

12th Annual Report of the **Independent Adjudicator** of the **Law Society**



Year ending 30th September 2009

Carol Ann Casey
Independent Adjudicator of the Law Society

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Note:

The Independent Adjudicator deals with appeals on complaints from ‘complainants’ made about solicitors of the Law Society of Ireland to the Complaints and Client Relations Section of the Regulation Department and Compensation Fund claims from ‘claimants’ made to the Financial Regulation Section of the Regulation Department. For the purposes of this Annual Report both ‘complainants’ and ‘claimants’ are often referred to as ‘clients’ throughout.

FOREWORD WITH REVIEW OF YEAR



Carol Ann Casey

This is the twelfth Annual Report of the Independent Adjudicator of the Law Society of Ireland, and my third Annual Report as office holder, which covers the period from 1 October 2008 to 30 September 2009.

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

My aim is to deliver an accessible, independent and consistent service which is paramount to ensuring that my adjudications give a fair impartial and unbiased opinion to all clients. Bearing in mind that I am in the dissatisfaction business, it is key for me to manage expectations at the outset so all parties are aware that my role does not encompass the investigation of a matter at first hand.

Complaints are handled by the Complaints and Client Relations Section of the Law Society's Regulation Department. Complaints centre on three key areas: inadequate professional services, overcharging and professional misconduct (see further details in section 2, page 7). Compensation Fund claims are handled separately by the Financial Regulation Section of the Law Society's Regulation Department (see further details in section 2, page 8).

This year I received 146 requests to examine matters. I adjudicated on 113 complaints and 9 Compensation Fund claims. 24 additional referrals were outside of my terms of reference for varying reasons (for further details see section 5, page 23). For a detailed breakdown of the Law Society's statistics please see sections 3 and 4). In my last Annual Report I wrote that I expected an increase in Compensation Fund claims this year due to the publicity connected to certain defaulting solicitors. Such referrals to my Office increased from 1 to 9 this year.

In January this year two significant changes took effect under the Civil Law (Miscellaneous Provisions) Act, 2008. Firstly, lay members are now in the majority on the Complaints and Client Relations Committee which emphasises the importance and value of their role in client customer care (Section 34 of the Act). Lay persons must be persons who are not solicitors. This Committee is charged with the consideration of allegations of overcharging, inadequate professional services and misconduct. Secondly, the Law Society of Ireland, can now 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" (Section 39 of the Act). I believe both of these changes are working extremely well this year with less adjourned decisions and compensation being levied in appropriate cases (see section 2, page 7).

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

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

To keep myself apprised and familiar with complaints and Compensation Fund matters, I attended, as an observer, at various Complaints and Client Relations Committee and Regulation of Practice Committee meetings, and on occasion at Solicitors Disciplinary Tribunal hearings and related High Court hearings. My attendance at the said Law Society meetings is integral to my role to ensure matters that can be referred to me are handled to my satisfaction and also from a self-educating perspective so I keep abreast with current complaints, Compensation Fund and disciplinary matters.

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 background. I am regularly asked about my background to be the jobholder, for which I believe I have a good lay person's knowledge of the Irish legislative system having worked as a law clerk in my early career which grounded my appreciation of the running of a legal practice (to include attending on counsel, etc.) and subsequently I have an established human resource background quite notably in dispute resolution. Apart from relevant academic attainments, I am currently undergoing an academic university ombudsman training programme to enhance my service delivery.

I have carried out the duties of the Independent Adjudicator position single-handedly and on a part-time basis with complete passion for delivering a professional, fair and impartial service. I asserted in my last Annual Report that the proposed Office of the Legal Services Ombudsman should not be a substantial additional financial burden on members (solicitors and barristers) of either the Law Society or Bar Council. Furthermore, given that much of the proposed Legal Service Ombudsman's role is similar to what I currently do, I guesstimate that the appointment of an Ombudsman with one administrative assistant would be sufficient. In the case of solicitors I believe members may incur increased levies, higher practising certificate and professional indemnity costs, so reducing the overheads of the Ombudsman's office should be favoured.

Finally, I wish to acknowledge my professional relationship with the Law Society of Ireland, and whilst I am independent and impartial with clear boundaries, I would like to commend the work of the Complaints and Client Relations Section, led by Ms Linda Kirwan, and the Regulation Department, led by Mr John Elliot, who continually facilitate the Office of the Independent Adjudicator. Equally I would like to thank the chairmen of the various committees for facilitating my observing on their committees on an ongoing basis throughout the year, and for steering increasingly fair and reasoned decisions.



Carol Ann Casey
Independent Adjudicator of the Law Society

20 November 2009

Section 1

REMIT OF THE INDEPENDENT ADJUDICATOR

Statutory governance

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

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

The Office of the Independent Adjudicator

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

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

The Office of the Independent Adjudicator is located at 26 Upper Pembroke Street, Dublin 2, autonomous of all Law Society premises.

The role of the Independent Adjudicator is:

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

Powers of the Independent Adjudicator

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

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

Section 2

CONSUMER INFORMATION ON MAKING A COMPLAINT ABOUT A SOLICITOR

Who can use the Independent Adjudicator?

A client who is dissatisfied with the 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:

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

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

What the Law Society cannot do

- Interfere with court proceedings to have a decision of a court overturned;
- Deal with complaints about the Garda Síochána, Barristers, Court Officials, Judges, etc.;
- Deal with complaints, particularly complaints of negligence, where legal action is a more appropriate remedy;
- 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. For further details please see the statistics from pages 11 to 23.

Following an internal audit of the Law Society's Complaints and Client Relations Section, they have been accredited ISO 9001:2008 continually for the last 5 years. This represents an independent validation of the complaint handling process and procedures of the Law Society. For further details please see page 41.

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 time. Members of the Committees are charged with the consideration of allegations of overcharging and inadequate professional services, as well as allegations of misconduct that are referred from the Complaints and Client Relations Section.

Following the enactment of the Civil Law (Miscellaneous Provisions) Act, 2008, the participation of lay members changed on 1 January 2009, highlighting the significance of their participation in the Complaints and Client Relations Committee. Up until then lay members participated in the Committee but were in the minority however they are now in the majority, as set out under Section 34 of this Act.

In addition, Section 39 of the Act also allows the Law Society of Ireland for the first time through its Complaints and Client Relations Committee to direct a solicitor to pay compensation to a client (up to a limit of €3,000) for "any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided".

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

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

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

- instruct a solicitor to reduce, waive or refund fees to their client;
- direct a solicitor to rectify any error, omission or deficiency in the services provided;
- direct a solicitor to take such other action in the interest of the client as the Committee may

specify;

- issue a reprimand to a solicitor;
- require a solicitor to make a payment (not exceeding €3,000) as a contribution towards the costs of the investigation;
- 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 impose a reprimand or direct that an application be made to the Solicitors Disciplinary Tribunal.

Please see the Law Society's complaints statistics in section 3 from pages 11 to 23.

When the Complaints and Client Relations Section of the Law Society notify the decision of the Committee to a client and solicitor they advise the client that if they are dissatisfied with the decision they can refer the matter to the Independent Adjudicator for her examination. This adds credence to the decision-making process and affords an impartial examination of how the complaint was investigated by the Law Society. I believe this is a fair and reasoned approach - clients are openly advised of this right of referral to the Independent Adjudicator by the Law Society at the beginning of the process and again upon their decision being finalised. This right will be the same right when the Legal Services Ombudsman is appointed.

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.

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 that the client gave them. Claimants can also make a claim if they were the client of a solicitor and they have lost money that was received by the solicitor on their behalf and was to be passed on to them or to others. The Financial Regulation Section can then decide 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 telling them what it was. 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. If the Law Society is paying the claimant all or part of their claim, it will also send them a cheque.

Please see the Law Society's Compensation Fund statistics in section 4, page 24.

Regulation of Practice Committee

The Regulation of Practice Committee polices the profession's compliance with the Solicitors' Accounts Regulations and with aspects of the Solicitors Acts not assigned to other regulatory committees. Up until recently the Regulation of Practice Committee was solely responsible for the adjudication of all claims for grants out of the Compensation Fund made by or on behalf of clients of solicitors who claim to have sustained loss in consequence of dishonesty on the part of their solicitors or employees of their solicitors. However, the Council of the Law Society amended its Council Regulations in September 2009 to permit power to be delegated to the Registrar of Solicitors to approve small claims not exceeding €5,000 on the Compensation Fund and analogous similar refunds of clients' monies.

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

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

The Solicitors Disciplinary Tribunal

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

The Independent Adjudicator

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

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

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

For further details please see the Remit of the Independent Adjudicator in section 5.

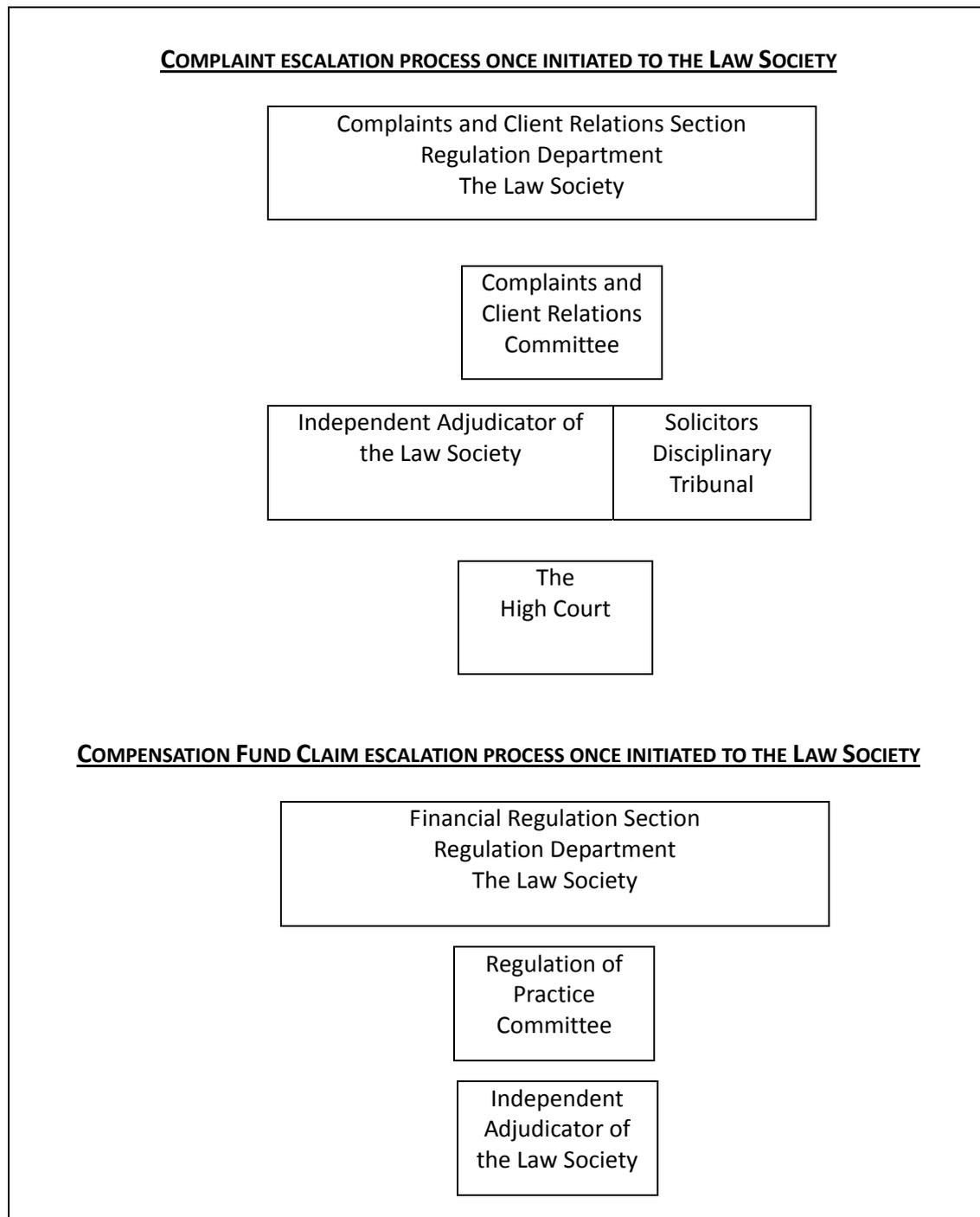
The Legal Services Ombudsman

The role of the Independent Adjudicator, who examines the Law Society's handling of complaints against solicitors, will be superseded by the appointment of a Legal Services Ombudsman. The

Legal Services Ombudsman Act, 2009 was enacted on 10 March 2009 and the appointment will be made by the Minister for Justice, Equality and Law Reform.

The Ombudsman will oversee the handling by the Law Society and Bar Council of complaints by clients of solicitors and barristers. The key functions of the Ombudsman will be:

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



Section 3

STATISTICS FROM COMPLAINTS AND CLIENT RELATIONS SECTION OF THE REGULATION DEPARTMENT OF THE LAW SOCIETY, 2008/2009

The total number of complaints received was **2,129**, of which **375** were deemed inadmissible, leaving a balance of **1,754** admissible complaints. These complaints, and the **1,075** complaints that were carried forward, were investigated by the complaints section during the last 12 months. Another **873** files were opened by the Complaints and Client Relations section, representing a mix of queries and requests for information from members of the public, making a total of **4,077** files handled by the Complaints section during the year.

398 of the **1,754** complaints made last year were made by solicitors against their colleagues, approx 22.6% of the total intake.

279 complaints, involving 178 solicitors, were referred to the Complaints & Client Relations Committee.

At year end, **1,020** of the **1,754** complaints investigated were closed, **632** were under investigation and **102** were pending before the Complaints & Client Relations Committee or the Solicitors Disciplinary Tribunal.

Of the **1,075** complaints that were carried forward, **766** were closed, **206** were still under investigation and **103** were pending before the Complaints & Client Relations Committee or the Tribunal.

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

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

- Breakdown of complaints page 12
- Excessive fees page 13
- Inadequate professional services page 14
- Misconduct page 15
- Complaints and Client Relations Committee statistics page 16
- Complaints and Client Relations Section general information page 17
- Complaints status at year end page 18
- Completion of complaint cases page 19
- Completion times of complaints handled by the Law Society page 20
- Source of complaints page 21
- Multiple complaints against solicitors page 22
- Status of complaints carried forward page 23

Please see section 2, page 7 for details of the Complaints and Client Relations Section and the Complaints and Client Relations Committee, section 6 page 30 for examples of matters referred to my Office and also section 5, page 25 for my comments on the complaint referrals this year.

Breakdown of complaints

	08/09	07/08	06/07
Admissible complaints	1754	1745	1462
Inadmissible complaints	375	290	274
Total	2129	2035	1736

Allegations of excessive fees	199	170	179
Allegations of inadequate professional services	417	550	518
Allegations of misconduct	1138	1025	765
Total	1754	1745	1462

Excessive fees

Complaints alleging overcharging were broken down as follows:

	08/09	07/08	06/07
Conveyancing	25	20	30
Probate	37	24	17
Litigation	66	49	58
Matrimonial	43	58	43
Other	28	19	34
Total	199	170	179

Inadequate professional services

Complaints alleging inadequate professional services were broken down as follows:

	08/09	07/08	06/07
Delay	172	224	216
Failure to communicate	78	123	129
Shoddy work	132	152	135
Other	35	48	38
Total	417	550	518

Misconduct

Complaints alleging misconduct were broken down as follows:

	08/09	07/08	06/07
Delay	13	12	9
Failure to communicate	80	88	133
Failure to hand over	128	148	178
Failure to account	105	68	71
Undertaking	614	565	231
Conflict of interest	32	25	18
Dishonesty or deception	19	14	15
Witnesses expenses	2	4	11
Other	134	99	94
Advertising	11	2	5
Total	1138	1025	765

Complaints and Client Relations Committee statistics

	08/09	07/08	06/07
Number of meetings	22 (+ 1 plenary)	15 (+ 1 plenary)	17 (+ 1 plenary)
Number of new matters referred	279	226	252
Number of complainants invited to attend	15	12	9
Referrals to Disciplinary Tribunal	63	49	34

Complaints and Client Relations Section general information

In addition to complaints, the Complaints Section opened 873 files consisting of a mix of complaints unrelated to solicitors, requests for information, queries, requests for legal advice and second opinions, potential complaints etc.

The Complaints and Client Relations Committee directed the payment of €44,630 in contributions from solicitors towards the costs incurred by the Society as a result of the solicitor's failure or delay in replying to the Society.

7 formal reprimands were issued by the Committee

The Committee utilised the powers contained in the 2002 Solicitors (Amendment) Act which allow it to consider multiple complaints against the same solicitor, in relation to 24 different solicitors.

Complaints status at year end

	08/09	07/08	06/07
Case closed	1020	974	908
Under investigation	632	684	484
Pending before Complaints and Client Relations Committee/ Disciplinary Tribunal	102	87	70
Total	1754	1745	1462

Completion of complaint cases

	08/09	07/08	06/07
Complaints resolved	552	462	484
No grounds for complaint but assistance provided	68	86	64
Withdrawn/abandoned	98	135	63
Rejected	260	259	254
Upheld	42	32	43
Total	1020	974	908

Completion times of complaints handled by the Law Society

	08/09	07/08	06/07
Complaints closed in less than 30 days	268=26.27%	300=30.80%	256=28.19%
Complaints closed in less than 60 days	219=21.47%	233=23.92	193=21.26
Complaints closed in less than 90 days	170=16.67%	138=14.17%	158=17.40
Complaints closed in less than 180 days	262=25.69%	216=22.18%	219=24.12%
Other	101=9.9%	87=8.93%	82=9.03%
Total	1020=100%	974=100%	908=100%

Source of complaints

	08/09	07/08	06/07
Complaints made by solicitors	398	505	269
Complaints made by parties other than solicitors	1356	1240	1193
Total	1754	1745	1462

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

	08/09	07/08	06/07
3 Complaints	46	64	64
4 Complaints	25	26	27
5 Complaints	21	14	9
6 Complaints	11	19	5
7 Complaints	10	6	5
8 Complaints	6	2	2
9 Complaints	2	1	1
10 Complaints	1	1	2
11 Complaints	3	--	-
12 Complaints	3	1	-
13 Complaints	2	3	4
14 Complaints	2	--	-
15 Complaints	-	--	-
16 Complaints	-	1	-
17 Complaints	-	1	-
18 Complaints	-	--	-
19 Complaints	1	--	-
20 Complaints	1	1	-
21 Complaints	1	1	-
23 Complaints	1	-	-
32 Complaints	-	1	-
34 Complaints	1	-	-
54 Complaints	-	1	-

Status of complaints carried forward

Closed	766
Open/reopened	206
Pending before Complaints and Client Relations Committee/ Disciplinary Tribunal	103
Total	1075

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 Sections' Compensation Fund statistics are advised below:

2008

672 claims received
€17,162,298 claimed
€8,627,712 paid

2007

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

2006

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

2005

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

Compensation Fund developments this year

The following is published in the Law Society's current Annual Report on developments between December 2008 to June 2009:

"In the six months ended 30 June 2009, 255 claims were received. Excluding invalid claims refused, these claims amounted to €2,367,559. Payments were made in the sum of €700,168 in respect of claims, and claims amounting to €1,667,391 are still under consideration.

The net assets of the Fund are valued at €14 million as at 30 June 2009. The annual contribution to the fund increased to €660 per solicitor for 2009. Insurance cover for €50 million in excess of €5 million is in place for the year ending 31 December 2009."

Please see section 2, page 8 for details on the Financial Regulation Section and the Regulation of Practice Committee, section 6, page 22 for example matters referred to my Office, and also section 5, page 25 for my comments on the Compensation Fund Claim referrals this year.

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 2008 to 30 September 2009. 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 set out in sections 3 and 4 of this Report.

- There were **146** referrals to the Office of the Independent Adjudicator from 1 October 2008 to 30 September 2009 broken down as follows:
 - **113** complaint referrals were examined and adjudicated;
 - **24** 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
 - **9** 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.)

(There were 24 more referrals to the Office of the Independent Adjudicator than in the period 1 October 2007 to 30 September 2008 which totalled 122.)

Breakdown of complaint related matters:

- Of the 113 complaint files that were examined, 17 had previously been before the Complaints and Client Relations Committee for direction, the remainder had been decided by the investigating solicitors of the Complaints and Client Relations Section.
- 23 of the 113 complaints related matters prompted correspondence from the Independent Adjudicator asking for further examination by the Complaints and Client Relations Section (see examples in section 6, page 30).
- Of the 23 complaint files referred back to the Complaints and Client Relations Section, 16 required further investigation and formal response and the remaining 7 complaint files warranted comments from the Independent Adjudicator, highlighting certain matters to the investigating solicitors of the Complaints and Client Relations Section which did not require further investigation.

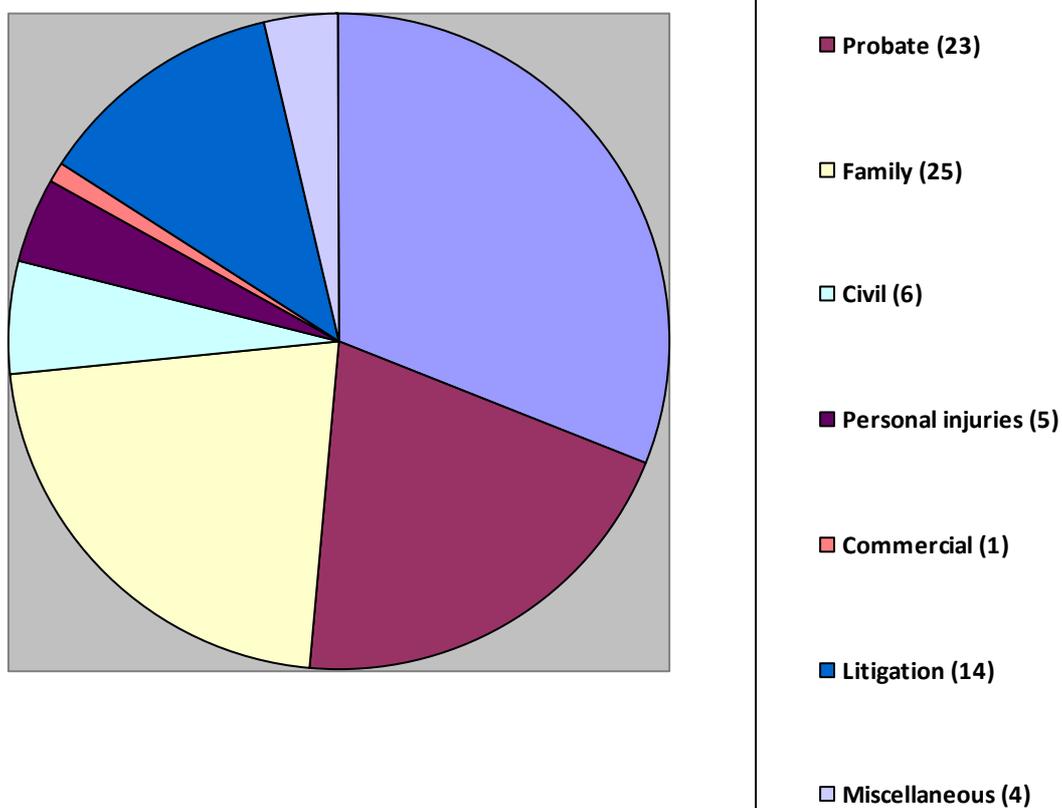
- Of the 23 complaint files referred back to the Complaints and Client Relations Section, 7 had already been before and were decided by the Complaints and Client Relations Committee, the remaining 16 had been decided by investigating solicitors of the Complaints and Clients Relations Section.
- Of the 7 matters referred back to the Complaints and Client Relations Committee, the status is as follows:
 - 3 decisions were altered from the original directions of the Committee;
 - 3 decisions remained as originally directed; and
 - 1 remains with the Complaints and Client Relations Committee pending further consideration.
- Of the 16 matters referred back to the Complaints and Client Relations Section none had been before the Complaints and Client Relations Committee previously. These referrals were acted upon by the investigating solicitors of the Complaints and Client Relations Section, none required submission before the Complaints and Client Relations Committee.
- My adjudications on the 113 complaint matters that I examined centred upon the following complaint disciplines:
 - Conveyancing (35)
 - Family (25)
 - Probate (23)
 - Litigation (14)
 - Civil matters (6)
 - Personal injuries (5)
 - Miscellaneous (4)
 - Commercial (1)

See illustration on page 27 which exhibits these matters by the number of complaints received;

- All complaints adjudicated upon fell into one or a combination of these three categories:
 1. Inadequate professional services (*Section 8 of the Solicitors (Amendment) Act, 1994*);
 2. Overcharging/excessive fees (*Section 9 of the Solicitors (Amendment) Act, 1994*);
 3. 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 28 for an illustrative breakdown of complaint categories this year (Compensation Fund claims are separate).

Breakdown on complaint matters which were referred to the Independent Adjudicator from 1 October 2008 to 30 September 2009

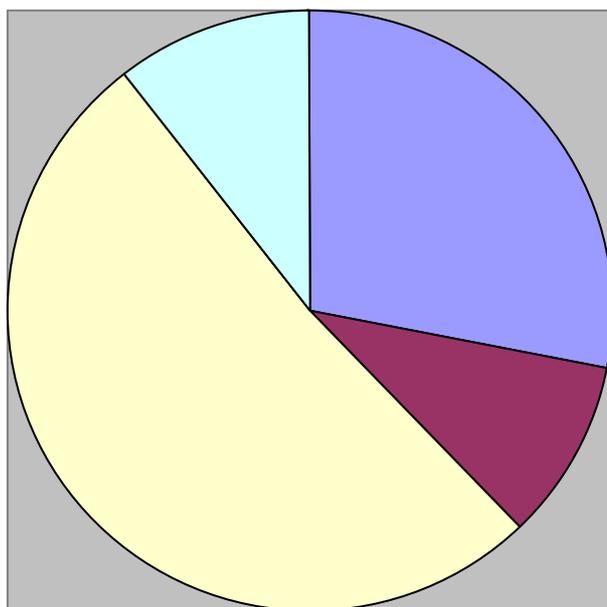


- 24 enquiry files were received directly from clients that were ineligible for my examination of their contents for the following reasons:
 - Matter had been to Solicitors Disciplinary Tribunal (2)
 - Investigation was ongoing with the Law Society (6)
 - Matter had not been through the Law Society's investigation process (8)
 - Out of time (2)
 - Matter had been adjudicated on previously by my Office (3)
 - Solicitor complained about is not a member of the Law Society of Ireland (1)
 - Complaint was outside Independent Adjudicator regulatory framework (2)

(26 enquiry files were received in the previous year)

- The volume of enquiry calls remains at a similar scale to that of the previous two years. The majority of calls have to do with complaint related matters as opposed to Compensation Fund related matters. All calls are logged and minuted.
- 42 of the Law Society's *Complaints about Solicitors* leaflets were dispatched to persons who had not been to the Law Society and called my Office for information on making a complaint about their solicitor (33 such leaflets were dispatched in the previous year).

Breakdown on the grounds of complaints which were referred to the Independent Adjudicator from 1 October 2008 to 30 September 2009



- Overcharging (32)**
- Misconduct (11)**
- Inadequate Professional service (59)**
- Overcharging and Inadequate Professional Service (12)**

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.

- 6 of the 9 Compensation Fund claim matters examined by the Independent Adjudicator resulted in correspondence from her to the Financial Regulation Section of the Regulation Department of the Law Society for consideration, most of which had to do with the same related matter (see examples in section 6, page 32).
- The Compensation Fund claims related to breach of undertakings (and there was also an increase in such breach of undertaking related complaints to the Complaints and Client Relations Section, see section 7, page 39).

Breakdown of problems that inhibited the Independent Adjudicator examining files

The following is a breakdown of adjudicating difficulties the Independent Adjudicator encountered whilst examining complaints and Compensation Fund claims this year:

- Files that were under ongoing investigation with the Law Society when submitted to the Independent Adjudicator for examination by the client (which is a regular occurrence despite all literature advising that complaints must be closed before being submitted to the Independent Adjudicator);
- Clients who had been to the Solicitors' Disciplinary Tribunal, but do not so advise the Independent Adjudicator in their application;
- 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 (this will change to 6 months on appointment of the Legal Services Ombudsman which I favour);
- Clients did not follow an appropriate process, e.g., unwilling to correspond in writing or to formally nominate a person to submit their appeal on their behalf;
- Insufficient details provided by clients, thus prolonging the examination of matters;
- Lack of differentiation between why a client is unhappy with their solicitor – the crux of their complaint to the Law Society – and the referral of their matter to my Office which is limited to an examination of the Law Society's handling of their specific complaints or Compensation Fund claims;
- Regrettably, there is an ever-increasing volume of harassing and offensive calls to the Office of the Independent Adjudicator. It is acknowledged that I am in the dissatisfaction business and need to clearly manage expectations from the outset;
- Unreal expectations on the part of clients who expect that the Independent Adjudicator will automatically side with them, award them compensation, etc., because she is a lay person – I stress over and over that my impartiality is the core element of my work ethic, and it is fundamental to my position that I am neither an advocate nor an apologist for any party.

Section 6

EXAMPLES OF ADJUDICATED COMPLAINTS AND COMPENSATION FUND CLAIM MATTERS REFERRED BACK TO THE LAW SOCIETY BY THE INDEPENDENT ADJUDICATOR

Complaint appeals to the Independent Adjudicator

Under Section 10(b) of the Solicitors (Adjudicator) Regulations, 1997 (S.I No. 406/1997) the Independent Adjudicator 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 that I requested were re-considered and/or re-investigated this year:

Matter 1 – Inadequate professional service

The client was aggrieved by the solicitor's ongoing false promises to complete a probate related matter which was to be completed in 8 to 10 weeks and took a 1.5 years. Firstly, whilst the solicitor acknowledged that he gave false promises, I believe the Law Society should have been more forceful to ensure that he completed the matter in a more timely manner (it was under investigation by the Law Society for 19 months). Secondly, I believed that a finding of inadequate professional services was insufficient without some sanction appended to it and stated that I was mindful of my right to direct the Law Society to refer this solicitor to the Solicitors Disciplinary Tribunal for what I perceived to be misconduct and the numerous false promises he gave his client. Thirdly, I proposed that the solicitor's practice be investigated. Finally, I added that I was not satisfied with the Law Society's final handling of this matter and believed it was the Law Society's responsibility to ensure that stock transfer forms were actually handed over to the client and not to assume, given the solicitor's track record on this matter, that this was done and on which the file was silent. The matter went back before the Complaints and Client Relations Committee who directed that the solicitor (a) write a full, frank and unequivocal letter of apology for the distress caused to his client who had been very patient; (b) that they wanted all matters finalised and to be advised when completed, and (c) that the solicitor refund €500 plus VAT to the Estate which was without prejudice to any legal rights that his client may have. The Committee concluded that if the matter was before them again there was a risk that the solicitor would be referred to the Solicitors Disciplinary Tribunal for an enquiry into his conduct on this matter. I deemed this to be a justified and fair response by the Law Society.

Matter 2 – Inadequate professional service

Client believed that the Complaints and Client Relations Committee did not take adequate account of the nature and extent of her probate related complaint on which she had to engage another solicitor at added expense, undue stress and delay. I believed that the services provided by the solicitor were inadequate and I requested the Law Society to

reconsider their decision. Unusually, this client has appeared before the Complaints and Client Relations Committee twice and at the time of writing this matter is back before the Complaints and Clients Relations Committee at my request.

Matter 3 - Misconduct

Matter in which a solicitor (Mr A) complained that a colleague (Mr B) had failed to comply with an undertaking. It took 5 years for the undertaking to be complied with. The Complaints and Clients Relations Committee decided to take no further action but gave no explanation for its decision. I wrote to the Complaints and Client Relations Section to re-examine the matter as I believed Mr A should have been provided with reasons and I deemed that Mr B was slow in responding to Law Society correspondence throughout this matter. The Committee wrote to me explaining the reasons for the decisions namely that the client matter was progressing and approaching a resolution, and that Mr A had not asserted his allegations in a manner that could be sustained at a disciplinary hearing. I was then in a position to communicate these reasons to Mr A, which I felt he should have received when the decision was first conveyed to him.

Matter 4 – Inadequate professional service

- A matter of stamp duty penalties from a client who blamed his solicitor for inadequate professional services (he made his complaint via his new solicitor). I was satisfied with the investigation process up to the closing decision by the Complaints and Client Relations Committee, which imposed no penalty. I believed that some sanction or penalty should have been imposed for the undue stress and substantial financial loss the client incurred due to his solicitor's inadequate professional services and that the Law Society should re-consider its finding of "the Committee upheld the complaint in this regard but decided after further deliberation to impose no penalty" which in my view was an insufficient summation. I also noted that the solicitor was tardy in corresponding with the Law Society. The Law Society declined to alter their determination on the basis that (a) the client was an experienced property vendor and purchaser and would have been aware of his stamp duty obligations and, (b) the fee charged by the solicitor was a reduced fee.

Matter 5 – Inadequate professional service

A probate related matter about a solicitor's inadequate professional service on which the client well asserted his position throughout the investigation. I was happy with the investigation up until the Complaints and Client Relations Committee decision stage which I deemed was insufficient to address the complaint. The Law Society had already recommended a fee reduction as the solicitor had not fulfilled his obligations under Section 68 of the Solicitors (Amendment) Act, 1994 which I deemed to be fair and reasonable. There were separate issues arising, the inadequacy of the professional services and the reconciliation of the client account ledgers. The matter was reviewed by the Committee who

made a finding of inadequate professional services against the solicitor under Section 8 of the Solicitors (Amendment) Act, 1994 and directed to solicitor to further reduce his fees, and to make an allowance for travel expenses incurred by the client. The solicitor in aggregate was ultimately directed to refund fees totally 55% of the originally charged. My referral of this matter led to a satisfactory conclusion which was fair and reasoned.

Matter 6 - Misconduct

Complaint about a solicitor's breach of undertaking (misconduct) to register a First Charge over a property within 10 days which did not happen for 2 years. My request to re-examine the complaint was rejected by the Committee on the basis that no financial loss had been adduced by the client as a result of the delay, his position had been secured and that the public interest would not be served if every instance of delay in compliance with an undertaking was referred to the Solicitors Disciplinary Tribunal. I accepted this response which provided a reasoned basis for the decision. I think it would have been helpful to assert such a conclusive finding in the Committee's decision originally communicated to avoid ambiguity.

Matter 7 – Delays in the Complaints and Client Relations Section's correspondence

This probate matter was first referred to my Office in 2007 and took until June this year to conclude, during which time I was constantly monitoring its progress. Regrettably the Law Society fell short on following through on its own undertakings to conclude matters and respond with final reports within its own communicated timeframes given to the client. I am highlighting this case, not because of the complaint matter (which I believe was ultimately the correct decision), but because the delay the Law Society incurred in investigating this matter was unacceptable. I requested an unequivocal apology should be written to the client not just by the investigating solicitor but also by the Head of the Complaints and Client Relations Section for what I perceived to be excessive delays in corresponding with the client which promptly happened. (I should add that such delays by the Complaints and Client Relations Section of this, or near this, magnitude are most unusual.)

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 appeals to her Office and in this regard some referred matters are set out below:

Matter A – Benchmark professional fees

This matter related to a letter from the Law Society appraising that the solicitor's client may also make a further claim for legal fees incurred in the completion of work for which payment was already made to the previous solicitor. No expectation of the professional fee was advised. The solicitor charged €3,000 plus VAT to which the Law Society allowed €600 plus VAT. My issue with this matter was not on the fee actually admitted but on the principle

of communication and that a breakdown of the estimated fee, or a benchmark fee, should have been advised to the solicitor with an expectation of what was likely to be admitted for the work to be done. I proposed that clarification should be clear at the outset to save ambiguity. The Regulation of Practice Committee advised that a sum of €600 plus VAT was considered to be an appropriate benchmark professional fee where a client's deed has to be stamped, the title registered and the title certified for the lenders pointing out the work that would typically be involved in such matters. They advised me that in arriving at this figure the Committee considered the typical complexity of such matters, the typical skill, labour, specialised knowledge and responsibility involved, as well as the typical amount of time required for the work. I was further advised that the Committee is at all times cognisant of the fact that it administers a fund which is supported by the contributions of all practising members of the profession and that it must be satisfied that the decisions it reaches in relation to legal costs result in a justifiable use of the Fund. They concluded that the solicitor's fee charged fell within the parameters of this benchmark. I believed that an expectation of fees should be advised to similar Compensation Fund claims and requested the Law Society to consider this in a guideline to append to the Compensation Fund application forms (CF1 and CF2). To add to this matter, the Financial Regulation Section's correspondence with me on this matter was tardy which was communicated to them.

Matter B – Delays in the Financial Regulation Section's correspondence

An appeal to my Office to consider the decision of the Regulation of Practice Committee not to pay interest on the loss sustained by their client at court interest rates as per Section 21(4)(b) of the Solicitors (Amendment) Act, 1960 as amended by Section 29 of the Solicitors (Amendment) Act, 1994. I was of the view that the solicitor should receive an explanation as to why he received the lower professional fee than he had expected. In this matter the Law Society had advised that a fee of €600 plus VAT is generally paid and then the Regulation of Practice Committee allowed €150 plus VAT without any breakdown. My dissatisfaction was not about the fee; it was on what I perceived to be the inadequate communication as to the breakdown of why the figure was €150 plus VAT when a higher expectation had been set by the Law Society. I was equally dissatisfied that the Financial Regulation Section of the Law Society had, unusually, not responded to four letters from the solicitor which included reasonable queries. The Law Society advised me that the professional fee claimed was for the work involved in submitting a claim on the Compensation Fund and that the claimant had not paid professional fees for the work done by the former practising solicitor. I advised the solicitor that he did not claim for interest on his client's loss sustained at court interest rates or otherwise and proposed that should he wish to make such a claim he could write to the Law Society enclosing supporting documentation.

Matter C – Clearer clarifying communication

Upon examining this file I believed that where the Law Society refuse to admit a claim for not falling within the ambit of Section 29 of the Solicitors (Amendment) Act, 1994 and that matter relates to negligence on the part of the solicitor, I would propose that a sentence is inserted in the closing correspondence as to what next steps can be taken for negligence matters such as taking independent legal action and referring them to the Negligence Panel on the Law Society's website. I advised that my objective for proposing this communication was for clarification purposes, in applicable cases, so claimants are aware that negligence falls outside of the jurisdiction of the claim on the Compensation Fund.

Matter D - Delays in the Financial Regulation Section's correspondence

I believed the Regulation of Practice Committee's decision on this claim was correct on an unfulfilled undertaking related matter however the Financial Regulation Section's delays in communicating the decision were not acceptable. I appraised the Law Society of this noting that I hoped similar situations would not occur as they can be emotive for claimants.

Section 7

OBSERVATIONS ON COMPLAINTS AND COMPENSATION FUND CLAIMS TO THE INDEPENDENT ADJUDICATOR, GENERAL COMMENTS AND FOLLOW-UP POST RANDOM REVIEWS OF THE REGULATION DEPARTMENT

Costs incurred by the Law Society due to solicitors' delay in corresponding

I noted that the Complaints and Client Relations Committee directed the payment of €44,630 in contributions from solicitors towards the costs incurred by the Law Society as a result of solicitors' failure or delay in replying to the Law Society (€47,950 in the previous year). The monetary figure aside, I welcome these directions as I have scant regard for solicitors who delay their response to their professional body's correspondence. This has been minuted in many of my adjudications and past Annual Reports. I believe solicitors must respond to the Law Society within the given timescales. Where this does not happen, the Complaints and Client Relations Committee must be more proactive and quicker to levy the costs than currently is the case. I believe this is the only way to address the problem. I pose the rhetorical question why should compliant solicitors pay for their colleagues' neglect of Law Society correspondence? The costs include the investigating legal executive summarising the matter, the administration time, inviting the solicitor to attend a meeting, all members of the Committee having to read all the papers, photocopying, secretarial support, etc. It should be pointed out that these are only the additional costs incurred by the Law Society in bringing the matter to a Committee because the solicitor has not replied.

Multiple complaints

In my previous Annual Reports I have commented that multiple complaints require more stringent measures by the Law Society. I observed at a plenary meeting of the Complaints and Client Relations Committee earlier this year at which I noted that the Committee limited the practising certificates of a number of solicitors and directed such solicitors to conduct management reviews of their practices at their own expense. On that day it appeared to me that many such solicitors work hard yet not wisely, and hopefully such management reviews can assist in this regard.

The Committee utilised the powers contained in the 2002 Solicitors (Amendment) Act which allow it to consider multiple complaints against the same solicitor in relation to 24 different solicitors (28 in the previous year). I hope that multiple complaints will decline more with continuing stringent measures towards achieving this being adopted by the Complaints and Client Relations Committee.

Also worth noting is that the review period for looking at multiple complaints is restricted to the preceding two practice years and I believe this period must be extended. I understand that the Law Society has proposed extending this review period to five practice years and I would encourage proactive implementation for this effect. (See the Law Society's statistics in section 3, page 22.)

Section 68 of the Solicitors (Amendment) Act, 2002

It continues to surprise me year on year that many solicitors do not wholly comply with their obligations under Section 68 of the Solicitors (Amendment) Act, 1994. [A Section 68 letter obliges every solicitor, at the inception of taking instructions, to outline to a client in writing (a) the actual charges they propose to charge or where that is not possible, (b) an estimate of the charges or where that is not possible, (c) the basis upon which the charges are to be made.] To address this failure the Law Society may request the solicitor concerned to discount a portion of the fees payable. Over the past few years, I have asserted my endorsement of this action in the interests of transparency and

openness about fees and to save all parties the unnecessary administrative burdens and costs which results from such non-compliance.

Judicial Review of Complaints and Client Relations Section

The Complaints and Client Relations Section was judicially reviewed on three occasions this year, winning two and losing one. Lessons were learnt from all three referrals and the issues raised in the course of the proceedings illustrated how complex regulatory procedures can be. The three case references were:

2008 No. 1349 J.R. - John F Condon v. The Law Society of Ireland

2008 No. 50 J.R. - Michael O'Sullivan v. The Law Society of Ireland and The Solicitors
Disciplinary Tribunal

2007 No. 1696 J.R. - Denis McMahon v. The Law Society of Ireland and The Solicitors
Disciplinary Tribunal.

Applications made to the High Court

I noted that there was an increase in applications made to the High Court to secure the cooperation of solicitors who are being investigated, for example, there were 20 applications in the 12 months to August 2009. These applications were either seeking an order requiring a solicitor to comply with a statutory notice served under Section 10 of the Solicitors (Amendment) Act, 1994 (which obliges a solicitor to produce his file for inspection) or seeking an order compelling the solicitor's attendance before a Complaints and Client Relations Committee meeting. These applications are the Law Society's response to dealing with solicitors who do not cooperate with the Law Society's investigation. Such applications incur extra work and cost on the Law Society (and on its bona fide members), and any costs awarded should be recovered in full from the offending solicitor. This would encourage solicitors to adhere to their professional body's formal requests and considerably reduce these applications.

Delays in appeals to the High Court

I have observed that where a decision of a Complaints and Client Relations Committee is appealed to the High Court there can be lengthy delays in awaiting the Court's judgement (see example 3 set out in solicitors' disciplinary referrals below). Cognisance must be placed on the negative impact that this can have on affected parties, particularly the client.

Successful application to freeze a solicitor's accounts

This year, for the first time ever, I am aware that the Complaints and Client Relations Committee made a successful application to the High Court to freeze the accounts of a solicitor and suspend him from practice in a situation where the Committee took the view that such action was necessary to protect the interests of the solicitor's clients. I understand that normally this type of application falls within the remit of the Regulation and Practice Committee.

Compensation Fund benchmark fee and explanatory leaflet

I wrote to the Financial Regulation Section of the Law Society advising that I believed an information leaflet for claimants would be beneficial especially on what the Law Society perceive to be the benchmark fee for claimants' solicitors' professional services rendered and details on completing Compensation Fund application forms. I was advised that the Financial Regulation Section are providing details of cost structures in advance of the matter being considered by the Regulation of Practice Committee and that they will continue to do so at the earliest opportunity. It was pointed out that solicitors, in matters appealed to my Office, have had ongoing issues with the benchmark fee which I expect will be an ongoing issue into next year (see example Compensation Fund appeals to my Office in section 6, page 32).

Correspondence from the Financial Regulation Section

The Financial Regulation Section were formally advised by me that I would like to see the Law Society's initiating correspondence with claimants being more expansive to include reference to data protection scrutiny, communications being in writing (for reasons of appeal to the Independent Adjudicator) and that telephone attendances, etc. are recorded on the respective files. I further proposed that they consider mirroring their communication model used by the Complaints and Client Relations Section which is very transparent from the outset of a complaint or enquiry matter being initiated with the Law Society. My comments were acknowledged with thanks.

Random review of files within the Regulation Department

On a number of occasions throughout the year I attended the Regulation Department to randomly review files that have not been to my Office. This assists towards validating my own satisfaction that files are handled and managed correctly by the Law Society. At my last random review I was disappointed to see that referrals to the Solicitors Disciplinary Tribunal continue to be an ongoing issue, despite highlighting my dissatisfaction with this in my last two Annual Reports (please see Referrals to Solicitors Disciplinary Tribunal below). As this is my third Annual Report to highlight this matter I wish to clearly emphasise my continued dissatisfaction on this matter.

Referrals to the Solicitors' Disciplinary Tribunal

As cited above I am dissatisfied with the continuing delays by the Law Society in processing referrals to Solicitors Disciplinary Tribunal. Whilst I acknowledge there has been an improvement in the referrals I still think that there are delays which need to be overcome (see examples below).

On a random review I conducted during the summer I picked up on three cases which fell well short of what I would deem acceptable (see outline of these random reviewed examples below). On this occasion, I am highlighting them with the sole purpose of accentuating the importance I am placing on the expeditious processing of referrals to the Solicitors Disciplinary Tribunal.

Example 1

This matter took 10 months to be processed from the date of referral to the date the application was lodged with the Solicitors Disciplinary Tribunal. I believe this is too slow for such disciplinary related matters. This does not reflect well on the Law Society if a client is left waiting for an excessive period of time to know the outcome or where the matter stands during that period and undermines the Law Society as a regulatory body.

Example 2

In July 2008 four findings of misconduct were found and the Solicitors Disciplinary Tribunal ordered that:

1. the solicitor be censured;
2. the Society present the report of the Tribunal to the President of the High Court recommending the President to restrict the practising certificate of the solicitor not allowing him to practice unless he is under the supervision of a solicitor who has not less than 10 years standing to be approved by the Law Society in advance; and
3. 50% of the costs of the Law Society are to be paid by the solicitor, taxed in default of agreement.

I noted in one of my random reviews a year later that this application to the High Court had not been made, and on which I wrote to the Law Society. The delay does not reflect the seriousness of this matter. I suspect that other members of the profession would equally not be satisfied, let alone members of the public if they were aware. The Law Society responded advising me that as the solicitor was due before the Regulation of Practice Committee in December 2008 to face very serious allegations, it was a deliberate time lag to allow these

further allegations to be referred to the Tribunal. I was advised that the application from the Regulation of Practice Committee was lodged on 30 June 2009. This point accepted, I take the view that half a year had lapsed since that Committee meeting in December 2008 and that this application should have been lodged sooner by the Law Society due to the severity of the matter.

Example 3

This complaint goes back to 2003 and the Solicitors Disciplinary Tribunal made a prima facie decision therein in September 2006 that the solicitor was guilty of misconduct on 3 grounds. The solicitor appealed and the appeal to the High Court was listed for November 2006. It was adjourned and transferred to a different Judge with judgement expected in February 2007. The Law Society regularly sought judgement which was still pending at the time of my review in July 2009. I wrote to the Law Society that I firmly believed this case urgently required the Society's formal intervention at the highest level possible to obtain judgement as a two year wait could in effect bring the profession's complaint handling mechanism into disrepute. I am mindful that this matter is outside my remit however I am highlighting it for the reason that the matter initiated as a complaint file (with the Complaints and Client Relations Section) on which a final decision is still pending 6 years on. The Registrar of Solicitors advised me that my concerns were raised with counsel, who represents the Law Society in many of their cases, and who advised that the delays in receiving such judgements are no greater than the delays experienced by other litigants. There I rest this matter.

The above examples were files that I randomly reviewed and propose an analysis is conducted on the status of all disciplinary related matters so delays can be addressed imminently with timely actions taken and with appropriate resources being either employed or redeployed as required to do so.

I am purposely highlighting the above files to show the shortcomings of matters related to solicitors' disciplinary matters. On many occasions I have been advised by the Registrar of Solicitors that the problem relates to a resourcing issue – for referrals to the Solicitors Disciplinary Tribunal in particular - which to me, as the Independent Adjudicator who oversees the Law Society's handling of complaints, is no longer an acceptable response to these ongoing and protracted matters.

Solicitor Disciplinary Tribunal sittings

I have noted that there are increasing volumes of matters before the Solicitors Disciplinary Tribunal which year on year are increasing the number of sittings of the Tribunal. For example there were 38 sittings of the Tribunal in 2003 and 110 in 2008. I noted that new applications from the Law Society's Regulation Department to the Solicitors Disciplinary Tribunal only increased from 52 new applications in 2003 to 65 new applications in 2008. I would have expected this increase to be higher which supports my continued dissatisfaction with the level of referrals to the Tribunal by the Law Society. As mentioned above (Under random review of files within the Regulation Department), this is my third year to highlight this matter which, in my opinion, is no longer at an acceptable level in the public's interest. I should also reiterate that the Tribunal, along with my own role, is wholly independent of the Law Society (see further section 2, page 9).

Disciplinary actions

I observed hearings before the Solicitors Disciplinary Tribunal on a number of occasions this year. In particular I followed one matter which originated as a complaint with the Complaints and Client Relations Section, was referred to the Solicitors Disciplinary Tribunal and proceeded to go before the President of the High Court. I should pay homage to all the personnel involved in such matters from inception through to the stage of a solicitor being struck off. There is a phenomenal amount of work

involved in such matters and I particularly acknowledge the Law Society's legal team (solicitors and counsel) for their persistent and professional work on the matters I have observed.

Volume of complaints related to undertakings

This year's statistics from the Complaints and Client Relations Section show a dramatic increase in the number of complaints that are related to solicitors' breach of undertakings. There were 614 complaints which account for nearly a third of all complaints made within the last year to the Law Society. Undertakings are a promise by a solicitor to do something such as, for example, to register a building society's mortgage or to pay a specified amount out of monies due to a client. The Law Society views non-compliance with undertakings as a matter of the utmost gravity and the dramatic increase in complaints about non-compliance of undertakings must be a matter of serious concern. Most are complaints from banks or building societies where the solicitor has failed to register the bank or building society's mortgage and deliver up the registered owner's deeds. A smaller but significant one is where a solicitor acts for developers who undertake to transmit the sale proceeds of each house in a development and they do not do it. This is a sign of our recessionary times and is a matter the Law Society appears to be taking very seriously.

Breach of undertakings

Further to the point above, in my file examinations there has also been a substantial increase in complaints and Compensation Fund claims that are related to solicitors' breaches of undertakings, which concur with the Law Society's statistics set out in Section 3, page 15. I think breach of undertakings is a serious matter which can often lead to misconduct and solicitors should be appraised of the severity the consequences of non-compliance with undertakings they give on behalf of their clients.

Restrictions on undertakings

The Solicitors (Professional Practice, Conduct and Discipline – Secured Loan Transactions) Regulations, 2009 (SI No. 211 of 2009) came into effect on 1 September 2009 which restricts the giving of undertakings to mortgages in secured loan transactions. I welcome the introduction of this Regulation as it prohibits solicitors from giving undertakings to, or for the benefit of, a bank or any persons related to a secured loan transaction, in which a solicitor or a connected person has a beneficial interest (unless the solicitor has given specified notice and the bank or other person has both acknowledged receipt of such notice and consented to the solicitor providing the undertaking). I think the enactment of these Regulations demonstrate an action the Law Society has taken with regard to recent high-profile cases which caused damage to public confidence in solicitors' undertakings. (Reference: Law Society Gazette, August/September 2009, page 11.)

Complaints about breaches of solicitors' undertakings

Complaints about breaches of solicitors' undertakings, driven by the increased attention by financial institutions to undertakings, continue to be a notable feature of the Regulation Department's work. And, whilst I noticed in the Registrar of Solicitors and Director of Regulation's Report, in the current Annual Report, a reference to the applications to the High Court mentioned, there is no reference to the amount of applications made before the Solicitors Disciplinary Tribunal, a matter which is an ongoing issue I am monitoring as highlighted above. (Reference: Law Society Annual Report & Accounts 2008/2009 – Reports of the Department Directors, page 15.)

In the Report of the Chairman of the Complaints and Client Relations Committee, Mr Simon Murphy noted that complaints about undertakings continue to dominate the work of the Complaints and Client Relations Section, accompanied by an increase in allegations of overcharging. As referenced in Section 3, page 11, the Complaints and Client Relations Section investigated 1,754 admissible complaints, 614 of which related to undertakings, the majority of which were given to financial

institutions. (Reference: Law Society Annual Report & Accounts, 2008/2009 – Reports of the Law Society’s Standing Committees, page 20.)

Negligence

Negligence is an increasingly common feature of matters referred to me for my examination and on which I would like to comment. 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”. As at 30 September 2009, the Law Society had awarded compensation under this Section 5 times. In 3 cases, the maximum amount under the legislation was awarded.

In relation to Compensation Fund claims, I make reference to the section of the Solicitors Acts, 1958-1994 as amended, and in particular Section 21 of the 1960 Act as amended by Section 29 of the 1994 Act. Section 21(4) clearly states that a client of a solicitor must sustain loss in consequence of dishonesty on the part of that solicitor arising from the solicitor’s practice as a solicitor. The terms of the Acts do not envisage or require that any grants be made from the Compensation Fund in respect of losses suffered by clients in relation to the negligence of a solicitor. The professional indemnity insurance of a solicitor normally covers these losses.

Impact of lay majority on the Complaints and Client Relations Committee

I have observed on all three divisions of the Complaints and Client Relations Committee on at least one occasion and am delighted that the new lay majority is working very satisfactorily. I think the lay majority has improved the dynamics on the Committee and there appears to be a smart decision-making process. I note that lay members are nominated from two sectors only - Irish Congress of Trade Unions (ICTU) and Irish Business Employers Confederation (IBEC) - and suggest adding to the nomination panels from which future lay members are to be appointed in order to broaden the spectrum of nominees’ disciplines and backgrounds.

I also must commend Simon Murphy, Chairman of the Complaints and Client Relations Committee and his two Vice Chairmen, Stuart Gilhooly and Andrew Cody, who run the three divisions of the Committee for their professionalism in running their meetings and for openly welcoming the lay majority voices.

Complaints and Client Relations Committee adjournments

In my past Annual Reports I have commented on the number of adjournments being granted by the Committee. I am pleased to say that at the meetings I have attended this year, most of the adjournments granted seemed fair and reasonable in the circumstances. This may have been/be facilitated by the new lay majority on the Committee (see section 2, page 7).

Complaint application form

I am delighted that the Complaints and Client Relations Section now use a complaint application form which assists a complainant to identify their complaint. This will save the Section administrative time as quite often the investigating solicitors had to write to the complainant asking for further details of their complaint in order to establish whether the complaint is one that can be addressed by the Law Society.

Complaints Review Task Force Report

The Complaints Review Task Force was convened in December 2006 in order to conduct a complete review of the way in which the Law Society handled complaints. The Task Force was chaired by Mr Joe Brosnan, former Secretary of the Department of Justice. The Independent Adjudicator has been following the progress of the Report over the years and notes it was finally adopted by the Council of the Law Society in September 2009. A programme of implementation has commenced and I will be asking the Society for a status report in due course.

ISO accreditation

I read the latest National Standard Authority of Ireland's Quality Management System Audit Report on the Law Society and noted the following positive observations "excellent professional file handling noted, supported by well maintained administration files" and that the system "is suitable for the needs of the organisation and provides a structure to ensure consistency in delivery". Recognition is due to the Head of the Complaints and Client Relations Section, Ms Linda Kirwan, and her team for receipt of this continuing accolade which provides independent validation of the procedures followed by the Complaints and Client Relations Section (see further section 2, page 7).

Clients' research prior to instructing legal action

Before suing clients should research their best and worst case fee outcomes that they can expect to pay a solicitor for running their specific legal action to include if the matter is appealed to a higher Court. This is irrespective of whether a solicitor complies with his Section 68 obligations under the Solicitors (Amendment) Act, 1994 upon taking instructions from a client. Being an appeal body, I regularly observe that clients can often have displaced querulous aggression towards their solicitor as opposed to the action itself and preparatory research may be helpful.

Client observations

Clients' expectations do not always coincide with the reality of the Independent Adjudicator's role, e.g., they may be seeking compensation, or they want the alleged offending solicitor to be struck off, etc. As alluded to earlier in this Annual Report, whilst clients are passionate about their complaint this passion does not necessarily mean that their complaint is a bona fide complaint that can be upheld. Each referral to the Independent Adjudicator is dealt on its individual merits objectively and impartially. The Independent Adjudicator is not in any way biased towards solicitors or clients, and reiterate, from my Foreword, that I am neither an advocate nor an apologist for either a client or solicitor. I am continually cognisant that I am in the dissatisfaction business and it is my job to ensure that I deliver the highest level of service without fear or favour to anyone.

Clients often expect a detailed explanation as to why their complaint was not upheld by the Independent Adjudicator to be given to them which may not be applicable or appropriate. I advise in all my initiating correspondence with clients and solicitors that I do not investigate a matter at first hand. I am not permitted under my governing Regulations (see Appendix I, page 46) to investigate legal issues or analyse legislation on behalf of a client. My role is to ensure that any dissatisfaction with the Law Society on the part of the general public is dealt with by an independent and impartial person who is not a lawyer and that their case is examined as such. It is therefore not prudent for my response to contain substantive detail which could be outside the remit of the Independent Adjudicator.

Solicitor observations

As mentioned earlier in this section, Section 68 of the Solicitors Act 1994 obliges solicitors to communicate in writing information about their fees. Solicitors should be careful about the information they supply under this Section. For example in one matter I examined this year, a solicitor clearly communicated in writing that his fee "will be X". Additional work arose which was

not anticipated. As the solicitor's letter about his fees, in compliance with his Section 68 obligations, was unequivocal and did not cater for any unexpected costs arising nor did he subsequently advise his client of his increased estimated fees in a timely manner, he was not entitled to recover any fees in excess of the amount specified in his originating letter. This example is not unusual and I have seen it arise on a number of occasions.

Solicitors' procrastination in communicating with clients can often be the crux of a complaint. Conversely, I have observed and perused numerous files where clients can equally be unrealistic, demanding and offensive.

I acknowledge that many solicitors' practices are enduring difficulties and that significant numbers of solicitors have been made redundant. I also note the Law Society have appointed a careers officer to assist members in finding alternative employment. I am equally cognisant of the effect that this has had on the Law Society who were themselves forced to make a number of staff redundant.

Time for referring matters to the Office of the Independent Adjudicator

It has been said to me on many an occasion by solicitors that they believe 3 years is too long for a client to bring a matter to my Office upon conclusion by the Law Society. I agree. However under the Legal Services Ombudsman Act, 2009 a client will have 6 months to refer their matter.

Observation from attendance at a Regulation of Practice Committee meeting

I observed on a meeting of the Regulation of Practice Committee at which it was proposed that the Registrar of Solicitors could deal with claims up to a certain agreed figure to utilise the Committee's professional time to greater extent. I welcomed this believing that it will save on the Regulation Department's time allocation and administration costs, and indeed Committee time. This proposal was approved by the Council of the Law Society in September 2009 which has since amended its Council Regulations to permit the Registrar of Solicitors to approve claims not exceeding €5,000 on the Compensation Fund and analogous similar refunds of clients' monies.

Conflict of evidence

I observed this year, more than in the past, that complaints cannot be upheld when there is a conflict of evidence. Whilst this is obvious, it is important to note, as matters referred to the Solicitors Disciplinary Tribunal must be capable of being substantiated.

Volume of work in the Regulation Department

I note in the Law Society's Annual Report 2008/2009 that the volume of work in the Regulation Department has increased greatly, for example that there were 86 applications to the High Court under the Solicitors Acts (compared with 17 in 2007), resulting in 206 orders (compared with 92 in 2007). The Law Society's Regulation of Practice Committee is continuing to deal with the Michael Lynn and Thomas Byrne cases "while successfully maintaining a solvent, adequately-funded Compensation Fund". To date there has been no special levy on the profession, despite these cases and indeed the investment market turmoil. (Reference: Law Society Annual Report & Accounts 2008/2009 – Report of the Director General, page 11.)

Concluding matters with solicitors

On occasion the Complaints and Client Relations Section and the Financial Regulation Section have focused on communicating the final decision to the client and may overlook advising the solicitor. Whilst this is infrequent, I still wish to mention it, as it is imperative that investigating solicitors or investigating accountants close out a matter with all parties. I am aware of increasing pressures on the personnel in the Regulation Department but nonetheless a solicitor against whom a complaint is made is entitled to be informed expeditiously of the outcome of the complaint.

Relocation of Regulation Department out of Blackhall Place

In December 2008 the Regulation Department of the Law Society moved out of Blackhall Place to their new accommodation at George's Court, George's Lane, North King Street, Dublin 7. This move was to emphasise the Law Society's separation of its representative and regulatory roles and towards continuing the Law Society's commitment to increased efficiency in all its activities. All regulatory committee meetings are held in this accommodation – the Regulation of Practice Committee, the Complaints and Client Relations Committee and the Professional Indemnity Insurance Committee.

The launch of the new building was opened by Minister Dermot Ahern who gave a welcome address, and I also wish to extend my gratitude to the outgoing President John D Shaw for his references in his speech to my last Annual Report that day.

Administrative changes

Good administrative changes occurred this year – the Complaints and Client Relations Section brought in a complaint form (as advised above), the Financial Regulation Section drafted an explanatory leaflet for claimants making a claim on the Compensation Fund, the Law Society's Complaints about Solicitors leaflet was edited to reflect the Society's requirement for cooperation and assistance towards resolving difficulties, and my own leaflet was edited to reflect communications with solicitors, etc. All are designed to enhance the service offered to those who avail of our aggregate services.

Emailing the Independent Adjudicator

The Independent Adjudicator's website is www.independentadjudicator.ie. This year I included an email address to enhance service communications with me: adjudicator@independentadjudicator.ie. As a continuing good practice I require a client's signature as authorisation to me to requisition their file from the Law Society for my examination of their matter.

Referring matters to the Legal Services Ombudsman

Once a matter has been examined by the Independent Adjudicator it will not be eligible for referral to the Legal Services Ombudsman when appointed.

Cooperation of the Regulation Department

My role necessitates the cooperation of the Regulation Department to facilitate my requisitions of files to be examined, my attendance at various committee meetings and my random reviews of files on an ongoing basis throughout the year. I wish to formally acknowledge and extend my gratitude to each one.

Section 7

CONCLUDING COMMENTS

This Annual Report was structured to be as informative as possible and has been based on my work during the year, clients' matters and questions posed to me, sample matters on which I have adjudicated, my comments and observations arising from my attendance at committee meetings, conducting random reviews of files in the Regulation Department (both the Complaints and Client Relations Section and the Financial Regulation Section), and following matters as they progressed through the Solicitors Disciplinary Tribunal and the High Court.

This year I received 146 requests to examine matters. I adjudicated on 113 complaints and 9 Compensation Fund claims, and 24 additional referrals were outside of my terms of reference for examination of their contents for varying reasons (for further details see section 5, page 25). Section 5 gives a breakdown of the complaint matters referred to the Independent Adjudicator while Section 6 sets out examples of adjudicated complaints and Compensation Fund Claim matters referred back to the Law Society by the Independent Adjudicator.

Section 7 contains my observations and comments during the year from which, accompanied by all the previous sections above, I set out four summation areas:

1. The key achievements this year have been:

- the Financial Regulation Department drafted guidelines for submitting a claim to the Law Society which will enhance communication;
- the lay majority sitting on the Complaints and Client Relations Committee appears to be working very satisfactorily (see section 7, page 40);
- the Law Society directed a solicitor to pay compensation to a client 5 times in its first 9 months of this year since the legislation came into effect, 3 times up to the maximum limit of €3,000 (see section 7, page 40);
- the Complaints and Client Relations Committee directed the payment of €44,630 in contributions from solicitors towards the costs incurred by the Law Society as a result of the solicitor's failure or delay in replying to the Society, and issued 7 formal reprimands (section 3, page 17);
- the Complaints and Client Relations Section have introduced a complaint application form.

2. There have been many increases this year such as in:

- the aggregate volume of complaints and Compensation Fund claim matters referred to the Office of the Independent Adjudicator – 146 matters this year by comparison to 122 last year (see section 5, page 25);
- the Compensation Fund claims received and paid by the Law Society – 9 claim appeals this year to 1 last year (see section 4, page 24);
- complaints about breach of undertakings (section 7, page 39);
- referrals to my Office about inadequate professional service and overcharging related complaints.

3. Matters on which I have been liaising with the Law Society, or monitoring, this year included:

- The ongoing delays with solicitors' disciplinary referrals (section 7, page 37);
- the Regulation Department's benchmark fee admitted in Compensation Fund claims. (This benchmark fee is €600 plus VAT which the Regulation Department considers to be an appropriate professional fee where a client's deed has to be stamped, the title registered and

the title certified for the lenders pointing out the work that would typically be involved in such matters.) Of the 9 Compensation Fund referrals to my Office this year, I wrote to the Law Society on 7 matters, most often on the benchmark fee the Law Society admitted versus the claimants', or their solicitors', expectation of what should be admitted (section 6, page 32);

- solicitors' delay in corresponding with the Law Society (section 7, page 35);
- the Law Society's delays, on occasion, in dealing with correspondence (section 7, page 42);
- ongoing multiple complaints (section 7, page 35);
- issues highlighted by my random reviews (section 7, page 37); and
- Solicitors' non-compliance with Section 68 of the Solicitors (Amendment) Act, 1994 (section 7, pages 35 and 41)

4. Issues the Independent Adjudicator requests the Law Society to action and improve upon are:

a. Referrals to the Solicitors Disciplinary Tribunal

In my last two Annual Reports I outlined my dissatisfaction with the delays in processing matters referred by the Complaints and Client Relations Committee to the Solicitors Disciplinary Tribunal. Whilst there has been some improvement it is still far short from satisfactory. These are important matters and the delays suggest that there are resource issues. The Law Society's response is well short of my expectations and I await a constructive solution to this problem, be it through reallocating resources, appointing a person on a fixed term contract, etc. as the Society deem appropriate to remedy this continuing problem (section 7, page 37);

b. Reducing multiple complaints

Multiple complaints are an ongoing issue (section 3, page 22), and whilst being managed, I think more needs to be done to reduce such matters. Many such solicitors fall within the first point above and if costs are recouped this may reduce the number of multiple complaints. I further urge extending the practising certificate review period from two years when considering the renewal of practising certificates for solicitors against whom multiple complaints have been made (section 7, page 35);

c. Recouping costs from solicitors

Where the Law Society has to refer a matter to the High Court to secure the cooperation of solicitors who are being investigated because the solicitor does not reply to Law Society correspondence or attend before a Complaints and Client Relations Committee meeting, the associated costs should be recovered from the offending solicitor. This should be automatic: I believe if the Law Society incurs such costs then the solicitor should pay the costs - with no exceptions (section 7, page 36);

d. Benchmark fees for Compensation Fund claims

I believe that solicitors should be expeditiously advised of the Compensation Fund benchmark fee to avoid any ambiguity. Most claim appeals to my Office this year centred upon this matter (section 6, page 32 and section 7, page 36); and

e. Concluding correspondence

The Regulation Department must ensure that all matters and claims are closed out at the end of a matter with each party – clients and solicitors – in a timely manner. In addition, the Regulation Department should consistently respond to correspondence within a reasonable timeframe.

In conclusion, I reiterate my continued dedication to the post of Independent Adjudicator of the Law Society, a role I am passionate about and will fulfil to the best of my ability until it is superseded by the appointment of a Legal Services Ombudsman.

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

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

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

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

2. (a) In these Regulations -

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

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

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

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

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

"the Registrars Committee" means the committee of the Council of the Society which is responsible for the adjudication of complaints made to the Society by or on behalf of clients of solicitors against their solicitors (other than complaints in the nature of claims

for grants out of the Compensation Fund, the adjudication of which are the responsibility of the Compensation Fund Committee) which have been referred to it by the Complaints Section of the Society initially concerned with the receipt and the examination or investigation and the attempted resolution of such complaints;

"Regulation" means a regulation in these Regulations;

"the Society" means the Law Society of Ireland.

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

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

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

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

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

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

(i) the remuneration of the Adjudicator; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) rejecting the complaint.

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

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

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

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

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

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

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

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

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

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

(i) the complaint is frivolous or vexatious; or

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

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

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

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

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

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

Dated this 26th day of September 1997.

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

Francis D. Daly

President of the Law Society of Ireland

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