Independent Adjudicator on page 4.

### **The Legal Services Ombudsman**

The role of the Independent Adjudicator, who examines the Law Society's handling of complaints against solicitors, will be superseded by the appointment of the Legal Services Ombudsman. The Legal Services Ombudsman Bill, 2008 was published by the Minister for Justice, Equality and Law Reform on 31 March 2008. The Ombudsman will oversee the handling by the Law Society and Bar Council of complaints by clients of solicitors and barristers. The key functions of the Ombudsman will be:

- to provide a forum of review for clients of solicitors and barristers who are dissatisfied with the handling of a complaint made to the Law Society or Bar Council;
- to oversee the complaints procedures in place in the Law Society and Bar Council; and
- to monitor and report annually to the Minister of Justice, Equality and Law Reform and the Oireachtas on the adequacy of the admissions policies of both professions.

This welcome Bill is expected to be enacted by the current Government in 2009.

### Section 3

## STATISTICS FROM THE LAW SOCIETY'S COMPLAINTS AND CLIENT RELATIONS SECTION, 2007/2008

The total number of complaints received was **2,035**, of which **290** were deemed inadmissible, leaving a balance of **1,745** admissible complaints. These complaints, and the **877** complaints that were carried forward, were investigated by the Complaints and Client Relations Section during the last 12 months. Another **847** files were opened by the Complaints and Client Relations Section, representing a mix of queries and requests for information from members of the public, making a total of **3,759** files handled by the Complaints and client Relations Section during the year.

**505** of the **1,745** complaints made last year were made by solicitors against their colleagues, approx 29% of the total intake.

**226** complaints were referred to the Complaints and Client Relations Committee.

At year end, **974** of the **1,745** complaints received during the year were closed, **684** were under investigation and **87** were pending before the Complaints and Client Relations Committee or the Solicitors Disciplinary Tribunal.

Of the **877** complaints that were carried forward, **573** were closed, **205** were still under investigation and **99** were pending before the Complaints and Client Relations Committee or the Solicitors Disciplinary Tribunal.

The following 12 pages advise the status of complaints dealt with by the Complaints and Client Relations Section of the Law Society of Ireland.

The breakdown of statistics on complaints from the Complaints and Clients Relations Section on the proceedings pages are as follows:

- Breakdown of complaints page 10
- Excessive fees page 11
- Inadequate professional services page 12
- Misconduct page 13
- Complaints and Client Relations Committee statistics page 14
- Complaints and Client Relations Section general information page 15
- Complaints status at year end page 16
- Completion of complaint cases page 17
- Completion times of complaints handled by the Law Society page 18
- Source of complaints page 19
- Multiple complaints against solicitors page 20
- Status of complaints carried forward page 21

## Breakdown of complaints

	<b>07/08</b>	<b>06/07</b>	<b>05/06</b>
Admissible complaints	1745	1462	1964
Inadmissible complaints	290	274	272
<b>Total</b>	<b>2035</b>	<b>1736</b>	<b>2236</b>

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Allegations of excessive fees	170	179	600
Allegations of inadequate professional services	550	518	546
Allegations of misconduct	1025	765	818
<b>Total</b>	<b>1745</b>	<b>1462</b>	<b>1964</b>

## Excessive fees

Complaints alleging overcharging were broken down as follows:

	<b>07/08</b>	<b>06/07</b>	<b>05/06</b>
Conveyancing	20	30	48
Probate	24	17	25
Litigation	49	58	148
Matrimonial	58	40	40
Other	19	34	339
<b>Total</b>	<b>170</b>	<b>179</b>	<b>600</b>

## Inadequate professional services

Complaints alleging inadequate professional services were broken down as follows:

	<b>07/08</b>	<b>06/07</b>	<b>05/06</b>
Delay	224	216	225
Failure to communicate	123	129	145
Shoddy work	152	135	119
Other	48	38	56
<b>Total</b>	<b>550</b>	<b>518</b>	<b>546</b>

## Misconduct

Complaints alleging misconduct were broken down as follows:

	<b>07/08</b>	<b>06/07</b>	<b>05/06</b>
Delay	12	9	38
Failure to communicate	88	133	105
Failure to hand over	148	178	174
Failure to account	68	71	112
Undertaking	565	231	219
Conflict of interest	25	18	25
Dishonesty or deception	14	15	16
Witnesses expenses	4	11	6
Other	99	94	119
Advertising	2	5	4
<b>Total</b>	<b>1025</b>	<b>765</b>	<b>818</b>

## Complaints and Client Relations Committee statistics

	07/08	06/07	05/06
Number of meetings	15 (+ 2 plenary)	17 (+ 1 plenary)	25 (+1)
Number of new matters referred	226	252	391
Number of complainants invited to attend	12	9	7
<b>Referrals to Disciplinary Tribunal</b>	<b>49</b>	<b>34</b>	<b>59</b>

## **Complaints and Client Relations Section General Information**

In addition to complaints, the Complaints and Client Relations Section opened 847 files consisting of a mix of complaints unrelated to solicitors, requests for information, queries, requests for legal advice and second opinions, potential complaints, etc.

The Complaints and Client Relations Committee directed the payment of €47,950 in contributions from solicitors towards the costs incurred by the Society as a result of the solicitor's failure or delay in replying to the Society.

5 formal reprimands were issued by the Committee

The Committee utilised the powers contained in the Solicitors (Amendment) Act, 2002 which allow it to consider multiple complaints against the same solicitor, in relation to 28 different solicitors.

## Complaints status at year end

	<b>07/08</b>	<b>06/07</b>	<b>05/06</b>
Case closed	974	908	1186
Under investigation	684	484	657
Pending before Complaints and Client Relations Committee/ Solicitors Disciplinary Tribunal	87	70	121
<b>Total</b>	<b>1745</b>	<b>1462</b>	<b>1964</b>

## Completion of complaint cases

	<b>07/08</b>	<b>06/07</b>	<b>05/06</b>
Complaints resolved	462	484	456
No grounds for complaint but assistance provided	86	64	155
Withdrawn/abandoned	135	63	94
Rejected	259	254	423
Upheld	32	43	58
<b>Total</b>	<b>974</b>	<b>908</b>	<b>1186</b>

## Completion times of complaints handled by the Law Society

	07/08	06/07	05/06
Complaints closed in less than 30 days	300=30.80%	256=28.19%	332=27.99
Complaints closed in less than 60 days	233=23.92	193=21.26	299=25.21%
Complaints closed in less than 90 days	138=14.17%	158=17.40	177=14.92%
Complaints closed in less than 180 days	216=22.18%	219=24.12%	268=22.60%
Other	87=8.93%	82=9.03%	110=9.27%
<b>Total</b>	<b>974=100%</b>	<b>908=100%</b>	<b>1186=100%</b>

## Source of complaints

	<b>07/08</b>	<b>06/07</b>	<b>05/06</b>
Complaints made by solicitors	505	269	265
Complaints made by parties other than solicitors	1240	1193	1699
<b>Total</b>	<b>1745</b>	<b>1462</b>	<b>1964</b>

**Multiple Complaints  
(solicitors against whom more than x complaints have been made)**

	<b>07/08</b>	<b>06/07</b>	<b>2005/06</b>
3 Complaints	64	64	75
4 Complaints	26	27	21
5 Complaints	14	9	21
6 Complaints	19	5	16
7 Complaints	6	5	4
8 Complaints	2	2	6
9 Complaints	1	1	3
10 Complaints	1	2	2
11 Complaints	-	-	-
12 Complaints	1	-	1
13 Complaints	3	4	2
14 Complaints	-	-	1
15 Complaints	-	-	-
16 Complaints	1	-	-
17 Complaints	1	-	1
18 Complaints	-	-	-
19 Complaints	-	-	-
20 Complaints	1	-	1
21 Complaints	1	-	1
32 Complaints	1	-	-
54 Complaints	1	-	-

## Status of complaints carried forward

Closed	573
Open/reopened	205
Pending before Complaints and Client Relations Committee/ Solicitors Disciplinary Tribunal	99
<b>Total</b>	<b>877</b>

## **Section 4**

### **STATISTICS FROM THE LAW SOCIETY'S REGULATION DEPARTMENT ON COMPENSATION FUND CLAIMS**

The Independent Adjudicator deals with complaints about any decision by the Law Society concerning an application for a grant from the Law Society's Compensation Fund. Grants are made to clients who have suffered a loss due to a solicitor's dishonesty. Grants are not made in respect of losses that have arisen due to a solicitor's negligence.

I set out below the Compensation Fund statistics for the years 2007 back to 2005 as follows:

#### **2007**

207 claims received  
€4,194,284.00 claimed  
€2,763,679.28 paid

#### **2006**

186 claims received  
€2,051,547.00 claimed  
€1,960,711.51 paid

#### **2005**

114 claims received  
€3,045,986.52 claimed  
€2,736,123.88 paid

### **Compensation Fund developments this year**

The following is published in the Law Society's current annual report:

"Developments since December 2007

In the seven months ended 31 July 2008, 420 claims were received. Excluding invalid claims refused, these claims amounted to €13,436,317. Payments were made in the sum of €7,458,943 in respect of claims and claims amounting to €5,977,374 are still under consideration.

The net assets of the fund are valued at €15 million as at 31 July 2008. The annual contribution to the fund remained at €400 per solicitor for 2008. Insurance cover for €30 million in excess of €5 million is in place for the year ending 31 December 2008. The Society will be seeking to recover under the insurance policy. The Society is confident that it will make substantial recoveries.

The committee met on 26 occasions, for eight scheduled, 12 special and six emergency meetings. In the course of the year, the Society's investigating accountants conducted approximately 300 investigations of practices."

As stated previously in this Report, I expect an increase in compensation fund referrals to my Office over the coming year given the recent publicity attached to certain defaulting solicitors.

## **Section 5**

### **BREAKDOWN OF MATTERS REFERRED TO THE INDEPENDENT ADJUDICATOR**

The following is the breakdown of cases examined by the Independent Adjudicator during the accountable year of 1 October 2007 to 30 September 2008. These cases, save where mentioned, all went through the Law Society's investigation process and fall into the statistics set out in section 3 of this Report.

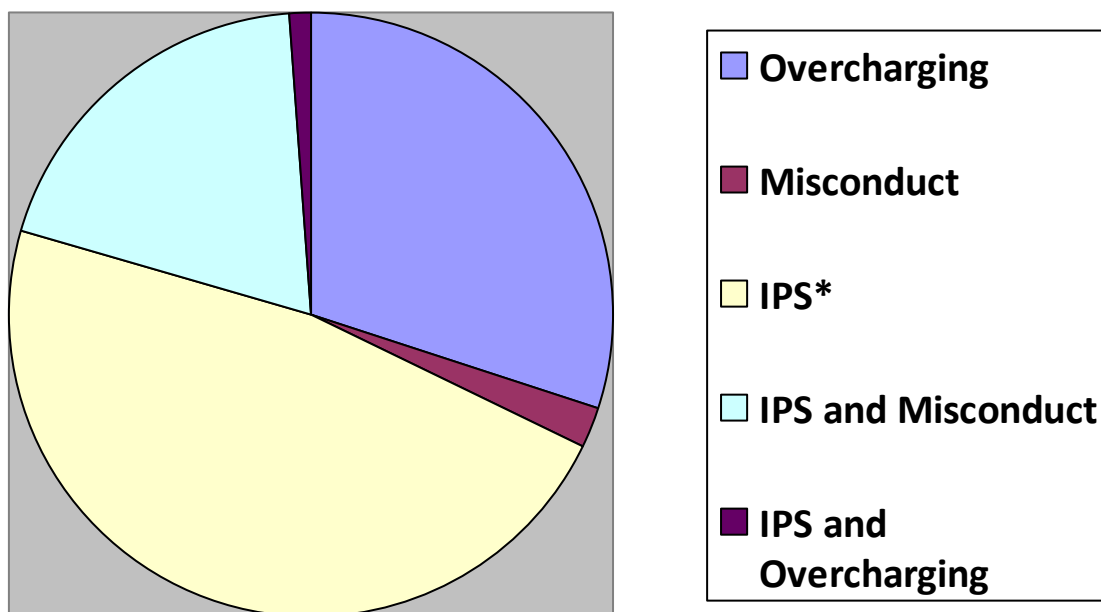
- There were 122 referrals to the Independent Adjudicator in the period 2007-2008\* broken down as follows:
    - 96 complaint referrals were wholly examined and adjudicated upon;
    - 25 complaint referrals were inadmissible for varying reasons such as the complaint was still under ongoing investigation by the Law Society (the most common), the complaint was out of time, the complaint had not been referred to/investigated by the Law Society in the first instance, or the complaint had been previously examined by the Independent Adjudicator. (These statistics do not fall within the Law Society's statistics mentioned in section 3);
    - 1 compensation fund referral which was examined;
- \*there were 139 referrals to the Independent Adjudicator in 2006-2007
- 74 letters were written by the Independent Adjudicator to the Complaint and Client Relations Section with queries and/or requests to further investigate, all of which are resolved and/or closed up to the current date;
  - 5 letters were written to the Registrar of Solicitors Regulation Department mainly due to the Disciplinary Tribunal referrals (see section 6 for further details);
  - All complaints adjudicated upon fell into one or a combination of these three categories:
    - Inadequate professional services
    - Overcharging
    - Professional misconduct.

See page 24 for illustrative breakdown. (Compensation Fund grant claims are separate);

- My adjudications centred upon the following complaint matters with the highest volume being in conveyancing followed by probate and family law and each of the respective matters listed below:
  - Conveyancing
  - Probate
  - Marital/family
  - Personal injuries
  - Civil matters
  - Undertakings
  - Litigation/settlements/undertakings
  - Redress Board

See illustration on page 25 which exhibits these matters by the number of complaints received;

**Breakdown on the grounds of complaints which were referred to the Independent Adjudicator from 1 October 2007 to 30 September 2008**

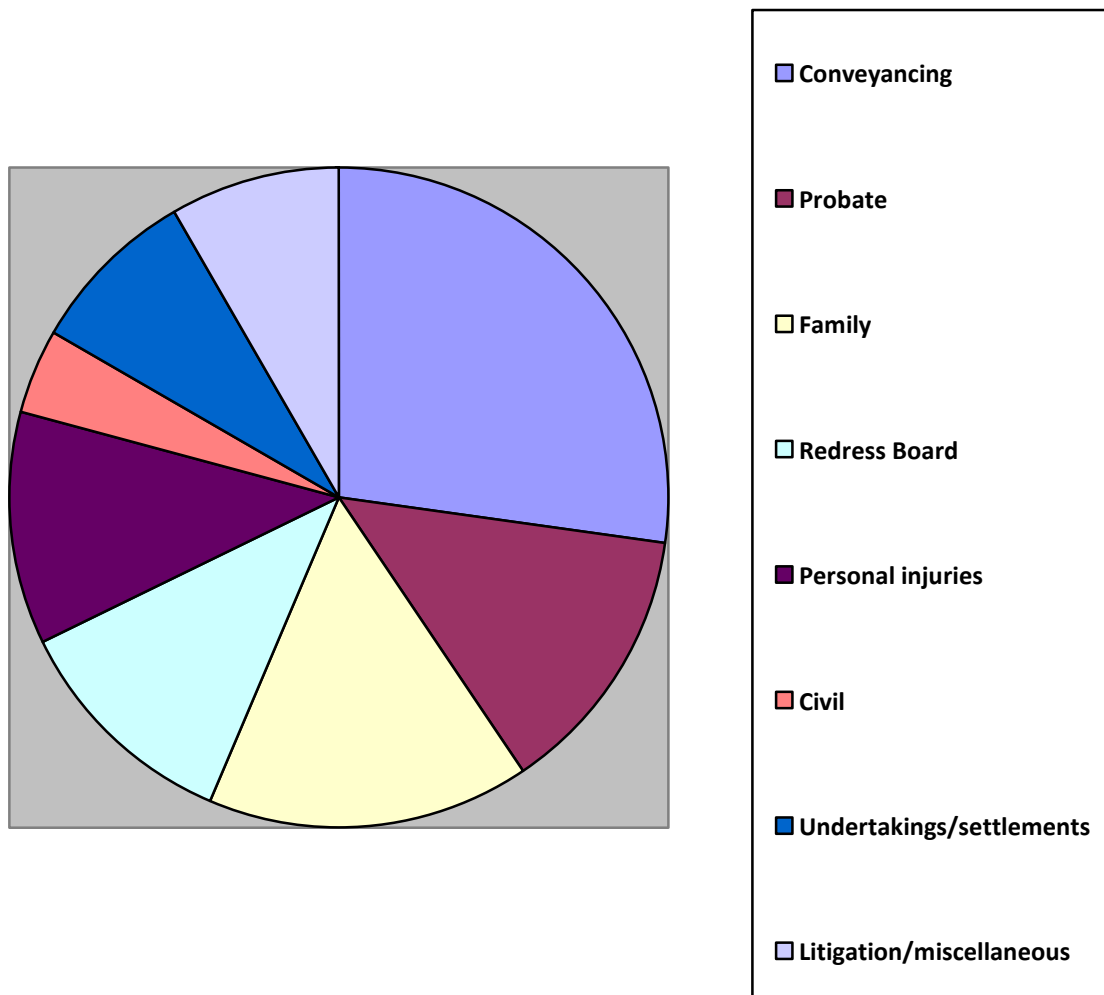


\* Inadequate Professional Service

- Compensation Fund cases: grants are made to persons who have suffered a loss due to a solicitor's dishonesty. Grants are not made in respect of losses that have arisen due to a solicitor's negligence. In this accountable year, I adjudicated on 1 compensation fund case on which I concurred with the Law Society's actions and decisions as being fair and reasonable. Being surprised at the low number of referrals I wrote to the Regulation Department during the year to confirm that decision letters included the right to refer to the Independent Adjudicator which was confirmed to be the case with copying letters from various files to this effect;
- The problems the Office of the Independent Adjudicator incurred in examining complaints this year fell into the following categories:
  - on occasion inadequately minuted meetings and telephone conversations of matters often make the examination of the Law Society's files difficult to follow and justify some delays in correspondence;
  - clients did not follow an appropriate process, e.g., unwilling to correspond in writing or to formally nominate a person to submit their appeal on their behalf;
  - files that are still under investigation by the Law Society when submitted to the Independent Adjudicator for investigation by the client (which is a regular occurrence despite literature advising complaints must be closed before being submitted to the Independent Adjudicator);
  - clients who had been to the Solicitors' Disciplinary Tribunal;
  - out of time referrals to the Independent Adjudicator (3 year jurisdiction) in initiating a complaint to my Office from the Law Society's decision date;
  - insufficient details provided by clients, thus elongating examination of matters;

- regrettably, an increasing volume of harassing and somewhat vulgar calls to the Secretariat and Independent Adjudicator;
- unreal expectations on the part of clients who expect that the Independent Adjudicator will automatically side with them, award them compensation, etc., as she is a lay person;
- lack of differentiation between why a client is unhappy with their solicitor – the crux of their complaint to the Law Society – and the referral of their matter to my Office which is limited to an examination of the Law Society’s handling of their specific complaints.

**Breakdown on complaint matters which were referred to the Independent Adjudicator from 1 October 2007 to 30 September 2008**



## Section 6

### OBSERVATIONS ON COMPLAINTS TO THE INDEPENDENT ADJUDICATOR AND GENERAL COMMENTS

- It is noted that there is a higher volume of admissible complaints to the Law Society (1745) to last year (1462) however less than in the reporting year 2005/2006 (1964). This fluctuation is due principally to an influx of complaints relating to claims made to the Residential Institutions Redress Board complaints in the reporting year 2005/2006 and a surge of complaints about solicitors' undertakings that have been applicable to the 2007/2008 reporting year. I am advised the Law Society has taken complaints about inappropriate undertakings seriously and has appointed a dedicated unit to deal with this matter specifically. It is very important that the Law Society continue to build public confidence in the profession, as well as the confidence of its members (solicitors), in the delivery of ethical high standards and service delivery by taking decisive and swift action on receipt of such complaints.
- I expected to see more of an improvement in the reduction of multiple complaints this year about the same solicitor (see statistics in section 3, page 20) and sincerely hope this will be the case with the introduction of Section 39 of the Civil Law (Miscellaneous Provisions) Act, 2008 from January 2009, which allows the Law Society for the first time to direct a solicitor to pay compensation to a client (up to a limit of €3,000) for "any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided". I deem this area to be of major concern which is referred to in my recommendations in section 7.
- The Regulation Department of the Law Society are undergoing substantial change – the influx of compensation fund claims this year, the unprecedented number of complaints about undertakings, accompanied by a relocation project which will take the Department, which includes the Complaints and Client Relations Section, out of Blackhall Place. I appreciate that this change adds pressures to already heavily loaded resources which could be perceived for some time delays that can occur on occasion in corresponding with clients and solicitors. Further, I believe the relocation of the Regulation Department out of Blackhall Place will emphasise the separation of the Law Society's representational and regulatory roles and I welcome this development.
- Last year I asserted the need for guidelines for persons attending a Complaints and Client Relations Committee meeting on which my views were sought and the procedure is operational. This year, I see merit in having guidelines for chairing meetings. This is particularly important for Complaints and Client Relations Committee meetings as there will a lay majority effective from 1 January 2008, and importantly to have synchronised standard terms of procedure among chairs.
- I questioned during the year, from my observing attendance at various Complaints and Client Relations Committee meetings, whether it is truly necessary to have multiple adjournments of matters before the Committee. This exasperates a client, which frustration can often be expressed to me if matters are referred for my examination. I therefore strongly encourage more decisive action to be taken which in turn will allow the Secretariat to more promptly conclude some longstanding matters.

- I am of the opinion that, in appropriate cases, more information should be given by the Complaints and Client Relations Committees at their meetings as a concluding comment such as 'the committee made no finding' is not appropriate or reasonable in all cases. This proposal was recently agreed by the Chair and Vice-Chair of both divisions of the Complaints and Client Relations Committees.
- There are an increasing amount of clients telephoning my Office who are distressed due to the solicitors not wanting to take on their case against another solicitor. Reasons cited to the Independent Adjudicator include the solicitor having a conflict of interest or them not wanting to take on the matter against another member of their profession. Two people advised me that they tried every solicitor on the Listing (the Negligence Panel) supplied by the Law Society none of whom would take their case. The Negligence Panel makes it clear that panel solicitors will generally only proceed with a claim if they are of the opinion that there is evidence of negligence and that proceedings can be brought within the relevant time limits. From speaking to potential litigants it is clear to me that most expect the solicitors on the Panel not to seek payment up front which is not always feasible particularly in the economic climate.
- I was contacted three times this accountable year by persons wishing to make complaints against judges as they did not know where to go. Naturally this is outside of my remit however I wish to state that I welcome the set up of a Judicial Council for such referrals to be dealt with.
- The Independent Adjudicator's website was set up this year - [www.independentadjudicator.ie](http://www.independentadjudicator.ie). Despite my Office being superseded by the imminent appointment of the Legal Services Ombudsman I remain of the opinion that this website is very important to firstly clearly differentiate my Office to that of the Law Society, and secondly so I can refer both clients and solicitors to the portal should they ask as both duly and regularly do. Having this information freely available on the Internet is of added value to the independence, accountability and transparency of my role as the independent Adjudicator of the Law Society.
- I acknowledge the Law Society is dealing with a high volume of complaints and compensation fund matters this year due to well-publicised issues related to solicitors' undertakings. This is a worrying time for the public and indeed for compliant solicitors who indirectly are affected by such adverse publicity. I therefore think it would be remiss of me not to comment on firstly the professional work the Law Society are doing to try to resolve such matters within the respective terms of reference as well as to acknowledge the good-standing solicitors who have acted and continue to act ethically and in the best interests of their clients. I believe any members (solicitors) of the Law Society who bring their profession into disrepute, or potential disrepute, need to be dealt with accordingly. I believe the Law Society is taking this very seriously, for example, the Society's Regulation of Practice Committee has uncovered 'acts of dishonesty' on the part of a number of solicitors who defrauded clients' money.
- It continues to surprise me that many solicitors do not wholly comply with their obligations under Section 68 of the Solicitors (Amendment) Act, 1994. [A Section 68 letter obliges every solicitor, at the inception of taking instructions, to outline to a client in writing (a) the actual charges they propose to charge or where that is not possible, (b) an estimate of the charges or where that is not possible, (c) the basis upon which the charges are to be made.] To address this failure the Law Society generally requests the solicitor concerned to discount a portion of the fees payable. This said I strongly encourage the Law Society to take whatever steps are necessary to ensure that all solicitors issue their Section 68 written correspondence in the interests of transparency and openness about fees and to save all parties the unnecessary administrative burdens and costs which results from such non-compliance.

- I concur with the President of the Law Society's public assertion during the year that the Law Society's key priority is that solicitors should be seen to uphold the highest standards in their profession and practise accordingly. They need to keep members (solicitors) focussed on the importance of respect for clients, their rights and their monies, and to put in place sufficient standards and regulations to ensure that. I equally agree with the President (Mr James MacGuill) that it is fair to comment that no body corporate can regulate for every circumstance and no system can guard against wrongdoing in every eventuality.
- I have noted on a number of occasions this year increasing delays by the Law Society in following up on investigation correspondence in the Complaints and Clients Relations Section which I have brought to their attention where I deemed it appropriate to do so. This said I am cognisant of an increased volume of complaints and indeed an ever-increasing volume of emails and telephone calls to the Section. I understand that the latter tends to take time and cannot be diaried for which means that these calls, by default, take precedence over files being investigated at that point in time. This may be a resourcing issue to be considered with in the future to deal with such matters. I have formally advised the Complaints and Client Relations Section, on more than one occasion, that I deem up to one month to be a reasonable timeframe for the investigating solicitor of the Section to respond and/or to correspond on a matter currently under complaint investigation.
- I think the manner in which the Law Society's Complaints and Client Relations Section conduct their investigations is by and large to my satisfaction. I have no adverse comment to advise throughout the annual review period and as such believe that the public are treated fairly and reasonably with well-considered investigations occurring by professional staff in the Law Society.
- People's expectations do not always coincide with the reality of the Independent Adjudicator's role, e.g., they may be seeking compensation for their stress, or they want the alleged offending solicitor to be struck off, etc. This continues to be surprising as clients have already been through the Law Society's investigation process when they appeal to my Office for the handling of their matter to be examined.
- I would like to reiterate that whilst clients are passionate about their complaint this passion does not necessarily mean that the complaint is a bona fide complaint that will be upheld. Each complaint is dealt with individually and is perused to assimilate all salient information to decipher the Independent Adjudicator's impartial views on the matter in hand. I would like to emphasise that the Independent Adjudicator is not in any way biased towards solicitors or clients, and reiterate, as advised in my forward (page 2), I am neither an advocate nor an apologist for either solicitor or client.
- Clients often expect details as to why their complaint was not upheld by the Independent Adjudicator to be given to them in minutiae detail which is usually not applicable nor appropriate, and I also advise in all my initiating correspondence with clients and solicitors that I do not investigate a matter at first hand. For example, if I decide that I am satisfied with the Law Society's decision then I am wholly supporting the contents of the Law Society's decision correspondence. I am not permitted under my governing Regulations (see Appendix I, page 36) to investigate legal issues or analyse legislation on behalf of a client. My role is to ensure that any dissatisfaction with the Law Society on the part of the general public is dealt with by an independent and impartial person who is not a lawyer and that their case is examined as such. It is therefore not prudent for my response to contain substantive detail which could be outside

the remit of the Independent Adjudicator.

- Once a matter has been examined by the Independent Adjudicator it will not be eligible for referral to the Legal Services Ombudsman when appointed. I state this as I have been asked if such a referral is possible on a few occasions throughout the year. Equally, I should advise that clients often submit their complaints to me for my re-examination without informing that the matter has already been examined by my predecessor in the past, possibly even years' ago. Once a case is examined, the Independent Adjudicator Office stands over that decision indefinitely.
- The Law Society have accepted a recommendation in my last Annual Report about the use of a complaint form however they have deferred the introduction of any such form pending the report of the Client Care Task Force.
- Last year, I asserted my concern at the delays from the date of referral of a matter from the Complaints and Client Relations Committee to the date the case is heard by the Solicitors Disciplinary Tribunal. My dissatisfaction with these delays was due to clients, who having already gone through an investigation process, had to endure an unreasonable waiting period for the referral of their matter to the Solicitors Disciplinary Tribunal which is processed by the Regulation Department. This unnecessarily prolongs matters and I did/do not look favourably upon a lack of communication to the parties (clients and solicitors) from the Law Society during this intervening period. I have met with the Director of Regulation on this matter and whilst my proposal for increased resources has not occurred as yet and referrals remain somewhat shy of a fully acceptable level to me, I am satisfied that priority is now being given to disciplinary matters referred to the Solicitors Disciplinary Tribunal by the Complaints and Client Relations Committee with specified criteria and appraisal dates. I have advised the Director of Regulation that I intend to continually monitor the status of referrals into the coming year and have asked for a formal appraisal at a six monthly interval as it remains important that such referrals are dealt with at the earliest opportunity.
- In addition to examining individual complaints I also conducted two random surveys of files in the Complaints and Client Relations Section which met with my satisfaction. I found one Solicitors Disciplinary Tribunal referral matter (related to the above point) on which more prompt action could have been taken however it is fair to say that I have seen a marked improvement on this matter generally since last year which is nearing an acceptable referral timeframe.
- Regrettably clients who contact my Office can be abusive and offensive. I endeavour to maintain calmness which can require skill. People are often aggrieved by the time they refer their complaint to my Office and then more often than not display inappropriate and rather offensive aggression with the Independent Adjudicator if their case has not been examined in their favour. I stress, as I have always done since commencing office, that the role of the Independent Adjudicator is not that of consumer advocate – it is to act in accordance with the principles of fairness, reasonableness and impartiality for all parties.
- I still believe that solicitors' procrastination in communicating with clients can often be the crux of a complaint which I openly acknowledge and take cognisance of when examining matters. This said I have observed and perused numerous files where clients can equally be extremely, and perhaps unrealistically, demanding and offensive to their solicitors which I also take account of.
- Appeals to the Independent Adjudicator are now normally examined and decided upon within a few weeks of the initiating letter to my Office which is equally my intention going forward. Speed

of access and service is one of my criteria on my self-devised charter for the operation of my role (see page 2).

- In acknowledging that there are continuing complaints made to both the Law Society's Complaints and Client Relations Section and compensation fund claims to the Regulation Department, I believe credit is due to the vast amount of solicitors who engender good legal practice in Ireland and are honourable members of their profession. I believe the comprehensive complaints mechanisms afforded to solicitors' clients (see section 2, pages 5 to 8) support best legal service practices in Ireland.
- During the year I wrote to the Regulation Department with regard to the dearth of compensation fund claim matters referred to me this accountable year. I was advised that Solicitors acting on behalf of potential claimants contact the Law Society for information as to the circumstances in which a grant is made from the fund and that it is the policy of the Society to inform claimants as early as possible in the process whether they are likely to have a claim on the fund. A consequence of this early communication is that a solicitor acting on behalf of claimant can advise their client whether or not a claim is likely to succeed. By the time a claim is considered by the Regulation of Practice Committee there is a far greater likelihood that the claim is valid in which case their claim will be acceded to. This explained the low volume of compensation fund claim referrals to my Office this year which I expect will be higher over the incoming adjudicable year given the recent publicity attached to certain defaulting solicitors.
- I understand that a major review of complaints handling by the Law Society is taking place under the chairmanship of Mr Joe Brosnan (retired Secretary General of the Department of Justice) and a report of the Complaints Review Task Force, which is conducting this review, is expected imminently. I await this report with interest.
- During the year I had the opportunity to visit neighbouring jurisdictions and I note the trend therein to remove certain aspects of complaint handling from the respective law societies. I am following this development with interest. I anticipate that this is an area that will be addressed by the Complaints Review Task Force referred to above.
- I have read the most recently delivered report of the Solicitors Disciplinary Tribunal who appear to be getting busier. I note with interest the referral subject matters, namely administration of estates (probate), civil claims, Section 68, Law Society of Ireland referrals, Solicitors Accounts Regulations and conveyancing. These areas, generally speaking, are reflective of matters referred to my Office (see section 5, pages 24 and 25).
- I am pleased to note that the Law Society is continuing to devote resources to the promotion of good client care through its Client Care Task Force which is conducting a series of visits to local Bar Associations to emphasise the importance of good client care.
- As recommended in my last Annual Report, the Complaints and Client Relations Committee established a Sub-Committee to consider the introduction of alternative sanctions which would be educational rather than punitive for certain solicitors in applicable circumstances. I understand that this Sub-Committee has conducted research to ascertain what is available or could be tailored to meet the need for establishing a referral course to assist those solicitors appearing before the Complaints and Client Relations Committee who are identified as needing assistance. I believe the work of this sub-committee has not been completed. (It is worth noting that the Law Society runs an extensive continuing professional development programme for all solicitors who are obliged to fulfil a minimum of 10 hours per annum.)

- I understand that as and from 1 January 2009 the Complaints and Clients Relations Committee will operate in three divisions as recommended by me in my last Annual Report, which is a welcome and appreciated development.
- I have observed that a significant amount of complaints are resolved through the good offices of the Complaints and Client Relations Section particularly with regard to complaints related to undertakings which I understand, and welcome, have been prioritised for prompt resolution.

## Section 7

### RECOMMENDATIONS/CHANGES PROPOSED IN THE ADJUCATING YEAR

This section of my Annual Report should be read in conjunction with my observations and general comments in the preceding section where each are further discussed.

- With reference to multiple complaints discussed in the previous section (page 26) and the statistics set out in section 3 (page 20), I am of the firm view that more stringent measures must be engaged as it is not acceptable to condone numerous members of the profession with ongoing multiple complaints against them. This is not only bad practice, but it could also be perceived as a weakness in the regulatory regime. It can also result in a disproportionate amount of time spent by the Complaints and Client Relations Section and Committee investigating, considering and deciding on such multiple complaints. If, as a general example, there are 10 complaints against one solicitor this means that there are 10+ clients dissatisfied, who received poor service for whatever reason, and equally that they are most likely discussing their dissatisfaction about their solicitor with other persons and indeed, perhaps as important, their dissatisfaction with the legal profession generally. I cannot emphasise strongly enough that tougher and unyielding measures must be taken in the appropriate cases. It is open to the Committee to direct the solicitor to make a contribution to the costs incurred by the Law Society and, in my view, this power could be exercised more assertively and frequently to include restricting solicitors' practising certificates by imposing conditions or requiring the solicitor to employ additional resources or attend specific continuous professional development modules. I also strongly recommend in such cases that the Committee should be more proactive in directing audits of solicitors' practices in order to obtain a comprehensive perspective of such practices' functioning. I appreciate this may add an additional resourcing burden however I believe more proactive action is required on this matter.
- In my last Annual Report I included guidelines for attendance at a Complaints and Clients Relations Committee meeting which had been devised that year. I would now like to see guidelines devised and communicated for chairing Complaints and Clients Relations Committee meetings (see section 6, page 26). My reasons for this proposed suggestion is two-fold, firstly to synchronise chair styles and performance delivery and secondly, to assist towards the new lay member majority that will sit on the Committee effective from 1 January 2008 (under the Civil Law (Miscellaneous Provisions) Act, 2008).
- As stated in my preceding Annual Report, I do not look favourably upon solicitors who, without bona fide reasonable excuse, take an excessive and/or an unreasonable amount of time in responding to the Law Society's investigatory correspondence. It happens, quite often, that solicitors receive two or three requests from the Law Society's Complaints and Client Relations Section to respond to a complaint before they do so. Generally, if there is no response after the third letter the matter is referred to the Complaints and Client Relations Committee. Whilst the Complaints and Client Relations Committee has a right to reprimand a solicitor and direct a contribution towards the costs incurred by the Law Society, and both regularly and continually do so, I would like more stringency on this and to a higher level of sanction which I hope will occur with the enactment of Section 39 the Civil Law (Miscellaneous Provisions) Act, 2008.
- I certainly do not look favourably on solicitors who do not wholly comply with Section 68 of the Solicitors (Amendment) Act, 1994 (section 6, page 27). Breach of Section 68 is potentially

misconduct and I would like the Committee to be more assertive in enforcing compliance with this Section. Whilst raising my dissatisfaction on this matter previously I am of the view that such complaints take up an unnecessary amount of time on limited resources in the Complaints and Client Relations Section so that if more forceful measures were taken it may reduce such complaints to the Law Society.

- The Law Society appears to be taking the necessary steps to ensure that cases which are being referred by the Complaints and Client Relations Section to the Solicitors Disciplinary Tribunal (which by their very nature are the more serious cases) are lodged with the Tribunal as quickly as possible in line with my requests in my last Annual Report. Whilst referrals could, in some cases, be more expeditious I expect the coming year will bring an even more marked improvement on this matter which I am regularly observing. I remain of the opinion that this is a very important area and if extra resource(s) are required they should be hired to ensure smooth and timely referrals (See section 6, page 29).
- I avidly believe in communication and recommended to the Law Society this year that, in appropriate cases, more information by the Complaints and Client Relations Committees' meetings should be decreed for a client as a statement such as 'the committee made no finding' is not appropriate or reasonable in all cases as decision correspondence (section 6, page 27). This proposal was recently agreed by the Chair and Vice-Chair of both Complaints and Client Relations Committees.
- Somewhat related to the point above, I am of the view that Complaints and Client Relations Committee meetings should not have multiple adjournments (although I acknowledge that in some cases this can be beneficial for the client) and would propose, where possible to do so, that more decisive and concluding action is taken (section 6, page 26). The lack of same, where it is possible to conclude, adds administrative burdens to matters in hand and also fundamentally elongates matters for all parties which may be unnecessary. Therefore I believe decisive action will allow the Secretariat to more promptly conclude some longstanding matters. I intend to monitor this matter going forward in my random reviews.
- I have formally advised the Complaints and Client Relations Section, on more than one occasion, that I deem up to one month to be a reasonable timeframe for the investigating solicitor of the Section to respond and/or to correspond on a matter currently under complaint investigation. I wish to advise that I deem this timeframe to be fair and reasonable and if it is not feasible alternative measures need to be engaged, e.g., seeking assistance of a peer in the Section.

## EXECUTIVE SUMMARY

The eleventh Annual Report of the Independent Adjudicator disseminated statistics, observations and recommendations for the period from 1 October 2007 to 30 September 2008.

This accountable year I adjudicated on 96 complaints and 1 compensation fund claim. 25 additional referrals have been outside of my terms of reference for varying reasons (for further details see section 5, page 23) (121 matters were referred to my Office in aggregate). I expect a considerable increase in compensation fund referrals to my Office over the coming months given the increased volume currently with the Law Society related to the recent publicity attached to certain defrauding solicitors (see section 4, page 22).

The Law Society's Complaints and Client Relations Committee directed penal measures against offending solicitors as evidenced from the statistics contained in this Report (see Section 3, page 15) to include that the Committee:

- issued 5 formal reprimands against solicitors (15 in 2006/2007); and
- directed payments of €47,950 in contributions from solicitors towards the costs incurred by the Law Society as a result of the solicitor's failure or delay in replying to the Law Society (€47,650 in 2006/2007).

The Observations section of this Report (section 6, pages 26 to 31) outlined that whilst the above measures are welcomed I would encourage less conservatism in decisions relating to bad practices or offences especially related to multiple complaints, overcharging, delay in responding to the Law Society and continued lack of compliance under Section 68 of the Solicitors (Amendment) Act, 1994.

The most important issue I highlighted in this Report is the somewhat incessant multiple complaints on which more stringent action needs to be taken (section 3, page 20; section 6, page 26 and section 7, page 32). I expressed that solicitors' ongoing non-compliance with the terms of Section 68 of the Solicitors (Amendment) Act, 1994 (for which I believe a solicitor generally has no excuse and causes so much administrative time on the Law Society) is of ongoing concern and again more unyielding action should be taken (section 6, page 27 and section 7, page 31). Further, I referenced the Law Society's delays in referring complaints to the Solicitors Disciplinary Tribunal. Whilst this latter issue has improved substantially since I highlighted it in my last Annual Report it still requires ongoing and continued prompt action (section 6, page 29 and section 7, page 32).

In investigating complaints, the Law Society requires timely, cooperative and comprehensive correspondence from the solicitor against whom a complaint is alleged so it can conduct a thorough investigation. Procrastination by solicitors who hinder and/or elongate this process is a practice I deplore and firm action should be taken for such delays or non-responses (see section 6, page 29).

I asserted my belief that credit is due to the vast amount of solicitors who engender good legal practice in Ireland and are honourable members of their profession. I remain satisfied that comprehensive complaints mechanisms are afforded to solicitors' clients (see section 2, pages 5 to 8) supporting best legal service practices in Ireland.

I openly welcomed the change regarding the participation of lay members which will take effect on 1 January 2009 under the Civil Law (Miscellaneous Provisions) Act, 2008 as this will reiterate the importance and value of client customer care. Up until now lay members participated in the

Complaints and Client Relations Committee but were in the minority however under Section 34 of the Civil Law (Miscellaneous Provisions) Act, 2008 from 1 January 2009 onwards the majority of members of any Committee charged with the consideration of overcharging and inadequate professional services complaints must be persons who are not solicitors. Section 39 of the Act allows the Law Society of Ireland, for the first time, to direct a solicitor to pay compensation to a client (up to a limit of €3,000) for “any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided”.

All matters considered, including the burdens that matters relating to certain defaulting solicitors has caused and the substantial volume of complaints and compensation fund claims being handled, I resolutely believe the Law Society’s Regulation Department and Complaints and Client Relations Section act professionally, efficiently and effectively within their respective terms of reference.

I advised in my Forward (page 3) that I fulfil the Independent Adjudicator position single-handedly and on a part-time basis with complete passion for delivering a professional, fair and impartial service. I believe the Office of the Legal Services Ombudsman should not be a substantial additional financial burden on members (solicitors and barristers) of either the Law Society or Bar Council and guesstimate that the appointment of an Ombudsman with one administrative assistant should be sufficient. In the case of solicitors I am of the opinion that members will most likely incur levies to effect the additional costs placed on the Law Society in fulfilling its Committee resources’ obligations under the Civil Law (Miscellaneous Provisions) Act, 2008, as referenced above, which will effect from 1 January 2008.

Finally, as somewhat alluded to in my Forward (page 3) I wish to express my continued dedication to being the Independent Adjudicator of the Law Society, a role I am and will fervently fulfil until it is superseded by the appointment of the Legal Services Ombudsman.

## Appendix I

### **S.I No. 406/1997 Solicitors (Adjudicator) Regulations, 1997**

The Law Society of Ireland, in exercise of the powers conferred on them by Section 71 (as amended by Section 69 of the Solicitors (Amendment) Act, 1994 ) of the Solicitors Act, 1954 HEREBY MAKE the following Regulations:

1. (a) These Regulations may be cited as the Solicitors (Adjudicator) Regulations, 1997.

(b) These Regulations shall come into operation on the first day of October 1997.

2. (a) In these Regulations -

"the Adjudicator" means the person appointed as adjudicator by the Society pursuant to Regulation 5(a);

"the Compensation Fund Committee" means the committee of the Council of the Society which is responsible for the adjudication of claims for grants out of the Compensation Fund (maintained by the Society pursuant to Section 21, as amended by substitution by Section 29 of the Solicitors (Amendment) Act, 1994 , of the Solicitors (Amendment) Act, 1960 ) made by or on behalf of clients of solicitors who claim to have sustained loss in consequence of dishonesty on the part of their solicitors or employees of their solicitors;

"the Disciplinary Tribunal" means the Disciplinary Tribunal established pursuant to Section 6 (as amended by substitution by Section 16 of the Solicitors (Amendment) Act, 1994 ) of the Solicitors (Amendment) Act, 1960 AND, where relevant, includes the Disciplinary Committee established pursuant to Section 6 of the Solicitors (Amendment) Act, 1960 ;

"he" and other cognate words denoting the masculine when used in these Regulations shall also include "she" and other cognate words denoting the feminine;

"the Scheme" means the scheme established, maintained and funded by the Society for the receipt and the examination or investigation by the Adjudicator pursuant to these Regulations of any complaint in writing made to the Adjudicator, by or on behalf of a client of a solicitor against the Society, concerning the handling by the Society of a complaint against that solicitor made to the Society by or on behalf of that client (which complaint to the Society is, in Regulations 7, 9 and 10, referred to as a "related complaint")

"the Registrars Committee" means the committee of the Council of the Society which is responsible for the adjudication of complaints made to the Society by or on behalf of clients of solicitors against their solicitors (other than complaints in the nature of claims for grants out of the Compensation Fund, the adjudication of which are the responsibility of the Compensation Fund Committee) which have been referred to it by the Complaints

Section of the Society initially concerned with the receipt and the examination or investigation and the attempted resolution of such complaints;

"Regulation" means a regulation in these Regulations;

"the Society" means the Law Society of Ireland.

(b) Other words and phrases in these Regulations shall have the meanings assigned to them by the Solicitors Acts, 1954 to 1994.

(c) In these Regulations, unless the context otherwise requires, the singular includes the plural.

3. The Interpretation Act, 1937 shall apply for the purposes of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of the Oireachtas, except insofar as it may be inconsistent with the Solicitors Acts 1954 to 1994 or these Regulations.

4. The Society shall establish, maintain and fund the Scheme.

5. (a) The Society shall appoint an adjudicator to administer the Scheme and to perform such other functions as the Adjudicator is empowered by these Regulations to perform;

(b) The duration and the terms and conditions of the Adjudicator's appointment as Adjudicator shall be as agreed between the Society and the Adjudicator, such terms and conditions to include provision for -

(i) the remuneration of the Adjudicator; and

(ii) the annual expenses of the Adjudicator in providing for the proper and efficient administration and maintenance of the Scheme.

(c) The person appointed as the Adjudicator shall not be a practising solicitor, a member of the Society or a practising barrister and shall be independent in the exercise of his functions.

6. Where, by reason of illness or other physical incapacity, the Adjudicator believes that he is unable effectively to perform his functions under these Regulations for a specified duration of time, the adjudicator may request the Society to appoint another eligible person as an acting adjudicator to administer the Scheme in place of the Adjudicator for such specified and limited duration of time as the Adjudicator and the Society deem appropriate and reasonable in the particular circumstances; and an acting adjudicator so appointed shall during such limited period of his appointment have all the powers of the Adjudicator in administering the Scheme and in performing the other functions of the Adjudicator as provided for in these Regulations.

7. In administering the Scheme, the Adjudicator shall (subject to Regulation 9) be empowered:

(a) to receive and to examine or investigate any complaint in writing made to him by or on behalf of a client of a solicitor against the Society, concerning the handling by the Society of a related complaint about that solicitor made to the Society by or on behalf of that client;

(b) to require the production of documents in the possession of the Society in connection with his examination or investigation of a complaint in writing made to him;

(c) to issue a memorandum in writing addressed to the Society and to the complainant and the solicitor concerned stating his conclusions of fact and his recommendations (if any) consequent on his examination or investigation of a complaint in writing made to him;

(d) to review generally the procedures of the Society in relation to the receipt and the examination or investigation by the Society of complaints in writing about a solicitor made to the Society by or on behalf of a client of that solicitor; and to make such recommendations to the Society in relation thereto as he deems appropriate;

(e) to submit annually to the Society during the month of December a report on his activities during the year ending on the preceding 30 September, for onward transmission by the Society to the Minister for Justice; which report may include recommendations for change in his or in the Society's procedures relating to the receipt, examination or investigation of complaints in writing made to him or made to the Society.

8. Without prejudice to the generality of Regulation 7, the Adjudicator may, in the course of administering the Scheme, seek the resolution of a complaint in writing made to him in such manner as he deems appropriate and reasonable in the particular circumstances.

9. In administering the Scheme, the Adjudicator shall not examine or investigate a complaint in writing received by him pursuant to Regulation 7(a) in any of the following circumstances, namely:

(a) where the complaint is received by him after the expiration of three years following the determination by the Society of the related complaint made to the Society;

(b) where the subject matter of the related complaint made to the Society about a solicitor has been or is in the course of being determined by a court or by the Disciplinary Tribunal;

(c) where the related complaint made to the Society relates to the alleged charging of excessive fees by a solicitor and the bill of costs in issue has been taxed or has been submitted to a Taxing Master of the High Court for taxation on a solicitor and own client basis;

(d) where the related complaint made to the Society about a solicitor is still in the course of being examined or investigated by the Society;

(e) where the complaint concerns a decision of the Compensation Fund Committee relating to the making of a grant, or the refusal to make a grant, out of the Compensation

Fund or relating to the quantum of any such grant.

10. Where the Adjudicator has completed his examination or investigation of a complaint in writing received by him pursuant to Regulation 7(a), he may issue a memorandum in writing addressed to the Society and to the complainant and the solicitor concerned:

(a) directing the Society to re-examine or reinvestigate the related complaint made to the Society about a solicitor, where he is not satisfied that the Society have investigated the related complaint adequately; or

(b) directing the Society to make application to the Disciplinary Tribunal for an inquiry into the conduct of the solicitor concerned on the ground of alleged misconduct; or

(c) rejecting the complaint.

11. The Society shall, as soon as practicable after receipt by the Society of a direction by the Adjudicator under Regulation 10 (a) or (b), notify, in writing, the Adjudicator and the complainant and the solicitor concerned of the action the Society proposes to take pursuant to such direction.

12. In the performance of his functions under these Regulations, the Adjudicator shall be entitled:

(a) to determine the procedures he will follow in relation to the receipt and the examination or investigation of complaints in writing made to him and to promulgate such procedures to the public and to the solicitors profession in such a manner as he deems appropriate and reasonable;

(b) to require the production of documents in the possession of the Society in connection with his examination or investigation of a complaint in writing made to him pursuant to Regulation 7(a);

(c) to leave access to all employees of the Society concerned with the receipt and the examination or investigation and the attempted resolution of complaints made to the Society by or on behalf of clients of solicitors against their solicitors;

(d) to attend meetings of the Registrars Committee or any division of the Registrars Committee.

13. The Adjudicator may examine or investigate a complaint in writing made to him, notwithstanding:

(a) that the complaint made to him related to a matter which arose before the coming into effect of these Regulations; or

(b) that the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.

14. (a) The Adjudicator may decide not to examine or investigate a complaint in writing made to him or may discontinue his examination or investigation of such complaint where he is, or becomes, of the opinion that:

(i) the complaint is frivolous or vexatious; or

(ii) (where the complaint is made by a person other than the client of the solicitor concerned) the person purporting to make the complaint on behalf of the client of the solicitor concerned does not have the authority, expressed or implied, to do so or is acting either solely in his own interest or in the interest of a person who is not a client of the solicitor concerned in relation to the subject matter of the complaint; or

(iii) the complainant has refused to accept an offer of redress of the complaint which the Adjudicator in all the circumstances deems appropriate and reasonable.

(b) Where the Adjudicator decides not to examine or investigate a complaint in writing made to him or to discontinue his examination or investigation of a complaint in writing, the Adjudicator shall by memorandum in writing notify the Society and the complainant and the solicitor concerned of that decision and the reasons for that decision.

15. A copy of every annual report of the Adjudicator prepared pursuant to Regulation 7(e) shall, as soon as practicable after it has been submitted by the Adjudicator to the Society:

(a) be transmitted by the Society to the Minister for Justice; and

(b) be promulgated by the Society to the public and to the solicitors' profession in such a manner as the Registrars Committee or the Council of the Society deems appropriate and reasonable.

Dated this 26th day of September 1997.

Signed on behalf of the Law Society of Ireland pursuant to Section 79 of the Solicitors Act, 1954 .

Francis D. Daly

President of the Law Society of Ireland