

Annual Report
of the
Independent Adjudicator
of the
Law Society of Ireland



Year ending 30 September 2013

Carol Ann Casey
Independent Adjudicator of the Law Society

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FOREWORD

This is my seventh Annual Report as the Independent Adjudicator of the Law Society of Ireland covering the period 1 October 2012 to 30 September 2013.

I am responsible for (a) ensuring that the Law Society of Ireland handles complaints about its members in an effective and efficient manner, (b) reviewing the Law Society's handling of claims made on its Compensation Fund, and (c) recommending any changes in the Law Society's complaints and claims procedures which are, in my view, necessary to maintain the highest standards. Allegations of financial irregularities usually go through a different process within the Law Society and unless they are the subject of a specific complaint by a client such matters are outside my remit.

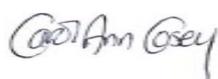
A fundamental attribute of my position, and the core of my work ethic, is that I am independent and impartial in all my work and adjudications. Being the Independent Adjudicator is not a campaigning job: it is not my role to wag a finger at the profession nor is it my job to come up with a binary answer (yes/no, guilty/innocent, etc.). I am neither an advocate nor an apologist. 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 with a relevant professional background.

Complaints are investigated by the Complaints and Client Relations Section of the Law Society's Regulation Department. Complaints centre on three key areas: inadequate professional services, excessive fees and professional misconduct. Compensation Fund claims are processed by the Financial Regulation Section of the Law Society's Regulation Department and decided by the Regulation of Practice Committee of the Law Society.

I observe various Complaints and Client Relations Committee and Regulation of Practice Committee meetings, and occasionally at Solicitors Disciplinary Tribunal hearings and High Court hearings of interest. I believe that my attendances at committee meetings, and my conducting various random reviews of files, are integral to my role to ensure that in my view the maintenance of the highest standards apply to the handling of complaints, Compensation Fund claims and disciplinary matters.

I carry out the duties of the Independent Adjudicator of the Law Society position single-handedly, and on a part-time basis, with emphasis on compliance, efficiency and effectiveness. Being solitary in my role I regularly develop my skills to deliver high quality customer service in my role.

I wish to acknowledge my professional relationship with the Law Society of Ireland. Whilst I am independent and impartial with clear boundaries, I would like to commend the work of the ISO accredited Complaints and Client Relations Section, led by Ms Linda Kirwan, and the Financial Regulation Section lead by Mr Seamus McGrath and Mr John Elliot, Registrar and Director of Regulation who continually facilitate my requests. Equally I would like to thank the chairmen of the various committees for facilitating my observing on their respective committees on an ongoing basis throughout the year, and for presiding over increasingly fair and reasoned decisions.



Carol Ann Casey
Independent Adjudicator of the Law Society

27 November 2013

Section 1

REMIT OF THE INDEPENDENT ADJUDICATOR

The Legal Services Regulation Bill was published on 12 October 2011 and when enacted will supersede my Office. Until then my Office continues with the following unchanged remit:

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. (<http://www.irishstatutebook.ie/1997/en/si/0406.html> and <http://www.irishstatutebook.ie/2005/en/si/0720.html>).

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 inadequate professional service, misconduct or overcharging related complaint made by or on behalf of any client against their solicitor. The Office of the Independent Adjudicator is located at 26 Upper Pembroke Street, Dublin 2, autonomous of all Law Society premises.

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:

- (a) ensures that complaints about the conduct of a solicitor are dealt with fairly and impartially by the Law Society;
- (b) reviews complaints about any decision by the Law Society concerning an application for a grant from the Law Society's Compensation Fund; and
- (c) recommends 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 manner 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:

- **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;
- the provision of **inadequate legal services** as provided for by Section 8 of the Solicitors (Amendment) Act 1994;
- the charging of **excessive fees** as provided for by Section 9 of the Solicitors (Amendment) Act 1994;

and includes any allegation, including an allegation which 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;
- Only 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 Regulation Department of the Law Society comprises 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.

Following an external audit of the Law Society's Complaints and Client Relations Section, they have been accredited ISO 9001:2008 continually for the last ten years. This represents an independent validation of the complaint handling process and procedures of the Complaints Section.

Complaints and Client Relations Committee

The Complaints and Client Relations Committee consist of solicitors and lay members who oversee the work of the Complaints and Client Relations Section of the Law Society. Lay members are persons who are not solicitors which highlights the importance of customer care. It should also be noted that the solicitors who sit on this Committee do so voluntarily in their own time. Members of the Committees are charged with the consideration of allegations of overcharging and inadequate professional services, as well as allegations of misconduct that are referred from the Complaints and Client Relations Section.

The Committee has three divisions, all of which have the same duties and responsibilities. Each division generally meets every six weeks and in order to be quorate there must be a majority of lay members present at the meeting.

The solicitors who are under investigation are often requested to attend to answer questions on the complaint(s) before them. Clients who ask to attend may do so but 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 of inadequate professional services or excessive fees 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;
- require a solicitor to make a payment (not exceeding €3,000) for any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided.

When dealing with complaints alleging misconduct, the Committee may either reject the complaint, impose a reprimand or direct that an application be made to the Solicitors Disciplinary Tribunal.

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. This adds credence to the decision-making process and affords an impartial examination of how the complaint was investigated by the Law Society. I believe this is a fair and reasoned approach - clients are openly advised of this right of referral to the Independent Adjudicator by the Law Society at the beginning of the process and again upon their decision being finalised.

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 however 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, in appropriate cases, monitor the progress of a matter for as long as necessary to ensure the client's business is satisfactorily concluded.

Applying 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.

Financial Regulation Section

The Financial Regulation Section of the Regulation Department of the Law Society administers the Compensation Fund, which the Law Society is required to maintain in order to compensate clients for losses arising due to dishonesty on the part of solicitors or their employees. Claimants can make a claim from the Fund if they were the client of a solicitor who misappropriated money belonging to the client. The Registrar and Director of Regulation can deal with a claim up to €5,000. Thereafter it is the Regulation of Practice Committee which decides whether to pay the claim in full, pay part of the claim, refuse the claim, or postpone the decision to a later meeting because more information is needed. When the Law Society has made its decision it will write to the claimant. If the Law Society is going to pay only part of their claim, or if it is refusing the claim, it will tell the claimant why.

Regulation of Practice Committee

The Regulation of Practice Committee administers the Compensation Fund, which the Law Society is required to maintain in order to compensate clients for losses arising due to dishonesty on the part of solicitors or their employees.

It polices the profession's compliance with the Solicitors Accounts Regulations and with aspects of the Solicitors Acts not assigned to other regulatory committees. The Committee comprises of solicitors and lay members, however unlike the Complaints and Client Relations Committee there is no requirement for a lay majority.

The Solicitors Disciplinary Tribunal

The Solicitors Disciplinary Tribunal is a statutory body, constituted under the Solicitors (Amendment) Act 1960 as amended by the Solicitors (Amendment) Act 1994 and 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. 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 in section 1.

The Legal Services Regulation Bill 2011

The Legal Services Regulation Bill 2011 will supersede the Office of the Independent Adjudicator of the Law Society. The Legal Services Regulation Bill proposes the following three key entities:

1. a new, independent, **Legal Services Regulatory Authority** with responsibility for regulating the provision of legal services by both solicitors and barristers;
2. an **Office of the Legal Costs Adjudicator** to assume the role of the existing Office of the Taxing-Master which will be conferred with enhanced transparency in its functions. The legal costs regime will be brought out into the open with better public awareness and entitlement to legal costs information; and
3. an **independent complaints structure** to deal with complaints about professional misconduct – and the independent **Legal Practitioners Disciplinary Tribunal**.

The Bill is available on <http://www.oireachtas.ie/documents/bills28/bills/2011/5811/document2.pdf>

Complaint and Compensation Fund Escalation Process Diagram

COMPLAINT ESCALATION PROCESS ONCE INITIATED TO THE LAW SOCIETY

(from top to bottom)

Complaints and Client Relations Section
Regulation Department
The Law Society

Complaints and Client
Relations Committee

| | |
|---|--|
| Independent Adjudicator of the Law Society | Solicitors Disciplinary Tribunal |
|---|--|

The
High Court

COMPENSATION FUND CLAIM ESCALATION PROCESS ONCE INITIATED TO THE LAW SOCIETY

(from top to bottom)

Financial Regulation Section
Regulation Department
The Law Society

Regulation of Practice Committee

Independent Adjudicator of the
Law Society

Section 3

STATISTICS FROM COMPLAINTS AND CLIENT RELATIONS SECTION OF THE REGULATION DEPARTMENT OF THE LAW SOCIETY, 2012/2013

The Law Society's year was 1 September 2012 to 31 August 2013.

The total number of new complaints received was 2,477, of which 361 were deemed inadmissible, leaving a balance of 2,116 admissible complaints. 2,007 complaints were carried forward, making a total of 4,123 complaints handled by the Complaints section during the year.

A further 954 files were opened by the Complaints and Client Relations section, representing a mix of queries and requests for information from members of the public and from the profession, as well as records of direct applications made to the Solicitors Disciplinary Tribunal by members of the public.

873 of the admissible complaints made last year were made by solicitors against their colleagues, a large proportion of which were made by solicitors acting on behalf of financial institutions. This figure was 1729 last year.

465 complaints, many of which were made against the same solicitors, were referred to the Complaints and Client Relations Committee.

At year end, the status of complaints investigated by the Law Society during the year was:

| | Closed | Under Investigation | Pending before C&CRC* | Total |
|-----------------|---------------|----------------------------|----------------------------------|--------------|
| New complaints | 968 | 1,016 | 132 | 2,116 |
| Carried forward | 1,176 | 702 | 129 | 2,007 |
| Total | 2,144 | 1,718 | 261 | 4,123 |

*Complaints and Client Relations Committee

The proceeding 13 pages set out the status of complaints dealt with by the Complaints and Client Relations Section as follows:

- Breakdown of complaints
- Excessive fees
- Inadequate professional services
- Misconduct
- Complaints and Client Relations Committee statistics
- Complaints status at year end
- Completion of complaint cases
- Completion times of complaints handled by the Law Society
- Source of complaints
- Multiple complaints against solicitors
- Status of complaints carried forward

Breakdown of complaints

| | 12/13 | 11/12 | 10/11 |
|-------------------------|--------------|--------------|--------------|
| Admissible Complaints | 2116 | 2453 | 2622 |
| Inadmissible Complaints | 361 | 360 | 360 |
| Total | 2477 | 2813 | 2982 |

| | | | |
|---|-------------|-------------|-------------|
| Allegations of Excessive fees | 84 | 100 | 118 |
| Allegations of Inadequate Professional Services | 314 | 266 | 301 |
| Allegations of Misconduct | 1718 | 2087 | 2203 |
| Total | 2116 | 2453 | 2622 |

Excessive fees

Complaints alleging overcharging were broken down as follows:

| | 12/13 | 11/12 | 10/11 |
|--------------|--------------|--------------|--------------|
| Conveyancing | 4 | 11 | 15 |
| Probate | 14 | 11 | 19 |
| Litigation | 27 | 39 | 39 |
| Matrimonial | 21 | 28 | 32 |
| Other | 18 | 11 | 13 |
| Total | 84 | 100 | 118 |

Inadequate professional services

Complaints alleging inadequate professional services were broken down as follows:

| | 12/13 | 11/12 | 10/11 |
|------------------------|--------------|--------------|--------------|
| Delay | 125 | 98 | 99 |
| Failure to communicate | 82 | 56 | 58 |
| Shoddy Work | 64 | 83 | 103 |
| Other | 43 | 29 | 41 |
| Total | 314 | 266 | 301 |

Misconduct

Complaints alleging misconduct were broken down as follows:

| | 12/13 | 11/12 | 10/11 |
|-------------------------|--------------|--------------|--------------|
| Delay | 11 | 3 | 5 |
| Failure to communicate | 58 | 50 | 56 |
| Failure to hand over | 99 | 80 | 92 |
| Failure to account | 104 | 70 | 102 |
| Undertaking | 1288 | 1732 | 1647 |
| Conflict of interest | 16 | 11 | 16 |
| Dishonesty or Deception | 8 | 7 | 9 |
| Witnesses Expenses | 1 | 4 | 4 |
| Other | 77 | 86 | 264 |
| Advertising | 22 | 4 | 8 |
| Counsel's fees | 34 | 40 | - |
| Total | 1718 | 2087 | 2203 |

Complaints and Client Relations Committee statistics

| | 12/13 | 11/12 | 10/11 |
|--|--------------------------|-------------------------|---------------|
| Number of meetings | 20 | 22 | 24 |
| | (+4 special + 1 plenary) | (+2 special +1 plenary) | (+ 1 plenary) |
| Number of new matters referred | 465 | 411 | 416 |
| Number of complainants invited to attend | 9 | 10 | 13 |
| Costs levied | €34,850 | €23,750 | €27,900 |
| Compensation orders | 5 | 3 | 3 |
| Reprimands | 7 | 15 | 20 |
| Referrals to Disciplinary Tribunal | 181** | 116 | 160 |

** There are a further 173 complaints about undertakings referred to the Solicitors' Disciplinary Tribunal subject to stay

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 22 different solicitors (28 last year and 25 the year before), as follows:

| | |
|--|-----------|
| Practising certificate issued unconditionally | 10 |
| Conditions imposed on practising certificate | 4 |
| Practising certificate issued subject to undertaking | 1 |
| Application for a practising certificate not pursued | 7 |
| Total: | 22 |

Complaints Status at year end

| | 12/13 | 11/12 | 10/11 |
|---|--------------|--------------|--------------|
| Case closed | 968 | 1115 | 1224 |
| Under Investigation | 1016 | 1183 | 1234 |
| Pending before Complaints and Client Relations Committee | 132 | 155 | 164 |
| Total | 2116 | 2453 | 2622 |

Completion of complaint cases

| | 12/13 | 11/12 | 10/11 |
|---|------------|-------------|-------------|
| Complaints Resolved | 501 | 650 | 652 |
| No grounds for complaint but assistance provided | 60 | 62 | 7 |
| Withdrawn/Abandoned | 160 | 122 | 295 |
| Rejected | 153 | 172 | 184 |
| Recommendation made* | 12 | | |
| Direction made* | 8 | | |
| Other** | 74 | 91 | - |
| Total | 968 | 1115 | 1224 |

*Recommendation made and Direction made previously were recorded concurrently as Upheld (18 in 11/12 and 10/11)

**New categories were introduced last year to include areas such as matters referred to the Solicitors Disciplinary Tribunal, recommendations made by the Complaints and Client Relations Committee and complaint files opened inadvertently

Completion times of complaints handled by the Law Society

The average completion time for 2012/2013 complaints is 88.46 days

The average completion time for 2011/2012 complaints is 91.23 days

The average completion time for 2010/2011 complaints is 76.07 days

The average completion time for 2009/2010 complaints was 76.55 days

The average completion time for 2008/2009 complaints was 81.81 days

| | 11/13 | 11/12 | 10/11 |
|---|-----------------|------------------|------------------|
| Complaints Closed in less than 30 days | 248=25.62% | 287=26% | 370=30.23% |
| Complaints Closed in less than 60 days | 226=23.35% | 228=20.65% | 267=21.81% |
| Complaints Closed in less than 90 days | 120=12.40% | 157=14.22% | 183=14.95% |
| Complaints closed in less than 180 days | 231=23.86% | 260=23.55% | 293=23.94% |
| Other | 143=14.77% | 172=15.58% | 111=9.07% |
| Total | 968=100% | 1104=100% | 1224=100% |

Source of complaints

| | 12/13 | 11/12 | 10/11 |
|--|--------------|--------------|--------------|
| Complaints made by Solicitors | 873 | 1729 | 1283 |
| Complaints made by parties other than solicitors | 1243 | 724 | 1339 |
| Total | 2116 | 2453 | 2622 |

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

| | 12/13 | 11/12 | 10/11 |
|---------------|--------------|--------------|--------------|
| 6 Complaints | 16 | 17 | 24 |
| 7 Complaints | 10 | 13 | 13 |
| 8 Complaints | 6 | 11 | 13 |
| 9 Complaints | 6 | 8 | 5 |
| 10 Complaints | 3 | 6 | 10 |
| 11 Complaints | 2 | 5 | 7 |
| 12 Complaints | 1 | 2 | 5 |
| 13 Complaints | 2 | 3 | 5 |
| 14 Complaints | - | 2 | 5 |
| 15 Complaints | - | - | 2 |
| 16 Complaints | 1 | 2 | 4 |
| 17 Complaints | 3 | - | 1 |
| 18 Complaints | - | 4 | 1 |
| 19 Complaints | - | 2 | 1 |
| 20 Complaints | - | 2 | 1 |
| 21 Complaints | 1 | - | 1 |
| 22 Complaints | - | 1 | 2 |
| 23 Complaints | 1 | - | - |
| 30 Complaints | 1 | - | 1 |
| 25 Complaints | - | 1 | - |

| | | | |
|----------------|---|---|---|
| 27 Complaints | - | 1 | 1 |
| 28 Complaints | - | - | 1 |
| 33 Complaints | - | 1 | 1 |
| 36 Complaints | - | 1 | 1 |
| 37 Complaints | 1 | - | 1 |
| 40 Complaints | - | - | 1 |
| 55 Complaints | - | 1 | 1 |
| 69 Complaints | - | 1 | 1 |
| 156 Complaints | 1 | - | - |

(See page 15 for the Complaints and Client Relations Committee's statistics that relate to multiple complaints)

Status of carried forward complaints at year end

| | 12/13 | 11/12 | 10/11 |
|---|--------------|--------------|--------------|
| Case closed | 1176 | 1361 | 827 |
| Under Investigation | 702 | 542 | 327 |
| Pending before Complaints and Client Relations Committee | 129 | 127 | 305 |
| Total | 2007 | 2030 | 1459 |

Section 4

STATISTICS FROM THE FINANCIAL REGULATION SECTION OF THE REGULATION DEPARTMENT OF THE LAW SOCIETY

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.

Compensation Fund statistics

The Financial Regulation Section's Compensation Fund statistics are advised below:

2012

266 claims received

€3,351,694 claimed

€1,325,591 paid

2011

244 claims received

€7,571,531.36 claimed

€2,538,894.47 paid

2010

255 claims received

€10,406,247.52 claimed

€2,485,829.03 paid

2009

424 claims received

€9,310,731.45 claimed

€2,721,936.01 paid

2008

672 claims received

€17,162,298 claimed

€8,627,712 paid

Compensation Fund developments in the six months to 30 June 2013

In the six months ended 30th June 2013, 165 claims were received. Excluding invalid claims refused, these claims amounted to €1,161,153. Payments were made in the sum of €213,562 in respect of claims and claims amounting to €947,591 are still under consideration.

The net assets of the fund are valued at €18 million as at 30 June 2013 (€16 million in 2012 and €15.5 million in 2011). The annual contribution to the fund was €760 per solicitor for 2013 (€700 in 2012 and 2011). Similar to last year, insurance cover for €50 million in excess of €5 million is in place for the year ending 31 December 2013.

Regulation of Practice activities during the year

The Law Society's investigating accountants conducted approximately 400 investigations of practices this year (the same amount over the previous two years). Like the Complaints and Client Relations Committee, the Regulation of Practice Committee comprises of 3 divisions. The committee met 17 times, for 8 scheduled, 5 emergency and 4 special meetings during the year.

Arising from these meetings the committee decided to:

- Refer 10 (20 last year and 20 the year before) solicitors to the Solicitors Disciplinary Tribunal on foot of findings disclosed in the investigation reports on their practices;
- Refer 16 solicitors (2 last year and 6 the year before) to the Solicitors Disciplinary Tribunal for failure to file accountants' reports on time;
- Refer 1 solicitor to the Solicitors Disciplinary Tribunal on the basis of criminal convictions obtained against the solicitor;
- Refer 1 solicitor (2 last year) to the Solicitors Disciplinary Tribunal for failing to pay for his practising certificate;
- Apply to the High Court for an order freezing the accounts of 6 solicitors (10 last year and 3 the year before) where dishonesty was discovered and in respect of 2 practices which had been abandoned;
- Apply to the High Court to take up the files of 3 solicitors' practices (5 last year);
- Apply to the High Court to suspend the practising certificates of 3 solicitors (9 last year and 6 the year before);
- Levy contributions amounting to €99,600 (€75,750 last year and €123,500 the year before) towards the cost of investigations;
- Apply to the High Court pursuant to Section 18 of the Solicitors (Amendment) Act 2002 for an order preventing a solicitor from practising as a solicitor illegally;
- Apply to the High Court pursuant to Section 18 of the Solicitors (Amendment) Act 2002 for an order to compel a solicitor to co-operate fully with the Society, respond to correspondence and attend meetings as directed;
- Refused to issue a practising certificate to a solicitor in accordance with Section 49 of the Solicitors Act 1954, as substituted by Section 61 of the Solicitors (Amendment) Act 1994, on the grounds that the solicitor had a criminal conviction and had been sentenced to a term of imprisonment in another jurisdiction.

Trends worthy of note include a significant reduction in the number of solicitors referred to the Solicitors Disciplinary Tribunal on foot of findings disclosed in the investigation reports on their practices and a reduction in the number of applications to the High Court to freeze the bank accounts of solicitors' practices, both due to a reduction in economic activity in solicitors' practices in recent years and generally greater compliance with the Solicitors Accounts Regulations. However, there was increase in the number of solicitors referred for failure to file accountants' reports, mainly due to the failure to file closing accountants' reports. The Society is receiving claims on the compensation fund in relation to an increasing number of solicitors' firms, mainly due to claims connected with incomplete work by now closed firms giving rise to fee disputes and complaints.

I noted that consideration of the draft new Solicitors Accounts Regulations has been adjourned by the Council of the Law Society pending the passing into law of the Legal Services Regulation Bill. I understand that it is the firm intention of the Law Society to bring the new regulations into being as soon as possible after the Bill has been passed.

The Chairman of the Regulation of Practice Committee, Martin Lawlor, advised the principle changes proposed to the existing regulations in the Law Society Annual Report (page 33) as:

- Quarterly balancing of the client and office ledgers.
- Mandatory review of client ledger balances for delays.
- Amendment to interest regulations to require solicitors to account for interest at a rate which is fair and reasonable having regard to the amount of money held, the length of time the moneys were held and the need for access to the funds.
- Amendment to the definition of client moneys to exclude moneys received or held other than in respect of an instruction relating to an underlying transaction of a legal or financial nature.
- Accountants' reports to be filed within 3 months of the year end.
- Reporting accountants to review the financial circumstances of the practice, and in defined special circumstances, provide a statement of the financial circumstances of the practice to the Law Society.
- In exceptional circumstances, for the adequate protection of the compensation fund and or for the purpose of determining whether or not to issue a solicitor with a practicing certificate or to impose conditions, the Law Society may require a solicitor to make available detailed evidence of that solicitor's assets and liabilities.

Section 5

BREAKDOWN OF MATTERS REFERRED TO THE INDEPENDENT ADJUDICATOR

This section of my Annual Report highlights the breakdown of cases examined by the Independent Adjudicator from 1 October 2012 to 30 September 2013. These matters, save where mentioned, all went through the Law Society's investigation process within the Regulation Department, by either the Complaints and Client Relations Section (complaints) or the Financial Regulation Section (Compensation Fund claims), and fall into the statistics or figures set out in sections 3 and 4 of this Report.

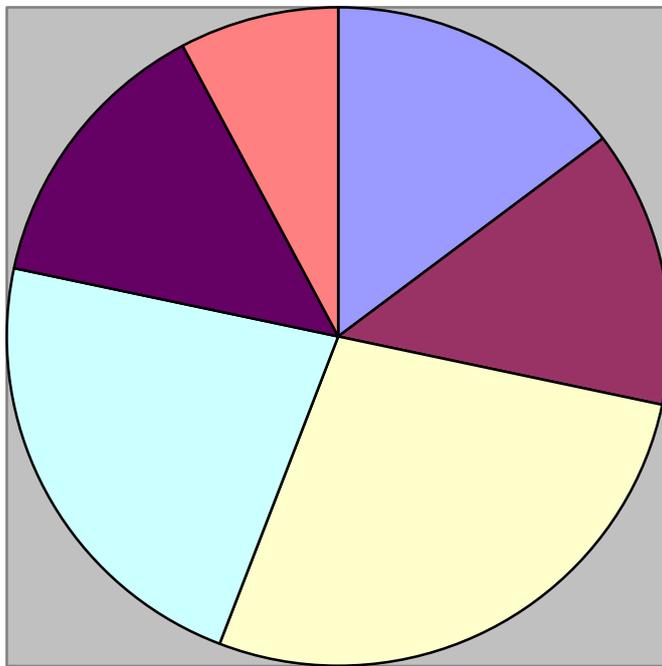
- **My office received 136 new requests to examine matters compared to 174 last year and comparable to the year before at 138** (21.83% decrease to last year and 1.24% increase to the year before). These are broken down as follows:
- **102 (132 last year and 109 the year before)** complaint referrals were examined and adjudicated;
- **16 (19 last year and 14 the year before)** complaint referrals were inadmissible for varying reasons such as the complaint was under ongoing investigation by the Law Society, the complaint was out of time, the complaint had not been referred to/investigated by the Law Society in the first instance, the complaint had been previously examined by the Independent Adjudicator, or the complaint had been referred to the Solicitors Disciplinary Tribunal. (These statistics do not fall within the Law Society's statistics mentioned in section 3 of this Annual Report); and
- **18 (23 last year and 15 the year before)** Compensation Fund claim referrals were examined and adjudicated. (These statistics do not fall within the Law Society's statistics mentioned in section 4 of this Annual Report.)

Breakdown of complaint related matters

- Of the 102 complaints that were examined by the Independent Adjudicator, 6 had been before the Complaints and Client Relations Committee for direction (3 last year), one of which on five occasions.
- 18 of the 102 complaints examined by the Independent Adjudicator prompted correspondence from the Independent Adjudicator to the Complaints and Client Relations Section (16 last year).
- Of the 18 files referred back to the Complaints and Client Relations Section the matters centred around the following issues, some more than once and some concurrently with other matters:

- delay liaising and following-up with complainants and solicitors during the course of the investigation;
 - failure to confirm the final outcome to the responding solicitor;
 - not advising a complainant of his or her right to refer to matter to the Independent Adjudicator;
 - the complaint initiated without a signed complaint form or letter;
 - I sought further investigation or clarification;
 - delay in bringing matters to the Complaints and Client Relations Committee after advising complainants it would be referred;
 - the Law society opened a file in duplicate;
 - the Law Society did not follow through to ensure the directions of the Complaints and Client Relations Committee's decision were fulfilled to completion;
 - my view that Section 68 of the Solicitors Acts should have been sought earlier in the investigation;
 - no record of telephone attendances with complainants on file;
 - engaged in telephone dialogue about a matter with a complainant's spouse;
 - failure of the Complaints and Client Relations Committee to levy costs where, in my opinion, it seemed appropriate to do so;
 - the original complaint was dealt with satisfactorily however not a subsequent complaint added to the file that I deemed required additional investigation;
 - the wording of a Complaints and Client Relations Committee's direction needed to be concur in meaning when communicated to the complainant;
 - the Law Society's closure of file prematurely;
 - a final report on an investigation should not say 'preliminary' when disseminated;
 - content of a Law Society decision letter could have been clearer; and
 - some general handling administration, e.g., not copying attachments to the relevant parties or file mismanagement.
- Of the 18 files referred back to the Complaints and Client Relations Section 5 matters were referred back to the Complaints and Client Relations Committee (with an additional file carried over from last year as the solicitor is long-term certified ill (with medical reports)):
 - My adjudications on the 102 complaint matters that I examined centred upon the following complaint disciplines:
 - Conveyancing **(15)** (36 last year; 29 previous year)
 - Civil **(23)** (29 last year; 27 previous year)
 - Probate **(28)** (25 last year; 21 previous year)
 - Family **(14)** (22 last year; 13 previous year)
 - Personal injuries **(14)** (11 last year; 11 previous year)
 - Employment **(8)** (6 last year; 5 previous year)
 - Criminal **(0)** (3 last year; 3 previous year)
 - See illustration on page 28 which exhibits these matters by the number of complaints received;

Breakdown on complaint matters which were referred to the Independent Adjudicator from 1 October 2012 to 30 September 2013



■ Conveyancing (15)

■ Family (14)

□ Probate (28)

□ Civil (23)

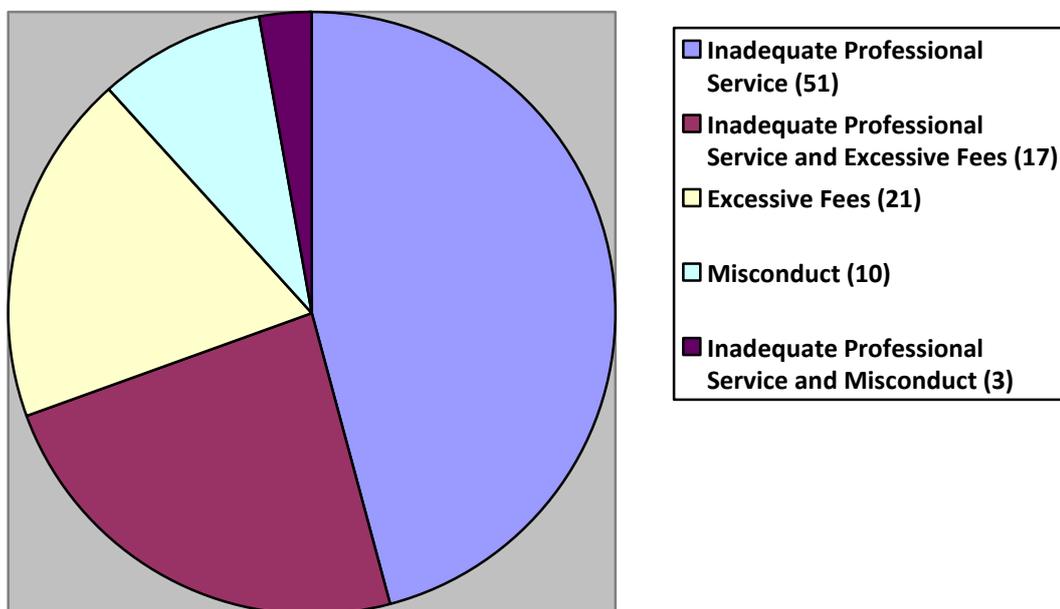
■ Personal injuries (14)

■ Employment (8)

- All complaints adjudicated upon fell into one or a combination of these three categories:
- **Inadequate professional services** (Section 8 of the Solicitors (Amendment) Act 1994);
- **Excessive fees (overcharging)** (Section 9 of the Solicitors (Amendment) Act 1994); and
- **Misconduct** (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).

See page 29 for an illustrative breakdown of complaint categories this year (Compensation Fund claims are separate).

Breakdown on the grounds of complaints which were referred to the Independent Adjudicator from 1 October 2012 to 30 September 2012



- In addition to the 102 complaint matters adjudicated, 19 matters were ineligible for my examination of their contents for the following reasons:
 - matter was under ongoing investigation with the Law Society;
 - not advised whether complaints had been investigated by the Law Society;
 - matter was previously adjudicated by the Independent Adjudicator;
 - matter was referred to the Solicitors Disciplinary Tribunal;
 - sought copy file from a previously adjudicated matter;
 - matter was out of time;
 - the complaint initiated with my Office concurrent with the Law Society;
 - the complainant was not a client of the solicitor (third party complaint); and
 - complainants sought legal advice from the Independent Adjudicator.
- The volume of enquiry calls to this office remain at a similar scale to that of previous years. The majority of calls related to complaint matters as opposed to Compensation Fund matters.
- 16 of the Law Society's *Complaints about Solicitors* brochures were dispatched to persons who did not have Internet access nor were aware that they had to complain about their solicitor to the Law Society prior to referring their matter to my Office.

Breakdown of Compensation Fund related matters

- Compensation Fund claims occur where 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.
- **16** Compensation Fund claim matters were referred to my Office for adjudication (23 last year; 15 year before); 14 had been decided by the Regulation of Practice Committee (9 last year; 14 year before) and 2 had been decided by the Registrar under delegated powers of the Regulation of Practice Committee (14 last year, 2 previous year).
- Of the 16 matters, 4 resulted in my correspondence to the Financial Regulation Section of the Regulation Department of the Law Society for the following reasons (8 last year):
- Delays in the Financial Regulation Section's correspondence with claimants (one file had 14 delays from my examination of its contents).
- Inadequate admittance of professional fee for amount of work done under 'exceptional circumstances' of the *Law Society's Guide to Claiming Refunds of Money Paid to a Solicitor* brochure.
- I requested that one of the matters I adjudicated upon be re-submitted before the Regulation and Practice Committee for further consideration that subsequently resulted in my opinion being directed.

Breakdown of reasons that inhibited the Independent Adjudicator examining files and/or posed difficulties in conducting work

For my 16 ineligible complaints the following sets out a breakdown of adjudicating reasons I continued to encounter whilst examining complaints and Compensation Fund claims:

- Files that were under ongoing investigation with the Law Society when submitted to the Independent Adjudicator for examination (which is a regular occurrence despite all literature advising that complaints must be closed before being submitted to the Independent Adjudicator);
- Complainants/claimants who had been to the Solicitors' Disciplinary Tribunal are not permitted to refer the matter to the Independent Adjudicator;
- 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;
- Complainants/claimants 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;
- Complainants/claimants arriving at the office of the Independent Adjudicator expecting to meet or wait to meet me is generally not permitted practice;
- Letters and calls to the Independent Adjudicator about solicitors acting for another party are outside of my jurisdiction;
- Insufficient details provided by complainants/claimants can prolong the examination of matters. This could include not signing their referral correspondence to the Independent Adjudicator, not advising that the matter is under investigation in the Law Society or that their matter has been referred to the Solicitors Disciplinary Tribunal;
- Lack of differentiation between why a complainant/claimant 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 or Compensation Fund claims;
- Complainants/claimants can be offensive and personally threatening to the office of the Independent Adjudicator. Suffice this to say that I think there is merit in treating people the way one would like to be treated themselves; and
- Unreal expectations on the part of complainants/claimants who expect that the Independent Adjudicator is there to concur with them, award them compensation, etc., because I am a lay person is a regular occurrence. Being impartial is core to my role and it is fundamental to my position that I am neither an advocate nor an apologist for any party. This has been and is my philosophy since taking office.

Section 6

EXAMPLES OF ADJUDICATED COMPLAINTS AND COMPENSATION FUND CLAIM MATTERS

Complaint appeals to the Independent Adjudicator

Under Section 10(b) of the Solicitors (Adjudicator) Regulations, 1997 (S.I No. 406/1997) I can direct the Law Society to re-examine or re-investigate the related complaint made to the Society about a solicitor, where I am not satisfied that the Society has investigated the related complaint adequately. In this regard I set out below some complaint related matters:

Matter 1 – Family

This family related enquiry matter was referred to the Law Society for alleged inadequate professional service reasons and was dealt with as an enquiry file. Whilst I concurred with the Law Society's decision, I was unhappy with the leniency granted to the solicitor for the following reasons:

1. I believed it was regrettable that the Law Society was compelled to write to the solicitor on numerous occasions and that he ultimately responded by emailed letter at 17.57 the evening before the Complaints and Client Relations Committee meeting apologising for the delay in responding to the Law Society stating he had been on vacation and was now involved in a case before the Commercial Court;
2. The solicitor's letter was accompanied by his practice's response, not his response, to the complaint written by his colleague, again emailed the evening before the scheduled meeting;
3. The claimant should have responded to the Law Society's correspondence before going on vacation. I noted that the solicitor said his reason for not attending the following day's meeting was "as explained in our telephone conversation I am currently on vacation". This telephone attendance was not minuted on the Law Society's file. I reiterated to the Law Society the importance of note-taking, such as in this case, that I believe forms parts of the aggregate assessment of their handling of matters.

Further, and fundamental in my adjudicative decision, it appeared to me from my examination of the file that the solicitor had not paid a previous direction of €450 towards the Law Society's costs. I also questioned whether a further levy might be placed on the solicitor for the above reasons. I requested that this matter be referred back to the Complaints and Client Relations Committee with the intention that the investigating solicitor is required to pay the levies.

This matter also led to debate on whether levies could be imposed by the Complaints and Client Relations Committee if the matter was not a formal complaint file. Whilst I was unhappy with the leniency afforded to the solicitor, I understand that there is a difference between a "complaint" and an "enquiry" matter which has an effect on an outcome of directions made by Committees. A "complaint" is opened when the Law Society is satisfied that there is an admissible complaint. An "enquiry" is opened where it is not evident that it discloses matters which can or should be investigated by the Law Society.

The Committee, on its subsequent perusal of the matter, deemed that the first contribution directed towards costs should have been, and now should be, recouped and that no further costs should be directed. The investigating solicitor duly followed up and the costs were paid to the Law Society.

Matter 2 - Probate

This probate complaint matter was driven by the complainants' solicitor about fees charged to his three clients for acting on the administration of the estate where allegedly no Section 68 correspondence was issued. The Law Society initiated an investigation to which the investigated solicitor replied that it was a complex estate and €18,000 was to pay executor expenses. It appeared to the writer that the solicitor had cash flow issues and was granted 12 months to return €10,000 to the beneficiaries plus VAT applicable at the time. In the Committee's decision, the minute stated that the Committee said the "the solicitor could pay over 12 months the sum of €12,100. The parties were agreeable to this" however the Law Society's letter to the solicitor stated he could pay "within 12 months". I believed there was a difference in interpretation of the payment terms of "over 12 months" to "within 12 months" which might imply that payment at the end of the 12 months would be satisfactory. I thought the minutes should have mirrored the Committee's decision. I further believed that the complainants are also "parties" and it might have been preferable to invite their agreement to the 12 month payment term (not the payment amount decision) especially as they had sought the Committee's decision prior to the meeting. I deemed it both unusual and unfair to allow the solicitor a 12 month timeframe to refund monies to an estate.

It should be noted that when I requisitioned the Law Society's file for my examination of its contents I was informed that it remained open pending the Complaints and Client Relations Committee's decision being completed in twelve months' time and was therefore not eligible for my examination. I challenged this on the basis of it being an unreasonable timeframe to ask complainants to await an independent adjudication, and subsequently received the file.

I further requested, as the Law Society's file remained open, what metrics it had put in place to monitor this repayment as the correspondence with the parties and file's contents did not allude to any.

The Law Society's response to my points stated the minute was a draft and as such the 12 month wording was a typographical error. I then sought my comments to be brought before the Complaints and Client Relations Committee under Section 10(a) of the Solicitors (Adjudicator) Regulations 1997. The Law Society then continued its investigation asking the solicitor to comment, who duly proposed a payment term within 9 months to which the Committee agreed. The complainant's solicitor was forthcoming in correspondence and brought further queries which again went before the Complaints and Client Relations Committee. The Committee directed that as no payment proposals were forthcoming from the solicitor, they directed that nine monthly instalments were made, backdated four months. They further directed that the refund of €12,100 should be divided pro rata as per the administration of the estate fee and the circuit court fee. The solicitor responded that all payments to the ten beneficiaries would be paid by June 2013 and the file was duly closed. There was a lot of clerical administration on this estate, and with the Law Society secretariat, which might have been unnecessary with more prescriptive payment terms being communicated as directed. It is worth noting that despite the voluminous correspondence on this matter, the three complainants' benefit was the smallest portion of the refunded monies.

Matter 3 - Probate

The complainant is one of two executrices in this probate complaint matter. The solicitor was not the complainant's solicitor, she acted for the other executor. The complainant alleged the solicitor charged excessive fees and an investigation followed. There was a fractious breakdown in family communications and I believed, upon my examination of the file, that the Law Society demonstrated exemplary investigative and diplomatic handling on an insistent and querulous complainant's matter in which she had written to a number of executives within the Law Society. The complainant pursued her matter to my Office and I concurred with the Law Society's decision and handling. I am

highlighting this matter as those who scream the loudest do not necessarily have a case to be answered in the first place, as in this case.

Matter 4 - Probate

The complainant was co-executor on an estate and allegedly received poor communications from the solicitor in this probate complaint matter. The Law Society investigated and found that the complainant had renounced his position and the estate was being dealt with by his co-executor thus closed the file. The complainant disagreed and wrote to the Director General. The Senior Solicitor in the Complaints and Client Relations then reviewed and re-opened the file. Further questions were asked of the solicitor with regard to beneficiary payments. The Law Society asked the complainant what he thought would be a satisfactory resolution and asked the solicitor if he had any proposals to resolve the matter advising the matter may go before the Complaints and Client Relations Committee. The solicitor advised the matter is closed as both executors had signed letters about the distribution of funds. The Law Society then advised that it would decide if the matter is closed seeking the complainant's response. Despite numerous letters, the solicitor was continually slow corresponding with the parties throughout this aggregate investigation and the matter was referred to the Committee. The solicitor consented to pay €500 to the complainant as an expression of regret for the delays. The solicitor advised that the monies in the estate were not held in an interest bearing account, he believed the beneficiaries were paid and the income tax was completed. The matter went before the Committee and the solicitor's submission was received the evening prior. The Committee gave 28 days for all monies to be paid to the beneficiaries including interest with an additional payment of €200 to the complainant. The complainant remained dissatisfied and came to my Office.

I believed that the file had been closed prematurely at the initial stage of the investigation and the correct decision was made by the Law Society for it to be re-opened so the investigation could continue from which I concurred with the Committee's decisions. I did not look favourably on the solicitor's protracted correspondence with the Law Society and wrote to him to this effect. I also wrote to the Law Society that I was satisfied it re-opened this matter as I believed further actions were warranted. I also advised that I was unhappy with the solicitor's protracted replies to Law Society correspondence, as well as his delays with the complainant, and that I wrote to him to this effect.

Matter 5 - Civil

This enquiry matter initiated from the complainant who was a director of a company that went into liquidation. He alleged that other directors fared better in their termination and redundancy terms led by the solicitor, and that the solicitor allegedly failed to lodge forms in the Companies Registration Office. The Law Society asked the solicitor to respond to this as an enquiry and said it was not being dealt with as a complaint. The solicitor responded that the complainant was not the direct client, the company was, and that all forms were lodged in the Companies Registration Office noting that the complainant had also made a concurrent complaint about the liquidator. The Law Society concluded that as the complainant was not a client he could not complain under Section 8 of the Solicitors' Acts against the solicitor. Upon referral to my Office I wholly concurred with the Law Society's decision yet pointed out that the Law Society should have acknowledged and concluded the correspondence with the solicitor who attentively obliged to the Law Society's request of him. This was acknowledged; I believe it is important that matters are closed with all parties.

Matter 6 - Probate

This articulate complaint was made about the solicitor's fees for work relating to the probate of his late wife and sister-in-law's estates. The Complainant believed the solicitor gave a fee for the probate work at the outset however no estimate was given in compliance with Section 68 of the

Solicitors Acts for additional conveyancing work. The Law Society did not pick up on some information in the early part of the investigation, however this was duly rectified post a thorough file review being completed leading to two requirements being communicated to the solicitor. Firstly, the solicitor was asked to return €1500 to the complainant which he duly did. Secondly, the Law Society found that an efficient service was not provided on the administration and pursuant to its obligation to try and resolve complaints between the solicitor and his client, it recommended that the solicitor go through the file in detail and provide comprehensive Administration Accounts comprising Estate Account, Cash Account and Distribution Account to include dates of when assets/income were received, liabilities discharged, CAT paid for each of the three beneficiaries and distributions made. It asked that the solicitor send copies of the Administration Accounts to the complainant and copy them to the Law Society. This was not done and I believed the Law Society should have followed-up to ensure this was brought to completion before closing its file. I wrote to the Law Society acknowledging the complex matter, observing that some matters were not identified in the early part of the investigation, and sought that the Law Society should follow-up with the solicitor to complete the accounts obligation in a timely manner. My request was acknowledged and with no correspondence received three months later I followed-up with the Law Society for an appraisal. The Law Society promptly advised that it wrote to the solicitor on the date it acknowledged my correspondence informing him that it had re-opened the file at my suggestion. No response had been received from the solicitor despite three letters being sent to him by the Law Society. The solicitor then responded enclosing an Administration Account, which the investigating solicitor deemed to be inadequate as a reflection of the conduct of the administration of the estate. The solicitor was therefore sent a template Administration Account and requested to adapt it to the estate in question. A further two requests had been sent to the solicitor by the Law Society and they appraised the complainant. I continue to monitor this situation and will be following up to ensure this matter is closed soonest. Sadly, at the time of writing, the complainant's son wrote to me advising that his father had just passed away and he wished to continue his complaint. I have just advised him that he would be entitled to receive a copy of the Administration Accounts, the subject of his late father's complaint, provided he was appointed his father's executor and he writes to the Law Society requesting the information.

Matter 7 - Civil

The complainant's new solicitor wrote to the Law Society about the complainant's former solicitor not handing over his file to his new solicitor. The Law Society investigated and the solicitor agreed to give the file to the new solicitor once his outlay was discharged and an undertaking was given that his own and counsel's fees would be paid at the successful conclusion of the hearing. The complainant's solicitor wrote again to the Law Society alleging inadequate professional service complaints. The Law Society responded referring the complainant's solicitor to the Complaints about Solicitors' Information brochure, that says the Law Society cannot direct a solicitor to refund to a client outlays that have actually been incurred. Upon referral to my Office, I believed the correct decision was made about the outlay however I requested that the Law Society investigate the additional inadequate professional services allegations which I deemed required specific response. This is in hand at the time of writing as the Law Society has confirmed it re-opened this file and is referring the matter to the Complaints and Client Relations Committee meeting in December 2013.

Matter 8 - Civil

The complainant believed the solicitor had ceased practising leaving no forwarding address and had a number of outstanding matters with him. Practice Closures in the Law Society said they had not taken the solicitor's files and gave the complainant his home address. The Complaints and Client Relations Section initiated a complaint with the Solicitor, to which the solicitor responded saying he was sick and suffering from "serious depression". The solicitor had also said he would arrange to deliver the papers and file, and forward the Law Society a statement of account. The latter did not

happen and, upon my examination of the file, this did not meet my satisfaction so I requested the Law Society to re-open its investigation. This duly happened and the solicitor was asked to provide (a) a statement of account and (b) advise the position with regard to reimbursement of monies paid to the complainant. The solicitor repeatedly did not respond to Law Society correspondence and the matter was referred to the Complaints and Client Relations Committee. The Committee noted that the solicitor had failed to respond to three letters from the Law Society. The Committee authorised the Law Society to apply to the High Court for an Order pursuant to Section 10A of the Solicitors (Amendment) Act 1994 as amended. The Committee put a stay on that application of seven days to allow the solicitor one final opportunity to respond to the Law Society's letter of May 2013. The Law Society appraised me in July 2013 that the solicitor had passed over the file to the complainant however had not addressed the queries on the statement of account and the reimbursement of monies. The solicitor subsequently furnished the Law Society with a statement of account and proposed to waive all fees for the work done on behalf of the complainant. The matter was back before the Complaints and Client Relations Committee in October 2013 at which the Committee noted the solicitor's proposal to resolve the complaint and considered that once the proposal was complied with by February 2014 then the matter would be marked as resolved. The Law Society appraised me of the outcome noting that the file is marked for review and if the proposal is not complied with the matter would be referred back to the Complaints and Client Relations Committee. The complainant has concurrently been appraised of developments on this matter by the Law Society, as part of its continued investigation, and by myself as I initiated this further enquiry. The complainant is appreciative of actions taken, which can be unusual in such matters.

Compensation Fund appeals to the Independent Adjudicator

The Independent Adjudicator is equally permitted to request the Financial Regulation Section of the Law Society to consider comments on Compensation Fund claim referrals to her office and in this regard some sample matters are set out below:

Matter A – Independent Adjudicator's decision was directed by Regulation of Practice Committee

This claim related to the transfer of title to lands and associated tax work involved in the transfer and mortgage of part of the transferred land. I was dissatisfied with the Law Society's delays in handling this matter. The claimant's solicitors submitted their clients' claim on 16 June 2011 which the Law Society acknowledged on 20 June 2011. The claimant's solicitors wrote requesting status updates on 17 October 2011, 3 January 2012, 23 July 2012 and 3 September 2012. The Law Society responded on 31 August 2012 without an apology solely stating "The above matter is under review and I shall be in contact with you in due course". This letter was over 14 months after the original claim was received. Subsequently the Law Society, by letter dated 14 September 2012 to the claimant's solicitors, noted that they did not have all the attachments to their initiating letter dated 16 June 2011.

It appeared to the writer that there was more work completed on this matter by the new solicitors than the Law Society had admitted. I noted at page 5 of the Law Society's 'Guide to claiming refunds of money paid to a solicitor' reference is made to 'exceptional circumstances'. On this basis I questioned whether the aggregate invoices might be considered exceptional circumstances and under Section 10(a) of the Solicitors (Adjudicator) Regulations 1997 I requested that this matter be brought back before the Regulation of Practice Committee for further consideration.

I was satisfied that the Regulation of Practice Committee decided to pay a further grant for €900 plus VAT in addition to the professional fees of €600 plus VAT previously granted. However, I conveyed a

number of further handling matters that I believed could have been better dealt with such as not informing the claimant's solicitors the matter was going back before the Regulation and Practice Committee in December 2012 (and at my request post my adjudication of its contents) and in its decision letter to them, the Law Society made no reference as to the context of why a further grant was decided. Also, I advised the Law Society that I should have been informed of this further decision concurrent to the claimant's solicitor and not had to write to the Law Society for an appraisal, especially since I had earlier sought a response to my letter referring the matter to the Regulation of Practice Committee.

Matter B – Mortgage and lease matter

The claimants allege they paid the solicitor €6,628.20 in 2008 in respect of mortgage and lease of unit and assumed everything was complete. The claimant shows proof of payment and an additional €307.50 paid to another solicitor to complete. The Law Society corresponded and investigated well, and in a timely manner. They brought the matter before the Regulation of Practice Committee who found that the only thing the solicitor did not do was provision of the title documents and send the certificate of title to the bank. They found that there were no specific monies set aside for this purpose so no misappropriation of funds. The claimants were far from happy and believe they are entitled to compensation. There is a good minute of a telephone attendance on the file between the Law Society and the claimant from which the Law Society seek further information. The matter was brought back before the Committee highlighting that the claimants would accept €150.00 however the additional material supplied did not provide substantiation of the allegations purported. There is a thorough 3-page accountant's report with this matter (the first I had seen of the new format Financial Regulation now use). I believed this file proved good handling and a professional claim administration investigation. It also highlights that the same amount of administration can go into small claims as much as big claims and that supporting documented evidence is paramount to making a Compensation Fund Claim.

Matter C – Companies monies and stealing allegation

The claimant made a Compensation Fund Claim following complaints made to the Complaints and Client Relations Section which were not upheld. This file shows good congruence of information between this Section and the Financial Regulation Section of the Law Society with appropriate notes to file. The claimant was a former director of a company and made allegations about their solicitor's dealings of matters. The Law Society's Financial Regulation Section sought information and clarification about a number of matters namely, the contractual arrangements between the purchasers of the properties and the claimant, clarification of the sale prices for the sites at the time, monies due to the company and to the claimant, clarification of the professional fees and proof of €5,000 professional fees being paid. The claimant said he had already had an exhausting process with his complaints being investigated by the Law Society and had now gone to the Gardaí to have them further investigated. The Law Society had been somewhat slow in correspondence at the beginning of this investigation however this was regularised. The matter went before the Regulation of Practice Committee with the submission of a good claim summary that no documentation was provided to substantiate that the professional fee for the sale of properties should have been a percentage of the sale price. The claimant was vexed by the process and gave the Law Society his Gardaí reference investigation number saying that he will be issuing criminal proceedings against the solicitor as he believes, contrary to the Law Society's thorough investigation and my examination of the matter, that the solicitor stole from him.

Matter D – Conveyancing matter

The claimants' present solicitor submitted a Compensation Fund Claim to the Law Society alleging that the claimants' solicitor received mortgage funds which were passed on to his clients, save €49,915 that the solicitor held. The Law Society completed a 14 page investigation report, and the

matter was considered and decided by the Regulation of Practice Committee. The Committee was not satisfied that the claimants did not take the benefit of the €49,915 balance of the mortgage funds that was claimed. There was much correspondence internally within the Law Society on this matter and neither dishonesty nor negligence was found. Upon my examination of the file, I concurred with the Law Society's decision and was satisfied with their handling, save some initial time delays in responding to correspondence that I did not merit highlighting on that occasion. The Law Society and my Office were subsequently put on notice that the Law Society's decision and my decision were subject to Judicial Review. This was the first Judicial Review in my Office's tenure, albeit as a second named defendant, and the matter settled between the plaintiff and the first named defendant, namely the Law Society.

Section 7

OBSERVATIONS ON COMMITTEE ATTENDANCES AND RANDOM REVIEWS

On two occasions throughout the year I attended the Regulation Department to randomly review files that had not been referred to my Office. This assists towards validating my own satisfaction that files are handled and managed correctly by the relevant sections of the Regulation Department of the Law Society. I randomly select a number of files from the listings of both the Complaints and Client Relations Section and Financial Regulation Section, and then the selected files are made available for my inspection in the Law Society to review.

I observed on each of the three divisions of the Complaints and Client Relations Committee twice and the Regulation of Practice Committee three times throughout the year.

The following are my comments from my random reviews and observations related to Committees:

- I was pleased to see that the Law Society drafted a supervision agreement, and supervision guidelines for solicitors, who are limited to practising under the supervision of another solicitor approved by the Law Society pursuant to having been through an investigative process. This includes such information as how, what, when, etc. supervision should occur. I have observed this being discussed at a few committee meetings and believe it puts structure and compliance on supervision.
- A solicitor under investigation is normally encouraged by the Law Society to finish the matter, the subject of the complainant's grievance. In cases where the solicitor no longer holds a practising certificate there could be seen to be a contradiction between the Law Society's aim to assist a complainant in having their business completed and the Law Society's duty to protect the public by ensuring that solicitors without a practising certificate do not provide legal services.
- The chairmen often point to the 'Consult a Colleague' scheme that is regularly advertised in the Law Society Gazette, and solicitors should not be reticent to engage.
- A bugbear of mine since taking office has been solicitors seeking adjournments at the last minute. I am pleased to see that the Law Society advise in writing that late adjournments are only sanctioned for medical grounds on receipt of a medical report, not a medical certificate. They further advise that if the solicitor does not attend or produces correspondence the evening before the committee, etc., then the committee may direct the solicitor to contribute to the costs thereby incurred, and failure to comply with such a direction may be a conduct issue. Such actions when followed through wholly meet my satisfaction which I encourage. I find it difficult to understand how solicitors engaged in a process with their regulatory body do not have the good grace to correspond or comply as directed.
- Following on from the last point, I believe it is very disrespectful when solicitors submit information the evening before or on the morning of a committee meeting. Committee members allocate time to peruse papers in advance and reading additional papers on the day can have an adverse affect on diarised attendances before them. At one meeting I observed this year one lay member asked for separate time to read and consider. I recall observing last year that a chairman advised that solicitors' failure to respond to correspondence in a timely

manner could lead to administration costs being levied against them. I have been, and remain, avidly in favour of costs being levied if such administration costs are incurred.

- Perhaps related to the last point, I noted that some solicitors representing solicitors can be tardy in responding to Law Society correspondence with responses delivered on the day or day before a meeting. I believe such representing solicitors should lead by example and seek their clients' responses in a timelier manner in order to make appropriate submissions to the Law Society for dissemination to the committee members in early course.
- If a solicitor is required to attend before a committee meeting, then they must attend even if represented by a solicitor or barrister. Perhaps the Law Society might consider imposing a levy if they do not attend? A requirement from one's regulatory body to attend a meeting is a requirement to attend, period.
- Related to this point above, perhaps the Law Society's letter inviting solicitors to attend before a committee could be altered to say that a finding may be made with or without their attendance?
- At a Financial Regulation meeting I observed within the year, it was suggested that the Registrar should issue another practice note on the requirement for a solicitor who is appointed as an executor to include a "charging clause" in the will in order to be entitled to charge a professional fee and the invalidation of a charging clause by the solicitor witnessing the will. I recommend this.
- I observed a discussion that where a complainant is nebulous a committee could invite him or her to attend before them to ascertain full facts.
- It is fair to say that some solicitors make great strides and others not in their preparation and attendances before committees, yet few apologise for being there in the first place and the time and resources their matter takes.
- I heard one chairman say to a solicitor before his committee a number of times "pull up your socks and put them on first" to get his point across! How true, as if solicitors took the actions they were directed to do from the committee then it would save everyone time, energy and resources.
- I am cognisant that clients can sometimes be slow giving instructions to their solicitor and then expect turnaround actions to be fulfilled.
- Where a committee directs a full a comprehensive response from a solicitor by a certain date, it must be that, full and comprehensive, and unequivocally answer the questions or update accordingly as directed.
- I think it is worth noting that the legislation refers to a complaint about a solicitor and the Complaints and Client Relations Committee has no jurisdiction to deal with complaints against a firm. This was discussed by a committee I observed upon.
- The Law Society, through the committees I observe, continue to apply to the High Court to get solicitors to respond to Law Society correspondence. When most professions, and people, are more prudent financially in current times, I think the Law Society is certainly no exception. I observed the President's List in the High Court at least six times this year where solicitors'

names are reamed off for such reasons. Whilst outside of my remit I wish to comment in a personal capacity that there are a few solicitors who feature regularly and who sometimes do not even have the good grace to attend: it is astonishing. I also find it increasingly frustrating when repeated adjournments occur in the High Court many times over.

- With regard to undertakings from financial institutions (which fall outside my remit due to being third party complainants, save for my observing committees' discussion and handling of such matters as a committee), I noted a committee discussion that some banks are proactive in meeting solicitors directly to try and expedite, and ultimately resolve the impasse which appeases me. Undertakings, whilst reducing, still feature highly on the aggregate complaints to the Law Society. Undertakings comprise 66.61% of the aggregate complaints made to the Law Society this year, yet it is worth noting that undertakings are down 34.47% on the aggregate complaints made last year (see page 42 of this Annual Report for more detail).
- Solicitors are often unfamiliar with their own files when attending before a Committee and can, in fact, be complacent about their attendance at a Committee. This shows nobody up but themselves. At the most recent meeting I observed the solicitor, who was being represented, cleaned his nails showing what I believed to be utter contempt for the process. I was also horrified to hear that one solicitor apparently threw a pen at a chairman recently during a meeting. There is no excuse for such disrespectfulness.
- I observed, from the meeting agendas at which I was attending, that a lot more solicitors than previously were required to attend before committees this year.
- I often ponder whether solicitors attending before a committee of their regulatory body understand that an Order directed by a committee must be complied with and that the Law Society and committee costs associated with such an Order must be discharged. Failure to do so leads to a risk of multiple complaints (as seen on pages 20 and 21 of this Annual Report) and referral to the Solicitors Disciplinary Tribunal.
- I observed that whether or not a solicitor rectifies the complaint before a committee, if a committee made a direction it must be complied with.
- I think it is a good practice that chairmen introduce to all attendees the people/roles around the table on all occasions. I like that one division has the lay members, solicitors and secretariat sitting in that order which can be easier for attendees to understand each one's perspective when questions are posed to them.
- It is noted that that there can be delay in Land Registry dealings, for example, a delay in having a matter mapped in the Land Registry is not a fault of solicitors and complainants need to be patient in this regard as this can be a factor outside of their solicitor's remit.
- With regard to Compensation Fund claims, I observed last year and again this year that claimants expect the Law Society to do lots of calculations and sort through their paperwork. I believe claimants should be obliged to make an orderly paper submission with reasonable calculations done. I wondered whether the Financial Regulation Section considered altering its requirements of claimants in their printed documentation?
- Where a complaint clearly discloses evidence of misconduct that should be a Solicitors Disciplinary Tribunal referral matter, it may still be important to try and resolve the complaint as much as possible for the benefit of the client before referring the matter to the Solicitors

Disciplinary Tribunal. A premature referral to the Solicitors Disciplinary Tribunal may not be in the best interests of the complaint in hand. (At the time of writing I await receipt of the Solicitors' Disciplinary Tribunal Annual Report, which I expect will have enhanced numbers of referrals to it this year.)

- Levying costs at the end of a file is common so that a solicitor can first rectify or comply with the Committee's directions (as applicable) to resolve the matter as deemed appropriate. I think a question ought to arise as to whether a practising certificate should be issued while levies remain unpaid? I am cognisant that the Law Society may have difficulties in terms of its statutory powers in this regard and am aware the Law Society is examining this issue.
- Practices are inspected not only by investigating accountants but also by investigating solicitors as appropriate, and there continues to be, from my random reviews, a good correlation of data between various Law Society sections. Also the files reviewed in my random reviews are consistent with my observations of committees and matters coming to my Office.
- I observed a complaint related matter where the complainant withdrew his complaint (perhaps where the solicitor said he would not charge him if he withdrew the complaint), and the Law Society continued the complaint as they believed it was a misconduct issue and had a duty to do so.
- In my last two Annual Reports I asserted that tablet devices should be used by the committees. Whilst appreciating it is an upfront cost I believe a cost benefit analysis would see this as a prudent decision thus discarding the voluminous paper, secretariat resources, distribution costs, physical risk carrying such papers, etc. for perhaps 1500 pages per person per meeting. I was pleased to see on page 33 of the Law Society's Annual Report 2012/13 that the "paperless meeting" project using tablets that piloted with the Regulation of Practice Committee in October 2012 was formally adopted in April 2013. I have observed on this paperless meeting project three times which I believe runs well. A year on though I would like to know why this has not as yet been rolled out for the equally voluminous Complaints and Client Relations Committee meetings?

Section 8

OBSERVATIONS ON COMPLAINTS AND COMPENSATION FUND CLAIMS TO THE INDEPENDENT ADJUDICATOR

This section expresses my observations on the Law Society's handling of complaints and Compensation Fund claims by the Complaints and Client Relations Section and Financial Regulation Section, followed by additional comments that apply to both Sections.

Observations on complaint handling

The Independent Adjudicator's comments on the Law Society's complaint handling statistics

The following are my views on the Complaints and Client Relations Section's statistics this year:

- ***New complaints received by the Law Society dropped 13.18%*** (968 this year to 1115 last year);
- ***The aggregate investigated complaints dropped 13.4%*** (2144 this year to 2476 last year);
- ***If complaints relating to undertakings are removed from the Law Society's statistics, the overall complaint numbers are down considerably to 39.13%*** for remaining misconduct, inadequate professional services and excessive fees complaints (29.39% last year);
- ***Complaints relating to undertakings, whilst remaining very high, dropped 25.64%*** (1288 this year to 1732 last year) ***and were 74.97% of the aggregate admissible misconduct complaints*** (compared to 82.99% last year);
- ***Of the 2116 admissible complaints (2453 last year), leaving aside the acerbic 1288 undertakings complaints (1732 last year), the remaining 828 aggregate complaints relate to other misconduct, inadequate professional services and excessive fees*** (726 last year);
- ***Referrals from the Complaints and Client Relations Committee to the Solicitors Disciplinary Tribunal increased to 181 referrals from 116 last year, and that there are a further 173 complaints about undertakings referred to the Solicitors Disciplinary Tribunal subject to a stay;***
- Inadequate professional service complaints totalled 314 of the aggregate 2116 complaints (14.83% of all complaints, by comparison to 10.84% of all complaints last year). There was an increase of 18.05% in complaints relating to inadequate professional services to last year. Of these delay increased by 27.55% to last year (125 from 98) and failure to communicate complaints increased 46.42% on last year (82 from 56).
- Excessive fees dropped to 84 complaints this year by comparison to 100 complaints last year.
- There were 968 new complaints closed this year by comparison to 1115 last year; 1016 new complaints are under investigation by comparison to 1183 last year; 132 are pending before the Complaints and Client Relations Committee by comparison to 155 last year. In aggregate there was a drop of 13.73% of new complaints from 2116 this year to 2453 last year;

- Of the 968 cases that completed, the number of complaints that resolved was 501 (650 last year) and there were 12 recommendations made and 8 directions.
- There was an increase in referrals to the Solicitors Disciplinary Tribunal directed by the Complaints and Client Relations Committee (181 this year to 116 last year) of which an astonishing 173 (95.37%) related to undertakings.
- Reprimands from the Complaints and Client Relations Committee were down to 7 from 15 last year;
- Costs levied increased to €34,850 from €23,750 last year. (I am aware that not all monies are received as many solicitors have little or no money to pay.);
- There has been a significant reduction (16%) in complaints relating to excessive fees over the last three years (84 allegations this year, 100 last year, 118 the previous) perhaps concurring with market conditions;
- Inadequate professional services complaints increased 18% to 314 from 266 last year;
- Aggregate misconduct complaints to include undertakings referred to above is down 17.68% on last year to 1781 from 2087;
- Last year counsel's fees were added as a new category of complaints to the Law Society's statistics and I note they have decreased to 34 from 40 last year;
- Last year 1,729 of the complaints investigated were made by solicitors against their colleagues which has nearly halved to 873 this year. This therefore means that the remaining complaints are made by parties other than solicitors;
- I observed an increase of 465 new matters (411 last year) were referred to the Complaints and Client Relations Committee by the Secretariat;
- Relating to misconduct I see that failure to communicate, failure to hand over files and failure to account have each increased on the previous two years (see page 45 of this Annual Report);
- Litigation matters is the highest area for complaints relating to excessive fees (39 of 100 this year and 39 of 118 last year);
- In aggregate there were fewer decisions made relating to multiple complaints such as less conditions imposed restricting solicitors to practice as an assistant solicitor (4 this year to 15 last year). However more conditions were imposed to assert better solicitor practice (e.g., attendance at course, undergo risk management audit, maintain register of complaints) (7 this year to 4 last year);
- The number of solicitors against whom multiple (5 or more) complaints are made are similar to previous years, yet it is astonishing to observe one solicitor had 156 complaints on which I have no doubt, and am fully satisfied, that the Law Society are taking, or have taken, all appropriate measures.

Decrease in complaint numbers

As referenced above it is good to see that new complaints received by the Law Society are down

13.18% to last year (968 this year to 1115 last year) whilst the aggregate investigated complaints this year dropped 13.4% (2144 this year to 2476 last year).

Complaints relating to undertakings

The Solicitors Disciplinary Tribunal in its 2011 Annual Report (page 8) sets out an explanation of an undertaking namely *“Both colleagues and banks rely on the integrity of solicitors when accepting undertakings. A solicitor’s undertaking is his bond, and must be regarded in that light. There are no exceptions to that rule. Likewise, a failure to reply to a bank’s correspondence in relation to an undertaking is unacceptable”*. This is the best definition I have come across to define undertakings.

Whilst remaining very high, misconduct complaints relating to undertakings dropped 25.64% (1288 this year compared to 1732 last year) and were 74.97% of the total admissible misconduct complaints this year compared to 82.99% last year).

60.86% of the aggregate complaints handled by the Law Society this year (70.61% last year) were undertaking-related and mostly complaints from financial institutions where the solicitor has failed to register the bank or building society’s mortgage and deliver up the registered owner’s deeds. A smaller but significant category is where a solicitor acts for developers and undertakes to transmit to the developer’s bank the sale proceeds of each house in a development and they do not do so.

As undertakings are generally submitted by financial institutions, they are not “clients” and therefore not permitted to refer their matters to my Office. Of the current 39.13%* admissible complaints being handled by the Law Society and eligible for referring to my Office (bearing in mind complainants can come to my Office within a 3 year period), my adjudication statistics remain comparable to the Law Society’s statistics as set out in section 5 of this Annual Report. I am pleased to see that some banks are amenable to constructive discussion with solicitors about undertakings affecting them. This in turn possibly alleviates some of the correspondence and investigation through the Law Society.

(*39.13% = 1288 undertaking related misconduct complaints from 2116 being the total number of admissible complaints to the Law Society this year.)

Multiple complaints

The number of solicitors who have multiple complaints against them have featured in my Annual Reports year on year and I am cognisant that the Law Society endeavours best practices over such solicitors that affect not only the individual’s clients, the profession at large, the Law Society’s brand and reputation, and of course themselves. I noted a reduction in conditions imposed restricting solicitors to practice as an assistant solicitor however a welcome increase in imposed conditions to performance manage such as, attendance at courses, risk management audits, maintain register of complaints, etc.

It could be perceived that the figures for multiple complaints contained in this year’s statistics, and indeed last’s year’s, may give a somewhat distorted picture, insofar as in some cases, multiple complaints were made by financial institutions against solicitors who had provided undertakings, and then were withdrawn within a very short space of time. In these cases, the complaints were made because the solicitor did not reply to the bank (and were justified on that basis) but on investigation by the Law Society it transpired that there was no underlying problem with the undertakings given.

Section 68 of the Solicitors (Amendment) Act 1994

It is hard to believe that the Section 68 guideline is now nearly 20 years in operation and that, whilst to a much lesser degree, solicitors can still be non-compliant with their obligations under this Section 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.] The Law Society in many cases addresses non-compliance of Section 68 obligations by proposing that the solicitor concerned discount a portion of the fees payable.

Compliance with Section 68 obligations can still often be nebulous for clients. Whilst, thankfully this matter does not seem to be as big an issue as in previous years of my report, I proffer that solicitors should be clear, fair and transparent in their written communications about the prospective fees they will charge their clients. I encourage solicitors to regularly audit their current processes to ensure it is fit and proper for the services currently provided. And, importantly, if additional services will be delivered, such as conveyancing work leading on from a probate matter, then an additional Section 68 letter should be given to the clients for that piece of work.

It is worth noting that solicitors sometimes neither apparently know or are remiss that they are obliged to give a Section 68 letter to a beneficiary of an estate.

To conclude my views on the Section 68 legislation, I am aware that the proposed provisions in respect of information in relation to legal costs which are included in the Legal Services Regulation Bill 2011, when enacted, will trigger a complete review of this whole area as new precedents will possibly be needed to comply with the new requirements.

Increase in complaints against solicitors no longer practising

It should be noted that the Law Society continues to exercise its regulatory function over solicitors who have ceased to practice. Even though a solicitor may not apply for a practising certificate in the current year, they can be disciplined as long as they remain on the roll of solicitors. Solicitors remain on the roll indefinitely unless they are struck off or apply to have their name removed. Even where a solicitor has been struck off or suspended the Law Society may continue disciplinary proceedings in order to secure High Court orders that may be relied upon in the event that the solicitor applies to go back on the roll at some time in the future.

Changes in run-off cover

Effective from the beginning of this year I am aware that solicitors can now retire from practice without making any further payments to obtain run-off cover which I expect is a welcome development.

Reduction in number complaints

As stated in the preamble to this section of my Annual Report, if complaints relating to undertakings are removed from the Law Society's statistics, the overall complaint numbers are down considerably to 39.13%. As set out above in section 3 of this Annual Report, there are 2116 admissible complaints this year, of which 1288 related to undertakings leaving the remaining 828 complaints in aggregate relating to other misconduct, inadequate professional services and excessive fees. This presumably reflects the contraction in the economy and the significantly reduced number of transactions conducted by solicitors.

Complaints and Client Relations Committee directions

I noted that the Complaints and Client Relations Committee directed the payment of €34,850 in contributions from solicitors towards the costs incurred by the Law Society as a result of solicitors' failure or delay in replying to the Law Society (€23,750 last year).

I have challenged the Law Society previously on why its costs are not recovered from the solicitor where a finding was not made but unnecessary costs were incurred because the solicitor did not respond to the Law Society. As is clear from my views in this Annual Report, I have unwavering scant regard for solicitors who unduly delay their response to their professional body's correspondence. Why should compliant solicitors pay [indirectly] for their colleagues' recusant neglect of Law Society correspondence? The costs include the investigating legal executive summarising the matter, the administration time, inviting the solicitor to attend a meeting, all members of the Committee having to read all the papers, photocopying, secretarial support, etc. It should be clarified that I am referring to the costs that are incurred by the Law Society when it is forced to refer the matter to a Committee because the solicitor has not replied.

As also advised in the preamble to this section of my Annual Report, I note referrals from the Complaints and Client Relations Committee to the Solicitors Disciplinary Tribunal increased from 116 last year to 181 referrals this year, and that there are a further 173 complaints about undertakings referred to the Solicitors Disciplinary Tribunal subject to a stay (an opportunity to resolve the matter before the referral proceeds).

Referrals to the Solicitors' Disciplinary Tribunal

The Chairman of the Complaints and Client Relations Committee, Andrew Cody, said "*Unfortunately, there has been a significant increase in the number of complaints that have been referred to the Solicitors Disciplinary Tribunal. These are cases that have been in the complaints system for some time, but have ultimately proved incapable of resolution*". (Law Society Annual Report 2012/13, page 25). I have observed numerous times chairmen being forthright to solicitors about it being in their best interests to resolve the matters before them or they could risk referral to the Solicitors Disciplinary Tribunal.

Further to the above point, I remain satisfied that the backlog of referrals to the Solicitors Disciplinary Tribunal has much improved and is no longer of major concern to me as in the past. A few years' ago the Regulation Department appointed a firm of outside solicitors to handle some of the referrals which appears to be working well as the backlog has decreased substantially. Whilst this has been an additional cost on the Regulation Department, I think the benefits speak for themselves with reduced delays and enhanced customer service. The normal procedure is that all matters referred to the Solicitors Disciplinary Tribunal are lodged within a three month timeframe, and may in fact be quicker depending on the matter. I believe a client (singular, plural or a body) who has gone through a process with one section of the Law Society, namely the Complaints and Client Relations Section, should have a seamless and equally time-consistent process moving to a subsequent section or to the outsourcing facility. For the Complaints and Client Relations Committee (made up of solicitor and lay members) to perceive that a referral to the Solicitors Disciplinary Tribunal is required should be taken to be a prima facie request for a prompt referral of the solicitor in question within three months in all cases without exception.

Solicitor Disciplinary Tribunal sittings

Unfortunately, however the increase in the number of referrals to the Solicitors Disciplinary Tribunal, and the rate at which they are being lodged, means that the Tribunal itself is under pressure – the

backlog has moved from the Law Society to the Tribunal. As the Tribunal is not subject to my remit I will not comment further.

Advertising misconduct related complaints

There has been a notable increase in the number of complaints relating to advertising which I understand are mainly in the area of personal injuries. There were 22 complaints this year by comparison to 4 last year. The Chairman of the Complaints and Client Relations Committee, Andrew Cody, stated in the Law Society's Annual Report (page 25): "*The Committee has noted an increase in the number of complaints made about solicitors advertising and will take appropriate action where advertisements are deemed to be in breach of the regulations*".

Observations on the Law Society's Compensation Fund Claims

The Independent Adjudicator's comments on the Law Society's Compensation Fund claim statistics

The following are my views on the Financial Regulation Section's statistics this year:

- There was a **9% increase in the 266 Compensation Fund claims** received by the Law Society this year by comparison to 244 in 2011 and 255 in 2010;
- ***There was a decrease in the number of all types of applications to the High Court for orders to include applications to suspend practising certificates*** (see page 24 for breakdown of numbers).
- ***There was an increase in referrals to the Solicitors Disciplinary Tribunal relating to failure to file accountants' reports*** (16 referrals this year to 12 last year);
- ***9 solicitors had their practising certificates suspended***, by comparison to 6 in 2011 and 11 in 2010;
- I understand that the Law Society is receiving claims on its Compensation Fund in relation to an increasing number of solicitors' firms, mainly due to claims connected with incomplete work by now closed firms giving rise to fee disputes and complaints;
- I was pleased to see that the Law Society applied to the High Court pursuant to Section 18 of the Solicitors (Amendment) Act 2002 for an order to compel a solicitor to co-operate fully with the Society, respond to correspondence and attend meetings as directed. I have notably little regard for solicitors' dismissal of their regulatory bodies directions;
- I was pleased to see that there has been a significant reduction in the number of solicitors referred to the Solicitors Disciplinary Tribunal on foot of findings disclosed in the investigation reports on their practices and a reduction in the number of applications to the High Court to freeze the bank accounts of solicitors' practices, both due to a reduction in economic activity in solicitors' practices in recent years and generally greater compliance with the Solicitors Accounts Regulations;
- I noted a refusal by the Regulation of Practice Committee to issue a practising certificate to a solicitor on the grounds that the solicitor had a criminal conviction and had been sentenced to a term of imprisonment in another jurisdiction; and

- Whilst the number of claims are up I believe that there are concurrently more small claims for refunds of fees and outlays which are often time consuming to investigate (as exemplified in my sample matters referred to my Office in section 4 of this Annual Report). I also observed that some claimants, or their solicitors, can be parsimonious in preparing the paperwork submitted to the Law Society thus taking more time for the Law Society to investigate. In addition, many such claims are negligence matters that are not covered by the Compensation Fund yet they take considerable time processing and dealing with follow up correspondence.

Comment on the Financial Status of the Compensation Fund

The Chairman of the Regulation of Practice Committee, Martin Lawlor, commented on the financial status of the Compensation Fund in the Law Society's Annual Report: "*The income and expenditure account of the compensation fund reflects a surplus (representing an excess of income over expenditure) of €680,938 for the year ended 31 December 2012, as compared with a deficit of €998,052 for the year ended 31 December 2011. The increase of €1,678,990 in the surplus for 2012 as compared to 2011 is attributable to an increase in 2012 of €3,103,089 in income, an increase of €1,447,696 in expenditure, as compared with 2011, together with a decrease in taxation amounting to €23,597*". (Law Society Annual Report, 2013, page 32). These surplus accounts are positive and admirable as I noted there was a *deficit of €1,247,198 in the income and expenditure for the year ended 31 December 2010*. In reviewing at the Law Society's audited annual accounts I also noted favourable developments.

Nature of Compensation Fund claims

I have observed that the nature of Compensation Fund claims received over the last number of years has changed with some of the high media profile Compensation Fund claim cases going back to 2007, the year I took office. Claims now seem to be more in relation to fees paid and the extent to which the Compensation Fund is liable to pay those claims is not always clear. In many cases, it appears, claimants are finding that work has not been completed and they are looking for refunds of all fees paid to the solicitor concerned, without any allowance whatsoever for the work completed by the solicitor.

Regulation of Practice Committee's Remit

The Regulation of Practice Committee administers the Compensation Fund, which the Law Society is required to maintain in order to compensate clients for losses arising due to dishonesty on the part of solicitors or their employees. I am often asked about dishonesty and think it is important to be transparent that grants from the Compensation Fund are made in relation to losses that were sustained "in consequence of dishonesty" on the part of a solicitor. As such, in considering claims, the Law Society's Regulation of Practice Committee is concerned only with acts or omissions that constitute dishonesty. The Compensation Fund is governed by Section 21 of the Solicitors Act 1960, as substituted by Section 29 of the Solicitors (Amendment) Act 1994, and amended by Section 16 of the Solicitors (Amendment) Act 2002, which provides that grants are made in respect of losses sustained "in consequence of dishonesty" on the part of a solicitor.

The Regulation of Practice Committee also polices the profession's compliance with the Solicitors Accounts Regulations and with aspects of the Solicitors Acts not assigned to other regulatory committees. Examination of this latter obligation falls outside the remit of my Office.

Administrative handling delays

In the past I have commented about administrative handling delays in investigating Compensation Fund Claims. This has improved however I still encourage communication with claimants and/or their solicitors if delays are likely to occur on an investigation. There was one matter this year that had particularly excessive delays without adequate communication to the claimants' solicitor, and

separately, further to my referral back to the Regulation of Practice Committee, required a further grant for professional fees from the Regulation of Practice Committee, which I am pleased to say was duly acceded to.

New accountants' report format

I noticed early in the year that a new format for reporting accountants' views on compensation fund claims was initiated and a new layout of content presented to the Regulation of Practice Committee which I welcomed.

Judicial Review

During the year my Office was put on notice of a Judicial Review subsequent to my decision on a Compensation Fund matter. I was the second named defendant and the Law Society was the first named defendant. I was represented by a solicitor and counsel yet the matter settled in early course with the first named defendant thus concluding the matter. This was the first Judicial Review notification to the Office of the Independent Adjudicator since its inception.

General comments that arose throughout the year

- At the DSBA Practice Management Seminar – Regulation Update 2013 held on 28 February 2013, a presenter, Keith Walsh, posed two maxims that solicitors should remember when dealing with complaints from their regulatory body. Firstly, the solicitor who acts for himself has a fool for a client. If a solicitor has a possible complaint, they should ask a colleague for advice, listen to the advice and deal with it immediately. Secondly, the solicitor should de-escalate the complaint. If possible [and it is not always possible nor advisable] they should permit the complaint to be resolved or adjudicated at the earliest possible opportunity. I cannot put these maxims any clearer.
- It is important for complainants to remember that the Law Society's function in addressing complaints of professional misconduct is primarily disciplinary; it is not a court and cannot make the type of orders some complainants expect.
- Differences of opinion arise frequently between a solicitor and their client. The Law Society cannot reconcile two different versions of events when facts differ between the complainant and the solicitor. I also observed that complainants can sometimes be economical with the truth and facts in their complaint to the Law Society.
- Sometimes complainants and claimants expect the Law Society to go beyond their remit. The Solicitors Acts do not extend to a detailed forensic examination of the type that may be required in order to deal with various individual queries raised in correspondence. The Law Society's emphasis is on resolving disputes where appropriate.
- In general the Law Society can only deal with complaints that would arise in the context of a solicitor/client relationship. The Law Society's disciplinary function does not extend to the regulation of a solicitor's personal affairs or to disputes which arise outside the confines of the solicitor/client relationship.
- From 1st January 2013, it is no longer possible for a solicitor to act for both sides in any conveyancing transaction, including voluntary transactions. This legally formally avoids a situation where a conflict of interest arises.

- I note the Law Society was included in the schedule of regulated bodies within the Ombudsman Act 2013 when it enacted this year. This, accompanied by the Legal Services Regulation Bill 2011, brings substantial change for the professional body.
- Part I of Law Society's Complaint Form asks the complainant to sign authorisation confirming the solicitor may disclose details concerning his/her complaint or any information pertinent to the matter to the Law Society. Sometimes complainants overlook this and have a displaced grievance.
- Sadly a chairman of a division of the Complaints and Client Committee, James O'Sullivan, passed away during the year and I commend his good work and contributions.
- I think the Law Society should have a more structured orientation for new members joining a committee and meeting each other with a risk register for contingencies when they occur, if for example a quorum cannot be met.
- When a solicitor signs a matter on behalf of the principal of a firm, then the principal must stand over the person's actions and be responsible.
- A client can change solicitors at any time but would need to weigh up the effect of withdrawing instructions in relation to what stage the file is at with the importance of having full confidence in one's solicitor. Also changing solicitors can result in a delay on the file.
- The majority of complaints submitted to the Law Society, and that come to my Office, are about small solicitor practices.
- The Law Society do, and must, keep focussed on what is and can be before them when investigating a matter.
- I think it is worth pointing out, for all parties, reappraisal of what a client can expect from a solicitor as:
 - every client is entitled to receive a prompt and efficient professional service from his solicitor and can make a complaint to the Law Society if he feels he has not received the appropriate level of service;
 - a client is entitled to be informed that the solicitor dealing with the file is unable to continue to provide such service and who in the office will be dealing with the file, either on a temporary or permanent basis;
 - the client is also entitled to be told the reason for such delays if there are any significant delays.
- It continues to surprise me that people often allege they had no idea how much their case was going to cost in either the circuit court or high court proceedings. In my opinion there is firstly a legal obligation on solicitors, under Section 68 of the Solicitors (Amendment) Act 1994, to advise his costs. However secondly, I also think clients should appraise themselves of the likely costs. Whilst obviously not an analogy or direct correlation, I do not believe a member of the public would engage in contractual purchase of something without having an appraisal on market norms and what to expect, and the same should apply here.
- Relating to Interest, I think it is worth clarifying that pursuant to the Solicitors (Interest on Client Monies) Regulations 2004, a solicitor shall "in respect of client monies which are received by him or her or his or her firm for or an account of a client hold such client monies in a client account

which is a deposit account and shall account to the client for interest thereon while so held". Similarly, for clarification, a deposit account is defined in the Act as "a deposit account or a savings account or a deposit receipt account maintained in the name of a solicitor or his or her firm at a bank and designated as a client account of that solicitor or his or her firm".

- I like to see the Law Society telling complainants that the Solicitors Acts impose an obligation to seek to resolve complaints about inadequate professional service before considering the imposition of a sanction. In pursuance of that obligation, they often write to ascertain what a complainant would consider to be a satisfactory resolution of their complaint so they can put their proposals to the solicitor which if agreed the matter will be resolved. They also advise that if resolution cannot be reached the papers will be referred to the Complaints and Client Relations Committee for their determination and if the complaint is upheld the imposition or sanction will be directed. The Law Society often equally ask a solicitor if he or she has any proposals to make and if so the Law Society would be happy to convey them to the complainant. I believe this is a fair and transparent process.
- It can arise that a client will instruct a new solicitor during an investigation. If a complainant wishes to change solicitor during a complaint investigation they are obviously perfectly at liberty to do so. If their complaint is upheld, the Law Society's Complaints and Client Relations Committee would then have the discretion to direct the solicitor to waive some or all of his fees for the work carried out to date. If their complaint is rejected, that would be the end of the Law Society's involvement. This means that if their complaint is rejected and there are fees due to the solicitor, these fees would have to be discharged before the file was handed over to a new solicitor. Alternatively, the solicitor might be prepared to accept an undertaking from their new solicitor that he or she would discharge the costs out of any damages recovered on their behalf. However it is important they understand that the solicitor does not have to accept such an undertaking, at law he would be entitled to hold on the file until his fees were discharged.
- The Complaints and Client Relations Section does not deal with negligence however a scheme of limited compensation for clients was introduced under Section 8 of the Solicitors (Amendment) Act 1994 as amended by Section 39 of the Civil Law (Miscellaneous Provisions) Act 2008, which allows the Law Society 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 note that the Legal Services Regulation Bill 2011 does not contain any provision which would allow the award of even limited compensation. Negligence matters continue to be referred to my Office for examination however they are also outside my remit.
- I noted the Complaints and Client Relations Section of the Law Society achieved the ISO accreditation accolade for the tenth year running. This is great achievement and credit is due to all in the Section, project led by Helen Mountaine. I think cognisance of this is important when the proposed new body is set up under the Legal Services Regulation Bill 2011.
- The Law Society could clarify more overtly that it has very limited jurisdiction to compensate a client for inadequate professional services saying the maximum amount it could award if a finding of inadequate professional services is made is €3,000 and then proposes a complainant speaks to their new solicitor with regard to alternative legal remedies.
- A solicitor is entitled to charge for time spent discussing a matter with a client and reviewing papers, especially when they have informed their professional fees and complied with Section

68(1) of the Solicitors (Amendment) Act 1994. It surprises me when members of the public think telephone calls, first meetings, etc. are free of such notified charges.

- The fact that a complaint falls outside the Law Society's regulatory jurisdiction does not reflect one way or the other on the merits of the issues a complainant raises; but the Law Society is not the appropriate forum for the investigation and determination of those issues.
- The Law Society's Task Force on the Future of the Law Society made a number of recommendations one of which was the appointment of a new director of representation and member services whom I expect will be a welcomed addition to the Law Society.
- Totally unrelated to my role, however I am delighted the Court of Appeal was approved by the electorate this year as a new and necessary piece of infrastructure in our justice system.
- Whilst attending the Dublin Solicitors Bar Association (DSBA)'s 'Regulation Update 2013' in February 2013 and was delighted to hear the questions and comments posed. One person asserted why is this sort of CPD training not part of one's training to be a solicitor as it was not when she trained. I cannot comment however convey the view here. However, I was delighted to be at the launch, by Alan Shatter T.D., Minister for Justice, Equality and Defence, of the 3rd edition of 'A Guide to Good Professional Conduct for Solicitors' on 4 November 2013 and to know that a copy has been disseminated to every member imminently.
- I was also pleased to see that the Law Society's Annual Report issued in electronic format for the first time this year to its approximate 10,000 members and other stakeholders. The Report presents with videos from the Director General and the President, accompanying the mandatory reporting and normal annual report information. I commend the Law Society on this interesting, welcome technical development and resource saving measure.
- I noted with interest an article in The Irish Times that said "*The Law Society's annual financial statements for 2012 show that the spend on "complaints handling" increased from €1.1 million to €1.23 million with the costs of the Solicitors' Disciplinary Tribunal increasing from €767,659 to €843,242*" (Gordon Deegan, The Irish Times, 15 July 2013). It is not for me to comment on the increase in spend however I appreciate complaint handling, for every regulatory body not just the Law Society, is an expensive business and one that is vital for their compliance, efficiency and effectiveness, and of course governance. The Law Society has informed me that the primary cause of the increase in expenditure is due to increased litigation costs due to increased volume of cases before the Solicitors Disciplinary Tribunal and the High Court.

Legal Services Regulation Bill

Now finally, to some views on the Legal Services Regulation Bill. I appreciate that some time back the Law Society decided that it would be in the best interests of the public and of the profession if complaints were no longer made to the Law Society but should be made instead to either the proposed Legal Services Regulation Authority or (in respect of fees) to the proposed Legal Costs Adjudicator. I understand that this view is now widely accepted.

I am aware that there have been many extensive detailed submissions to the Department of Justice, Equality and Defence by many parties with the intention of setting up a fair, robust, realistic and workable body in situ that will serve all stakeholders well.

The new body will be an amalgamation of both the solicitors and barristers' professions' complaint handling processes. With regard to the respective volumes of complaints, and whilst appreciating

not like for like, I noted that there were 968 new complaints made to the Law Society this year (1115 last year) and 106 to the Barristers' Professional Conduct Tribunal in 2012 (45 in 2011).

I believe it is an incredibly stressful, and elongating, time for members of the Complaints and Client Relations Section who have worked, and work, so arduously for the Law Society. I myself have seen and worked with the Scottish Legal Services Commission in Scotland and the Legal Ombudsman's offices in Birmingham under different auspices and have a good appreciation how both structures work. I think, and have asserted this view many times previously in different fora, that the size of our jurisdiction, along with the best neighbouring practices of as similar as possible a context environment, and best practice ombudsman structures should all be considered concurrently for the proposed Irish regime.

The Bill, when enacted, will also supersede my Office.

Section 7

SUMMARY OF THE YEAR'S STATISTICS

Referrals to the Office of the Independent Adjudicator of the Law Society

- ***My office received 136 new requests to examine matters compared to 174 last year and comparable to the year before at 138*** (21.83% decrease to last year and 1.24% increase to the year before).
- ***I adjudicated on 102 complaints*** (132 last year and 109 the year before) ***and 16 Compensation Fund claims*** (23 last year and 15 the year before).
- Of the 136 matters I examined, I wrote 18 letters to the Complaints and Client Relations Section of which 5 requested referral back to the Complaints and Client Relations Committee for further review. I wrote 4 letters to the Financial Regulation Section requesting one to be referred back to the Regulation of Practice Committee for further review. All of which were considered.
- My Office was subject to its first Judicial Review this year, albeit as a second named defendant, which was settled by the first named defendant, the Law Society, with the plaintiff directly.

Complaint matters dealt with by the Law Society

- ***New complaints received by the Law Society dropped 13.18% to last year*** (968 this year to 1115 last year).
- ***The aggregate investigated complaints by the Law Society dropped 13.4% this year*** (2144 this year to 2476 last year).
- ***Complaints to the Law Society relating to undertakings, whilst remaining very high, dropped 25.64%*** (1288 this year to 1732 last year) and were 74.97% of the aggregate admissible misconduct complaints this year compared to 82.99% last year).
- Excluding undertakings, 39.13% comprises the Law Society's aggregate complaints dealt with this year relating to misconduct, inadequate professional services and excessive fees (29.39% last year).

Compensation Fund Claim matters dealt with by the Law Society

- There was a ***9% increase in the 266 Compensation Fund claims*** received by the Law Society this year by comparison to 244 in 2011 and 255 in 2010.
- ***There was a decrease in the number of all types of applications to the High Court for orders to include applications to suspend practising certificates*** (see page 24 for breakdown of numbers).
- ***There was an increase in referrals to the Solicitors Disciplinary Tribunal relating to failure to file accountants' reports*** (16 referrals this year to 12 last year).
- ***9 solicitors had their practising certificates suspended***, by comparison to 6 in 2011 and 11 in 2010.

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