

# **13th Annual Report** of the **Independent Adjudicator** of the **Law Society of Ireland**



**Year ending 30 September 2010**

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

## TABLE OF CONTENTS

	<b>Page</b>
<b>Foreword with review of year</b>	<b>2</b>
<b>1. Remit of the Independent Adjudicator</b>	<b>4</b>
- Statutory governance	4
- The Office of the Independent Adjudicator	4
- Powers of the Independent Adjudicator	4
<b>2. Consumer information on making a complaint about a solicitor</b>	<b>5</b>
- Who can use the Independent Adjudicator?	5
- Complaints the Law Society may investigate	5
- What the Law Society cannot do	5
- Complaints and Client Relations Section of the Law Society	5
- Complaints and Client Relations Committee	6
- Applying to the Independent Adjudicator or to the Solicitors Disciplinary Tribunal	7
- Financial Regulation Section of the Law Society	7
- Regulation of Practice Committee	7
- The Solicitors Disciplinary Tribunal	7
- The Independent Adjudicator	7
- The Legal Services Ombudsman	8
<b>3. Statistics from the Complaints and Client Relations Section of the Regulation Department of the Law Society</b>	<b>10</b>
- Breakdown of complaints	11
- Excessive fees	12
- Inadequate professional services	13
- Misconduct	14
- Complaint and Client Relations Committee statistics	15
- Complaints status year end	16
- Completion of complaint cases	17
- Completion times of complaints handled by the Law Society	18
- Source of complaints	19
- Multiple complaints against solicitors	20
- Status of complaints carried forward	21
<b>4. Statistics from the Financial Regulation Section of the Regulation Department of the Law Society</b>	<b>22</b>
- Compensation Fund statistics	22
- Compensation Fund developments this year	22
- Regulation of Practice Committee activities during the year	23
<b>5. Breakdown of complaint matters referred to the Independent Adjudicator</b>	<b>24</b>
<b>6. Examples of adjudicated complaints and Compensation Fund claim matters</b>	<b>30</b>
<b>7. Observations on complaints and Compensation Fund claims</b>	<b>35</b>
<b>Concluding comments</b>	<b>43</b>

## FOREWORD WITH REVIEW OF YEAR



**Carol Ann Casey**

This is the thirteenth Annual Report of the Independent Adjudicator of the Law Society of Ireland, and my fourth Annual Report as office holder, which covers the period from 1 October 2009 to 30 September 2010.

I am responsible for (a) ensuring that the Law Society of Ireland handles complaints about its members in an effective and efficient manner, (b) reviewing the Law Society's handling of claims made on its Compensation Fund, and (c) recommending any changes in the Law Society's complaints and claims procedures which are, in my view, necessary to maintain the highest standards. Allegations of financial irregularities 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.

A fundamental attribute of my position, and the core of my work ethic, is that I am independent and impartial in all my work and adjudications. Being the Independent Adjudicator is not a campaigning job: it is not my role to wag a finger at the profession nor is it my job to come up with a binary answer (yes/no, guilty/innocent, etc.).

My own code of ethics in the Independent Adjudicator role is, first and foremost, to be neither an advocate nor an apologist, and secondly, to deliver my service and adjudications against the following which I believe are essential attributes for my role:

- clarity of purpose;
- accessibility;
- openness and transparency;
- good customer service; and
- quality work and performance delivered at a high professional standard.

This year I received 183 requests to examine matters (146 last year). I adjudicated on 136 complaints (113 last year) and 19 Compensation Fund claims (9 last year). In my previous Annual Report I wrote that I expected an increase in the number of requests that I received to review Compensation Fund claims this year due to the publicity connected to certain defaulting solicitors: this happened. I had also noted the dramatic increase in the number of complaints related to solicitors' breach of undertakings (614 last year): this has had an unprecedented increase this year to 1134.

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

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 High Court hearings of interest. I believe that my attendance at the committee meetings is integral to my role to ensure that in my view the maintenance of the highest standards apply to the handling of complaints, Compensation Fund claims and disciplinary matters.

I deem the role of the Independent Adjudicator to be in the public interest as the incumbent cannot be, and is not, a lawyer, thus meaning I am impartial with a relevant professional background. I have also attained, at my own expense, two relevant university ombudsman accreditations since my last Annual Report, thus proving my commitment to my role and enhancing my service delivery to all stakeholders.

As part of my studies I conducted a comparative analysis of solicitor complaints in Ireland versus Scotland, which moved from a Legal Services Ombudsman Office to Legal Services Complaints Commission. Separately, I am familiar with the workings of the Scottish Legal Complaints Commission (SLCC) (opened in October 2008) and the newly established English Legal Services Ombudsman's office (LSO) based in Birmingham (opened in October 2010), having been to both on various work projects. I believe there is much to learn from the legal profession's complaint handling in these jurisdictions who no longer self-regulate.

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 robust and timely adjudicative service.

This year the Law Society produced a welcomed Compendium of Solicitors Acts, 1954 to 2008 and Legal Services Ombudsman Act, 2009. Legislation passed enacting the Legal Services Ombudsman Act in March 2009. I asserted in my previous Annual Reports 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, especially in economically challenging times. I believe that much of the proposed Legal Services Ombudsman's role will be similar to what I currently do. I reiterate my view that the appointment of an Ombudsman with one administrative assistant is sufficient. I further propose and favour a shared service ombudsman environment to be both knowledge and cost effective facilitating a leverage on aggregate resources. This appears to work effectively for four ombudsman schemes in the United Kingdom.

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



Carol Ann Casey  
Independent Adjudicator of the Law Society

17 November 2010

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

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

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

The Office of the Independent Adjudicator provides an independent forum to which members of the public may apply if they are dissatisfied with the manner in which the Law Society of Ireland has dealt with any inadequate professional service, misconduct or overcharging related complaint made by or on behalf of any client against their solicitor. The Office of the Independent Adjudicator is located at 26 Upper Pembroke Street, Dublin 2, autonomous of all Law Society premises.

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

The role of the Independent Adjudicator 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.

Following an external audit of the Law Society's Complaints and Client Relations Section, they have been accredited ISO 9001:2008 continually for the last 7 years. This represents an independent validation of the complaint handling process and procedures of the Law Society.

### **Complaints and Client Relations Committee**

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

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

The solicitors who are under investigation are often requested to attend to answer questions on the complaint(s) before them. Clients are rarely in attendance and 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.

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.

### **Applying to the Independent Adjudicator or to the Solicitors Disciplinary Tribunal**

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

### **Financial Regulation Section**

The Financial Regulation Section of the Regulation Department of the Law Society administers the Compensation Fund, which the Law Society is required to maintain in order to compensate clients for losses arising due to dishonesty on the part of solicitors or their employees. Claimants can make a claim from the Fund if they were the client of a solicitor who misappropriated money belonging to the client. The Registrar and Director of Regulation can decide to pay a claim up to €500. Thereafter the Regulation of Practice Committee can 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. 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 send them a cheque.

### **Regulation of Practice Committee**

The Regulation of Practice Committee administers the compensation fund, which the Law Society is required to maintain in order to compensate clients for losses arising due to dishonesty on the part of solicitors or their employees. The Registrar of Solicitors is permitted to approve claims not exceeding €5,000 on the Compensation Fund and analogous similar refunds of clients' monies.

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

### **The Solicitors Disciplinary Tribunal**

The Solicitors Disciplinary Tribunal is a statutory body, constituted under the Solicitors (Amendment) Act, 1960 as amended by the Solicitors (Amendment) Act, 1994 and the Solicitors (Amendment) Act, 2002. The Tribunal, like the Independent Adjudicator, is wholly independent of the Law Society of Ireland. The Tribunal comprises of twenty solicitor members and ten lay members, the latter being drawn from a wide variety of backgrounds. 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 1.

### **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 (<http://www.attorneygeneral.ie/eAct/2009/a809.pdf>) 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, 2009/2010

The Law Society's year was 1 September 2009 to 31 August 2010.

The total number of new complaints received was **2,504**, of which **387** were deemed inadmissible, leaving a balance of **2,117** admissible complaints. **1,043** complaints were carried forward, making a total of **3,160** files handled by the Complaints section during the year.

A further **1,078** files were opened by the Complaints and Client Relations section, representing a mix of queries and requests for information from members of the public and from the profession, making a total of **4,625** files handled by the Complaints section during the year.

**724** of the complaints investigated last year were made by solicitors against their colleagues, approximately 34% of the total intake.

**302** complaints, many of which were made against the same solicitors, were referred to the Complaints & Client Relations Committee.

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

	<b>Closed</b>	<b>Under Investigation</b>	<b>Pending before CCRC/SDT*</b>	<b>Total</b>
New complaints	1,013	953	151	2,117
Carried forward	688	179	176	1,043

\*Complaints and Client Relations Committee/Solicitors Disciplinary Tribunal

The proceeding 12 pages set out the status of complaints dealt with by the Complaints and Client Relations Section as follows:

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

## Breakdown of complaints

	09/10	08/09	07/08
Admissible Complaints	2117	1754	1745
Inadmissible Complaints	387	375	290
<b>Total</b>	<b>2504</b>	<b>2129</b>	<b>2035</b>

---

Allegations of Excessive fees	135	199	170
Allegations of Inadequate Professional Services	340	417	550
Allegations of Misconduct	1642	1138	1025
<b>Total</b>	<b>2117</b>	<b>1754</b>	<b>1745</b>

## Excessive fees

Complaints alleging overcharging were broken down as follows:

	<b>09/10</b>	<b>08/09</b>	<b>07/08</b>
Conveyancing	15	25	20
Probate	26	37	24
Litigation	37	66	49
Matrimonial	43	43	58
Other	14	28	19
<b>Total</b>	<b>135</b>	<b>199</b>	<b>170</b>

## Inadequate professional services

Complaints alleging inadequate professional services were broken down as follows:

	<b>09/10</b>	<b>08/09</b>	<b>07/08</b>
Delay	145	172	224
Failure to communicate	74	78	123
Shoddy Work	86	132	152
Other	35	35	48
<b>Total</b>	<b>340</b>	<b>417</b>	<b>550</b>

## Misconduct

Complaints alleging misconduct were broken down as follows:

	<b>09/10</b>	<b>08/09</b>	<b>07/08</b>
Delay	8	13	12
Failure to communicate	60	80	88
Failure to hand over	104	128	148
Failure to account	88	105	68
Undertaking	1134	614	565
Conflict of interest	22	32	25
Dishonesty or Deception	12	19	14
Witnesses Expenses	2	2	4
Other	209	134	99
Advertising	3	11	2
<b>Total</b>	<b>1642</b>	<b>1138</b>	<b>1025</b>

## Complaints and Client Relations Committee statistics

	09/10	08/09	07/08
Number of meetings	23	22	15
	(+plenary + special)	(+ plenary)	(+ plenary)
Number of new matters referred	302	279	226
Number of complainants invited to attend	20	15	12
Costs levied	€35,600	€44,630	€47,950
Compensation orders	3	3	-
Reprimands	49	7	5
Referrals to Disciplinary Tribunal	158	63	49

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 17 different solicitors, as follows:

Conditions imposed on practising certificate:	7
Directions given	4
Practising certificate issued	6
Total:	17

## Complaints Status at year end

	<b>09/10</b>	<b>08/09</b>	<b>07/08</b>
Case closed	1013	1020	974
Under Investigation	953	632	684
Pending before Complaints & Client Relations/Disciplinary Tribunal	151	102	87
<b>Total</b>	<b>2117</b>	<b>1754</b>	<b>1745</b>

## Completion of complaint cases

	<b>09/10</b>	<b>08/09</b>	<b>07/08</b>
Complaints Resolved	558	552	462
No grounds for complaint But assistance provided	112	68	86
Withdrawn/Abandoned	133	98	135
Rejected	197	260	259
Upheld	13	42	32
<b>Total</b>	<b>1013</b>	<b>1020</b>	<b>974</b>

## Completion times of complaints handled by the Law Society

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

	<b>09/10</b>	<b>08/09</b>	<b>07/08</b>
Complaints Closed in less than 30 days	229=22.61%	268=26.27%	300=30.80%
Complaints Closed in less than 60 days	272=26.85%	219=21.47%	233=23.92
Complaints Closed in less than 90 days	186=18.36%	170=16.67%	138=14.17%
Complaints closed in less than 180 days	251=24.78%	262=25.69%	216=22.18%
Other	75=7.40%	101=9.9%	87=8.93%
<b>Total</b>	<b>1013=100%</b>	<b>1020=100%</b>	<b>974=100%</b>

## Source of complaints

	<b>09/10</b>	<b>08/09</b>	<b>07/08</b>
Complaints made by Solicitors	724	398	505
Complaints made by Parties other than solicitors	1393	1356	1240
<b>Total</b>	<b>2117</b>	<b>1754</b>	<b>1745</b>

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

	<b>09/10</b>	<b>08/09</b>	<b>07/08</b>
6 Complaints	11	11	19
7 Complaints	9	10	6
8 Complaints	2	6	2
9 Complaints	6	2	1
10 Complaints	7	1	1
11 Complaints	3	3	-
12 Complaints	7	3	1
13 Complaints	3	2	3
14 Complaints	14	2	-
15 Complaints	2	-	-
16 Complaints	-	-	1
17 Complaints	4	-	1
18 Complaints	1	-	-
19 Complaints	2	1	-
20 Complaints	-	1	1
21 Complaints	2	1	1
23 Complaints	-	1	-
24 Complaints	1	-	-
25 Complaints	1	-	-
26 Complaints	1	-	-
27 Complaints	1	-	-
54 Complaints	1	-	-

## Status of carried forward complaints at year end

Case closed	688
Under investigation	179
Pending before Complaints & Client Relations Committee/ Disciplinary Tribunal	176
<b>Total</b>	<b>1043</b>

## Section 4

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

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

#### Compensation Fund statistics

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

##### 2009

424 claims received  
€9,310,731.45 claimed  
€2,721,936.01 paid

##### 2008

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

##### 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 2009 to June 2010:

"In the six months ended 30 June 2010, 132 claims were received. Excluding invalid claims refused, these claims amounted to €2,526,307. Payments were made in the sum of €685,701 in respect of claims, and claims amounting to €1,840,606 are still under consideration.

The net assets of the fund are valued at €16 million as at 30 June 2010. The annual contribution to the fund remained at €660 per solicitor for 2010. Insurance cover for €50 million in excess of €5 million is in place for the year ending 31 December 2010.”

### **Regulation of Practice Committee activities during the year**

The Committee met on 18 occasions, for 8 scheduled, 3 special and 7 emergency meetings during the year and the Law Society’s investigating accountants conducted approximately 400 investigations of practices and appointed an additional lay member, now 3 in total. Due to the Committee’s workload and administrative burden on the secretariat it was decided to sit in 3 divisions from the commencement of the committee year.

During the year the Regulation of Practice Committee decided to:

- Refer 28 solicitors (as compared with 14 last year) to the Solicitors Disciplinary Tribunal on foot of findings disclosed in the investigation reports on their practices;
- Refer 20 solicitors (3 last year) to the Solicitors Disciplinary Tribunal for failure to file accountant’s reports on time;
- Apply to the High Court for an order freezing the accounts of 6 solicitors (4 last year) where dishonesty was discovered;
- Suspend the practising certificates of 11 solicitors (4 last year);
- Levy contributions amounting to €137,000 (€93,000 last year) towards the costs of investigations pursuant to the Solicitors Accounts Regulations; and
- Make application to the High Court pursuant to Section 18 of the Solicitors (Amendment) Act 2002 in 3 (2 last year) cases where solicitors failed to comply with Society directions.

## 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 2009 to 30 September 2010. These matters, save where mentioned, all went through the Law Society's investigation process within the Regulation Department, by either the Complaints and Client Relations Section (complaints) or the Financial Regulation Section (Compensation Fund claims), and fall into the statistics or figures set out in sections 3 and 4 of this Report.

- There were **183 (146 last year)** referrals to the Office of the Independent Adjudicator from 1 October 2009 to 30 September 2010 broken down as follows:
  - **136 (113 last year)** complaint referrals were examined and adjudicated;
  - **28 (24 last year)** 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
  - **19 (9 last year)** 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.)

(The aggregate referrals to my office for the period 1 October 2007 to 30 September 2008 totalled 122.)

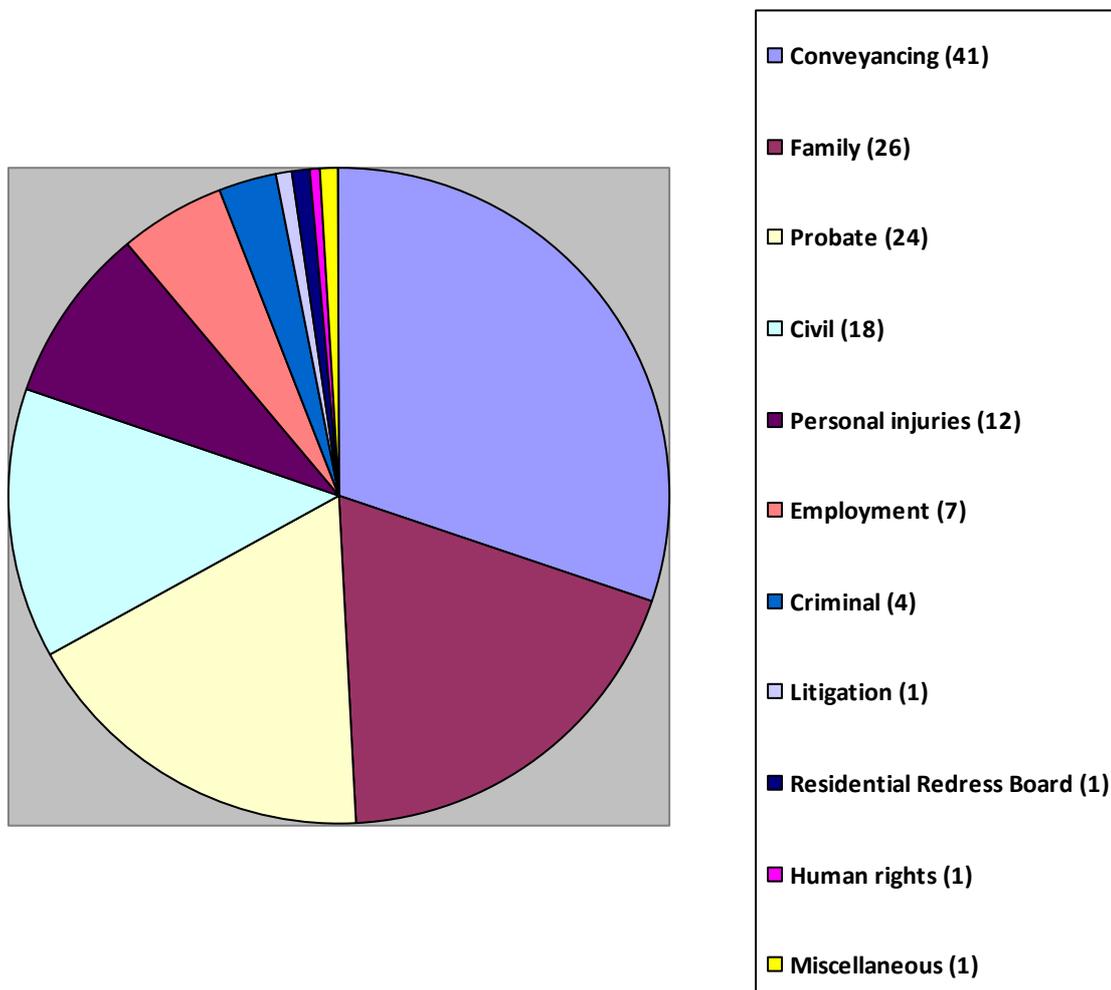
#### Breakdown of complaint related matters:

- Of the 136 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.
- 18 of the 136 complaints related matters prompted correspondence from the Independent Adjudicator to the Complaints and Client Relations Section.
- Of the 18 matters referred back to the Complaints and Client Relations Section:
  - 10 related to Law Society delays on the investigation to include correspondence with the complainant and solicitor, or generally that the Law Society was slow on concluding the matter;
  - 4 related to delays by the solicitor in corresponding on the matter; and

- 4 related to questions on the decisions of the Complaints and Client Relations Section or Complaints and Client Relations Committee.
- Of the 18 complaint files referred back to the Complaints and Client Relations Section, the Independent Adjudicator believed:
  - 11 required further investigation and formal response on matters raised, 2 of which had been to the Complaints and Client Relations Committee and the remaining 9 had been decided by the investigating solicitor in the Complaints and Client Relations Section;
  - 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; and
  - 2 of the 18 complaint files had been to the Committee previously.
- Of the 2 matters referred back before the Complaints and Client Relations Committee, the following was decided:
  - the Committee noted that as no adverse findings pursuant to Section 8 or section 9 of the Solicitors (Amendment) Act, 2002 were made on this matter, they had no jurisdiction to levy costs. Whilst I appreciate this decision, I am of the view that the legislation as drafted does not allow sufficient flexibility to levy costs where a solicitor demonstrates poor respect for his professional body by seeking adjournments immediately prior to the meeting and/or failing to respond in a timely manner. I think this is regrettable and am of the opinion that the legislation needs to be reviewed in this regard. (See matter 1 on page 30)
  - the Independent Adjudicator believes the Committee made an incorrect decision on this matter. Post my communicated dissatisfaction the Law Society sought counsel's opinion, which has set a precedent for other matters that I refer back to the Committee. I am of the view that if counsel's opinion had been known and applied to this matter in advance another division of the Committee is likely to have altered the original decision. (See matter 8 on page 32)
- My adjudications on the 136 complaint matters that I examined centred upon the following complaint disciplines:
  - Conveyancing (41)
  - Family (26)
  - Probate (24)
  - Civil matters (18)
  - Personal injuries (12)
  - Employment (7)
  - Criminal (4)
  - Litigation (1)
  - Residential Redress Board (1)
  - Human rights (1)
  - Miscellaneous (1)

See illustration on page 26 which exhibits these matters by the number of complaints received;

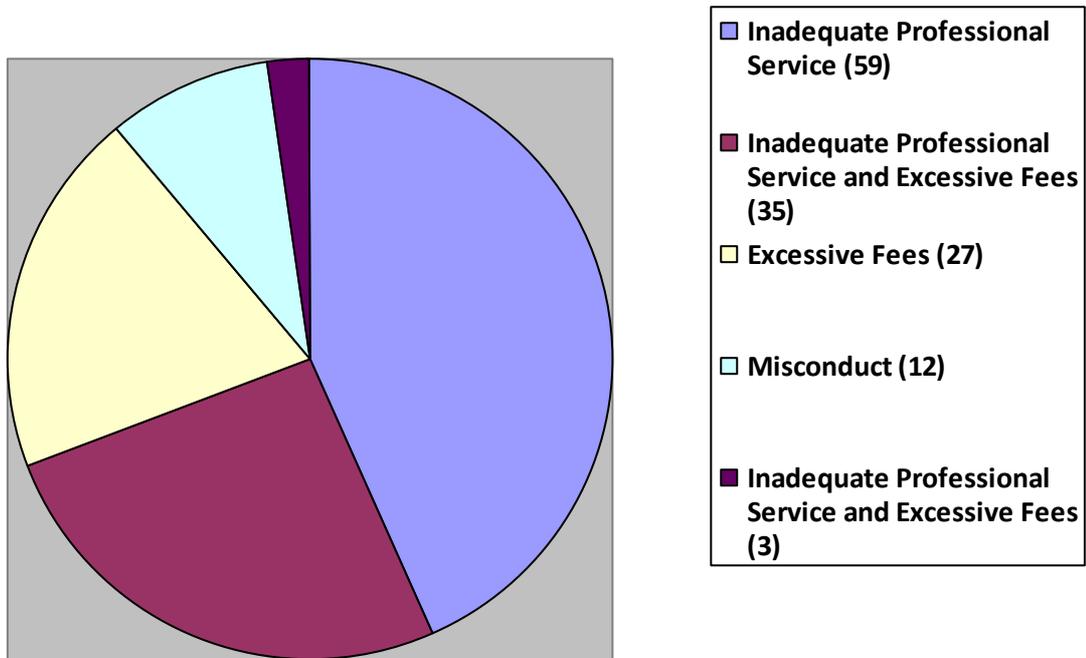
**Breakdown on complaint matters which were referred to the Independent Adjudicator from 1 October 2009 to 30 September 2010**



- 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*); and
  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 27 for an illustrative breakdown of complaint categories this year (Compensation Fund claims are separate).

**Breakdown on the grounds of complaints which were referred to the Independent Adjudicator from 1 October 2009 to 30 September 2010**



- In addition to the 136 matters adjudicated, 28 matters were ineligible for my examination of their contents for the following reasons:
  - Investigation was ongoing with the Law Society (14)
  - Matter had not been through the Law Society's investigation process (9)
  - Matter had been adjudicated on previously by my office (2)
  - Matter had been to Solicitors Disciplinary Tribunal (1)
  - Out of time (1)
  - Complaint was outside Independent Adjudicator regulatory framework (1)
- The volume of enquiry calls to this office remains at a similar scale to that of previous years. The majority of calls related to complaint matters as opposed to Compensation Fund matters.
- 20 of the Law Society's *Complaints about Solicitors* leaflets were dispatched to persons who were not aware that they had to complain about their solicitor to the Law Society prior to referring their matter to me.

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

Further to the reasons set out above, for the 28 ineligible complaints, the following sets out 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 are not permitted to have their matter examined by the Independent Adjudicator. This occurred with only one matter referred to my office this year;
- 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;
- 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;
- As mentioned in my three previous Annual Reports, there is an ever-increasing volume of harassing and abusive calls to the Office of the Independent Adjudicator. Three complainants were particularly offensive this year, so much so that I advised them if they contacted my office again I would inform the Garda Síochána. It is acknowledged that I am in the dissatisfaction business however I wish to clearly state that I am not intimidated by any such complainant or claimant with displaced aggression;
- 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 is a regular occurrence. 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.

### **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.

- Of the 19 Compensation Fund claim matters referred to my office for adjudication, 4 resulted in my correspondence to the Financial Regulation Section of the Regulation Department of the Law Society for the following reasons:
  - 1 related to what I believed to be an incorrect decision of the Regulation of Practice Committee;
  - 1 related to my request to provide more information as to why the claim was rejected by the Regulation of Practice Committee; and
  - 2 related to delays in corresponding and concluding the matters.

## Section 6

# EXAMPLES OF ADJUDICATED COMPLAINTS AND COMPENSATION FUND CLAIM MATTERS

### Complaint appeals to the Independent Adjudicator

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

#### **Matter 1 – Levying costs for adjournments**

This matter involved a right of way problem on which the complainant engaged solicitor. I noted considerable delays by the Law Society in dealing with the parties and communicated this accordingly. However the core of my dissatisfaction was that the solicitor sought two adjournments immediately before the Complaints and Client Relations Committee meeting with (in one case) no reasonable excuse afforded to the Committee, despite same being requested. I requested that this file be reviewed to allow the Law Society to direct the solicitor to make a contribution to the costs incurred by Law Society. The Committee decided that as no adverse findings were made they had no jurisdiction to levy costs. Whilst I appreciate the reason for this decision, I am of the view that the legislation as drafted does not allow sufficient flexibility to levy costs, which in my opinion is regrettable.

#### **Matter 2 – Delay by the Law Society in concluding this matter**

This family law matter was adjudicated upon in July 2009 after the complainant requested the Law Society to close its file due to his dissatisfaction with the Law Society's progress on the matter. (It should be noted that under Section 9 of the Solicitors (Adjudicator) Regulations, 1997 I am not permitted to examine a file where the related complaint made to the Law Society about a solicitor is still in the course of being examined or investigated by the Society.) At that time, I found that there were many delays in the Law Society's correspondence and wrote to the body accordingly. The Law Society decided to continue its investigation of the matter – notwithstanding the fact that they had closed the file – and the matter was referred to me for a second time in July 2010 after the Law Society made a recommendation that fees be refunded. My examination of the file continued from where I had previously adjudicated. I believed that there were again substantial delays, albeit also from the complainant on this occasion, and I wrote to the Senior Solicitor of the Complaints and Client Relations Section. There was much work done on this file but regrettably the complainant remained unhappy.

#### **Matter 3 – Levying costs on solicitors**

The complainant asserted that the solicitor fell well short of an acceptable level of communication with his regulatory body in responding to his complaint such as faxing the Law Society the day of the Complaints and Client Relations Committee Meeting, did not follow-up on the Committee's directions, ignored a subsequent meeting and was slow in dealing with the Law Society. No finding was made against the solicitor, and similar to the first matter above: no formal finding against the solicitor = no levy.

#### **Matter 4 – Matters must be fully concluded by the Law Society**

This matter involved an estate with 18 beneficiaries, of which the complainant was one. When the matter concluded it was referred to me for my adjudication. I noticed that interest on €190,000 had not been accounted for which the solicitor is obliged to do. The Law Society had omitted to finalise this issue and at my request asked the solicitor to calculate the interest with no further cost to the beneficiaries. This duly happened and 18 cheques were issued for the complainant to disseminate to each of the beneficiaries.

#### **Matter 5 – Matters can sometimes be outside the control of the Law Society**

The Law Society investigated a complaint which went before the Complaints and Client Relations Committee. There was a direction to reduce the fee. The reduced fee was agreed by the solicitor, albeit some time later, however I believed that there was a small shortfall plus interest. I asked for the shortfall to be paid. The solicitor was on certified sick leave at the time, and despite numerous attempts by the Law Society and my office to finalise the interest matter, to include nominating his legal representative to do so, it remains open. The point of this matter is that the Law Society must balance the rights of a solicitor who is absent from his office due to illness against the rights of the client. In this particular matter the complainant had also appeared before the Committee and asserted that he had an unfair and disadvantaged process. I did not uphold this assertion.

#### **Matter 6 – Law Society must conclude correspondence with solicitors**

The complainant deemed the solicitor to have acted inappropriately by taking instructions from his daughter instead of himself. The solicitor comprehensively responded to the Law Society. The Law Society was slow in engaging in correspondence on this matter, especially with the solicitor. I have written many times to the Law Society on the importance of correspondence with solicitors as well as complainants, and in a timely manner. I believe solicitors as well as complainants are due this respect when they have responded to Law Society correspondence within the requested timeframes. Separately on this matter, the Law Society contacted the wrong firm of solicitors to respond to this complaint and, whilst this was human error, their reaction to the correspondence should have been timelier as the solicitor in question wrote on a couple of occasions to confirm the complaint was not for their firm.

#### **Matter 7 – An adjudication post a Judicial Review on a decision by the Complaints and Client Relations Committee**

The solicitor was the executor and solicitor of the estate. The complainants, who were the beneficiaries, believed they had incurred substantial delays and costs in concluding the estate. The complainants also felt compelled to instruct their own solicitor on the matter. The Law Society investigated comprehensively and, through its Complaints and Client Relations Committee, reached its decision in April 2008, which based on my examination of the file seemed fair and reasonable in all circumstances. The solicitor did not agree with the Committee's findings and initiated Judicial Review proceedings in the High Court against the Law Society. The Law Society defended this action and at the same time initiated proceedings under Section 18 of the Solicitors (Amendment) Act, 1994 to compel the solicitor to comply with the directions of the Committee made in April 2008. I noted that the costs of both sets of proceedings, which solely related to the complainant's complaint, were substantial and to date have been borne entirely by the Law Society. I also believed that if the complainants' family had been forced to initiate these proceedings it would have been at considerable cost to the estate.

What I deemed not to meet my satisfaction on the Law Society's handling of this matter was the delay of 4 months in the correspondence with the complainants that issued after the proceedings were finalised. This said, I think a few factors had to be borne in mind such as:

- the complainants were not unduly prejudiced by this delay;

- the Law Society communicated its decision in 2008 (at which point the solicitor initiated the Judicial Review proceedings). Thereafter the complainants were kept advised as to the process of the proceedings by the Complaints and Client Relations Section and the Litigation Section of the Law Society who informed the complainants' solicitor in relation to the ongoing proceedings; and
- the complainants were advised that any outstanding issues would be reviewed after the High Court proceedings. Ultimately the Law Society took Counsel's advice that the matter could not be revisited and that the decision of the Complaints and Client Relations Committee was final.

I therefore concluded that in the context of a file of approximately 5 years, a delay of 4 months was not a major delay especially considering that the Law Society dealt with a number of members of the family during that period.

I believed that, most importantly from my adjudicating perspective, the monies were released to the beneficiaries on this matter as a result of the Law Society's considerable intervention.

### **Matter 8 – Setting a precedent**

The complainant's solicitor appealed the Complaints and Client Relations Committee's decision to my office. The matter related to inadequate professional services and overcharging on an estate which necessitated the complainant instructing another solicitor to conclude the probate. The complainant (who resides in the UK) appeared before the Committee twice which is unusual. Under Section 10(a) of the Solicitors (Adjudicator) Regulations, 1997 I requested the Law Society to re-examine this matter as I believed the solicitor provided inadequate professional services from inception of taking instructions on this matter to include:

- the solicitor should have taken the appropriate action at the time;
- the complainant should not have had to involve a new solicitor on this matter;
- action on this matter appeared to have taken place when it was referred to the Law Society in May 2007 however the solicitor was slow in responding to the Law Society, and in attending before the Committee (in one case it appeared that he did not turn up) (I refer to my opinion in matter 1 above);
- there was no documented proof, that I could see, that the solicitor agreed to a fee reduction with the new solicitor;
- the complainant incurred substantial professional fees in instructing a second solicitor on this matter which she should not have to incur, and as such I put forward that the first solicitor should absorb the new solicitor's fees or the most part thereof;
- the fees were excessive; and
- I drew attention to a particular letter which I believed the Committee failed to take into account appropriately.

This matter went back before the Committee and the decision remained unanimous as originally decided. It was acknowledged that the solicitor was slow to correspond and he had agreed to reduce his fee by €5,000, however I would have expected a substantially higher reduction. I was dissatisfied with this unchanged decision, and equally with no narrative for the reasons, as I believed the bill was still excessive. I was assertive in re-stating my continued dissatisfaction and the Director of Regulation sought counsel's opinion on the ability of the Law Society to refer a complaint back to a different division of the Complaints and Client Relations Committee that had already been reviewed by the original deciding division of the Complaints and Clients Relations Committee. It appeared that this was a "grey area" and, on closer analysis, in fact a more complex matter than might at first sight appear. Counsel decided it was not an option insofar as such a referral would in effect constitute a third investigation of the complaint. The outcome was that the original decision on this matter stood. However it did set a precedent in that when I refer a matter back to the Complaints and Client

Relations Committee in the future it will be referred to a different division of the Committee for review.

#### **Matter 9 – Delays in correspondence necessitating an apology**

The complainant made a detailed and articulate submission on her dissatisfaction with the solicitors' (family firm) handling of her brother's estate. The client was frustrated and disillusioned with her solicitors. She then escalated her complaint to me that the Law Society was not attentive to her letters and did not force the solicitors to respond. The file was moved to another investigating solicitor who gave a timeframe for submission of his final report on the matter. This report was not delivered within the timeframe which infuriated the complainant, and when it issued, it rejected her complaint. Upon my examination of the file I was satisfied that the Law Society's decision was the correct finding on this matter. However, I believed the delays in corresponding and responding with the complainant fell well short of what would be expected both during the early stages of this complaint to the Law Society and then more importantly in the later stages. For example, she was advised by the Law Society on March 2009 that she should receive a more detailed report within a matter of weeks but it was not disseminated to her until October 2009. This was definitely not a satisfactory timeframe. I also believed that once a complaint is initiated with a solicitor, the Law Society has a duty of care to conclude the matter with the solicitor (as mentioned in other matters above) which was not evident from this file. I formally requested that the Law Society promptly apologise to the complainant for the delays she encountered.

#### **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 – Altered decision**

Post my adjudication of this conveyancing matter (mortgages with financial institutions) I requested that it be referred back to the Regulation of Practice Committee for re-consideration and a final review be conducted on one of the mortgages within it. I noted that my role was not to decide whether there was or was not mortgage fraud.

I asserted the following opinions post my examination of this complex matter:

- the Law Society should have given the claimant's solicitors more information as to why the loan between Bank of Scotland and the claimants was not a matter for the Law Society, and upon their first request;
- I noted that I believed that the claimant should have noticed the increased or extra payments to his mortgage through his bank account which would have changed with the additional payments and questioned exactly how much was paid, etc.;
- I commented that I believed the claimant was aware that the mortgage was drawn down and that a problem existed, and whether more immediate action should have been taken;
- I noted that a detailed and proper cash account was conducted by the Regulation Department;
- the Law Society should have advised the claimant's solicitors in a timely manner of their right to go to the Independent Adjudicator, which perhaps may not have necessitated them to initiate Judicial Review proceedings. I acknowledged that this was subsequently rectified by the Law Society.

I foresaw this matter having a no win situation for either the claimants or the Law Society if Judicial Review was proceeded with and made a proposal, if it could be permitted within my remit, to:

- a. pay the admitted claim;
- b. reimburse the claimants the mortgage monies;
- c. pay the claimant's solicitor's reasonable legal costs from inception of dealing with the Law Society to date.

This matter went before the Committee as I requested and the Committee directed the above measures.

#### **Matter B – Lack of sufficient evidence**

This Compensation Fund claim was rejected by the Regulation of Practice Committee due to the lack of sufficient evidence to deal with the matter. The claimant's solicitor asked for more details and a similar response was communicated to them. I wrote to the Law Society on this matter highlighting my salient points as follows having examined the file:

- on three occasions, the claimant's solicitors requested reasons as to why their clients' claim was refused "due to the lack of sufficient evidence" and should have been furnished this in early course;
- the Law Society took one year to respond to the claimant's solicitors' third request for information on the refusal of the claim;
- I was of the view that the Regulation of Practice Committee should have been given examples of the lack of evidence to accompany their first decision to refuse the claim;
- I believed that the claim for €15,000 was inadequately supported however the rest of the claim should be re-considered; and
- The Regulation of Practice Committee's decisions as communicated by the Law Society in September and October 2008 should have included a reference of the claimants' right to refer their claim to the Independent Adjudicator.

The Regulation of Practice Committee deemed that it had not been proven to the satisfaction of the Committee that the claimant had suffered a loss in consequence of dishonesty on the part of the solicitor. They advised the claimant's solicitors the reasons for declining the claim and that they could submit additional information in support of the claim which would be further reviewed. They did this and the Committee deemed it was still insufficient evidence. The principle of this matter was that in appropriate cases a reason should be given for rejecting a claim, and it was good that the claimant's solicitors could submit additional supporting documentation despite the claim being decided.

## Section 7

# OBSERVATIONS ON COMPLAINTS AND COMPENSATION FUND CLAIMS TO THE INDEPENDENT ADJUDICATOR

### Comments on the Law Society's complaint handling statistics

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

- complaints related to undertakings are extremely high;
- excluding undertakings, the number of complaints that are upheld are very low, however the number of complaints referred to the Solicitors Disciplinary Tribunal has increased;
- contributions towards costs are down and this could be because the solicitor has little or no money anyway;
- the increase in referrals to the Solicitors Disciplinary Tribunal and reprimands appears to be directly attributable to the increase in complaints about undertakings, and possibly to solicitors against whom multiple complaints are made;
- there are very few orders for compensation as this only applies in very limited circumstances;
- significant reduction over the last 2 years on excessive fees and inadequate professional services complaints;
- complaints of excessive fees are down in conveyancing, probate, family and litigation matters;
- significant reduction in complaints of delay, failure to communicate, failure to hand-over and shoddy work;
- reprimands have had a 10-fold increase in 2 years reflecting undertakings, which are ultimately resolved but only after substantial intervention by the Law Society; and
- the number of solicitors against whom multiple complaints are made are up on last year.

### Comments on the Law Society's Compensation Fund claim statistics

I note a considerable decline in Compensation Fund claims to the Law Society (424 this year by comparison to 672 last year), with an increase in applications to the High Court for an order freezing the accounts of 6 solicitors (4 last year) where dishonesty was discovered, and 11 solicitors had their practising certificates suspended, by comparison to 4 last year. As the Compensation Fund claims have reduced I think this will provide a catch-up period to other regulation related matters.

The Chairman of the Regulation of Practice Committee, Michael Quinlan, said in the Law Society's Annual Report: *"The significant increase in regulatory activity is believed to result from the combined impact of counter-cyclical effects of the recession and improved effectiveness of the regulatory system"* (Law Society Gazette, 2010, page 23).

### Multiple complaints

The number of solicitors who have multiple complaints against them have featured in my Annual Reports over the previous three years suggesting that more stringent measures should be adopted by the Law Society. I reiterate this opinion. The Complaints and Client Relations Committee utilised the powers contained in the 2002 Solicitors (Amendment) Act that allow it to consider multiple complaints against the same solicitor in relation to 17 different solicitors last year (24 the previous year).

### Section 68 of the Solicitors (Amendment) Act, 2002

This is my fourth Annual Report, and the fourth time I am commenting 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 often propose that the solicitor concerned 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. I might also add that clients could often better inform themselves on the likely costs of their matter going before a court and the likely costs if they lose and have to pay their opponent's costs.

### **Volume of complaints related to undertakings**

The Complaints and Client Relations Section experienced an unprecedented number of complaints about outstanding undertakings given by solicitors in the course of conveyancing transactions (1134 complaints this year by comparison to 614 last year). These complaints rarely come to my attention in so far as the majority of complaints are lending institutions. My remit is limited to complaints by clients. While it appears that the majority of such complaints are resolved, I am concerned about the strain it puts on resources in the Section and that I would hope "ordinary" clients do not suffer as a result.

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. As expressed above, 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 category is where a solicitor acts for developers and undertakes to transmit to the developer's bank the sale proceeds of each house in a development and they do not do it. This continues to be a sign of our recessionary times and is a matter the Law Society has taken very seriously.

In the current Law Society's Annual Report, the Registrar of Solicitors and Director of Regulation, John Elliot, appraised "*Given the significant regulatory problems caused by commercial undertakings, it should come as no surprise that they have been banned from the start of the next PII [professional indemnity insurance] indemnity year*" (page 13).

Further in the Annual Report (page 18) the Chairman of the Complaints and Client Relations Committee, Simon Murphy, said "*Despite the content of previous reports, the publication of practice notes in the Gazette and the introduction of one hour's mandatory CPD on regulatory issues, complaints are on the rise – and complaints about undertakings, in particular, are a source of serious concern*". He continued although "*the majority of these complaints are eventually resolved, the costs of investigation are considerable and, in most cases, non-recoverable from the solicitor. Where a solicitor cannot comply with an undertaking, the committee has no option but to refer the matter to the tribunal. However, disciplinary proceedings will not provide practical redress to the complainant, who can be severely disadvantaged as a result*".

### **Negligence**

I mentioned last year that negligence is an increasingly common feature of matters referred to me for my examination. 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 2010, the Law Society had awarded compensation under this Section 4 times. In 2 cases, the maximum amount under the legislation was awarded. This is low in my opinion.

In relation to Compensation Fund claims, 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.

### **Referrals to the Solicitors’ Disciplinary Tribunal**

I observed on hearings before the Solicitors Disciplinary Tribunal on a few occasions this year. I have never under-estimated the amount of work involved when the Law Society makes a referral to the Solicitors Disciplinary Tribunal, as I have evidenced files in this regard. With the upsurge in referrals over recent years this has put soaring pressures on the Regulation Department. Over recent years I have conversed with the Registrar and Director of Regulation on the importance of the Law Society’s more timely referrals to the Tribunal. I was pleased to be informed that the Law Society appointed, on a pilot basis, an external firm of solicitors to act for the Law Society in certain referrals to the Solicitors Disciplinary Tribunal with the specific objective of achieving the target of all referrals from the Complaints and Client Relations Committee being filed within three months of the date of referral. This arrangement recently commenced. The Registrar and Director of Regulation informed me that the situation will continue to be monitored with a view to assessing whether these measures will be sufficient. This is a much welcomed initiative especially since I have raised more timely referrals with the Law Society on a number of occasions.

### **Solicitor Disciplinary Tribunal sittings**

I noted last year that there was an upsurge in matters before the Solicitors Disciplinary Tribunal giving an example that there were 38 sittings of the Tribunal in 2003 by comparison to 110 in 2008. The Tribunal sittings decreased to 100 times in 2009 and their findings and referrals to the High Court also appear to have decreased. However, the status of the 139 applications as at 31 December 2009 is higher than previous years with 121 in 2008 and 94 in 2007. Of the 139 applications I found it unsurprising to note that 92 of these were brought by the Law Society.

### **Names of solicitors appearing before the Solicitors Disciplinary Tribunal**

Mid this year I wrote to the Chairman of the Solicitors Disciplinary Tribunal about the perceived lack of communication the public receive about solicitors appearing before the Tribunal. It was not the practice of the Tribunal to disclose the first name of a solicitor due to appear before the Tribunal, which I believed was important so people could ascertain the identity of the solicitor. I said that I did not think this lack of information was transparent for the public and requested to know the reason for such non-disclosure or whether there is a statutory bar on the Tribunal disclosing the first names of solicitors. I further asked whether there was a jurisdictional issue with this non-disclosure. I believed that this information was in the public’s interest as a keen advocate of transparency in the profession. The Chairman raised this matter with the President of the High Court, Mr Justice Nicholas Kearns, as the President has overall supervision of the Tribunal’s procedures. I was informed that when the Tribunal initially decided to publish the Tribunal’s diary of cases on its website, the style of the electronic Legal Diary published by the Courts Service was followed. That Legal Diary does not, in respect of the listing of cases, give any detail other than the surname of the defendant/respondent and the specific record number of the case. This is the style the Tribunal decided to follow. However in relation to Tribunal staff being requested for information over the telephone about pending cases, the Tribunal decided that in future they would, if asked, advise that

the particular surname relates to a particular solicitor giving his or her first name and his or her practice location. I was happy with this outcome. I should note that solicitors' full names are published in all Tribunal findings of misconduct.

### **Beneficiaries are clients of solicitors**

The decision in *Condon v. The Law Society of Ireland* [2008 No. 903 J.R.], inter alia, confirmed that the definition of "client" in section 2 of the Solicitors (Amendment) Act, 1994 extends to include beneficiaries under a will for the purposes of making a complaint. Kearns P. in this judgement found that the definition of 'client' "not only addressed the usual position of a person who, by giving instructions to a solicitor, becomes a 'client', but, much more significantly, extends the definition to include a beneficiary to an estate under a will, intestacy or trust". Therefore "beneficiaries of an estate are clients of the solicitor and, as such, are afforded all of the protection under the Act that any other clients of a solicitor would be entitled to..." One follow-up on this is that a beneficiary is entitled to advance a complaint to the Law Society under the Act where a solicitor is acting both as executor and solicitor. In addition there was a valuable article in the Law Society Gazette (July 2010, page 22-25) highlighting that the definition of 'client' in the Solicitors (Amendment) Act, 1994 must include the beneficiaries of a will where the solicitor is the executor. I raise this matter as I received many matters to be examined this year that related to beneficiaries being clients.

### **Complaints and Client Relations Section's primary function**

I reference this point as quite often complainants think that the Law Society can investigate matters beyond their remit: the Complaint and Client Relations Section's primary function is to consider allegations that arise in the context of legal services provided by solicitors. The Law Society's emphasis is on resolving disputes where appropriate.

### **Delays in Law Society correspondence**

Despite being cognisant that there has been a surge of complaints about undertakings, on a number of occasions this year I felt compelled to write to the Law Society with regard to some investigating solicitors' delays in correspondence within reasonable timeframes.

### **Concluding matters with solicitors**

I mentioned last year that the Complaints and Client Relations Section focused on communicating the final decision to the complainant and on occasion overlooked advising the solicitor. Regrettably this was more apparent this year and I wish to stress the importance that the investigating solicitors conclude matters 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. I escalated this to the Senior Solicitor and understand that she has emphasised to the investigating solicitors the necessity for concluding matters with both the complainant and the solicitor.

### **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 €35,600 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 (€44,600 in 2008/2009 and €47,950 in 2007/2008). I am surprised that the costs levied by the Committee are considerably lower this year than in previous years especially since the number of reprimands (among other factors) increased to 49 this year by comparison to 7 in 2009/2008 and 5 in 2008/2007. This is also interesting when correlated to the Committee's referrals to the Solicitors Disciplinary Tribunal which were 158 referrals this year, by comparison to 63 last year and 49 in 2007/2008.

I have challenged the Law Society on why the solicitor's costs cannot be recovered where a finding was not made but unnecessary costs were incurred because the solicitor did not respond to the Law Society. I have scant regard for solicitors who unduly delay their response to their professional body's correspondence. This is regularly minuted in many of my adjudications and past Annual Reports. I believe solicitors must respond to the Law Society within given and reasonable timescales. Where this does not happen, I think the Complaints and Client Relations Committee should be more proactive and quicker to recover its costs than can occasionally be the case. I believe this is the only way to address the problem. I continually 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 clarified that I am referring to the costs that are incurred by the Law Society when it is forced to refer the matter to a Committee because the solicitor has not replied.

I note that the Solicitors Disciplinary Tribunal, in its recently published 2009 Annual Report, states: *"The Tribunal is always concerned with a solicitor's inability or unwillingness to deal with Law Society correspondence. The Tribunal take a serious view of such failure. It is self-evident that such conduct makes the investigation of complaints by the regulatory body almost impossible. When this occurs, the Society cannot deal with the complaint and, in turn, they cannot satisfy or convince the complainant that the Law Society is in any way effective, or dealing with their complaint"*. I agree.

#### **Complaints and Client Relations Committee adjournments and decisions**

Year on year I have mentioned my dissatisfaction on the number of adjournments being granted by the Committee. I spent 8 days observing committees this year and believe some chairmen are more disposed towards granting adjournments than at others and there should be more consistency on what comprises a fair and reasonable adjournment which should be applied throughout all divisions.

I think there can be some disparity between the decisions made on the divisions of the Complaints and Client Relations Committee and I would like to see more consistency in this regard. Each chairman has a different style of running a meeting and I think lessons can be learnt by each chairman sharing precedents and observing on other divisions if their time allowed (I am cognisant that solicitor committee members give of their time voluntarily, to include the chairmen).

#### **Late submissions of material presented to the Complaints and Client Relations Committee**

I wrote to the Law Society post one of my attendances at a Complaints and Client Relations Committee that I believed costs should be recovered where a solicitor presents a submission to the Law Society for the Committee immediately prior to the committee meeting. I deemed that the solicitor demonstrated disregard for his professional body with such a late submission as it was unreasonable and impractical for the Committee with a busy agenda to peruse this submission on the day of the meeting. The Senior Solicitor of the Complaints and Client Relations Section advised me that this matter was also raised by a lay member which was unknown to me. I await to see if due credence will be given to this matter.

#### **Guidelines to attendees before the Complaints and Client Relations Committee**

I suggested two changes this year to the leaflets disseminated to complainants who will appear before the Complaints and Client Relations Committee. Firstly, I believed it is valuable to state that a complainant may be legally represented and be accompanied by up to two persons should they wish. Secondly, that submissions presented before the Committee must be confined to the facts of the complaint itself.

### **Lay members of Committees**

At the time of writing the lay members' annual report was not available however I would expect some consistency with my observations. I believe having a lay majority the Complaints and Client Relations Committee delivers an increasingly high quality service. Equally the lay members add substantial value on the Regulation of Practice Committee and I note they appointed one additional lay member this year.

I commented last year that most of the lay members are nominated from two sectors only - Irish Congress of Trade Unions (ICTU) and Irish Business Employers Confederation (IBEC). I suggested 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 reiterate my opinion.

### **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 had not been to my office. This assists towards validating my own satisfaction that files are handled and managed correctly by the Law Society.

I randomly select a number of files from the listings of both the Complaints and Client Relations Section and Financial Regulation Section, and then the files are made available for my inspection. Most referrals of complaints to my office are made against small to medium sized practices however the following case history arises out of a complaint made against one of the larger commercial firms:

The complaint related to excessive fees on a conveyancing matter. The complainant was a retired pensioner and the conveyance was not concluded 4 years on. The complainant outlined that she did not receive an estimate of the firm's fees. The matter went before the Complaints and Client Relations Committee twice, and the complainant attended. The Committee considered the professional fee as excessive and the non-compliance with Section 68(1) of the Solicitors (Amendment) Act, 1994 as serious. It was noted that in addition to the €35,000 plus VAT and outlay already billed to the complainant, there was approximately an additional €8,000 plus VAT and outlay to be charged. The Committee explained that their obligation is to try and resolve complaints pursuant to the provisions of Section 9 of the above referenced Act. The Committee believed that a more appropriate figure to charge was €20,000 plus VAT and outlays and that this was to include any work done from the date of the last bill and work in the future to finalise the matter for the complainant. The solicitor accepted the Law Society's recommendation and the matter concluded to the complainant's satisfaction with no adverse finding against the solicitor.

I cite this example as I was happy with the Law Society's handling of this matter that highlights the importance of complying with Section 68 of the Solicitors Acts and charging a reasonable fee for the work in hand.

### **Administrative observations to the Regulation Department**

I noticed that the Complaints and Client Relations Section streamlined its day-to-day activities this year such as operating an automated telephone answering service which refers to matters being subject to review by the Independent Adjudicator. This I believe, akin to the ISO accreditation, is both effective and efficient working.

I requested in the next edition of the Complaints about Solicitors leaflet that a sentence be inserted to the effect that if a complainant initiates an application to the Solicitors Disciplinary Tribunal whilst the Law Society's investigation is ongoing that their complaint immediately ceases with the Law Society. This is now in the current edition.

Whilst conducting one of my random reviews of files this year within the Financial Regulation Section and Complaints and Client Relations Section of the Regulation Department I was very surprised to observe the vast amount of files waiting typing. I appreciated that there was substantial pressure on the Complaints and Client Relations Section at the time because of undertaking complaints, but was concerned that such delays in typing would have a knock-on effect on matters before the Committees and indeed in correspondence delays noted on files upon which I may adjudicate. My concerns were referred to the Director of Regulation and Registrar of Solicitors who informed me that a secretary had been hired for a temporary period, as well as a solicitor and secretary through the FAS scheme. I was pleased with these actions on this matter.

The Regulation Department drafted a Compensation Fund application form (superseding its CF1 and CF2 forms) and updated its information booklet on claims for refunds of money paid to a solicitor in December 2009, on which my comments were incorporated during the drafting stage. The guide and the claim form are written in simple, easy to read language (like the Complaint and Client Relations Section's complaint form). The application form can also be used where clients are claiming a refund of client monies from a closed practice where the money is in the control of the Law Society. I was keen for the literature to be amended as last year there were referrals to my office whereby new solicitors instructed by claimants to conclude a file regularly sought fees from the Compensation Fund that were deemed to be too high on the Fund. The Financial Regulation Section of the Regulation Department now appraises claimants that the Law Society may normally pay up to €600 in appropriate circumstances for their professional fees. This was a good outcome from the matters I raised in my last Annual Report. Once this leaflet issued I informed each of the solicitors who wrote to me on this matter last year advising them a clarification had been inserted to the literature from the Regulation Department.

My role is to examine complaint files that have been investigated by the Law Society. I therefore require that a full account of the correspondence and, if relevant emails and telephone calls that have occurred, are recorded on the files. On occasion such records may not be on the files.

#### **Synchronisation of matters between Sections of the Regulation Department**

If a complaint discloses a suggestion of financial irregularities or the solicitor is under financial pressures, this will be reported to the Chief Investigating Accountant in the Financial Regulation Section. He uses the information provided when deciding which practices should be prioritised for investigation. Transfer of information about complaint irregularities are equally conveyed to the Senior Solicitor in the Complaints and Client Relations Section. I see examples of this in action from my adjudications and random reviews proving a good flow of internal communications between these Sections in the Regulation Department.

#### **Rejected Compensation Fund claims**

I noted this year that some Compensation Funds claims were rejected due to inadequate supporting documentation. I think claimants and/or their solicitors should be aware of this and be asked to make their submission as comprehensive as possible within the terms of reference of the Fund.

#### **Pilot scheme for one-day inspections**

The Financial Regulation Section set up a pilot scheme last year for one-day inspections. This has proved very successful and is being used, where appropriate, on a more frequent basis throughout the country. I am also aware that since July this year investigations have included anti-money laundering compliance as required by the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010.

**Law Society's referral of matters to a cost drawer**

The Law Society can refer a matter to a cost drawer as it deems appropriate, and I noted such a referral when observing on a Committee. Whilst I appreciate that this can be reasonable to do, I question why the Law Society should be liable for the cost if they conclude that the costs are excessive. Such a referral also puts a considerable delay on the finalisation of a complaint which is understood.

**Law Society assisting its members**

I noted during the year that the Law Society set up a web-based resource facility to assist consumers to understand more about different areas of law and the legal system, together with an outline of the services provided to clients by solicitors ([www.lawinfo.ie](http://www.lawinfo.ie)). This is a welcome initiative.

**Regulation in the 21<sup>st</sup> Century – what every practitioner needs to know**

I further observed that the Law Society ran a continuous professional development (CPD) programme on regulation and practice management in June this year. This was a well-attended training session and one that I believed should be run more regularly where the programme is appropriately promoted to attract a high attendance. The introduction of one hour's mandatory CPD on regulatory issues may escalate the importance of this programme.

## Section 7

### CONCLUDING COMMENTS

This Annual Report is premised on my adjudications, observation attendance at Committees, random reviews and correspondence with the Regulation Department of the Law Society. My office received 183 requests to examine matters of which I adjudicated on 136 complaints and 19 Compensation Fund claims.

**Referrals to the Solicitors Disciplinary Tribunal** is a matter on which I have been communicating with the Law Society and commented on in my previous Annual Reports. It appears that the increase in referrals to the Solicitors Disciplinary Tribunal and reprimands is directly attributable to the increase in complaints about undertakings, and possibly to solicitors against whom multiple complaints are made. The key issue for me is the timeliness of these referrals. Whilst I appreciate that referral timeframes have improved they still remain an issue and I am pleased to see the appointment of an external firm of solicitors on a pilot basis to deal with referrals to the Tribunal.

Over the years a key subject for me has been the **recovery of costs from solicitors**. I would avidly favour the legislation being amended to permit greater flexibility to recover costs incurred by the Law Society in investigating a complaint. Presently, the Law Society has no jurisdiction to recover costs where no adverse finding has been made but it has incurred substantial costs because of the solicitor's delay in responding to the Law Society. I firmly believe costs should be recoverable from solicitors who seek adjournments immediately prior to a committee meeting and/or fail to respond in a timely manner with their professional body, irrespective of whether a finding is ultimately made. I am of the opinion that such a change would instil higher regard in solicitors for their professional body's complaint handling and Compensation Fund claim systems, defray the cost of investigation and reduce the unnecessary escalation of matters for such reasons. I believe more power to recover costs can sort these dilemmas.

Further on recovery of costs from solicitors, I find it difficult to comprehend how costs are down considering the volume of complaints and matters investigated. Where directions are made on solicitors to pay costs, they must be paid. If they are not paid why not impose an interest rate for not paying by a certain date? Not paying these costs has a knock-on financial effect on the Law Society, and ultimately its members. I further believe that the chairmen of the divisions of the Committees should agree a fair and reasoned level of costs and apply it consistently throughout their divisions.

Complaints against solicitors who have **multiple complaints** against them require ongoing stringent attention. I note and appreciate that the Law Society arduously monitor such complaints however the statistics remain high. Presently the review period is 2 years for such complaints. I believe there are pros and cons for increasing this time period and suffice it to say that multiple complaints require rigorous attention.

Finally, I believe with the **increase in regulatory activity** the Regulation Department of the Law Society has initiated more effective and efficient practices to meet their stakeholders' needs. Such practices include hiring additional resources to expedite the regulatory process, appointing an additional lay member, holding extraordinary meetings, implementing improved complaints and Compensation Fund application processes and procedures, and appointing an external firm of solicitors to handle referrals to the Solicitors Disciplinary Tribunal.

**Contact details:**

Ms Carol Ann Casey  
Independent Adjudicator of the Law Society  
26 Upper Pembroke Street  
Dublin 2

Tel: +353 1 662 0457  
Fax: +353 1 662 0365  
Email: [adjudicator@independentadjudicator.ie](mailto:adjudicator@independentadjudicator.ie)  
Web: [www.independentadjudicator.ie](http://www.independentadjudicator.ie)