

**THE INDEPENDENT ADJUDICATOR  
OF THE LAW SOCIETY**

**10<sup>TH</sup> ANNUAL REPORT  
TO  
THE PRESIDENT  
OF THE  
LAW SOCIETY OF IRELAND**

**- Year ending 30 September 2007 -**

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

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## **PREAMBLE**

### **The Independent Adjudicator**

The Independent Adjudicator is Carol Ann Casey. Ms Casey took over from Ms Lenore Mrkwicka whose resignation from the role effected in December 2006. Ms Mrkwicka's examination of cases for quarter one of this review period has been disseminated into this annual report, of which the annual review period is from 1 October 2006 to 30 September 2007.

## FORWARD BY THE INDEPENDENT ADJUDICATOR

I am privileged to have been appointed the Independent Adjudicator of the Law Society. I wish to commend my immediate predecessor, Ms Lenore Mrkwicka, and her predecessor, Mr Eamon Condon, for their establishment of the Office of the Independent Adjudicator which is now in its eleventh year since inception. This annual report covers the tenth year from 1 October 2006 to 30 September 2007.

I am charged with the responsibility of ensuring that the Law Society of Ireland handles complaints about its members in an effective and efficient manner and with reviewing the Society's response to claims made on its Compensation Fund.

Complaints have centred on three key areas: inadequate professional services, overcharging and professional misconduct (see further details on page 5).

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.

The number of complaints over the last year is paralleled to last year. In 2005/2006, there was a vast increase in complaints submitted to both the Law Society and to the Independent Adjudicator as a direct result of the controversy involving a number of solicitors who were alleged to have deducted fees from compensation awards made to claimants under the Residential Institutions Redress Board scheme despite having already received their fees from the State. This regrettable matter was investigated and examined promptly by both the Law Society and my predecessor, which is commendable, and only a few cases were carried forward to this accountable year. This matter was also highlighted on Irish television which generated high public interest that continues today in initiated complaints to the Office of the Independent Adjudicator, which could be a factor in the continuing paralleled volume of complaints this year.

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

Being the Independent Adjudicator, I aim to be neither an advocate nor an apologist and to deliver the following in my work:

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

Since I commenced Office I have attended as an observer at various Complaints and Client Relations Committee and Regulation of Practice Committee meetings, a Solicitors Disciplinary Tribunal hearing, a plenary meeting of the Complaints and Client Relations Committee and various Law Society meetings. Lay members participate in every regulatory decision-making committee and engender continuous active contributions to the fairness of decisions by each of these Committees above-mentioned and I have noted on many occasions that the last voice of decision very often rests with the lay attending member(s). In addition, each year the lay members of the Complaints and Client

Relations Committee promulgate an annual report on their findings to the Law Society which I have acquainted myself on for recent years.

I have established a professional relationship with the Law Society of Ireland, and whilst always being independent and impartial with clear boundaries, I would like to highly commend the work of the Complaints and Client Relations Section, led by the Senior Solicitor, Ms Linda Kirwan, who always promptly obliges and facilitates the Office of the Independent Adjudicator.

A handwritten signature in black ink that reads "Carol Ann Casey". The signature is written in a cursive, flowing style.

Carol Ann Casey  
Independent Adjudicator of the Law Society

November 2007

## **Section 1**

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

#### **Statutory governance**

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

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

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

The Office of the Independent Adjudicator provides an independent forum to which members of the public may apply if they are dissatisfied with the manner in which the Law Society of Ireland has dealt with any complaint made by or on behalf of any client against their solicitor. The Office of the Independent Adjudicator also deals with complaints about any decision by the Law Society concerning an application for a grant from the Law Society's Compensation Fund. Grants are made to clients who have suffered a loss due to a solicitor's dishonesty. Grants are not made in respect of losses that have arisen due to a solicitor's negligence.

The role of the Independent Adjudicator is:

- (a) to ensure that complaints about the conduct of a solicitor are dealt with fairly and impartially by the Law Society; and
- (b) 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.

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.

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

## Section 2

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

#### Who can use the Independent Adjudicator

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

#### Complaints the Law Society may investigate

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

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

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

#### What the Law Society cannot do

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

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

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

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

## **Complaints and Client Relations Committee**

The Complaints and Client Relations Committee consists of solicitors and lay members who oversee the work of the Complaints and Client Relations Section of the Law Society. The remit of the lay members is to represent the interests of the general public. The Committee generally meet every four to six weeks and at least one lay member must be present at every meeting. There are two divisions of the Committee, both of which have the same duties and responsibilities. The solicitors on these committees give of their time voluntarily to adjudicate on complaints against members of the Law Society of Ireland.

The solicitors who are under investigation are often requested to attend to answer questions on the complaint(s) before them. As the Committee is there to assess the alleged complaint against the solicitor, clients are rarely in attendance, and where so is the case, they are never in attendance with 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 include:

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

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

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

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

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

Apart from appealing a decision of the Law Society to the Independent Adjudicator for examination, a client may choose instead to go directly to the Solicitors Disciplinary Tribunal or may go after the decision of the Independent Adjudicator has been communicated to them. A client may not go to the Solicitors Disciplinary Tribunal and then go to the Independent Adjudicator. Both options are defined below.

### **The Solicitors Disciplinary Tribunal**

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

### **The Independent Adjudicator**

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

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

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

For further details please see the Remit of the Independent Adjudicator on page 5.

### **The Legal Services Ombudsman**

The role of the Independent Adjudicator will be revoked with the enactment of the Civil Law (Miscellaneous Provisions) Bill, 2006. Part 2 of this Bill will ratify the appointment of a Legal Services Ombudsman who will oversee the handling of complaints against solicitors of the Law Society of Ireland and barristers of the Bar Council of Ireland. This welcomed Bill was initiated by the former Minister for Justice, Equality and Law Reform, Mr Michael McDowell, and is expected to be enacted by the current Government in 2008.

### Section 3

## STATISTICS FROM THE LAW SOCIETY OF IRELAND'S COMPLAINTS AND CLIENT RELATIONS SECTION, 2006/2007

The total number of complaints received was 1736, of which 274 were deemed inadmissible, leaving a balance of 1462 complaints which were investigated by the Complaints and Client Relations section. This is 502 complaints less than last year. 1009 complaints were carried forward.

Another 805 files were opened by the Complaints and Client Relations section, representing a mix of queries and requests for information from members of the public.

269 of the 1462 complaints investigated were made by solicitors against their colleagues, just over 18% of the total.

Of the 1462 complaints investigated, 252 went to the Complaints and Client Relations Committee.

At year end, of the 1462 complaints investigated, 908 complaints were closed, 484 were under investigation and 70 were pending before the Complaints and Client Relations Committee or the Solicitors Disciplinary Tribunal.

Of the complaints carried forward, 686 were closed, 200 were under investigation and 123 were pending before the Complaints and Client Relations Committee or the Solicitors Disciplinary Tribunal.

The following 11 pages advise the status of complaints dealt with by the Complaints and Client Relations Section of the Law Society of Ireland.

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

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

## Breakdown of complaints

	<b>2006/07</b>	<b>2005/06</b>	<b>2004/05</b>
Admissible complaints	1462	1964	1232
Inadmissible complaints	274	272	256
<b>Total</b>	<b>1736</b>	<b>2236</b>	<b>1488</b>

\* \* \* \* \*

Allegations of excessive fees	179	600	86
Allegations of inadequate professional services	518	546	492
Allegations of misconduct	765	818	654
<b>Total</b>	<b>1462</b>	<b>1964</b>	<b>1232</b>

## Excessive fees

Complaints alleging overcharging were broken down as follows:

	<b>2006/07</b>	<b>2005/06</b>	<b>2004/05</b>
Conveyancing	30	48	14
Probate	17	25	15
Litigation	58	148	22
Matrimonial	40	40	21
Other	34	339	14
<b>Total</b>	<b>179</b>	<b>600</b>	<b>86</b>

## Inadequate professional services

Complaints alleging Inadequate Professional services were broken down as follows:

	<b>2006/07</b>	<b>2005/06</b>	<b>2004/05</b>
Delay	216	225	213
Failure to communicate	129	145	120
Shoddy work	135	119	129
Other	38	56	30
<b>Total</b>	<b>518</b>	<b>546</b>	<b>492</b>

## Misconduct

Complaints alleging misconduct were broken down as follows:

	2006/07	2005/06	2004/05
Delay	9	38	13
Failure to communicate	133	105	111
Failure to hand over	178	174	148
Failure to account	71	112	92
Undertaking	231	219	151
Conflict of interest	18	25	12
Dishonesty or deception	15	16	14
Witnesses expenses	11	6	15
Other	94	119	87
Advertising	5	4	1
<b>Total</b>	<b>765</b>	<b>818</b>	<b>654</b>

## Complaints and Client Relations Committee

	2006/07	2005/06	2004/05
Number of meetings	17	25	16
	(+ 1 plenary)	(+ 1)	(+2)
Number of new matters referred	252	391	159
Number of clients invited to attend	9	7	7
Referrals to Disciplinary	34	59	17

## **General**

In addition to complaints, the Complaints and Client Relations Section of the Law Society opened 1,079 files consisting of a mix of inadmissible complaints, requests for information, queries, requests for legal advice, potential complaints, etc.

The Registrar's Committee directed the payment of €47,650 in contributions from solicitors towards the costs incurred by the Law Society as a result of the solicitor's failure or delay in replying to the Law Society.

Fifteen (15) formal reprimands were issued by the Committee.

The Committee utilised the powers contained in the 2002 Solicitors (Amendment) Act allowing it to consider multiple complaints against the same solicitor on 9 occasions.

### Complaints Status at Year End

	<b>2006/07</b>	<b>2005/06</b>	<b>2004/05</b>
Case closed	908	1186	772
Under investigation	484	657	395
Pending before Complaints and Client Relations/Disciplinary Tribunal	70	121	65
<b>Total</b>	<b>1462</b>	<b>1964</b>	<b>1232</b>

## Case Completion

	<b>2006/07</b>	<b>2005/06</b>	<b>2004/05</b>
Complaints resolved	484	456	345
No grounds for complaint but assistance provided	64	155	106
Withdrawn/abandoned	63	94	81
Rejected	254	423	199
Upheld	43	58	41
<b>Total</b>	<b>908</b>	<b>1186</b>	<b>772</b>

### Completion Times

	<b>2006/07</b>	<b>2005/06</b>	<b>2004/05</b>
Complaints closed in less than 30 days	256=28.19%	332=27.99	233=30.18%
Complaints closed in more than 30 and less than 60 days	193=21.26	299=25.21%	206=26.68%
Complaints closed in more than 60 and less than 90 days	158=17.40	177=14.92%	127=16.45%
Complaints closed in more than 90 and less than 180 days	219=24.12%	268=22.60%	148=19.17%
Other	82=9.03%	110=9.27%	58=7.51%
<b>Total</b>	<b>908=100%</b>	<b>1186=100%</b>	<b>772=100%</b>

### Source of Complaints

	<b>2006/07</b>	<b>2005/06</b>	<b>2004/05</b>
Complaints made by solicitors	269	265	344
Complaints made by parties other than solicitors	1193	1699	888
<b>Total</b>	<b>1462</b>	<b>1964</b>	<b>1232</b>

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

	<b>2006/07</b>	<b>2005/06</b>	<b>2004/05</b>
3 Complaints	64 solicitors	75 solicitors	46 solicitors
4 Complaints	27 solicitors	21 solicitors	22 solicitors
5 Complaints	9 solicitors	21 solicitors	6 solicitors
6 Complaints	5 solicitors	16 solicitors	8 solicitors
7 Complaints	5 solicitors	4 solicitors	4 solicitors
8 Complaints	2 solicitors	6 solicitors	2 solicitors
9 Complaints	1 solicitors	3 solicitors	1 solicitor
10 Complaints	2 solicitors	2 solicitors	-
11 Complaints	-	-	2 solicitors
12 Complaints	-	1 solicitor	-
13 Complaints	4 solicitors	2 solicitors	-
14 Complaints	-	1 solicitor	1 solicitor
16 Complaints	-	-	1 solicitor
17 Complaints	-	1 solicitor	-
20 Complaints	-	1 solicitor	-
21 Complaints	-	1 solicitor	-
23 Complaints	-	1 solicitor	-
24 Complaints	-	2 solicitors	-
44 Complaints	-	1 solicitor	-

### Status of complaints carried forward

Closed	686
Open/reopened	200
Pending before Complaints and Client Relations Committee or pending before Disciplinary Tribunal	123
<b>Total</b>	<b>1009</b>

#### **Section 4**

### **BREAKDOWN OF MATTERS REFERRED TO THE INDEPENDENT ADJUDICATOR FROM 1 OCTOBER 2006 TO 30 SEPTEMBER 2007**

The following is the breakdown of cases examined by the Independent Adjudicator during the accountable year of 1 October 2006 to 30 September 2007. These cases all, save where mentioned, went through the Law Society's investigation process and fall into the statistics set out in Section 3.

- 139 cases were wholly examined, adjudicated upon and closed by the Independent Adjudicator, 136 of which related to Complaints and the remaining 3 related to Compensation Fund claims;
- 21 additional complaints fell outside my jurisdiction to examine (and did not fall within the Law Society's statistics mentioned in Section 3);
- 1 case remains under further investigated by the Law Society at my request;
- 17 letters were written by the Independent Adjudicator to the Complaint and Client Relations Section with queries and/or requests to further investigate (which includes the 1 case pending cited above);
- 1 case required meeting with the Law Society, meeting with the client separately, holding numerous telephone conversations with the client and solicitor, and a final decision is withheld pending conclusion of the matter;
- Not one solicitor who was contacted by my Office hindered my examination process in any way;
- A number of meetings were held with clients in my Office throughout the year, often post the Independent Adjudicator's decision being communicated, all matters of which are concluded;
- No meetings were held with solicitors, although I engaged in many minuted telephone conversations with solicitors about matters under my examination;
- Every matter being investigated consists of at least 4 letters and up to approximately 8 letters from the Independent Adjudicator to the client and solicitor;
- The matters adjudicated upon centred on the following with by far the highest volume being in conveyancing and probate related matters followed respectively by each of the other matters listed below:
  1. Conveyancing
  2. Probate
  3. Marital/family
  4. Criminal
  5. Personal injuries
  6. Redress Board

- All complaints adjudicated upon fell into one of these three categories:
  1. Inadequate professional services
  2. Overcharging
  3. Professional misconduct.
 (Compensation Fund grant claims are separate);
  
- Compensation Fund cases: grants are made to persons who have suffered a loss due to a solicitor's dishonesty. Grants are not made in respect of losses that have arisen due to a solicitor's negligence. In this accountable year, I adjudicated upon 3 Compensation Fund cases on which I concurred with the Law Society's decision in each matter.
  
- The Office of the Independent Adjudicator deals with complaints about solicitors practising in Ireland or Compensation Fund claims initiated from various parts of Ireland, Europe, Australia, New Zealand, America and Canada.
  
- The problems the Office of the Independent Adjudicator had in examining complaints this year fell into the following categories:
  - clients did not follow an appropriate process, e.g., unwilling to correspond in writing or to formally nominate a person to submit their appeal on their behalf;
  - files that are still investigation by the Law Society when submitted to the Independent Adjudicator for investigation;
  - clients who had been to the Solicitors' Disciplinary Tribunal;
  - out of time applications (3 year jurisdiction) in initiating a complaint to my Office from the Law Society's decision date;
  - insufficient details provided by clients, thus elongating examination of matters;
  - illegible writing can be a problem. On at least 6 occasions this year I have had to refer to the support of the Complaints and Clients Relations Section to assist me in interpreting client names and/or postal addresses.

**Section 5**  
**OBSERVATIONS ON COMPLAINTS TO THE INDEPENDENT ADJUDICATOR**  
**FROM 1 OCTOBER 2006 TO 30 SEPTEMBER 2007**

- The manner in which the Law Society's Complaints and Client Relations Section conduct their investigations is wholly to my satisfaction. I have no adverse comment to advise throughout the annual review period and as such believe that the public are treated fairly and reasonably with well-considered investigations occurring by professional staff in the Law Society.
- People's expectations do not always coincide with the reality of the Independent Adjudicator's role, e.g., they may be seeking compensation for their stress, or they want the allegedly offending solicitor to be struck off, etc. This continues to be surprising as clients have already been through the Law Society's investigation process when they appeal to my Office for their matter to be examined.
- Whilst email has its advantages it also brings disadvantages as clients expect an immediate response. This is not feasible and I am comfortable that matters are dealt with in a timely manner by the Law Society's Complaints and Client Relations Section. If there was an excessive delay on a matter, which has not been the case to date, I would be addressing this with the Section on a case by case basis.
- I would like to assert that whilst clients are passionate about their complaint this passion does not necessarily mean that the complaint is a bona fide complaint that will be upheld. Every complaint is dealt with individually and is perused to assimilate all salient information to decipher the Independent Adjudicator's impartial views on the matter in hand. I would like to emphasise that the Independent Adjudicator is not in any way biased towards solicitors or clients.
- Clients often expect details of why their complaint is not upheld by the Independent Adjudicator to be given to them in minute detail which is generally not applicable, necessary or appropriate. For example, if I decide that I am satisfied with the Law Society's decision then I am wholly supporting the contents of the Law Society's decision correspondence. I am not permitted under my governing Regulations\* to investigate legal issues or analyse legislation on behalf of a client. My role is to ensure that the general public is dealt with by an independent person who is not a lawyer and that their case is examined as such. It is therefore not prudent for my response to contain substantive detail which could be outside the Independent Adjudicator's remit.
- From time to time clients submit their complaint to the Independent Adjudicator for re-examination without informing my Office that the matter has been examined by my predecessor in the past, possibly even years' ago. Once a case is examined, the Independent Adjudicator Office stands over that decision indefinitely.
- I am pleased to see that multiple complaints against solicitors against whom more than one complaint was initiated against them has reduced and would hope this will continue into the future.

\* See Section 1, page 5 for reference details

- In addition to examining individual complaints I also conducted a random survey of files in the Complaints and Client Relations Section. My inspection disclosed no significant findings about the manner in which complaints are processed by the Complaints and Client Relations Section. However, my review included two files which were referred to the Solicitors Disciplinary Tribunal and I am somewhat concerned at the delays from the date of referral to the date the case is heard by the Tribunal. I accept that the workings of the Disciplinary Tribunal do not fall within my remit but my enquiries also revealed that a number of months may elapse before a case is considered by the Tribunal. The Law Society needs to ensure that referrals by the Complaints and Client Relations Committee and Complaints and Client Relations Section are dealt with at the earliest opportunity.
- Quite often decorum has been missing from clients when dealing with the Independent Adjudicator. People are usually aggrieved by the time they make their appeal to my Office and often display inappropriate and rather offensive aggression with the Independent Adjudicator if their case has not been adjudicated in their favour. I stress that the role of the Independent Adjudicator is not that of consumer advocate – it is to act in accordance with the principles of fairness, impartiality and reasonableness for all parties.
- Solicitors' procrastination in communicating with clients can often be the crux of a complaint which I openly acknowledge and take cognisance of when examining matters. This said I wish to also avow that I have observed and perused numerous files where clients can be extremely demanding of their solicitors. This can be unreasonable, and from time to time harassing, and which I equally take cognisance of when examining matters.
- Appeals to the Independent Adjudicator are now normally examined and decided upon within a few weeks of the initiating letter to my Office which is equally my intention going forward.
- In acknowledging that there are continuing complaints made to both the Law Society's Complaints and Client Relations Section and to the Independent Adjudicator, I believe credit is due to the vast amount of solicitors who engender good legal practice in Ireland and are honourable members of their profession. I believe the comprehensive complaints mechanisms afforded to solicitors' clients (see Section 2, pages 6 to 8) support best legal service practices in Ireland.

## Section 6

### RECOMMENDATIONS/CHANGES PROPOSED IN THE ADJUCATING YEAR

- I do not look favourably upon solicitors who take an excessive and/or an unreasonable amount of time in responding to the Law Society's investigatory correspondence. It happens, quite often that solicitors receive two or three requests from the Law Society to respond to a complaint before they do so. Generally after the third letter, if there is no response the matter is referred to the Complaints and Client Relations Committee. Whilst the Committee has a right to reprimand a solicitor, and both regularly and continually does so, I would like to see this happen more frequently and to a higher level of sanction (bearing in the mind the maximum the Law Society can impose is €3,000). I expect to be more stringent on this in the coming review year.
- The Complaints and Client Relations Committee should consider preventative and educational measures in addition to carrying out their traditional adjudicative role. I think there is a need for a continual education process for solicitors to ensure that they deliver a fair and reasonable service in accordance with the Solicitors' Acts and the Guide to Professional Conduct of Solicitors in Ireland.
- In neighbouring jurisdictions application forms are in situ for initiating a complaint for investigation. This is something I favour in order to assist the client in putting a structure on their complaint at the outset. At a minimum I would like a complaint to be clearer at its initiation stage on the following:
  1. the exact nature of the client's complaint; and
  2. what the client hopes to achieve by the investigation of their complaint.This will clarify the purpose of the investigation, set realistic expectations from the beginning and assist the solicitor with the preparation of his response thus expediting the process. To have an application form would also be advantageous to reducing unnecessary and burdensome communications with a client.
- During this review year guidelines for attendance at Complaint and Client Relations Committee meetings were formalised with the Law Society's Complaints and Clients Relations Section. My involvement in this initiative was prompted by a client informing me that he felt daunted by the format of the meeting, the amount of people in attendance and that it would have assisted him to know what to expect in advance of attending such a meeting. I am pleased to advise that these guidelines are now made available to any person attending the Complaints and Client Relations Committee meetings. Please see Appendix I on page 29 for these guidelines.
- A common failing by solicitors is the lack of a Section 68 letter which contains information on charges to clients, satisfying Section 68 of the Solicitors (Amendment) Act, 1994. A Section 68 letter is a letter which every solicitor is obliged to send to a client at the inception of taking instructions outlining 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 have generally requested the solicitor concerned to discount a portion of the fees payable by the client. I believe that in many cases the fees reduction was insufficient and was therefore pleased to note that at a plenary meeting of the Complaints and Client Relations Committee which I attended on 6 September 2007 the Committee resolved to seek more substantial reductions in fees charged. A client has a legal right to written details of the legal charges for their solicitor's proposed work at the offset

and I think by increasing such a discounted percentage of a solicitor's overall fee, this sets a clear parameter that such non-compliance will be penal on a solicitor's fees actually received. I further believe that such an increased sanction should reduce the amount of complaints, especially multiple complaints, against solicitors due to non-issuance of Section 68 letters. I recommend that the Committee's resolution be followed in all appropriate cases.

- The Society should take whatever steps are necessary in terms of staff and resources to ensure that cases which are referred to the Solicitors Disciplinary Tribunal (which by their very nature are the more serious cases) are lodged with the Tribunal as quickly as possible. This is a matter that I will be observing closely in the coming year.
- Having sat in on a number of meetings of the Complaints and Client Relations Committee and notes the volume of work, I believe there is a need for the creation of a third division of the Committee.

## EXECUTIVE SUMMARY

The tenth Annual Report of the Independent Adjudicator disseminated statistics, observations and recommendations for the period from 1 October 2006 to 30 September 2007.

Complaints and compensation fund grant claims that have been submitted to both the Complaints and Client Relations Section of the Law Society and appealed to the Independent Adjudicator have been paralleled to that of the review year 2005/2006. I believe this is largely due to the public's heightened awareness through the media of complaints made against solicitors.

I believe credit is due to the vast amount of solicitors who engender good legal practice in Ireland and are honourable members of their profession (Section 5, page 25). I am also satisfied that comprehensive complaints mechanisms are afforded to solicitors' clients (see Section 2, pages 6 to 8) supporting best legal service practices in Ireland.

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

1. issued 15 formal reprimands against solicitors; and
2. directed payments of €47,650 in contributions from solicitors towards the costs incurred by the Law Society as a result of the solicitor's failure or delay in replying to the Law Society.

Related to point 2 above, the Law Society requires timely, cooperative and comprehensive correspondence from the solicitor against whom a complaint is alleged so it can conduct a thorough investigation. Procrastination by solicitors who hinder and/or elongate this process is an area I do not look favourably upon. A major part of clients' alleged complaints centres on their solicitors' procrastination in communicating with them, and in turn such procrastination cannot be acceptable by the Law Society nor the Independent Adjudicator when investigating such client complaints. This said, as I asserted within my observations of this report (Section 5, pages 24 to 25), clients can be extremely demanding of their solicitors which can be unreasonable, and from time to time harassing, which I equally take cognisance of when examining matters.

A large number of complaints have to do with overcharging and when investigated by the Law Society's Complaints and Client Relations Section it regularly transpires that a Section 68 letter has not been issued to clients at the offset (Section 6, page 26). I am delighted that the Law Society has recommended greater reductions for non-compliance with Section 68. I believe this sets a clear mark that such practice is not and will not be accepted.

Finally, I would like to acknowledge that the role of the Independent Adjudicator will be revoked with the enactment of the Civil Law (Miscellaneous Provisions) Bill, 2006 which will ratify the appointment of a Legal Services Ombudsman who will oversee the handling of complaints against solicitors of the Law Society of Ireland and barristers of the Bar Council of Ireland. I wholly endorse this appointment and believe that the encompassment of complaints against barristers will be a new and welcomed facet to the proposed Ombudsman position which will be in the Irish public's interest.

## Appendix I

### **Guidelines for attendance at meetings of the Complaints and Client Relations Committee**

- Attendance at a Complaints and Client Relations Committee meeting is an opportunity for the attendee to respond to a complaint before the Committee or present the key facts of their matter.
- Attendees should make themselves known at Reception upon arrival. Attendees are requested to stay in the waiting-room allocated pending their appearance before the Committee. If for any reason they have to leave please notify Reception.
- Agenda items can sometimes take longer than anticipated. If there are significant delays all persons waiting to attend will be notified.
- Each agenda item is allocated a specific time which is specified by the Chairman at the outset. Attendees are asked to observe the time allocated to that item for the benefit of those coming after them. It would be helpful if attendees prepared in advance a list of key points related to their matter which they wish to bring to the Committee's attention.
- At the commencement of each item, the Chairman will introduce the members of the Committee including the Lay Members (at least one of whom must be present at every meeting) and members of the Secretariat.
- Questions are led by the Chairman and may be added to from members of the Committee.
- The Committee does not operate in an adversarial fashion - clients and solicitors are interviewed separately.
- Persons attending before the Committee are requested to confine their submissions to the facts of the complaint itself.
- Attendees may be accompanied by up to two persons.
- Committee Members are not permitted to communicate directly with any party, solicitor or client, outside the confines of the Committee Meeting.

## Appendix II

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

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

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

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

2. (a) In these Regulations -

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

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

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

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

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

"the Registrars Committee" means the committee of the Council of the Society which is responsible for the adjudication of complaints made to the Society by or on behalf of clients of solicitors against their solicitors (other than complaints in the nature of claims for grants out of the Compensation Fund, the adjudication of which are the responsibility of the Compensation Fund Committee) which have been referred to it by the complaints section of the Society initially concerned with the receipt and the examination or investigation and the attempted resolution of such complaints;

"Regulation" means a regulation in these Regulations;

"the Society" means the Law Society of Ireland.

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

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

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

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

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

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

(i) the remuneration of the Adjudicator; and

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

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

6. Where, by reason of illness or other physical incapacity, the Adjudicator believes that he is unable effectively to perform his functions under these Regulations for a specified duration of time, the adjudicator may request the Society to appoint another eligible

person as an acting adjudicator to administer the Scheme in place of the Adjudicator for such specified and limited duration of time as the Adjudicator and the Society deem appropriate and reasonable in the particular circumstances; and an acting adjudicator so appointed shall during such limited period of his appointment have all the powers of the Adjudicator in administering the Scheme and in performing the other functions of the Adjudicator as provided for in these Regulations.

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

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

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

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

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

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

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

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

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

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

(c) where the related complaint made to the Society relates to the alleged charging of

excessive fees by a solicitor and the bill of costs in issue has been taxed or has been submitted to a Taxing Master of the High Court for taxation on a solicitor and own client basis;

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

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

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

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

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

(c) rejecting the complaint.

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

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

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

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

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

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

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

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

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

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

(i) the complaint is frivolous or vexatious; or

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

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

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

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

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

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

Dated this 26th day of September 1997.

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

Francis D. Daly

President of the Law Society of Ireland

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