

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



Year ending 30 September 2014

Carol Ann Casey
Independent Adjudicator of the Law Society

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FOREWORD

This is my eighth Annual Report as the Independent Adjudicator of the Law Society of Ireland covering the period 1 October 2013 to 30 September 2014.

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.

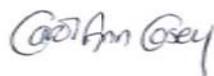
A fundamental attribute of my position, and the core of my work ethic, is that I am independent and impartial in all my work and adjudications. Being the Independent Adjudicator is not a campaigning job: it is not my role to wag a finger at the profession nor is it my job to come up with a binary answer (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 2014

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>

<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 without financial reward. 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 independent 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
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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, 2013/2014

The Law Society's year was 1 September 2013 to 31 August 2014.

The total number of new complaints received was 1,916, of which 390 were deemed inadmissible, leaving a balance of 1,526 admissible complaints. 1,947 complaints were carried forward, making a total of 3,473 complaints handled by the Complaints section during the year.

A further 940 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 the profession, and records of direct applications made to the Disciplinary Tribunal by members of the public.

370 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.

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

At year end (31 August 2014), the status of complaints investigated by the Law Society during the year was:

	Closed	Under Investigation	Pending before C&CRC*	Total
New complaints	957	517	52	1,526
Carried forward Complaints	1,198	624	125	1,947
Total	2,155	1,141	177	3,473

*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

	13/14	12/13	11/12
Admissible Complaints	1526	2116	2453
Inadmissible Complaints	390	361	360
Total	1916	2477	2813

Allegations of Excessive fees	128	84	100
Allegations of Inadequate Professional Services	291	314	266
Allegations of Misconduct	1107	1718	2087
Total	1526	2116	2453

Excessive fees

Complaints alleging overcharging were broken down as follows:

	13/14	12/13	11/12
Conveyancing	13	4	11
Probate	24	14	11
Litigation	45	27	39
Matrimonial	21	21	28
Other	25	18	11
Total	128	84	100

Inadequate professional services

Complaints alleging inadequate professional services were broken down as follows:

	13/14	12/13	11/12
Delay	104	125	98
Failure to communicate	70	82	56
Shoddy Work	76	64	83
Other	41	43	29
Total	291	314	266

Misconduct

Complaints alleging misconduct were broken down as follows:

	13/14	12/13	11/12
Delay	9	11	3
Failure to communicate	36	58	50
Failure to hand over	125	99	80
Failure to account	84	104	70
Undertaking	703	1288	1732
Conflict of interest	18	16	11
Dishonesty or Deception	7	8	7
Witnesses Expenses	3	1	4
Other	70	77	86
Advertising	7	22	4
Counsels' fees	45	34	40
Total	1107	1718	2087

Complaints and Client Relations Committee statistics

	13/14	12/13	11/12
Number of meetings	22	20	22
	(+1 special +1 plenary)	(+4 special + 1 plenary)	(+2 special +1 plenary)
Number of new matters referred	382	465	411
Number of complainants invited to attend	11	9	10
Costs levied	€37,700	€34,850	€23,750
Compensation orders	9	5	3
Reprimands	7	7	15
Referrals to Disciplinary Tribunal	319*	181**	116

* 51 of these Referrals to the Solicitors Disciplinary Tribunal are subject to a stay of varying length

** 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 16 different solicitors (22 last year), as follows:

Practising certificate issued subject to undertaking	1
Conditions imposed restricting solicitor to practise as an assistant solicitor	2
Conditions imposed (i.e., attendance at courses, undergo risk management audit, maintain Register of Complaints)	9
Practising certificate withheld pending receipt of medical report	1
Practising certificate refused	3
Total:	16

Complaints status on admissible new complaints by year end

	13/14	12/13	11/12
Case closed	957	968	1115
Under Investigation	517	1016	1183
Pending before Complaints and Client Relations Committee	52	132	155
Total	1526	2116	2453

Completion of complaint cases

	13/14	12/13	11/12
Complaints Resolved	422	501	650
No grounds for complaint but assistance provided	58	60	62
Withdrawn/Abandoned	92	160	122
Rejected	178	153	172
Recommendation made*	8	12	
Direction made*	16	8	
Other**	130	74	91
Total	968	1115	1224

* Recommendation made and Direction made previously were recorded concurrently as Upheld (18 in 2011/2012)

** This includes 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 2013/2014 complaints is 90.70 days

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

	13/14	12/13	11/12
Complaints Closed in less than 30 days	311=32.57%	248=25.62%	287=26%
Complaints Closed in less than 60 days	174=18.22%	226=23.35%	228=20.65%
Complaints Closed in less than 90 days	110=11.52%	120=12.40%	157=14.22%
Complaints closed in less than 180 days	196=20.52%	231=23.86%	260=23.55%
Other	164=17.17%	143=14.77%	172=15.58%
Total	955=100%	968=100%	1104=100%

Source of complaints

	13/14	12/13	11/12
Complaints made by Solicitors	370	873	1729
Complaints made by parties other than solicitors	1156	1243	724
Total	1526	2116	2453

**Multiple Complaints
(solicitors against whom more than 6 complaints have been made)**

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

36 Complaints	-	-	1
37 Complaints	-	1	-
47 Complaints	1	-	-
55 Complaints	-	-	1
63 Complaints	-	-	1
69 Complaints	-	1	
156 Complaints	-	1	-

(See page 16 for the Complaints and Client Relations Committee's statistics that relate to multiple complaints)

Status of carried forward complaints at year end

	13/14	12/13	11/12
Case closed	957	1176	1361
Under Investigation	517	702	542
Pending before Complaints and Client Relations Committee	52	129	127
Total	1526	2007	2030

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:

6 months to 30 June 2014

216 claims received
€6,819,871.39 claimed
€1,692,482.24 paid

Calendar year 2013

299 claims received
€4,542,976.47 claimed
€2,652,576.49 paid

Calendar year 2012

266 claims received
€9,136,221.44 claimed
€2,744,986.25 paid

Compensation Fund developments in the six months to 30 June 2014

In the six months ended 30 June 2014, 216 claims were received (165 for the same period last year). Excluding invalid claims refused, these claims amounted to €2,366,133 (€1,161,153 for the same period last year). Payments were made in the sum of €408,991 (€213,562 for the same period last year) in respect of claims and claims amounting to €1,957,142 (€947,591 for the same period last year) are still under consideration.

As at 30 June 2014, the net assets of the fund are valued at €17 million (€18 million in 2013 and €16 million in 2012). The annual contribution to the fund was €760 per solicitor for 2014 (same as last year). Similar to last two years, insurance cover for €50 million in excess of €5 million is in place for the year ending 31 December 2014.

Regulation of Practice activities during the year

Consistent to the last few years, the Law Society's investigating accountants conducted approximately 400 investigations of practices this year. The Regulation of Practice Committee now comprises of 4 divisions, each chaired by chairman, or three vice-chairmen, with a lay committee member appointed to each division. The Committee met 16 times, for 11 scheduled, 3 emergency and 2 special meetings during the year.

Arising from these meetings the Committee decided to:

- Refer 13 (10 in 2013 and 20 in 2012) solicitors to the Solicitors Disciplinary Tribunal on foot of findings disclosed in the investigation reports on their practices;
- Refer 9 solicitors (16 in 2013 and 2 in 2012) to the Solicitors Disciplinary Tribunal for failure to file accountants' reports on time;
- Refer one solicitor to the Solicitors Disciplinary Tribunal for failure to engage with the Committee as directed;
- Apply to the High Court for an order freezing the accounts of 6 solicitors (6 in 2013 and 10 in 2012) where dishonesty was discovered;
- Apply to the High Court to suspend the practising certificates of 6 solicitors (3 in 2013 and 9 in 2012);
- Levy contributions amounting to €44,600 (€99,600 in 2013 and €75,750 in 2012) towards the cost of investigations;
- Apply to the High Court pursuant to Section 18 of the Solicitors (Amendment) Act 2002 in 2 cases for an order compelling the solicitors to attend committee meetings and to provide certain documentation;
- Appeal a decision of the Solicitors Disciplinary Tribunal to the High Court in relation to the sanction imposed by the Tribunal;
- Impose conditions on a solicitor's practising certificate where the solicitors had unsatisfied judgments;
- Impose conditions on a solicitor's practising certificate where the solicitor had entered into a debt arrangement;
- Appeal a decision of the High Court to refuse an application by the Law Society to freeze a solicitor's accounts;
- Refuse an application for a practising certificate in respect of 2 solicitors.

Trends worthy of note in the Independent Adjudicator's opinion

I noted that referrals to the Solicitors Disciplinary Tribunal are continuing and that the Levy contributions appear to me to have amounted to €44,600 by comparison to €99,600 in 2013 and €75,750 in 2012.

The Chairman of the Regulation of Practice Committee stated in the Law Society's Annual Report that there has been an increase in solicitors adjudicated bankrupt, having unsatisfied judgments and participating in debt arrangements. He added that bankrupt solicitors are automatically suspended, but may apply to the Law Society to have the suspension lifted. The Regulation of Practice Committee issued a practice note on bankruptcy, judgment and debt arrangements (see Gazette, November 2013, p.53). Such matters are decided by the Committee on a case-by-case basis (see Law Society Annual Report 2014, p.36).

In the Report of the Regulation of Practice Committee in the Law Society's Annual Report (p.36), the Chairman noted that a practice note was issued to advise that any solicitor, whose practising certificate is dated after the date on which they commenced legal services, should make an application to the President of the High Court to have their practising certificate backdated to the date on which they commenced providing legal services (also see Gazette, July 2014, p.53). In the same practice note, in-house solicitors were also advised that they are required to hold a practising certificate, regardless of the areas of law in which they practise (see Gazette, July 2014, p.53).

I observed that the Solicitors Accounts (Amendment) Regulations 2013, which came into force on 1 January 2014, ensures that moneys received by a solicitor acting as a personal insolvency practitioner (PIP) are regulated under the solicitors accounts regulations.

Up to November 2014 solicitors were required to comply with five different statutory instruments in relation to clients' moneys:

- Solicitors Accounts Regulations, 2001
- Solicitors (Interest on Clients' Moneys) Regulations, 2004
- Solicitors Accounts (Amendment) Regulations, 2005
- Solicitors Accounts (Amendment) Regulations, 2006
- Solicitors Accounts (Amendment) Regulations, 2013.

I am apprised that the Law Society, at its Council Meeting on 7 November 2014, approved the Solicitors Accounts Regulations 2014 which will be effective on 1 December 2014.

Solicitors and reporting accountants find it difficult to follow regulations that are spread over five different statutory instruments, and, therefore, I note the Chairman of the Regulation of Practice Committee reported that it is proposed to consolidate the Solicitors Accounts Regulations 2001 to 2013 in one statutory instrument to make it easier for users to follow the Regulations (see Law Society's Annual Report 2014, p.36).

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 2013 to 30 September 2014. 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.

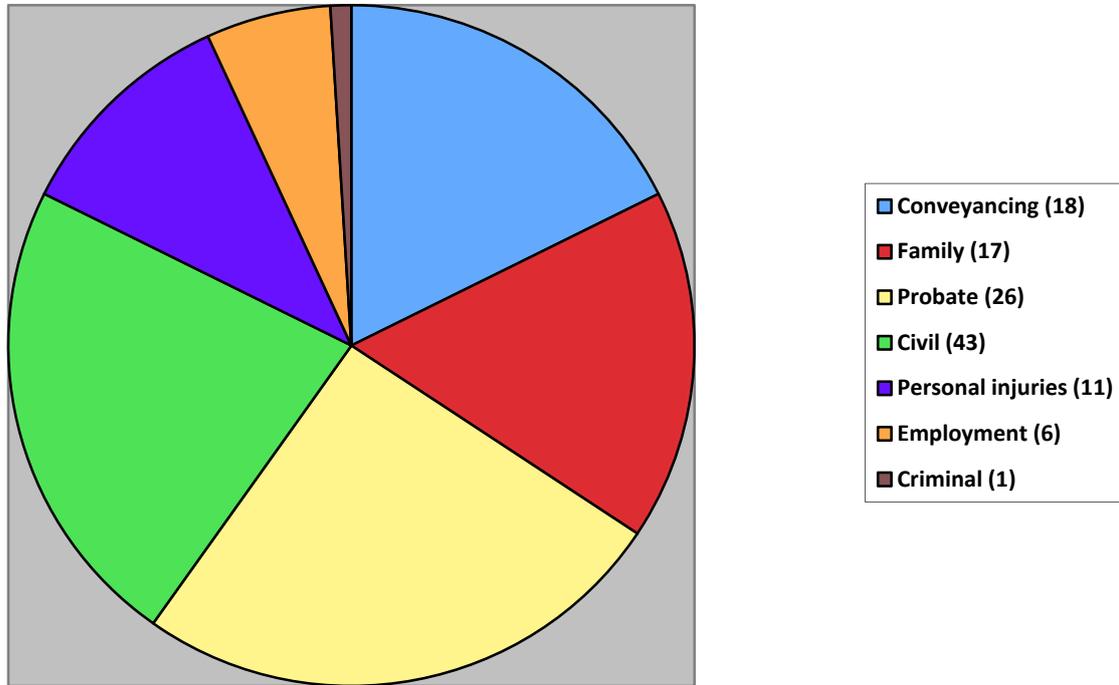
- **My office received 164 new requests to examine matters compared to 136 in 2013 and 174 in 2012** (21% increase). These are broken down as follows:
- **122 (102 in 2013 and 132 in 2012)** complaint referrals were examined and adjudicated;
- **21 (18 in 2013 and 19 in 2012)** complaint referrals were 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
- **21 (16 in 2013 and 23 in 2012)** 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 122 complaints that were examined by the Independent Adjudicator, 7 had been before the Complaints and Client Relations Committee for direction (6 in 2013 and 3 in 2012).
- 21 of the 122 complaints examined by the Independent Adjudicator prompted correspondence from the Independent Adjudicator to the Complaints and Client Relations Section (18 in 2013 and 16 in 2012).
- Of the 21 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:
 - where the Law Society recommended a reduction in fees, the solicitor agreed yet omitted to pay the associated VAT to the complainant. The file was closed by the Law Society and I sought it to retrieve the VAT for the complainant, which was duly done;

- delay liaising and/or following-up with complainants and solicitors during the course of the investigation;
 - failure to confirm the final outcome to the responding solicitor;
 - I believed the Law Society was judgmental too soon in a matter before gathering all facts;
 - not advising a complainant of his or her right to refer a matter to the Independent Adjudicator;
 - not advising a complainant his right to make a claim on the Law Society's Compensation Fund in an appropriate case to do so;
 - further investigation or clarification;
 - 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;
 - failure of the Complaints and Client Relations Committee to levy more costs where, in my opinion, it seemed appropriate to do so;
 - closure of a file prematurely; and
 - some general handling administration, e.g., not copying attachments to the relevant parties or file mis-management.
- Of the 21 files referred back to the Complaints and Client Relations Section 2 matters were referred back to the Complaints and Client Relations Committee, and in both cases my views were upheld.
 - My adjudications on the 122 complaint matters that I examined centred upon the following complaint disciplines:
 - Conveyancing **(18)** (15 in 2013 and 36 in 2012)
 - Civil **(43)** (23 in 2013 and 29 in 2012)
 - Probate **(26)** (28 in 2013 and 25 in 2012)
 - Family **(17)** (14 in 2013 and 22 in 2012)
 - Personal injuries **(11)** (14 in 2013 and 11 in 2012)
 - Employment **(6)** (8 in 2013 and 6 in 2012)
 - Criminal **(1)** (0 in 2013 and 3 in 2012)
 - See illustration on page 29 which exhibits these matters by the number of complaints received;

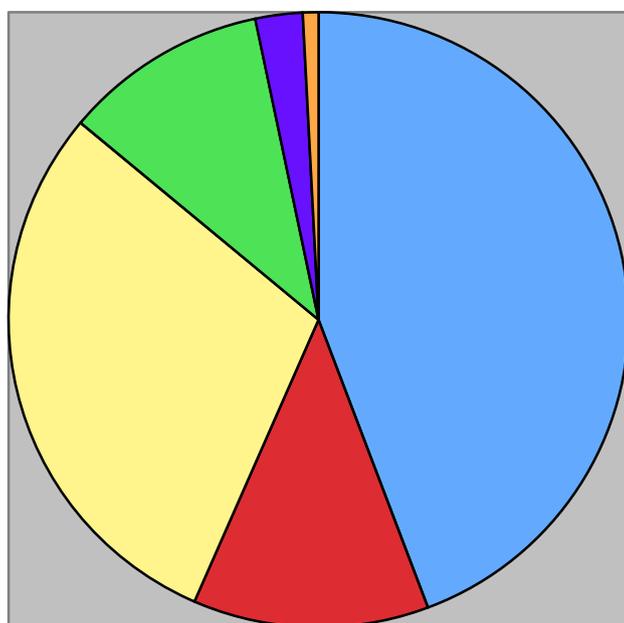
Breakdown on complaint matters which were referred to the Independent Adjudicator from 1 October 2013 to 30 September 2014



- 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);
- **Overcharging/excessive fees** (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 30 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 2013 to 30 September 2014



- Inadequate Professional Service (54)
- Inadequate Professional Service and Excessive Fees (15)
- Excessive Fees (36)
- Misconduct (13)
- Inadequate Professional Service and Misconduct (3)
- Misconduct and Excessive Fees (1)

- In addition to the 122 complaint matters adjudicated, 21 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.
- 8 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.
- **21** Compensation Fund claim matters were referred to my Office for adjudication (16 in 2013 and 23 in 2012); 18 had been decided by the Regulation of Practice Committee (14 in 2013 and 9 in 2012) and 3 had been decided by the Registrar under delegated powers of the Regulation of Practice Committee (2 in 2013 and 14 in 2012).
- Of the 21 matters, one resulted in my correspondence to the Financial Regulation Section of the Regulation Department of the Law Society for the following reasons (4 in 2013 and 8 in 2012):
 - in this case I sought clarification as a Solicitors Disciplinary Tribunal determination had been made in respect of a complaint to the Law Society by the claimant. However I was asked to examine the claimant's claim on the Compensation Fund rather than his complaint to the Law Society so Section 9(a) of the Solicitors (Adjudicator) Regulations 1997 as substituted by Section 6 of the Solicitors (Adjudicator) (Amendment) Regulations 2005 did not apply.

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

For my 21 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 and/or extensive email correspondence despite being politely advised of my office procedures;
- 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. As referenced in the Foreword above, 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 – Civil matter

The Eastern European complainant alleged the solicitor did not act on his matter from 2008 to 2013 claiming inadequate professional service. The solicitor acknowledged that there was a delay on the file and took responsibility asserting that he sent papers to counsel who never reverted. He offered to meet the complainant to bring matters forward, with the services of an interpreter at his expense as the complainant was not a fluent English speaker. He also offered to return the only fee paid to date of €300 and to absorb the outlay costs in an effort to resolve the matter. The complainant would not meet the solicitor and was angry throughout the complaint investigation. The Law Society closed this matter noting that the solicitor tried to resolve the matter which the complainant was not willing to accept.

I was satisfied with the law Society's handing on this matter save for an initial matter I brought to their attention regarding communications. In the Law Society's correspondence with the complainant it stated "*Since our investigation is subject to review by the Independent Adjudicator of the Law Society, please correspond with the Society in writing so that there is a clear record of all communications on the file*". Similar was not stated in the initiating letter to the solicitor who referenced this in his responding letter to the Law Society. For transparency and fairness I believed that similar wording to that in the complainant's letter should be mirrored in solicitors' letters for future matters.

Matter 2 – Civil matter

This enquiry file was initiated as the complainant and his wife invested substantial monies in a property portfolio led by a financial institution advised by one of the leading solicitor practices. The solicitors were hired by the financial institution, not the complainant, to prepare the memorandum for investors and related documents on behalf of the investors. The complainant believed that he was a direct client of the solicitors' firm which was not the case. In deciding this matter the investigating solicitor sought an appraisal of another solicitor within the Complaints and Client Relations Section who concurred with this view.

Whilst I was satisfied with the Law Society's decision on this matter, I noted some excessive delays in responding to the complainant, which I thought were unnecessary and a holding letter would have been appropriate and polite. The complainant also wrote to the Director General of the Law Society about the Complaints and Client Relations Section's delay. I advised the Law Society that if there would be delays, such as in this case, for example, from 19 August to 29 October 2013, wherein the Law Society advised the complainant that he would hear from the Society "shortly" and this did not

happen until 9 January 2014, that holding letters are communicated as automatic scheduled follow-up.

Further I did not agree with the tonality of correspondence to the complainant, namely *“I accept that there has been some delay in getting back to you on this matter, but I must emphasise that the above file reference is for an enquiry file only and not a complaint. This file was opened as an enquiry as I have always been of the opinion that this matter did not warrant investigation as a complaint.”* My views on this were that firstly the complainant was not advised his matter was an enquiry matter. Secondly, the wording could imply he was treated less favourably to that of a complainant*, and thirdly, the above inference could have implied less attention was given to his matter than to others.

*For information and clarification, since taking office, dissimilar to the Law Society, I have always referred to members of the public coming to my office as complainants, not enquirers as the Law Society can differentiate when a full investigation is not required on a matter.

Matter 3 – Probate matter

The complainant was unhappy with her now late solicitor (now firm) on the probate of her mother’s estate in which she was a beneficiary and her brother was the executor. The solicitor appointed an independent mediator (solicitor) between the complainant and her brother however that did not meet the complainant’s expectations. She was furious with the solicitor referring to the firms’ correspondence as “pathetic”, and she was rude towards their practice and their website wording, which was unwarranted in my opinion.

The complainant was equally far from happy with the Law Society’s actions on her matter and wrote to the President of the Law Society at his commercial address, two other Presidents of the Law Society, the Director General, the Director of Regulation many times, and numerous solicitors within the Law Society’s Complaints and Client Relations Section. The Law Society believed, as did I upon referral to my office, that the dispute was between the executor and herself, and was not a legal matter on which the Society had to intercede. The Law Society also suggested she seek legal advice as the Society could assist no further.

I include this matter to highlight that many complainants can not accept a rejection of their complaint and despite going to inordinate lengths with copious letters, a complaints handling process is and must be still handled in the appropriate manner and remit, as happened in this matter. It further highlighted that no matter how professional and courteous the solicitor’s firm was, it will not negate a matter that is outside their remit, namely in this case a bitter debacle among siblings.

Matter 4 – Conveyance matter

The complainant purchased a house in 2005, in which her solicitor also acted for the vendor, and found out in 2007 that the map attached to the deeds was incorrect. She made a complaint to the Law Society. The solicitor acknowledged the complaint and agreed to rectify the boundary matter and deeds on a number of occasions yet the matter was an inordinately long drawn out process to rectify, with both parties being remiss in follow-up on occasion. It was eventually completed in 2012 and the matter was referred to the Complaints and Client Relations Committee for direction on whether the services provided were inadequate. A comprehensive file review was conducted by the secretariat who proposed that the committee member may wish to nominate a member of the Committee to consider the file with a view to making a recommendation to the next meeting. At the next meeting this was not acceded to and the Committee directed the solicitor to pay compensation

to the complainant within 28 days. The complainant was not happy and referred the matter to my office. I believed that a file review should have been undertaken by a committee member as fundamentally the compensation was insufficient for the inadequate professional services rendered by the solicitor, and that a separate division of the Committee should review the matter. This was duly done and the Committee directed that a further €350 should be paid to the complainant, in addition to the €250 already paid by the solicitor. This decision then met my satisfaction.

I am aware that such a conflict can no longer happen under the new conflict rules.

Matter 5 – Conveyance matter

The complainant maintained he purchased a property in 2010 from an estate agent for the sum of €60,000 which had not been registered and that the solicitor overcharged him. After much consideration the Complaints and Client Relations Committee directed that an application be made to the High Court for an Order requiring the solicitor to hand over the file on this matter. Upon receipt the Committee Secretary prepared a report based on the documentation, which was also sent to the solicitor for his observations. The Committee noted the considerable delay in making the file available to the complainant and the Law Society, and noted that the solicitor had not made any proposals to resolve the matter. The Committee decided that (a) the services were inadequate, (b) the solicitor should refund the fees paid by deduction from the sale proceeds, and (c) arising out of the solicitor's lack of response to the complainant, his delay in handing over the file and failure to notify his insurance, it directed a reprimand be imposed. The complainant was unhappy, and upon my examination of the matter, I believed that the Committee needed to put time limits on directions made by them in the interests of the complainant. I also asserted that I would prefer the Law Society to be more fulsome in their response to the complainant's correspondence clarifying his expectations against the Law Society's remit at the embryonic stage of the investigation, which was noted. This matter highlights the extremities the Law Society has to go to to compel a solicitor to respond or hand over a file, to include going before the Complaints and Client Relations Committee on numerous occasions, and the Law Society administration and costs associated in making an application before the President of the High Court.

It is worth noting that this solicitor has since been struck of the Register of Solicitors.

Matter 6 – Conveyance matter

Upon my examination of this matter, I believed that the Law Society closed this conveyance matter prematurely and I requested that it be brought before the Complaints and Client Relations Committee. My reasons for the referral were that I was of the opinion that (a) the refund of fees from the solicitor to the complainant did not appear to have been paid from my perusal of the documentation, (b) a cheque that issued to the complainant's brother bounced that resulted in a bank charge being incurred by the complainant's brother, (c) the loss of interest on the refund of fees should be accounted for, and (d) it appeared that the complainant had not received the deeds of his land as yet and on which I believed the Law Society should further investigate to see if the matter had progressed in the Land Registry. The matter was brought before the Complaints and Client Relations Committee, at which the solicitor's legal representative attended, who advised that while the file had been located the solicitor was as yet unable to find the title deeds. It also appeared that the solicitor was not in a position to send replacement cheques in respect of the payments due to his brother nor the refund of fees. The Law Society then advised the complainant that he could make an application to the Society's Compensation Fund for these monies and that they were keeping the matter under review as to the ascertainment of the file deeds in the hope they would be found. This matter remains under review at the time of writing.

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 a sample matter is set out below:

Compensation Fund Claim subsequent to a complaint referred to the Solicitors Disciplinary Tribunal and an Appeal against the Tribunal to the High Court. This Compensation Fund Claim highlights the level of Committee work

This complex medical negligence matter related to excessive legal fees on substantial work in legal proceedings against seven medical defendants. The matter had previously been before the Complaints and Client Relations Section. The reason I am citing this example is at an early Regulation of Practice Committee meeting a solicitor committee member agreed to take the voluminous storage boxes of files to review and form an opinion. This was substantial work, done voluntarily, which presented an 8 page report back to the Committee for its subsequent meeting at which I was present in an observation capacity only. The decision was that the fees charged were not unreasonable for the substantial amount of work done. As the claimant, through his solicitor, was unhappy with the Committee's decision, the matter was subsequently referred to my office to examine its contents and I wholly concurred with the Law Society's actions and decision. Not unlike, other committees, especially the Complaints and Client Relations Committee, the voluntary commitment of solicitor members should be noted.

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, its division dealing with multiple complaints at the start of the year 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 noted that the Complaints and Client Relations Committee sat on 24 occasions during the year and dealt with 382 new complaints, many of which appeared on the Committee's agenda on more than one occasion.
- It is worth commenting on the fact that the authority to make grants from the Compensation Fund lies with the Law Society's Regulation of Practice Committee. This Committee meets 9 times a year. Once sufficient information is at hand to put to the Committee, a report has to be prepared and then put on the agenda of the Committee's meeting. This process can take a number of months. I am saying this as sometimes claimants write to me about delays, and whilst some may be justified, others may take their natural course. I therefore often write to claimants, or their solicitors, that delays can be justified.
- I observed, and commented on, that no female was a member of the Complaints and Client Relations Committee's multiple complaints meeting*, and indeed at some other committee meetings I attended up to my year end. I have since been apprised that female vice-chairmen have been appointed to the each of the Complaints and Client Relations Committee and Regulation of Practice Committee, which appeases me.

* A multiple complaints meeting takes place each January to assess solicitors who have more than 6 complaints made against them within the previous year.
- I note and think it is very important that solicitors who attend before the Complaints and Client Relations Committee dealing with multiple complaints must be represented by a solicitor. A simple reason is that their professional livelihood is at stake. I appreciate that the Law Society suggest this recommendation in their invitation letters to the solicitors in question yet it is not always adhered to.
- Whilst I appreciate that there is a solicitor health support and advice assistance programme available to solicitors, in appropriate cases I would like to see the Committee advising of this service more frequently, especially at the multiple complaints meeting.

- At the multiple complaints meeting I really do question why solicitors, who have found themselves present at such meetings, do not attend with their register of undertakings and/or be more prepared for this important meeting. This meeting can determine their fate as a practising solicitor.
- Sometimes it is not the number of complaints that are before the Complaints and Client Relations Committee's multiple complaints meeting but the nature of the complaints. I question whether this meeting should therefore be re-titled to be technically correct for such aggregate cases?
- I think every solicitor before a multiple complaints committee meeting needs to be questioned if they are fit to practice, as would apply in other professions.
- I welcome that the multiple complaints meeting, which also directs on the issuing on a solicitor's practising certificate as advised above, can and does refer solicitors to do the essential of legal practice course at their own expense (3 weeks full-time), for example where the Committee believes the solicitor needs to re-learn conveyancing.
- I think the multiple complaints meeting is about client, public, profession and financial institution protection, and to allow the solicitor to practice without equivocation to be fit to practice. At this meeting solicitors must prove they can be a noble member of the profession keeping their continuous professional development (CPD) up-to-date, etc.
- Solicitors before committees must have meaningful and constructive engagement with the Law Society and make a substantive and fulsome response replying - not just responding and acknowledging correspondence - this is a key issue for me so the Law Society can compel solicitors to respond in such a manner, and for solicitors to actually do so.
- In my view if committee members have to read paperwork they will want to know why, and rightly so.
- Solicitors attending before a committee are not at school, and such excuses as a mother being sick with no work done as directed since the last committee meeting is not an excuse. I note, and welcome, that the Law Society acts stringently in such cases.
- I took note that one solicitor committee member commented between matters that nothing irritates clients more than when solicitors do not revert to them, which should be done routinely at the end of the day or the next day in all cases. I agree with this, save where a client demonstrates incessant or defective communications.
- It appeases me that the Law Society writes to a solicitor pursuant to their attendance before a Complaints and Client Relations Committee setting out what the solicitor is obliged to do for the next meeting and advise if unfulfilled they may be referred to the Solicitors Disciplinary Tribunal. A full substantive report must be submitted within 14 days of the next committee meeting to allow time for the administration of its circulation within the committee meeting pack of papers and to allow committee members to review its contents before the meeting.
- Correspondence arriving too late can irritate committee members. I noted one lay member at a Complaints and Client Relations Committee meeting saying that the Committee should ignore correspondence that arrives too late, for example within 24 hours of the meeting.

- If a solicitor or complainant hands papers to the committee at a meeting, these must be handed directly to the chairman by the committee member and not read by other committee members in advance.
- All random reviews conducted this year wholly met my satisfaction as to the Law Society's handling of complaints or client matters.

Section 8

GENERAL OBSERVATIONS ON MY WORK THROUGHOUT THE YEAR

- I noticed an increase this year in complainants advising that they are referring their matter to An Garda Síochána, despite their complaints not being upheld by either the Law Society and Independent Adjudicator.
- I am aware that the Solicitors Acts reference failure to correspond with the Law Society, however I question this in its literal sense as I believe that there is a difference between failure to correspond and failure to give a substantive report; it is the latter that is critical for me.
- I attended the Dublin Solicitors Bar Association Practice Management Seminar - Regulation Update 2014 in February. Presentations, as usual, covered complaints and Law Society inspections. I was pleased to see two additions namely by Therese Clarke discussing the key areas of the 3rd edition of *A Guide to Good Professional Conduct for Solicitors*, and a presentation by a solicitor who represents solicitors before regulatory committees on the practicality of being before a Law Society regulatory committee, the Solicitors Disciplinary Tribunal, the President of the High Court and appeals to the Supreme Court. With regard to the latter I think hardly an eye blinked in fear that it could happen to them and the presentation was very helpful, and practical.
- In line with recommendations of the Future of the Law Society Task Force Report the Law Society invested in its member representation and communications. In this regard it rebranded and launched 'Tone of Voice' guidelines complemented by training, at which I attended. The guidelines' objectives are to improve the way in which the Society writes and speaks to its members and to the public to make all its communications courteous and respectful, clear and concise, and of service (see Law Society's Annual Report 2014, p.20).
- Complainants should note that neither the Law Society nor the Independent Adjudicator provide legal advice. Correspondence equally advises same.
- For the first time this year, I have noted a substantial increase in emails and scanned attachments being sent to me directly from complainants. There are three complainants in particular that have near clogged my whole system, and on one occasion I required IT support. Unfortunately and disappointingly, despite courteous letters from me, unsavoury emails continue to arrive from these complainants, quite often continuing from new or different email addresses.
- The burden of proof is on the person making the allegation to provide evidence to support the allegation. If there is no substantive and corroborating evidence, be it by a complainant alleging excessive fees, inadequate professional services or misconduct, or a claimant alleging dishonesty, then the Law Society can not make a determination in favour of one party above the other.
- 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. Perhaps not doing so should be considered misconduct?

- 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.
- 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 have raised this question previously and reiterate 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 that the Law Society was examining this issue, however I have not seen any appraisal.
- 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 normally extend to the regulation of a solicitor's personal affairs or to disputes which arise outside the confines of the solicitor/client relationship.
- 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.
- I think it is worth pointing out, for all parties, re-appraisal 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.
- 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.
- 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.
- In the Solicitors Disciplinary Tribunal Annual Report last published for the year 2012, I noted an increase in referrals by the Law Society to the Tribunal, and also an increase in direct referrals from lay applicants (p.5). The Tribunal met 96 times in 2012, compared to 106 times in 2011 (p.3). The chairman, Edward McEllin, stated "*In these straitened times, it is a matter of personal responsibility for solicitors to ensure that they have the resources and that they are fit to cope with the pressures and responsibilities of their practices. It is essential that all solicitors who contemplate commencing practice on their own account have a working knowledge of the Solicitors Accounts Regulations and other office procedures to maintain an efficient practice. Solicitors also need to listen to their clients and understand their requirements, as clients who find themselves at the centre of a complaint can encounter severe emotional and financial turmoil*" (p.17).
- I recently enquired of the Registrar of Solicitors and Director of Regulation, John Elliot, the status of referrals from the Law Society to the Solicitors Disciplinary Tribunal. I understand in relation to complaints made by clients, the average number of weeks is 14 from date of referral by the

Complaints and Client Relations Committee to the date of filing the application with the Solicitors Disciplinary Tribunal (for cases filed in the 12 months to 30 September 2014). This interests me as for years I asserted that the Law Society needed to deploy more resources into filing applications to the Tribunal, which duly happened and there has been an appreciable and appreciated improvement. However now, despite the Law Society deploying more clerical resources to the Tribunal, there is a substantial back-log with the Tribunal holding hearings, and in looking at the latest 2012 Solicitors Disciplinary Tribunal figures, this back-log appears to be increasing which is disappointing for all stakeholders affected.

- The Law Society published its Strategy Statement 2014 to 2018. Within this document (page 10) there is a specific operational plan for 2014 to 2015 for the Regulation Department and the sixth item in this plan states that the Society will seek changes to the disciplinary process with the objective of reducing avoidable delays. I further noted in the Registrar of Solicitors and Director of Regulation's report, within the Law Society's Annual Report 2014, stated that "*significant efforts have been made to engage with the Solicitors Disciplinary Tribunal to change the Tribunal rules to reduce avoidable delays. So far, there have been no definitive developments. If appropriate, we will return to this initiative*" (p.22).
- I am aware that the Law Society has created a new position of Head of Regulatory Legal Services that it is currently recruiting. One of the key aims of the creation of this position is to make a fundamental improvement in the management of legal services for the regulatory function of the Law Society. This will include a more focused case management of disciplinary cases partly with a view to firstly, ensuring that the 3 month filing target for client cases is always achieved, except in circumstances which are beyond the control of the Law Society, and, secondly, to identify and implement measures within the control of the Law Society which are designed to have the effect of reducing the time lapse between filing applications and first hearing, particularly in client cases.
- I appreciate a large amount of work is being done by the Law Society to monitor the Legal Services Regulation Bill 2011, which commenced report stage in July 2014. I note the Law Society continues to liaise with, and make submissions to, the Department Justice and Equality on the Bill. As referenced above, the Bill once enacted will supersede my office. I am cognisant of the continued uncertainty for many staff in the Law Society's Regulation Department also.

General Comments relating to Complaints and Client Relations

- It is a matter for a complainant if he or she wishes to consult with or instruct a new solicitor to act for them in their matter and accordingly they may wish to obtain their file. If they instruct a new solicitor, the existing solicitor is entitled to be paid for the work done. If they are not happy with the bill they have two options:
 1. they can ask the Law Society to review the bill if they believe the costs charged are excessive, or
 2. they can request that the bill of costs be submitted for taxation. Further information on taxation can be found at page 10 of the Law Society's leaflet *Complaints about Solicitors* that is sent to complainants when a complaint investigation is initiated.
- It is worth noting that if a matter has highly excessive fees, there may be a case of misconduct especially if the Law Society has to reduce a fee.

- I have often written on the definition of a “Client” which can be found under Section 2 of the Solicitors (Amendment) Act 1994. A client can authorise another person to make a complaint on their behalf. However the Law Society will require a signed authority from a client authorising another party to make a complaint. I have observed that this gets complicated by not being possible when the client is deceased.
- The Conveyancing Committee issued a precedent letter of undertaking re mortgage on title following a number of queries about the wording of solicitors’ undertakings given on closing to redeem a mortgage/charge on the title. This welcomed sample letter of undertaking also appeared in the Gazette (see April 2014, p.53).
- I think there is merit in saying that when a complainant writes to the Law Society they should raise all their complaints concurrently as it is generally not possible to raise new complaints once the Law Society has commenced its investigation.
- I note that beneficiaries are still not always receiving notification of fees in compliance with Section 68 of the Solicitors Acts. In respect of compliance with Section 68 (1) of the Solicitors (Amendment) Act 1994, solicitors must note that the definition of ‘client’ includes a beneficiary to an estate (Section 2 Solicitors (Amendment) Act, 1994) therefore the beneficiaries to an estate have to be furnished with a copy of a solicitor’s letter pursuant to Section 68 (1) of the Solicitors (Amendment) Act, 1994.
- During the year I proposed to the Law Society’s Complainants and Client Relations Section that they recommend time limits for compliance with directions to refund money. I had noticed that whilst directions were made follow-up was required to ensure directions were fulfilled. I am pleased this has been adopted.
- The Law Society’s website sets out the procedure for complainants to make a complaint about their solicitor. A signed complaint must be submitted to the Law Society and once an investigation commences communications must be in writing and signed. Similar to my office procedures I require a signed authorisation to permit me to requisition the individual’s file from the Law Society to examine its contents. I reiterate this, as so often correspondence is submitted, particularly in recent times by email, that still requires a signature. I am astonished at the increasing lack of courtesy that individuals can have by forwarding emails with no cover note or not addressing emails to either the Law Society or Independent Adjudicator.
- Whilst I am pleased to hear that 3 new lay members will be appointed in November 2014, I am disappointed, yet again, that my recommendation has not been acceded to in two respects namely to broaden the nomination panel as complainants come from a wider diverse and eclectic mix of society, and to have more female representation. I question what the difficulty is in such representation. This is my fourth time to state this in my annual reports and I hope, before I cease office, the Society might look at my suggestions more favourably in this regard.
- The Law Society has this year published its guidelines for solicitors attending Complaints and Client Relations Committee meetings on its website under complaints against solicitors which I welcome. Guidelines are available for complainants also, should they wish to or be required to attend these meetings.
- As fees tend to remain a substantial part of complainants’ complaints and the aggregate of claimants’ claims to the Law Society, it appealed me to read that a practice note was issued to remind the profession that it is never permissible for a solicitor to deduct fees, prior to

completion of a sale, from deposit monies held by the solicitor in trust or as stakeholder, whether or not so authorised by the solicitor's client (see Gazette, December 2013, p.55).

- As stated in previous annual reports with this year being no different, I reference that complainants can be demanding, aggressive and rude to the Law Society and to the Independent Adjudicator. Regrettably I still need to reiterate this point.
- It is worth noting that the Complaints and Client Relations Committee's role is to be inquisitorial and to resolve complaints where possible. I believe that the Committee gives extensive, sometime too much, forbearance to solicitors to complete their matters. Though I do appreciate that in some cases the forbearance is justified, for example allowing the solicitor to complete matters with the Land Registry or Revenue, which takes time.
- As ever, I think many matters before the Complaints and Client Relations Committee are about money, irrespective of how the complaint initiated. Complainants often say it is about the principle of the matter, yet they regularly want either their fees refunded, reduced or compensation. If the latter, the Law Society, if they deem the matter merits, can only award compensation up to €3,000 (see p.6 of this Annual Report above).
- I am delighted to advise that complaints about undertakings have reduced. In the report of the Chairman of the Complaints and Client Relations Committee, Barry MacCarthy wrote, "*There has been a substantial fall in the number of complaints received this year, attributable to the decline in complaints made by financial institutions about undertakings. This continues a downward trend that started last year and suggests that we have turned a corner insofar as the problem is concerned*" (Law Society's Annual Report 2014, p.28). This is very good and positive news for the Law Society, its professional indemnity insurers and its bona fide members alike. 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).
- It is worth noting that even if a complainant made a complaint within the 5-year period, there may be nothing to be gained by the Law Society exercising its regulatory role and taking disciplinary proceedings against a solicitor who has already been struck off the register of solicitors, as that is the ultimate sanction that the Law Society can seek.
- In going through old papers in my office recently, I was struck by a letter dated June 1998 from the then President, Laurence Shields, attaching precedent letters dealing with Section 68 of the Solicitors (Amendment) Act, 1994. It questioned for me had similar been done since and uploaded on the Law Society's members access on the website? I am cognisant, and welcome, that the Law Society has issued many practice notes on this matter however it was these actual letters that interested me.
- It still fascinates me as to why the Complaints and Client Relations Committee do not operate their meetings via electronic tablet device. The Regulation of Practice Committee is now in the third year using this technology. In my opinion the administration, outlay and resourcing time would be substantially decreased for the Law Society if it were to do so. I am however pleased to be recently appraised by the Society that the implementation of paperless meetings is underway.
- I am cognisant that clients can sometimes be slow giving instructions to their solicitor and then expect turnaround actions to be fulfilled.

- 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.

General comments relating to Regulation of Practice

- 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 again 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.
- I commented in my last Annual Report on the increase in breaches of the Solicitors (Advertising) Regulations 2002 which at that time fell within the remit of the Complaints and Client Relations Committee. I therefore welcomed reading a Gazette a practice note from the Registrar of Solicitors and Director of Regulation on "Restrictions and limitations on solicitors' advertising" (see Gazette, April 2014, p.54-55). I was also pleased to see, under the Chairman of the Regulation of Practice Committee's Report in the Law Society's Annual Report (p.36), that this enforcement has moved under the direction of the Regulation of Practice Committee. I noted special focus has been placed on raising awareness in the profession about these Regulations with a view to improving compliance levels and thereby ensuring a level playing field for the profession advertising their services (see further Gazette articles, March 2014 p.52, May 2014 p.53 and June 2014 p.52).
- S.I. No. 442 of 2013 Solicitors (Compensation Fund) Regulations 2013 brings the time limit for making a claim on the Compensation Fund to be submitted to the Law Society within 6 months of becoming aware of the loss. There must be exceptional circumstances to extend this time limit, which will be decided by the Regulation of Practice Committee. I welcomed that the Registrar wrote an explanatory note about the 6 month time limit for making claims on the Compensation Fund that was posted on the Law Society's website and a practice note was issued in the Gazette (see April 2014, p.53).
- The Law Society's website sets out the procedure for complainants to make a complaint about their solicitor. A signed complaint must be submitted to the Law Society and once an investigation commences communications must be in writing. Similar to my office procedures I need a signed authorisation to permit me to requisition the individual's file from the Law Society to examine its contents. I reiterate this, as so often correspondence is submitted, particularly by email, that requires a letter and signed approval.

- The Chairman of the Regulation of Practice Committee stated in the Law Society's Annual Report that there has been an increased in solicitors adjudicated bankrupt, having unsatisfied judgments and participating in debt arrangements (see Law Society Annual Report 2014, p.36). He added that bankrupt solicitors are automatically suspended, but may apply to the Law Society to have the suspension lifted. The Regulation of Practice Committee issued a practice note on bankruptcy, judgment and debt arrangements (see Gazette, November 2013, p.53). Such matters are decided by the Committee on a case-by-case basis.
- From time to time, a solicitor is found to be practising without a practising certificate. It is professional misconduct and a criminal offence for solicitors to provide legal services of any kind – reserved or non-reserved – without holding a practising certificate. Such cases are addressed by the Regulation of Practice Committee and reported to An Garda Síochána.
- In the Report of the Regulation of Practice Committee in the Law Society's Annual Report (p.36), the Chairman noted that a practice note was issued to advise that any solicitor, whose practising certificate is dated after the date on which they commenced legal services, should make an application to the President of the High Court to have their practising certificate backdated to the date on which they commenced providing legal services (also see Gazette, July 2014, p.53). In the same practice note, in-house solicitors were also advised that they are required to hold a practising certificate, regardless of the areas of law in which they practice (see Gazette, July 2014, p.53).
- I reported last in my last Annual Report that consideration of draft new Solicitors Accounts Regulations was adjourned by the Council of the Law Society pending the enactment of the Legal Services Regulation Bill. I also observed in the Law Society's Annual Report that there have been no further developments on this matter since then (see Law Society's Annual Report 2014, p.36).
- 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.

Section 9

OBSERVATIONS ON COMPLAINTS AND COMPENSATION FUND CLAIMS

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 decreased 23% on an already decreased 13% last year;
- The aggregate complaints handled by the Law Society dropped 16% this year;
- If complaints relating to undertakings are removed from the Law Society's statistics, the overall admissible complaint numbers are down considerably to 46%;
- Complaints relating to undertakings decreased 45% on an already decreased 26% last year (703 this year and 1288 last year);
- Of the 1526 admissible complaints, leaving aside the reduced 703 undertakings complaints, the remaining 823 aggregate complaints relate to other misconduct, inadequate professional services and excessive fees;
- There was a 45% increase in referrals from the Complaints and Client Relations Committee to the Solicitors Disciplinary Tribunal (268 referrals plus a further 51 referrals that are subject to a stay of varying lengths. This is an increase from 181 last year plus a further 173 referrals with a stay);
- Excessive fees increased 52% to 128 complaints this year by comparison to 84 complaints last year;
- Allegations of misconduct complaints decreased 36% to 1107 this year from 1718 last year;
- Inadequate professional service complaints decreased 30% to 219 complaints this year from 314 last year;
- It appears solicitors are less proactive in making complaints about their colleagues (370 this year by comparison to 873 last year and 1729 in 2012);
- There were 957 new complaints closed this year by comparison to 968 last year; 517 new complaints are under investigation by comparison to 1016 last year; 52 are pending before the

Complaints and Client Relations Committee by comparison to 132 last year. In aggregate there was a drop of 28% of new complaints from 1526 this year to 2116 last year;

- Of the 957 complaint cases that completed, 15% less this year (422) resolved to last year (501) and there were 8 recommendations made (12 last year) and 16 directions (8 last year);
- Reprimands from the Complaints and Client Relations Committee remained static at 7 this year and last year;
- Costs levied increased to €37,700 from €34,850 last year. (I am aware that not all monies are recovered as many solicitors have little or no money to pay.);
- Inadequate professional services complaints increased 18% to 314 from 266 last year;
- 64% of misconduct complaints relate to undertakings this year by comparison to 75% last year;
- Complaints relating to counsel's fee has increased to 45 from 34 last year;
- Complaints made by solicitors continued to reduce this year to 370 (873 last year and 1729 the year before). This therefore means that the remaining complaints are made by parties other than solicitors;
- I observed an decrease of 382 new matters (465 last year) were referred to the Complaints and Client Relations Committee by the Secretariat;
- I noted that failure to hand over files increased to 125 matters from 99 last year;
- The average completion time of a file has increased very slightly to 90.70 days from 88.46 days. It seemed to me that less complaints closed yet less complaints initiated in the year, albeit some case may be more complex;
- In aggregate there were fewer decisions made relating to multiple complaints such as less conditions imposed restricting solicitors to practice as an assistant solicitor (2 this year compared to 4 last year and to 15 the previous year). However more conditions were imposed to assert better solicitor practice (e.g., attendance at courses, undergo risk management audit, maintain register of complaints) (9 this year compared to 7 last year and to 4 the previous year);
- The number of solicitors against whom multiple (5 or more) complaints have decreased to previous years which is a welcome observation.

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 12% increase in Compensation Fund claims for the aggregate year 2013 (299) by comparison to 2012 (266) received by the Law Society;

- There appears to be a pattern of increasing Compensation Fund claims as for the first 6 months to 30 June 2014, 216 Compensation Fund Claims have been received by the Law Society;
- Aggregate referrals to the Solicitors Disciplinary Tribunal by the Regulation of Practice Committee appear to be relatively consistent at 25 this year by comparison to 26 in 2013 and 22 in 2012.

Applications to the High Court for orders to include applications to suspend practising certificates were 14 this year by comparison to 9 in 2013 and 19 in 2012.

- 2 solicitors had their practising certificates refused/suspended, by comparison to 9 in 2013.
- I noted that referrals to the Solicitors Disciplinary Tribunal are continuing and that the Levy contributions appear to me to have amounted to €44,600 by comparison to €99,600 in 2013 and €75,750 in 2012.

Section 10

SUMMARY OF THE YEAR'S STATISTICS

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

- My office received 164 new requests to examine matters compared to 136 in 2013 and 174 in 2012 (21% increase to 2013). Within this figure:
 - I adjudicated on 122 complaints compared to 102 in 2013 and 132 in 2012 (20% increase to 2013).
 - I adjudicated on 21 Compensation Fund claims compared to 16 in 2013 and 23 in 2012.
 - Of the 164 matters examined, I wrote 21 letters to the Complaints and Client Relations Section of which 2 requested referral back to the Complaints and Client Relations Committee for further review and in both cases my views were upheld.

Complaint matters dealt with by the Law Society

- The aggregate new complaints received by the Law Society dropped 23% to last year (1916 this year to 2477 in 2013).
- The aggregate complaints (new and carried forward) received and handled by the Law Society dropped 16% this year (3473 this year to 4123 in 2013).
- Complaints to the Law Society relating to undertakings dropped 45% (703 this year to 1288 last year) and were 74% of the aggregate admissible misconduct complaints this year.
- Admissible complaints received by the Law Society dropped 28% to 2013 (1526 this year against 2116 in 2013) of which 46% related to undertakings leaving 54% relating to all other misconduct, inadequate professional services and excessive fees complaints.

Compensation Fund Claim matters dealt with by the Law Society

- There appears to be a pattern of increasing Compensation Fund Claims received by the Law Society this year as for the 6 months to 30 June 2014 216 claims were received whilst 299 were received for the whole of 2013 and 266 for 2012.
- Referrals to the Solicitors Disciplinary Tribunal by the Regulation of Practice Committee appear to me to be consistent this year to recent years.
- Applications to the High Court for orders to include applications to suspend practising certificates were 14 this year by comparison to 9 in 2013 and 19 in 2012.
- 2 solicitors had their practising certificates refused/suspended, by comparison to 9 in 2013.

Section 11

SUMMARY OF THE YEAR'S OVERVIEW COMMENTED IN EARLIER SECTIONS

- I am aware that the Solicitors Acts references failure to correspond with the Law Society, however I question this in its literal sense as I believe that there is a difference between failure to correspond and failure to give a substantive report; it is the latter that is critical for me.
- Sometimes it is not the number of complaints that are before the Complaints and Client Relations Committee's multiple complaints meeting but the nature of the complaints. I question whether this meeting should therefore be re-titled to be technically correct for such aggregate cases?
- 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. Perhaps not doing so is considered misconduct?
- 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 have raised this question previously and reiterate 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 that the Law Society was examining this issue, however I have not seen an appraisal.
- Despite the fact that the Law Society deployed more clerical resources to the Solicitors Disciplinary Tribunal, there is a substantial and increasing back-log at that end. I noted in the Registrar of Solicitors and Director of Regulation's report within the Law Society's Annual Report 2014 that "*significant efforts have been made to engage with the Solicitors Disciplinary Tribunal to change the Tribunal rules to reduce avoidable delays. So far, there have been no definitive developments. If appropriate, we will return to this initiative*" (p.22).
- Solicitors before committees must have meaningful and constructive engagement with the Law Society and make a substantive and fulsome response replying - not just responding and acknowledging correspondence - this is a key issue for me so the Law Society can compel solicitors to respond in such a manner, and for solicitors to actually do so.
- During the year I proposed to the Law Society's Complainants and Client Relations Section that they recommend time limits for compliance with directions to refund money. I had noticed that whilst directions were made follow-up was required to ensure directions were fulfilled. I am pleased this has been adopted.
- I appreciate substantial work is being done by the Law Society to monitor the Legal Services Regulation Bill 2011 which commenced report stage in July 2014. I note the Law Society continues to liaise with, and make submissions to, the Department Justice and Equality on the Bill. As referenced above, the Bill once enacted will supersede my office. I am cognisant of the continued uncertainty for many in the Law Society's Regulation Department also.

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