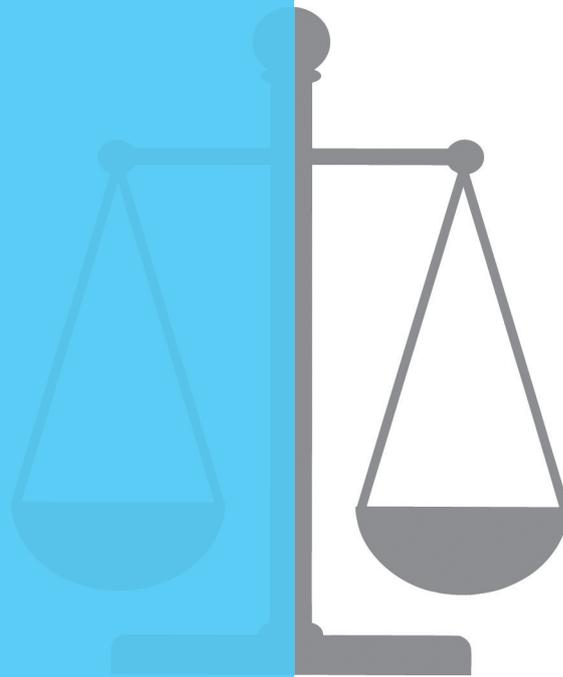


Annual Report
of the
Independent Adjudicator
of the
Law Society of Ireland



Year ending 30 September 2012

Carol Ann Casey
Independent Adjudicator of the Law Society

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FOREWORD WITH REVIEW OF YEAR



Carol Ann Casey

“To me, it is not the complaint or Compensation Fund claim but how it is handled”

This is the fifteenth Annual Report of the Independent Adjudicator of the Law Society of Ireland, and my sixth Annual Report as office holder, for the period from 1 October 2011 to 30 September 2012.

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.).

This year I received 174 requests to examine matters (138 last year and 183 the prior year). I adjudicated on 132 complaints (109 last year and 136 the prior year) and 23 Compensation Fund claims (15 last year and 19 the prior year).

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, and my conducting various random reviews of files, 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 carry out the duties of the Independent Adjudicator of the Law Society position single-handedly, and on a part-time basis, with emphasis on cost efficiency in what remains a difficult economic climate.

Being solitary in my role, I take my continuous personal development seriously to deliver high quality customer service in my role. This year I completed a professional award in regulatory affairs with the Chartered Management Institute in the UK, and am doing the chartered director programme with the Institute of Directors.

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

Finally, the Legal Services Regulation Bill 2011 when enacted will supersede my Office and appointment. I have observed stress and job security worries on employees of the Law Society's Regulation Department, most specifically the Complaints and Client Relations Section who will be most affected. I, like so many parties most notably the regulatory body, have conveyed my opinions on the Bill to Alan Shatter T.D., Minister for Justice, Equality and Defence. I remain fully committed to, and passionate about, my role as The Independent Adjudicator of the Law Society until the Bill's enactment.



Carol Ann Casey
Independent Adjudicator of the Law Society

5 November 2012

Section 1

REMIT OF THE INDEPENDENT ADJUDICATOR

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

Statutory governance

The Office of the Independent Adjudicator was established by Statutory Instrument No. 406 of 1997 – Solicitors (Adjudicator) Regulations, 1997 and Statutory Instrument No. 720 of 2005 – Solicitors (Adjudicator) (Amendment) Regulations, 2005. (<http://www.irishstatutebook.ie/1997/en/si/0406.html> and <http://www.irishstatutebook.ie/2005/en/si/0720.html>).

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

The Office of the Independent Adjudicator

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

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

The role of the Independent Adjudicator 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 which for whatever reason has been withdrawn, where the Society considers that, in pursuance of its regulatory functions and in the public interest, the Society ought to investigate or continue to investigate.

What the Law Society cannot do

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

Complaints and Client Relations Section of the Law Society

The Complaints and Client Relations Section of the Regulation Department of the Law Society comprises a team of investigating solicitors, with their support staff, whose sole function is to investigate alleged complaints against solicitors. The majority of complaints are concluded by

this Section. Where they cannot be resolved or the investigation discloses serious matters, the complaint is referred to the Complaints and Client Relations Committee for direction.

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

Complaints and Client Relations Committee

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

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

The solicitors who are under investigation are often requested to attend to answer questions on the complaint(s) before them. Clients who ask to attend may do so but are never in attendance at the same time as the solicitor, as the Committee does not operate in an adversarial manner.

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

- instruct a solicitor to reduce, waive or refund fees to their client;
- direct a solicitor to rectify any error, omission or deficiency in the services provided;
- direct a solicitor to take such other action in the interest of the client as the Committee may specify;
- issue a reprimand to a solicitor;
- require a solicitor to make a payment (not exceeding €3,000) as a contribution towards the costs of the investigation;
- require a solicitor to make a payment (not exceeding €3,000) for any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided.

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

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

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

Applying to the Independent Adjudicator or to the Solicitors Disciplinary Tribunal

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

Financial Regulation Section

The Financial Regulation Section of the Regulation Department of the Law Society administers the Compensation Fund, which the Law Society is required to maintain in order to compensate clients for losses arising due to dishonesty on the part of solicitors or their employees. Claimants can make a claim from the Fund if they were the client of a solicitor who misappropriated money belonging to the client. The Registrar and Director of Regulation can deal with a claim up to €5000. Thereafter it is the Regulation of Practice Committee which decides whether to pay the claim in full, pay part of the claim, refuse the claim, or postpone the decision to a later meeting because more information is needed. When the Law Society has made its decision it will write to the claimant. If the Law Society is going to pay only part of their claim, or if it is refusing the claim, it will tell the claimant why.

Regulation of Practice Committee

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

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

The Solicitors Disciplinary Tribunal

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

The Independent Adjudicator

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

“In administering the Scheme, the Adjudicator shall (subject to Regulation 9) be empowered:
(a) to receive and to examine or investigate any complaint in writing made to him by or on behalf of a solicitor against the Society, concerning the handling by the Society of a related complaint about that solicitor made to the Society by or on behalf of that client”.

For further details please see the Remit of the Independent Adjudicator in section 1.

The Legal Services Regulation Bill 2011

The Legal Services Regulation Bill 2011 will supersede the Legal Services Ombudsman Act 2009. The role of the Ombudsman was to supersede my Office by overseeing the handling by the Law Society and Bar Council of complaints by clients of solicitors and barristers. The Ombudsman was not appointed and instead the Legal Services Regulation Bill proposes the following three key entities:

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

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

Complaint and Compensation Fund Escalation Process Diagram

COMPLAINT ESCALATION PROCESS ONCE INITIATED TO THE LAW SOCIETY

(from top to bottom)

Complaints and Client Relations Section
Regulation Department
The Law Society

Complaints and Client
Relations Committee

Independent Adjudicator of the Law Society	Solicitors Disciplinary Tribunal
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The
High Court

COMPENSATION FUND CLAIM ESCALATION PROCESS ONCE INITIATED TO THE LAW SOCIETY

(from top to bottom)

Financial Regulation Section
Regulation Department
The Law Society

Regulation of Practice Committee

Independent Adjudicator of the
Law Society

Section 3

STATISTICS FROM COMPLAINTS AND CLIENT RELATIONS SECTION OF THE REGULATION DEPARTMENT OF THE LAW SOCIETY, 2011/2012

The Law Society's year was 1 September 2011 to 31 August 2012.

The total number of new complaints received was 2,813, of which 360 were deemed inadmissible, leaving a balance of 2,453 admissible complaints. 2,030 complaints were carried forward, making a total of 4,483 complaints handled by the Complaints section during the year.

A further 1,047 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.

1,729 of the complaints investigated last year were made by solicitors against their colleagues, approximately 70% of the total intake. A large proportion of these complaints were made by solicitors acting on behalf of financial institutions.

411 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:

	Closed	Under Investigation	Pending before CCRC/SDT*	Total
New complaints	1,115	1,183	155	2,453
Carried forward	1,361	542	127	2,030
Total	2,476	1,725	282	4,483

*Complaints and Client Relations Committee/Solicitors Disciplinary Tribunal

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

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

Breakdown of complaints

	11/12	10/11	09/10
Admissible Complaints	2453	2622	2117
Inadmissible Complaints	360	360	387
Total	2813	2982	2504

Allegations of Excessive fees	100	118	135
Allegations of Inadequate Professional Services	266	301	340
Allegations of Misconduct	2087	2203	1642
Total	2453	2622	2117

Excessive fees

Complaints alleging overcharging were broken down as follows:

	11/12	10/11	09/10
Conveyancing	11	15	15
Probate	11	19	26
Litigation	39	39	37
Matrimonial	28	32	43
Other	11	13	14
Total	100	118	135

Inadequate professional services

Complaints alleging inadequate professional services were broken down as follows:

	11/12	10/11	09/10
Delay	98	99	145
Failure to communicate	56	58	74
Shoddy Work	83	103	86
Other	29	41	35
Total	266	301	340

Misconduct

Complaints alleging misconduct were broken down as follows:

	11/12	10/11	09/10
Delay	3	5	8
Failure to communicate	50	56	60
Failure to hand over	80	92	104
Failure to account	70	102	88
Undertaking	1732	1647	1134
Conflict of interest	11	16	22
Dishonesty or Deception	7	9	12
Witnesses Expenses	4	4	2
Other	86	264	209
Advertising	4	8	3
Counsel's fees	40		
Total	2087	2203	1642

Complaints and Client Relations Committee statistics

	11/12	10/11	09/10
Number of meetings	22	24	23
	(+2 special +1 plenary)	(+ plenary)	(+plenary +special)
Number of new matters referred	411	416	302
Number of complainants invited to attend	10	13	20
Costs levied	€23,750	€27,900	€35,600
Compensation orders	3	3	3
Reprimands	15	20	49
Referrals to Disciplinary Tribunal	116	160	158

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 28 different solicitors (25 last year and 17 the prior year), as follows:

Practising certificate issued unconditionally	9
Conditions imposed on practising certificate	15
Practising certificate issued subject to undertaking	3
Application for a practising certificate not pursued	1
Total:	28

Complaints Status at year end

	11/12	10/11	09/10
Case closed	1115	1224	1013
Under Investigation	1183	1234	953
Pending before Complaints & Client Relations Committee/ Disciplinary Tribunal	155	164	151
Total	2453	2622	2117

Completion of complaint cases

	11/12	10/11	09/10
Complaints Resolved	650	652	558
No grounds for complaint But assistance provided	62	75	112
Withdrawn/Abandoned	122	295	133
Rejected	172	184	197
Upheld	18	18	13
Other*	91		
Total	1115	1224	1013

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

Completion times of complaints handled by the Law Society

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

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

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

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

	11/12	10/11	09/10
Complaints Closed in less than 30 days	287=26%	370=30.23%	229=22.61%
Complaints Closed in less than 60 days	228=20.65%	267=21.81%	272=26.85%
Complaints Closed in less than 90 days	157=14.22%	183=14.95%	186=18.36%
Complaints closed in less than 180 days	260=23.55%	293=23.94%	251=24.78%
Other	172=15.58%	111=9.07%	75=7.40%
Total	1104=100%	1224=100%	1013=100%

Source of complaints

	11/12	10/11	09/10
Complaints made by Solicitors	1729	1283	724
Complaints made by Parties other than solicitors	724	1339	1393
Total	2453	2622	2117

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

	11/12	10/11	09/10
6 Complaints	17	24	11
7 Complaints	13	13	9
8 Complaints	11	13	2
9 Complaints	8	5	6
10 Complaints	6	10	7
11 Complaints	5	7	3
12 Complaints	2	5	7
13 Complaints	3	5	3
14 Complaints	2	5	14
15 Complaints	-	2	2
16 Complaints	2	4	-
17 Complaints	-	1	4
18 Complaints	4	1	1
19 Complaints	2	1	2
20 Complaints	2	1	-
21 Complaints	-	1	2
22 Complaints	1	2	-
23 Complaints	-	-	-
24 Complaints	-	1	1
25 Complaints	1	-	1
26 Complaints	-	-	1

27 Complaints	1	1	1
28 Complaints	-	1	-
33 Complaints	1	1	-
36 Complaints	1	1	-
37 Complaints	-	1	-
40 Complaints	-	1	-
54 Complaints	-	-	1
55 Complaints	1	1	-
69 Complaints	1	1	-

Status of carried forward complaints at year end

	11/12	10/11	09/10
Case closed	1361	827	688
Under Investigation	542	327	179
Pending before Complaints & Client Relations Committee/ Disciplinary Tribunal	127	305	176
Total	2030	1459	1043

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:

2011

244 claims received
€7,571,531.36 claimed
€2,538,894.47 paid

2010

255 claims received
€10,406,247.52 claimed
€2,485,829.03 paid

2009

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

2008

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

Compensation Fund developments in the six months to 30 June 2012

In the six months ended 30 June 2012, 162 claims were received (by comparison to 116 for the prior period last year). Excluding invalid claims refused, these claims amounted to €1,925,125. Payments were made in the sum of €712,454 (€362,909 for the same period last year) in respect of claims. Claims amounting to €1,212,671 are still under consideration.

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

Regulation of Practice activities during the year

The Committee met on 16 occasions, for 8 scheduled, 5 emergency and 3 special meetings during the year. The Law Society's investigating accountants conducted approximately 350 investigations

of practices (approximately 400 last year). Like the Complaints and Client Relations Committee, the Regulation of Practice Committee comprises of 3 divisions.

During the year and as a result of its meetings, Regulation of Practice Committee decided to:

- Refer 20 solicitors (20 last year and 20 the prior year) to the Solicitors Disciplinary Tribunal on foot of findings disclosed in the investigation reports on their practices;
- Refer 2 solicitors (6 last year and 20 the prior year) to the Solicitors Disciplinary Tribunal for failure to file accountant's reports on time;
- Refer 2 solicitors to the Solicitors Disciplinary Tribunal for practising while not holding a practising certificate;
- Apply to the High Court for an order freezing the accounts of 10 solicitors (3 last year and 6 the prior year) where dishonesty was discovered, and in respect of one practice where the solicitor had surrendered his practising certificate and was no longer practising, but had failed to provide any documentary evidence to show whether any client monies were held in the client bank account, or whether the client bank account had been closed;
- Apply to the High Court to take up the files of 5 solicitors' practices;
- Apply to the High Court to suspend the practising certificates of 9 solicitors (6 last year and 11 the prior year);
- Levy contributions amounting to €75,750 (€123,500 last year and €137,000 the prior year) towards the costs of investigations pursuant to the Solicitors Accounts Regulations;
- Apply to the High Court pursuant to Section 18 of the Solicitors (Amendment) Act 2002 for an order permitting the Law Society to close down a solicitor's practice where the solicitor, a sole practitioner, was no longer permitted to practise on his own account by order of the High Court and had no practising certificate.

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 2011 to 30 September 2012. 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 **174 (138 last year and 183 the prior year)** referrals to the Office of the Independent Adjudicator from 1 October 2011 to 30 September 2012 broken down as follows:
 - **132 (109 last year and 136 the prior year)** complaint referrals were examined and adjudicated;
 - **19 (14 last year and 28 the prior 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
 - **23 (15 last year and 19 the prior 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.)

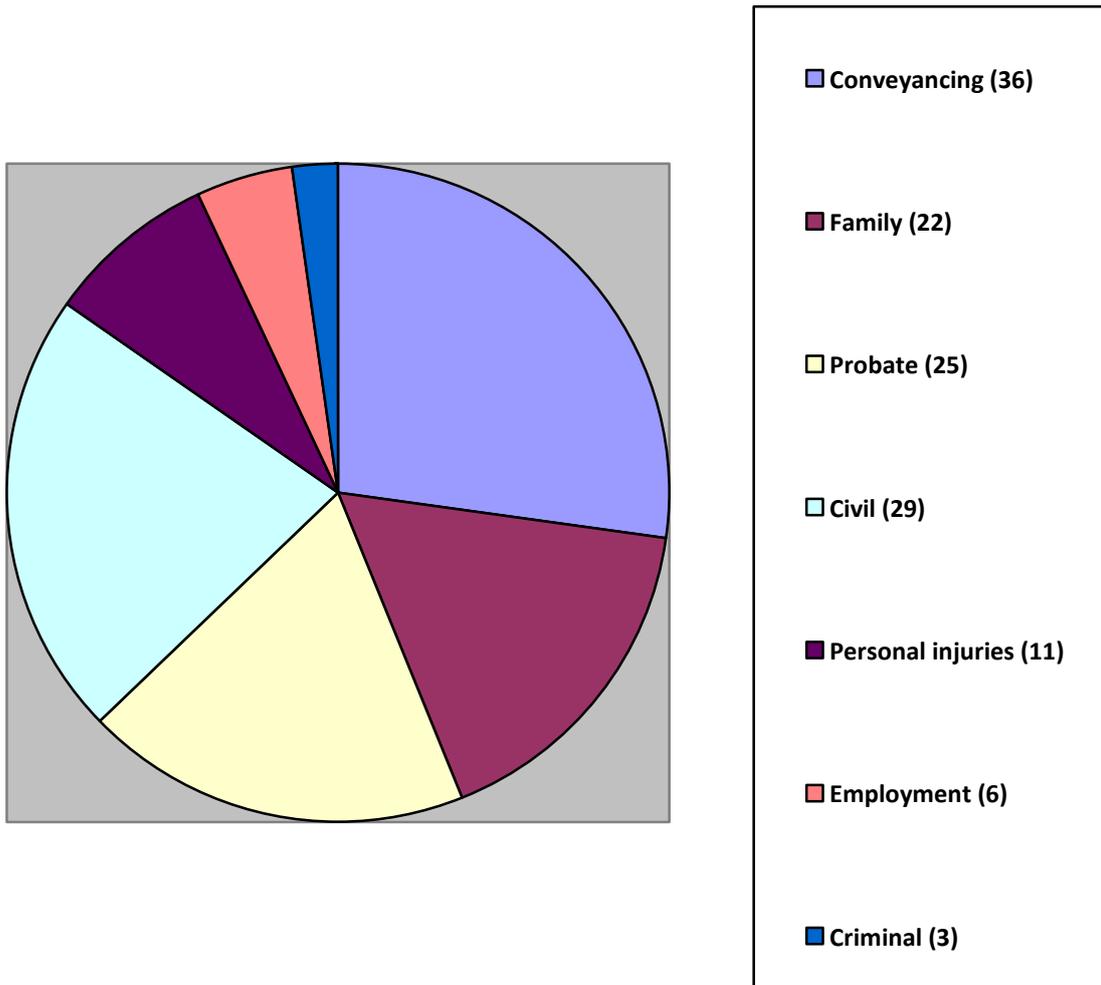
Breakdown of complaint related matters:

- Of the 132 complaints that were examined by the Independent Adjudicator, 3 had been before the Complaints and Client Relations Committee for direction, 2 of which on two occasions.
- 16 of the 132 complaints examined by the Independent Adjudicator prompted correspondence from the Independent Adjudicator to the Complaints and Client Relations Section.
- Of the 16 files referred back to the Complaints and Client Relations Section the matters centred around the following issues, some more than once and some concurrently with other matters:
 - Delay liaising and following-up with complainants and solicitors during the course of the investigation;
 - Failing to confirm the final outcome to the responding solicitor;
 - Not advising a complainant's right to refer to matter to the Independent Adjudicator;
 - Complaint being initiated without a signed complaint form or letter;
 - Independent Adjudicator sought further investigation or clarification;
 - Delays in bringing matters to the Complaints and Client Relations Committee after advising complainants;
 - No record of telephone attendances with complainants on file;

- Engaging in telephone dialogue about a matter with a complainant's spouse;
 - Writing letters in plain English;
 - Failure of the Committee to levy costs where it seemed appropriate to do so;
 - Investigating solicitor collecting a complainant's file from a solicitor's office is not the responsibility of the Law Society;
 - Contents of the decision letter could have been clearer; and
 - General handling administration, e.g., copying attachments to the relevant parties, file management.
- My adjudications on the 132 complaint matters that I examined centred upon the following complaint disciplines:
 - Conveyancing **(36)** (29 last year)
 - Civil **(29)** (27 last year)
 - Probate **(25)** (21 last year)
 - Family **(22)** (13 last year)
 - Personal injuries **(11)** (11 last year)
 - Employment **(6)** (5 last year)
 - Criminal **(3)** (3 last year)

See illustration on page 28 which exhibits these matters by the number of complaints received;

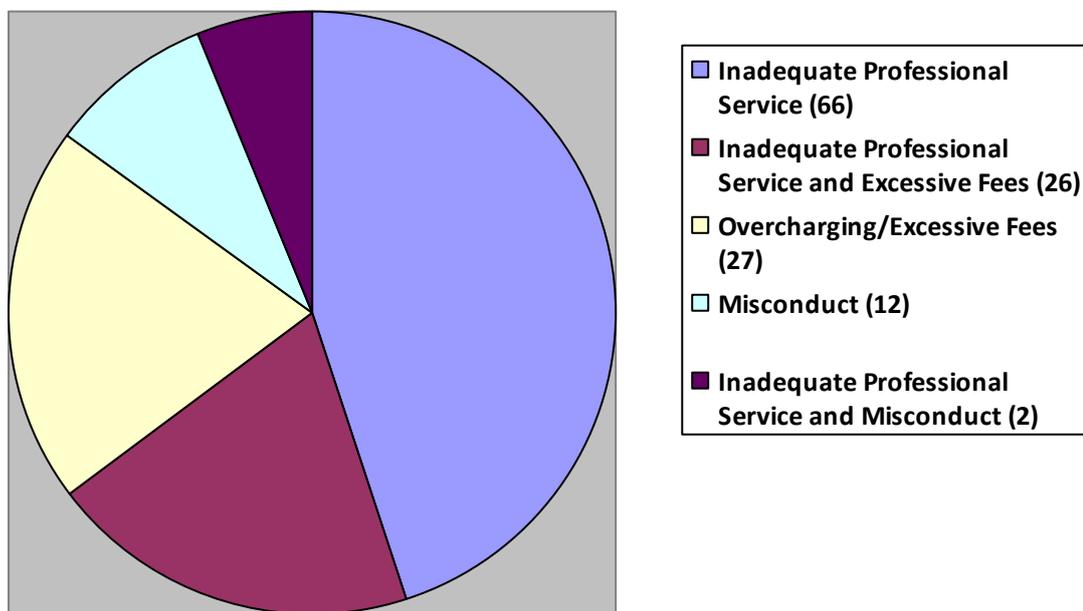
Breakdown on complaint matters which were referred to the Independent Adjudicator from 1 October 2011 to 30 September 2012



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

Breakdown on the grounds of complaints which were referred to the Independent Adjudicator from 1 October 2011 to 30 September 2012



- In addition to the 132 complaint matters adjudicated, 19 matters were ineligible for my examination of their contents for the following reasons:
 - Matter was under ongoing investigation with the Law Society;
 - Unclear if complaints had been investigated by the Law Society;
 - Matter was previously adjudicated by Independent Adjudicator;
 - Matter was referred to Solicitors Disciplinary Tribunal;
 - Seeking copy file from a previously adjudicated matter;
 - Complaint was about the judiciary;
 - Complaint was about officers of the Law Society;
 - Matter was before Regulation of Practice Committee;
 - Matter was out of time;
 - Advising caution with making assumptions in communicating with complainants;
 - Request for information on the legal complaint handling process; and
 - Complainants sought advice from the Independent Adjudicator.
- 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.
- 39 (14 last year) 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 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.

- **23** (15 last year) Compensation Fund claim matters were referred to my office for adjudication; 9 (14 last year) had been decided by the Regulation of Practice Committee and 14 (1 last year) had been decided by the Registrar under delegated powers of the Regulation of Practice Committee.
- Of the 23 matters, 8 resulted in my correspondence to the Financial Regulation Section of the Regulation Department of the Law Society for the following reasons:
 - Delays in the Financial Regulation Section's correspondence with claimants;
 - Poorly written letter to a claimant where I was of the opinion that it is not for the Law Society to pass comment beyond the claim itself;
 - Not advising a claimant of the date their matter was before the Regulation of Practice Committee;
 - Lack of documentation to support the Regulation of Practice Committee's decision; and
 - Tardy claim processing, despite a matter being a voluminous claim, with delays and email correspondence missing off file.
- None of the 23 matters I examined and adjudicated upon this year were requested by me to go back before the Regulation and Practice Committee.

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

Further to the reasons set out above, for the 19 ineligible complaints, the following sets out a breakdown of adjudicating reasons the Independent Adjudicator encountered whilst examining complaints and Compensation Fund claims this year:

- Files that were still 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 refer the matter to the Independent Adjudicator;
- Out of time referrals to the Independent Adjudicator (3 year jurisdiction) in initiating a complaint to my office from the Law Society's decision date;
- 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;
- Clients arriving at the office of the Independent Adjudicator expecting to meet or wait to meet me is not a permitted practice;
- Letters and calls to the Independent Adjudicator about third party complaints or Compensation Fund claims is outside of my jurisdiction;
- Insufficient details provided by clients can prolong the examination of matters. This could include not signing their referral correspondence to the Independent Adjudicator, not advising that the matter is under investigation in the Law Society or that their matter has been referred to the Solicitors Disciplinary Tribunal;
- Lack of differentiation between why a 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;
- Clients can be offensive and personally threatening to the office of the Independent Adjudicator. Suffice this to say that I think there is merit in treating people the way one would like to be treated themselves;
- Unreal expectations on the part of clients who expect that the Independent Adjudicator is there to concur with them, award them compensation, etc., because she is a lay person is a regular occurrence. Being impartial is core to my role and it is fundamental to my position that I am neither an advocate nor an apologist for any party.

Section 6

EXAMPLES OF ADJUDICATED COMPLAINTS AND COMPENSATION FUND CLAIM MATTERS

Complaint appeals to the Independent Adjudicator

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

Matter 1 – Various dissatisfaction with handling of complaint

This alleged misconduct and inadequate professional services matter related to a bill of costs in a civil action. Whilst I believed the correct decision was communicated I was dissatisfied with the handling of this matter. There were handling delays. When the complainant was advised the matter was going before the Complaints and Client Relations Committee there was further delay and the information put before them was parsimonious in terms of the handling and related correspondence delays incurred. I questioned what the Committee's view would have been if they knew of these delays that were not advised to them. The solicitor was also very slow responding to Law Society correspondence that I believed should have had rigorous follow-up from the regulatory body. [The Law Society can make an application to the High Court for an Order pursuant to section 10(A) of the Solicitors (Amendment) Act as amended to compel a solicitor to respond to the Law Society's correspondence and to attend the Complaints and Client Relations Committee.] I noted that the Law Society engaged in telephone conversation with the complainant's wife and that there was no minute of this call especially since the Law Society advises complainants in its initiating correspondence to "...please correspond with the Society in writing so that there is a clear record of all communications on file". The Law Society did not advise in its decision letter the right to refer the matter to my office which should have been the case, especially as the matter had been before the Committee. I also commented on the Law Society's use of plain English with shorter more specific sentences on this matter. As an example, "I am not sure whether the Society has jurisdiction to deal with some of the issues that you have raised..." on which I thought the Law Society either did not have jurisdiction and should have been specific or refrained from such a comment. In aggregate, I was of the opinion that this matter could have been managed better. I subsequently met with two solicitors in the Complaints and Client Relations Section to discuss my dissatisfaction of these handling matters. At the end of the meeting I was satisfied with the assurances given to enhance the management of complaint investigation files.

Matter 2 – Making assumptions in correspondence

This probate matter was for alleged inadequate professional service to the complaint enquirer who was executor to her father's will. The enquirer submitted a 6 page letter of complaint with substantial attachments. I thought it would have been appropriate to ask the enquirer to complete the Law Society's complaint form in order to assess the jurisdiction of the complaint. There was a delay responding to the enquirer's complaint letter. I cautioned against the Law Society making assumptions in their correspondence, which the enquirer commented on a few times, for example saying "you are assuming far too much". Therefore, whilst I agreed with the Law Society's decision on this matter, the handling could have improved.

Matter 3 – Various dissatisfaction with handling of complaint

This civil matter was for alleged inadequate professional services and excessive fees for selling a stake in a company. Whilst I believed that the correct decision was made, I discussed some handling issues with the Law Society. These included limited attendances of many telephone conversations with the parties, delays in the handling of correspondence, correspondence not wholly chronological and sparse minutes. I also observed that the decision was emailed to the complainant a few days before the solicitor was communicated the same decision and I am of the opinion that decisions must be conveyed to both parties concurrently. Following my discussion with the Law Society, I was satisfied that adequate steps were taken to address these matters.

Matter 4 – Matter requested for re-investigation by the Independent Adjudicator was rejected by the Complaints and Clients Relations Committee

This conveyancing matter was for alleged inadequate professional services and excessive fees. Post my adjudication I posed two questions to the Law Society to bring back before the Complaints and Client Relations Committee. The complainant had advised in his initial complaint to the Law Society that he had bought land with his brother and business partner; the solicitor's first sentence to the Law Society in response to the complainant's letter was that the client in this matter was the company not the person and the company was liquidated in 2009 by the directors due to insolvency. I questioned why this matter underwent an extensive investigation, to include being put before the Complaints and Client Relations Committee twice, when the Law Society's final letter stated "I confirm that the Committee took the view that the complaints raised were linked to the company, which is now in liquidation and, in the circumstances, these complaints would not be pursued further". I also thought that it would have been appropriate to levy costs on the solicitor due to his ongoing delays in corresponding with his regulatory body. The Law Society forwarded my letter to both parties and the solicitor gave a comprehensive response. He said he had ceased to practice, had made his secretary redundant and collected his post sporadically from his old office, hence the delays in correspondence. He added "*In all due respect the Adjudicator in her first query she seems to be implying (rightly or wrongly) that the Law Society should have made a determination on the liquidation of the company at an earlier date. If that is correct then a lot of the queries raised would have fallen by the way side as would the alleged "delays in corresponding with the Law society" and the queries would not have necessitated my secretary delving into the files and records of the liquidated company. I also attended in Dublin on two occasions with counsel before the Committee, both of these meetings being in duration of no longer than 10/15 minutes each. This involved considerable expense travelling with counsel from Limerick to Dublin.*" He added that he had not been in receipt of income since then and would not therefore be in a position to discharge any costs. The matter subsequently went back to the Committee for a third time who decided not to levy costs on the solicitor and as the complainant could not prove he purchased the property in a personal capacity the Committee would not consider this matter further. I took the view that remains steadfast, and as asserted to the Law Society, that this was a matter taken by a liquidated company and it should not have been investigated in the first place.

I set out two additional complaint matters as sample files I examined:

Matter 5 – Barrister complaints jurisdiction

As there has been a substantial increase in complaints to the Law Society from barristers about solicitors not paying their fees, I thought I would reference one matter in deference to my own adjudicating jurisdiction. A combined complaint by three senior counsel was investigated by the Law Society, not upheld and subsequently referred to my office for adjudication. Whilst I examined this file, and wholly concurred with the Law Society, I realised thereafter that such examinations are outside of my jurisdiction as I examine complaints by clients of solicitors. In this case counsel were

not clients and instead were instructed by a solicitor who had endeavoured to retrieve fees for both counsel and his practice.

Matter 6 – Threatening complainant

This matter was for alleged inadequate professional services and overcharging in adversarial family law proceedings in which the solicitor representing the complainant was temporarily suspended from practice on the eve of a crunch Circuit Court case. The solicitor was blatantly sluggish responding to his regulatory body that necessitated a levy of €550 against him by the Complaints and Client Relations Committee and an application to the High Court for an Order requiring the solicitor to attend to before the Committee. The complainant alleged the solicitor was rude, aggressive, contemptuous and offensive. The matter was decided in the courts and the complainant refused to pay the solicitor's advised fees due (in compliance with Section 68 of The Solicitors Amendment Act 2002). The Law Society found no basis for the complaint and made no finding save that the solicitor should have replied to Law Society correspondence which would have saved him aggravation, the levy and application to the High Court against him. The complainant then referred the matter to my office, and both he and the solicitor engaged in written and verbal communication with the writer. The solicitor said he had never met anyone like the complainant who simply did not want to pay any fees (which also mirrored what was in writing from him to the Law Society). The complainant was extremely angry, condescending, threatening and dismissive of all involved in the Irish legal system (he is not an Irish resident). Whilst the complainant was equally curt with me, I wish to state here that impartiality is key to my role and such attitudes do not intimidate the writer.

Compensation Fund appeals to the Independent Adjudicator

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

Matter A – Lack of supporting documentation to accompany decision

This claim in respect of alleged conveyancing work was examined by me last year and additional papers were subsequently submitted to the Law Society. I was of the view this year, as advised previously, that I would like to have seen more information to support "The Committee directed that the claim be refused" which I did not think was unreasonable. The Regulation of Practice Committee subsequently decided that as this matter was before them on numerous occasions that any future consideration required copy of contracts or any other substantial evidence to prove the solicitor/client relationship. The claimant's solicitor did not accept this and I advised him that sample evidence might have been proving a legitimate transaction such as a contract in respect of the property purchase taking place. I believe that the Law Society could have advised the substantial evidence required with its decision to refuse the claim which would have saved protracted and unnecessary correspondence thereafter.

Matter B – It is not always for the Financial Regulation Section to decide on merits of a claim

This claim alleged that the solicitor did not complete the title documents and lost title deeds. The claim was for approximately €1,100. Whilst I concurred with the Regulation of Practice Committee's decision made on this matter, I was not of the view that the correspondence was wholly satisfactory. For example, in this particular matter I believed that it was unnecessary for the Law Society to state "...what the solicitor has done constitutes negligence and for these reasons, and unfortunately for you, your claim does not form a valid claim to the fund".

Matter C – Various dissatisfaction with handling of a Compensation Fund Claim

This claim for €74,000 alleged that the solicitor did not complete title documents and lost title deeds. Whilst I concurred with the Regulation of Practice Committee's decision made in this matter, I was not satisfied with a number of handling matters. There appeared to have been emails and telephone calls that were not recorded on the file and for which I asked the Law Society to forward to me for adjudicative reasons from various officers within its Financial Regulation Section. Whilst I appreciated that this was a substantial and voluminous file, I noted delays in responding correspondence from the Law Society. I thought it was unnecessary for the Law Society to contact the claimant's new solicitor instead of the claimant, and noted that the response to the Law Society came directly from the claimant. As part of the investigation it appears that the Law Society requested documentation which was duly submitted, and then was further requested some considerable time later perhaps elongating the matter. I observed emails from the claimant's daughter, who is a solicitor and a party to the claim, were not responded to. The claimant requested the schedule, which was the calculation of the grant from the Compensation Fund, to be sent to him and it took four weeks to do so which I deemed to be excessive for him to know the basis of the Committee's decision. There was another file reference on this matter that I queried the Law Society on. I pointed out to the Financial Regulation Section that I have often commented on solicitors' delays in responding to their regulatory body and recently I had raised regulatory body correspondence delays with claimants and/or their solicitors. Unusually I too had to request a response to my queries raised on this matter and advised that I would be referencing the Financial Regulation's correspondence delays in my Annual Report. This matter, when rejected by the Regulation of Practice Committee, was referred to my office which I too did not uphold. It followed the claimant's daughter telephoning me to the effect that they were furious with the decision of the claim.

Matter D – Not always for Financial Regulation to decide on merits of a claim

This €218,000 claim alleged that the solicitor was instructed to re-mortgage a property and was put in loan funds to do so. I noted handling delays. Many Law Society letters commenced with the exact same words "I refer to previous correspondence and sincerely apologise for my delay in reverting to you" yet delays continued. I asked the Law Society if this might have initiated a further review of the practice when this complaint initiated to which I was advised that the deficit was cleared in September 2009 and further investigation was carried out that year that resulted in an application to the High Court. I stressed that telephone attendances are important and must be recorded on the file. I observed in the one telephone attendance on the file that the claimant's solicitor said, in the Law Society's Accountant's Report to the Disciplinary Committee, that the claimant used X's money to pay his own tax and that he was not aware of their accountant's report saying that the solicitor had used his client's funds to pay his own tax, but could look into this. I asked whether the Law Society investigated this and if so what the position was. The Law Society responded to me that their Accountant's Report disclosed a payment to the Revenue of €11,570 however on whose behalf that payment was made was not stated in the Report. I noted an email to the Regulation of Practice Committee attaching "an additional item" for the meeting the following day. I asked if this matter had been listed for the scheduled committee meeting or was additional correspondence being emailed (as it was unknown to the writer what was attached). These claims were initiated in 2009 and the Law Society was advised of the urgent circumstances for the claimants on a number of occasions so I believed there should have been more notice for these matters to come before the Committee, and indeed for the Committee to peruse, not on the day before the Committee meeting. Whilst I concurred with the Regulation of Practice Committee's decision I believed the handling of this claim could have improved.

Section 7

OBSERVATIONS ON RANDOM REVIEWS AND COMMITTEE ATTENDANCES

On two 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 relevant sections of the Regulation Department of the Law Society. I randomly select a number of files from the listings of both the Complaints and Client Relations Section and Financial Regulation Section, and then the selected files are made available for my inspection in the Law Society to review.

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

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

- Where a committee directs a full a comprehensive response from a solicitor by a certain date, it must be that, full and comprehensive, and unequivocally answer the questions or update accordingly.
- I believe it is disrespectful to submit information the day before or the morning of a meeting. Committee members allocate time to peruse papers in advance and reading additional papers on the day can have an adverse affect on diarised attendances before them.
- In my opinion solicitors often wait until the last minute before a committee meeting to update the Law Society despite having been directed to do so within a specific advance timeframe. I believe committees should advise that failure to reply within the timeframe may constitute a conduct issue.
- I observed that a chairman said letters to solicitors coming before them should be edited to the effect that their failure to respond to correspondence in a timely manner could lead to administration costs being levied against them. I see no reason why costs cannot be levied if such administration costs were incurred.
- I think it is worth noting that the legislation refers to a complaint about “a solicitor” and the Complaints and Client Relations Committee has no jurisdiction to deal with complaints against a firm. This was discussed by a Committee I observed upon.
- Solicitors are often not familiar with their own files when attending before a Committee.
- It is rare that I have observed solicitors having remorse or apologising for being before a Committee.
- Sometimes clients can be slow giving instructions to their solicitor.
- At one meeting that I attended, I observed that there were three matters where assistant solicitors signed undertakings on their principals’ instructions and behalf, in which case the Committee required the principals to also attend before them. I deemed this to be fair.

- I pondered whether solicitors attending before a committee of their regulatory body understand that an Order directed by a committee must be complied with and that the Law Society and committee costs associated with such an Order must be discharged. Failure to do so leads to a risk of multiple complaints (as seen on pages 21 and 22 of this annual report) and referral to the Solicitors Disciplinary Tribunal.
- I observed that whether or not a solicitor rectifies the complaint before a committee, if a committee made a direction it must be complied with regardless whether work is completed to rectify the problem(s).
- I noted with approval in September 2012 a committee taking the stance to refer a solicitor to the Solicitors Disciplinary Tribunal for an enquiry for cancelling his attendance through a telephone call from his secretary the afternoon before the scheduled meeting due to his work commitments. The chairman said he was to be called and directed to attend. The solicitor chose not to. This solicitor had also chosen not to respond to Law Society correspondence, had previously cancelled his attendance before a committee, etc. In this case anything other than referral would have been incorrect in my observing opinion.
- Related to this point above, perhaps the Law Society's letter inviting solicitors to attend before a committee could be altered to say that a finding may be made with or without their attendance.
- I think it is a good practice that chairmen introduce all people/roles around the table on all occasions.
- A solicitor must make best endeavours to get barristers' their fees and I think the committees are reasoned about this. (In this regard, and as will be commented upon in the next section of this annual report, I have noted a substantial increase from last year in third party complaints from barristers.)
- I think it is fair to comment that the Revenue Commissioners can hold up complaints, for example, delay in stamping deeds, which is not a fault of solicitors, and complainants need to be patient in this regard. I am pleased to have observed this being commented on many times at various meetings I observed at.
- With regard to Compensation Fund claims, I observed that claimants expect the Law Society to do lots of calculations and sort through paperwork. I believe claimants should be obliged to make an orderly paper submission with calculations done. Perhaps the Financial Regulation Section could consider altering its requirements of claimants in their printed documentation.
- As I have stated on numerous occasions in the past, and certainly nothing to do with the capability of the members, I encourage more diversity in nomination bodies of lay members. Also, as a general observation, this is my sixth annual report and have yet to see a female chairperson of any of the committees within my remit. I believe having a lay majority the Complaints and Client Relations Committee delivers an ever-increasingly high quality customer service. Equally the lay members add substantial value on the Regulation of Practice Committee. (I noted the lay members also made a submission to Mr Alan Shatter TD, the Minister for Justice, Equality and Defence, with regard to the Legal Services Regulation Bill 2011.)

- As my file requisitions in the course of my annual review were randomly selected, a number of them were from financial institutions relating to unfulfilled undertakings. Whilst such bodies are not direct clients and therefore outside my remit for comment, it perhaps correlates that so many files continue to be of this nature as outlined in the statistics (see section 3).
- Where a complaint clearly discloses evidence of misconduct and should be a Solicitors Disciplinary Tribunal referral matter, it may still be important to try and resolve the complaint as much as possible for the benefit of the client before referring the matter to the Solicitors Disciplinary Tribunal. A premature referral to the Solicitors Disciplinary Tribunal may not be in the best interests of the complaint in hand.
- Practices are inspected not only by investigating accountants but also by investigating solicitors as deemed appropriate, and there continues to be, from my random reviews, a good correlation of data between various Law Society sections.
- Levying costs at the end of a file is common so that a solicitor can first rectify or comply with the Committee's directions (as applicable) to resolve the matter as deemed appropriate. I think a question ought to arise as to whether a practising certificate should be issued while levies remain unpaid?
- In my last annual report, I commented on the value for committee members using tablets such as iPads for reading their voluminous files of correspondence, reducing paper, secretarial resources, delivery expenses, etc. I am delighted that this was initiated in October 2012 with the chairman's division of the Regulation of Practice Committee being the first committee to operate on tablets. I will observe on this Committee in December 2012 as to how it works in practice. I understand that pending this pilot, if successful it will be rolled out to other committees to include the heavily papered Complaints and Client Relations Committee.
- Finally, I observed, more so than previous years, efficient and effective levels of communication between the different sections in the Regulation Department that I believe is essential in delivering a top quality regulatory regime.

Section 8

OBSERVATIONS ON COMPLAINTS AND COMPENSATION FUND CLAIMS TO THE INDEPENDENT ADJUDICATOR

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

Observations on complaint handling

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

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

- of the 2453 admissible complaints this year, an acerbic 1732 related to undertakings leaving the remaining 721 complaints in aggregate relating to other misconduct, inadequate professional services and excessive fees;
- complaints related to undertakings are extremely high, and 10% higher than the same period last year (70% of the aggregate admissible complaints this year compared to 60% last year);
- excluding undertakings, the number of complaints that are upheld remains very low (18 (+116 referrals to the Solicitors Disciplinary Tribunal) and 18 (+160 referrals to the Solicitors Disciplinary Tribunal) last year). It is noted that a significant number of complaints were resolved following the Law Society's intervention;
- there has been a decrease in referrals to the Solicitors Disciplinary Tribunal (116 this year to 160 last year) and reprimands (15 this year to 20 last year) which is surprising given the increase in complaints about undertakings;
- contributions towards costs is the lowest for the last few years €23,750 this year (€27,900 last year and €35,600 the prior year) (and this could be because the solicitors in question may have little or no money);
- there are very few orders for compensation as this only applies in very limited circumstances (3 orders for each of the last 4 years);
- there has been a significant reduction over the last 3 years on excessive fees (100 this year, 118 last year and 135 the prior year) and inadequate professional services complaints (266 this year, 301 last year and 340 the prior year), with substantially more for grounds of misconduct of which approximately 70% relate to undertakings;
- counsels' fees has been added as a new category of complaints to the Law Society's statistics (40 of the 2087 misconduct complaints, or 8% of the remaining misconduct complaints excluding undertakings (that account for 1732));
- 1,729 of the complaints investigated were made by solicitors against their colleagues (by comparison to 1283 last year and 724 the prior year) which is approximately 70% of the total intake (a large proportion of these complaints were made by solicitors acting on behalf of financial institutions);
- 411 complaints (416 last year), many of which were made against the same solicitors, were referred to the Complaints and Client Relations Committee;
- there is a reduction in complaints for shoddy work (83 this year and 103 last year);
- litigation is the highest area for complaints relating to excessive fees (39 of 100 this year and 39 of 118 last year);
- this is the first year that the Complaints and Client Relations Committee directed the Registrar to refuse a practising certificate;

- 1,361 cases closed this year by comparison to 827 last year and 688 the prior year;
- 542 cases remain under investigation at year end by comparison to 327 last year and 179 the prior year (I understand this includes cases that are still pending before the Solicitors Disciplinary Tribunal and this will change next year);
- related to the above point, the average completion time for a case this year was 91.23 days, by comparison to 76.07 last year and 76.55 the year before);
- of the 2453 complaints this year, 1115 concluded 18 of which were upheld (1183 remain under investigation and 155 are before the Complaints and Client Relations Committee). 18 complaints were upheld last year and 13 the prior year. Despite the low number of upheld complaints, it should be noted that 650 complaints resolved this year;
- reprimands continue to decrease: 15 this year, 20 last year and 49 the prior year; and
- the number of solicitors against whom multiple (5 or more) complaints are made are similar to previous years.

Complaints related to solicitors' undertakings

Last year I commented that of the 2622 admissible complaints handled by the Law Society, 1647 related to solicitors' undertakings (over 60%). This year of the 2453 admissible complaints, 1732 (over 70%) relate to solicitors' undertakings. As undertakings are generally submitted by financial institutions, they are not "clients" and therefore not permitted to refer their matters to my Office. Of the current 30% of potentially admissible complaints being handled by the Law Society and eligible for referring to my Office (bearing in mind complainants can come to my office within a 3 year period), my adjudication statistics remain high as set out in section 5.

Multiple complaints

The number of solicitors who have multiple complaints against them have featured in my Annual Reports over the previous five years suggesting that more stringent measures should be adopted by the Law Society. 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 28 different solicitors (25 last year and 17 the previous year). I am cognisant that it is only solicitors who apply for a practising certificate that are required to attend before the annual Multiple Complaints Committee to satisfy the committee that they should be issued with a practising certificate with or without conditions. I understand that considerable measures are being taken on this matter and note that one recusant solicitor, for the first time, was refused a practising certificate this year by the Complaints and Client Relations Committee. I am surprised that the Committee does not refuse practising certificates more often having regard to the number of complaints made about certain solicitors.

I was pleased to observe this year that in 14 cases (6 last year) the Complaints and Client Relations Committee required the solicitors to establish a register of undertakings as a condition attaching to their practising certificate and to forward an update to the Law Society on a monthly basis. Undertakings were also accepted from 2 further solicitors, one of which had to furnish monthly updates and the other had to furnish three monthly updates. As well as addressing complaints already made to the Law Society, this initiative is designed to ensure that the specific solicitors review all outstanding complaints and pre-empts further complaints being made.

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

Section 68 of the Solicitors (Amendment) Act 1994

I am of the view solicitors are substantially more compliant with their obligations under Section 68 of the Solicitors (Amendment) Act 1994 than in the past. [A Section 68 letter obliges every solicitor, at the inception of taking instructions, to outline to a client in writing (a) the actual charges they propose to charge or where that is not possible, (b) an estimate of the charges or where that is not possible, (c) the basis upon which the charges are to be made.] The Law Society generally addresses non-compliance of Section 68 obligations by proposing that the solicitor concerned discount a portion of the fees payable.

Having examined in excess of 1000 files since taking office I have seen varieties of compliance and non-compliance with Section 68 of the Solicitors (Amendment) Act 1994. As stated above, I am delighted to have observed a marked improvement in solicitors acknowledging and fulfilling their obligations to this regulatory requirement. I have come across some good letters to clients and some poor ones, and one letter that I thought was exceptional in terms of information and clarity of costs expectations, encouraged me to not only compliment the solicitor but also to tell the Law Society. The Law Society is reluctant to model solicitors' letters, which I appreciate, and I refer to its Guidance and Ethics Committee's comprehensive summary of the Section 68 issues to be addressed in a Practice Note from November 2010 titled "The Dos and Don'ts of Section 68". I am aware that the Guidance and Ethics Committee are currently considering a request from the National Consumer Agency that the Law Society encourage solicitors to make it easier for clients to obtain quotes for legal services before they commit to a particular firm. I believe a meeting was held in September 2012 in this regard. Should this effect it will be good news for clients. A key summation is, as I observed at a recent Complaints and Client Relations Committee, solicitors compliance to Section 68 obligations should be "as clear as crystal".

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

Increase in complaints against solicitors no longer practising

It should be noted that the Law Society continues to exercise its regulatory function over solicitors who have ceased to practise. Whilst solicitors may not apply for a practising certificate in the current year, they can be disciplined as long as they remain on the roll of solicitors. Solicitors remain on the roll indefinitely unless they are struck off or apply to have their name removed. Even where a solicitor has been struck off or suspended the Law Society may continue disciplinary proceedings in order to secure High Court orders that may be relied upon in the event that the solicitor applies to go back on the roll at some time in the future. I am aware that from the end of this year, colleagues will be able to retire from practice without making any further payments to obtain run-off cover, which I expect will be a very welcome development.

Volume of complaints related to undertakings

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

The Law Society has focussed substantial resources and rigor towards rectifying undertaking related matters and providing appropriate advices as the regulatory body. As evident in the Law Society's statistics (see section 3) and as discussed above, 70% of the aggregate admissible misconduct complaints handled by the Law Society this year are mostly complaints from financial institutions

where the solicitor has failed to register the bank or building society's mortgage and deliver up the registered owner's deeds. A smaller but significant category is where a solicitor acts for developers and undertakes to transmit to the developer's bank the sale proceeds of each house in a development and they do not do so.

The Complaints and Client Relations Section experienced an unprecedented number of complaints about outstanding undertakings given by solicitors in the course of conveyancing transactions over the last three years - 1732 this year (and over 70% of all complaints), 1647 complaints last year and 1134 the prior year. These complaints rarely come to my attention insofar as the majority of complainants are lending institutions. My remit is limited to complaints by clients (which is on the remaining 30% of complaints to the Law Society, and in this regard my number of examinations is high).

Change in structure of complaints

It seems that if the complaints relating to undertakings are removed from the Law Society's statistics, the overall complaint numbers are down considerably. As set out above, there are 2453 admissible complaints this year, 1732 related to undertakings leaving the remaining 721 complaints in aggregate relating to other misconduct, inadequate professional services and excessive fees. This presumably reflects the contraction in the economy and the significantly reduced number of transactions conducted by solicitors. Should this be the case into the future I assume the Regulation Department has assessed its aggregate risk management to mitigate change.

Complaints and Client Relations Committee directions

I noted that the Complaints and Client Relations Committee directed the payment of €23,750 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 (€27,900 last year and €35,600 the prior year). Despite the volumes of complaints as well as the number of multiple complaints, I particularly noted that the costs levied by the Committee are low again this year and indeed that the number of reprimands (15) are considerably lower than recent years (20 last year and 49 the prior year). This is perhaps interesting when reviewed against the 116 referrals to the Solicitors Disciplinary Tribunal (160 last year and 158 the year prior)?

I have challenged the Law Society on why its costs are not recovered from the solicitor where a finding was not made but unnecessary costs were incurred because the solicitor did not respond to the Law Society. I have unwavering scant regard for solicitors who unduly delay their response to their professional body's correspondence. Why should compliant solicitors pay [indirectly] for their colleagues' recalcitrant 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.

The Solicitors Disciplinary Tribunal, in its recently published 2011 Annual Report, states: "*Treating the regulatory process with disdain by failing to reply to the correspondence from the Law Society and by failing to attend meetings of the Complaints and Regulations Committee when requested to do so, cannot be excused*".

Referrals to the Solicitors' Disciplinary Tribunal

For the first time since taking office I am delighted to report that the status of referrals to the Solicitors Disciplinary Tribunal has much improved and is not of major concern to me as in the past. The Regulation Department appointed a firm of outside solicitors to handle some of the referrals

which appears to be working well as the backlog has decreased substantially. Whilst this has been an additional cost on the Regulation Department, I think the benefits speak for themselves with reduced delays and enhanced customer service. As advised in my last Annual Report, I encourage continued arduous effort to ensure that all matters referred to the Solicitors Disciplinary Tribunal are lodged within the three month timeframe in all cases which now seems to be the case.

Breaking down my reason for my view above: a client (singular, plural or a body) has gone through a process with one section of the Law Society, namely the Complaints and Client Relations Section, and should have a seamless and equally time-consistent process moving to a subsequent section or to the outsourcing facility. For the Complaints and Client Relations Committee (made up of solicitor and lay members) to perceive that a referral to the Solicitors Disciplinary Tribunal is required should be taken to be a prima facie request for a prompt referral of the solicitor in question within three months in all cases without exception.

Solicitor Disciplinary Tribunal sittings

I note that the Solicitors Disciplinary Tribunal sat 106 times in 2011 by comparison to 92 in 2010. Their findings of misconduct have increased to 42 in 2011 by comparison to 31 in 2010. Equally the Tribunal's findings of referrals to the President of the High Court have also increased to 78 in 2011 by comparison to 63 in 2010. Conversely, the status of the 143 applications in 2011 is lower than 182 in 2010. Of the 143 applications 56 of these were brought by the Law Society (by comparison to 65 of the 182 applications in 2010). These figures are interesting when considered against the referral decisions of the Complaints and Client Relations Committee.

Observations on Compensation Fund claim handling

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

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

- there was decline again this year in Compensation Fund claims received by the Law Society (244 in 2011 and 255 in 2010, by comparison to 429 in 2009);
- there was an increase in applications to the High Court for an order freezing the accounts of 10 solicitors this year (3 in 2010 and 6 in 2009) where dishonesty was discovered;
- 9 solicitors had their practising certificates suspended, by comparison to 6 in 2010 and 11 in 2009;
- the amounts paid by the Law Society in 2011 do not fall far short of those paid in 2010 considering the reduced number of claims submitted (€2,538,894.47 paid in 2011 and €2,485,829.03 paid in 2010). I understand from the Law Society that whilst the number of claims are down they receive more small claims for refunds of fees and outlays which are often time consuming to investigate. I observed that some claimants, or their solicitors, can be parsimonious in preparing the paperwork submitted to the Law Society thus taking more time for the Law Society to investigate. In addition, many such claims are negligence matters that are not covered by the Compensation Fund yet they take considerable time processing and dealing with follow up correspondence.

The Chairman of the Regulation of Practice Committee, Martin Lawlor, commented on the financial status of the Compensation Fund in the Law Society's Annual Report: *"The income and expenditure account of the Compensation Fund reflects a deficit (representing an excess of expenditure over income after taxation) of €998,052 for the year ended 31 December 2011, compared with a deficit of €1,247,198 for the year ended 31 December 2010. The decrease of €249,146 in the deficit for 2011 compared with 2010 is attributable to a decrease in 2011 of €1,991,491 income, a decrease of*

€2,283,038 in expenditure, compared with 2010, together with an increase in taxation amounting to €44,410” (Law Society Annual Report, 2012, page 22).

Nature of Compensation Fund claims

I have noted that the nature of Compensation Fund claims received in the last number of years is changing. Some of the high profile media Compensation Fund claim cases go back around five years now. Claims seem to be in relation to fees paid and the Law Society advised me during the year that the extent to which the Fund is liable to pay those claims is not always clear. In many cases, it appears, claimants are finding that work has not been completed and they are looking for refunds of all fees paid to the solicitor concerned, without any allowance whatsoever for the work completed by the solicitor. As I have raised delays with the Financial Regulation Section numerous times throughout the year, I have been proffered that this matter has increased the length of time it takes to deal with claims.

Financial Regulation Section administrative matters

I wrote to the Financial Regulation Section during the year about delays in handling and their administrative correspondence. I believed that it would be good to advise a claimant/claimant’s solicitor if a matter will take some time to investigate. I commented that I wrote to the Complaints Section a number of years’ ago that, depending on the matter, up to a month could be perceived to be a reasonable timeframe to respond to correspondence or for the Law Society to appraise that it is continuing its investigation by way of a holding letter. I appreciate that the Financial Regulation team often has to inspect practices, which can also elongate matters, and suggested that they may like to consider the framing of their information leaflet, editing their initiating letter to claimants to set expectations at the outset, or indeed sending an acknowledgement letter advising the matter is in hand. I also asserted my opinion that it is important that relevant emails are put on files for data recording reasons, especially as the Law Society advises its files are open to independent inspection in its initiating correspondence.

General observations on both complaints and Compensation Fund claim handling

Negligence

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”. Further and interestingly, I note that the Legal Services Regulation Bill 2011 does not contain any provision which would allow the award of even limited compensation.

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.

Negligence matters continue to be referred to me for examination that are also outside of my remit.

Complainants' and claimants' expectations of the Law Society

Sometimes complainants and claimants expect the Law Society to go beyond their remit. The Solicitors Acts do not extend to a detailed forensic examination of the type that may be required in order to deal with various individual queries raised in correspondence. The Law Society's emphasis is on resolving disputes where appropriate.

Complaint and Compensation Fund files

My role examines matters that have been investigated by the Complaints and Client Relations Section and the Financial Regulation Section of the Law Society. I therefore require that a full account of the correspondence, to include relevant emails and telephone calls, are recorded on the files. On occasion such records may not be on the files and I repeat the importance of doing so, especially for example when the Complaints and Client Relations Section state in their initiating letter to parties that as their investigation is subject to my review they require correspondence to be in writing "so there is a clear record of all communications on our files". This must equally apply to the Law Society to ensure all appropriate communications are aptly recorded.

Delays in Law Society correspondence

Being cognisant that there has been a surge of complaints about undertakings in the last three years, and pressures on Financial Regulation, on a number of occasions this year I wrote to the Law Society with regard to some investigating solicitors' and investigating accountants' delays in correspondence or actions within reasonable timeframes. I have proposed to the Regulation Department that if there are likely to be delays in investigating a complaint or Compensation Fund claim, or generally attending to a matter, that a holding letter is communicated to the relevant parties. I now formally request that this happens as a matter of course. Customer service is vital from all sections of the Regulation Department who are brand ambassadors for their employer.

Additional general observations from my year

- It is important for complainants to remember that the Law Society's function is primarily disciplinary; it is not a court and cannot make the type of orders some complainants expect.
- While observing on a Regulation of Practice Committee meeting this year, the claimants can submit a file with everything unsequenced, perhaps unrelated, etc. and expect the Law Society to sort and disseminate into a claim. This could be perceived to be a degree of laziness for claimants making complaints.
- I understand that a general Law Society rule is that it can only deal with complaints that would arise in the context of a solicitor/client relationship. The Law Society's disciplinary function does not extend to the regulation of a solicitor's personal affairs or to disputes which arise outside the confines of the solicitors/client relationship.
- I have observed that complainants can sometimes be economical with the truth and facts in their complaint to the Law Society.
- I was delighted to observe at a Complaints and Client Relations Committee meeting that made a decision to change Law Society correspondence inviting a solicitor to attend a Complaints and Client Relations Committee meeting to say a finding will be made with/without their attendance, to encourage solicitors to attend before committees.
- The Law Society often needs to clarify that it has very limited jurisdiction to compensate a client for inadequate professional services saying the maximum amount it could award if a finding of inadequate professional services is made is €3,000 and then proposes a complainant speaks to their new solicitor with regard to alternative legal remedies.
- A solicitor is entitled to charge for time spent discussing a matter with a client and reviewing papers, especially when they have informed their professional fees and complied with Section 68(1) of the Solicitors (Amendment) Act 1994. It surprises me when members of the public think telephone calls, first meetings, etc. are free of such notified charges.

- The fact that a complaint falls outside the Law Society’s regulatory jurisdiction does not reflect one way or the other on the merits of the issues a complainant raises; but the Law Society is not the appropriate forum for the investigation and determination of those issues.
- Whilst counsels’ complaints about fees are outside my remit, I know that there have been numerous complainants to the Law Society. The Guide to Professional Code of Conduct of Solicitors in Ireland, second edition, states that a “Solicitor has no personal liability for counsels’ fees”, “a solicitor who instructs counsel should use his endeavours to ensure that counsel receives fees that are due and owing to him at the earlier opportunity” and “in the absence of any express agreement a reasonable fee should be paid to counsel”. Counsel are not clients and solicitors must do their best to obtain fees for both counsel and their firm.

Changes under the Legal Services Regulation Bill for the Regulation Department

The President of the Law Society, Donald Binchy, wrote a letter to the profession in February 2012 in relation to the Legal Services Regulation Bill along with a copy of the Law Society’s comprehensive submission to the Minister for Justice, Equality and Defence with regard to the proposed changes to the Bill at Committee Stage. In the Law Society’s Annual Report (page 3) President Binchy said “The Bill will bring about enormous changes within the profession. Firstly, as a direct consequence of the Bill, once the new Legal Services Regulatory authority is established, the handling of all complaints against solicitors will move to the new authority. The Society has always believed that its complaints-handling process – which has for some time have more lay involvement than it has involvement of solicitors – is fair, objective and efficient. This view has been endorsed by successive ministers for justice and successive independent adjudicators. ... The transfer of these functions [complaints] to the new authority will, of course, have very significant implications, not just for the profession, but also for the complaints-handling staff within the Society. The Society has been and will continue to campaign very strongly for the transfer of these personnel to the new authority in order to protect their livelihoods and ensure the transfer of their expertise to the new body.”

In my capacity as the Independent Adjudicator, I have observed enormous strain and stress with job security worries on the employees of the Law Society’s Regulation Department, most specifically the Complaints and Client Relations Section that will be most affected. This Bill when enacted will also supersede my office and role.

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 174 requests to examine matters** (138 last year and 183 the prior year). I adjudicated on 132 complaints (109 last year and 136 the prior year) and 23 Compensation Fund claims (15 last year and 19 the prior year).

Of the 2453 complaints referred to the Law Society this year, 1732 related to **solicitors' undertakings (over 70% of all complaints)**. As undertakings are generally submitted by financial institutions, they are third parties and not permitted to refer their matters to my Office. Therefore of the approximate 30% of the Law Society's potentially eligible complaints to be referred to my Office, I am of the opinion that my adjudication statistics are very high as set out in section 5.

Of the 2453 admissible complaints to the Law Society this year, considering 1732 related to undertakings, an aggregate of 721 complaints remain that cover other areas of misconduct, inadequate professional services and excessive fees. I question will this have **an impact on future workloads** and has the Law Society considered risk mitigation in this regard. This said, I appreciate that in the current climate of uncertainty over the future of legal complaint handling it is difficult to make plans for the future.

This is my first annual report not to mention my dissatisfaction with **referral timeframes to the Solicitors Disciplinary Tribunal** as I believe they are now being handled within reasonable periods. I must commend the Law Society's Regulation Department for their arduous work on this matter.

I firmly believe that **costs should be recovered 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 have yet to see the Law Society recovering fees in such cases and question why.

Somewhat related to the above point, I note that **costs and contributions levied by the Committees are reducing considerably**. The levy contributions amounted to €75,750 (€123,500 last year and €137,000 the prior year) towards the costs of Compensation Fund claim investigations pursuant to the Solicitors Accounts Regulations; whilst the costs levied by the Complaints and Client Relations Committee amounted to €23,750 (€27,900 last year and €35,600 the prior year).

Levying costs at the end of a file is common so that a solicitor can first rectify or comply with the Committee's directions (as applicable) to resolve the matter as deemed appropriate. However I have also yet to see **refusal to issue a practising certificate while levies remain unpaid** and I think the Law Society should consider whether this might be done in cases of persistent and repeated failure to pay levies.

Complaints against solicitors who have **multiple complaints** against them require ongoing stringent attention. I note and appreciate that the Law Society stringently monitor such complaints however the statistics remain high. Presently the review period is a statutory 2 year period for such complaints. I do not believe that there is a statutory period for such complaints in the Legal Services Regulation Bill.

I observed a **surge of complaints made by members of the Bar Council of Ireland** against solicitors (10% of complaints excluding undertaking complaints), where solicitors had not settled their accounts. Barristers are not clients of solicitors. Solicitors must make all endeavours to seek counsel's fees. I noted that in many cases the solicitors themselves had not been paid.

Finally, I believe the Law Society, especially the Complaints and Client Relations Section of the Regulation Department, is embracing for considerable upheaval and job security stress with the enactment of the **Legal Services Regulation Bill 2011**. This proposed legislation will also have a big impact on my tenure as the Independent Adjudicator of the Law Society due to my office being disbanded by the enactment of this Bill. The Director General of the Law Society, Ken Murphy, said in its recently issued Annual Report *"This was a year in which the Council of the Law Society was required, to a greater extent than ever before, to think and act strategically. ...Yes, it has been the year of the bill. Or at least, the first year of the bill."* I think the implications are gradually becoming apparent for all stakeholders and the sense of wonderment may continue for some time yet to come, however in the interim it must be status quo for all.

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