

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



**Year ending 30 September 2016**

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

**ANNUAL REPORT  
OF THE  
INDEPENDENT ADJUDICATOR OF THE  
LAW SOCIETY OF IRELAND**

- Year ending 30 September 2016 -

**CAROL ANN CASEY  
INDEPENDENT ADJUDICATOR OF THE LAW SOCIETY**

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## FOREWORD

The role of the Independent Adjudicator of the Law Society is a statutory office where 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.

As the Independent Adjudicator of the Law Society of Ireland 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.). Simply put, I am neither an advocate nor an apologist. I hold a statutory office and 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 an appropriate professional background.

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

I observe at various Complaints and Client Relations Committee and Regulation of Practice Committee meetings, and occasionally at Solicitors Disciplinary Tribunal hearings and High Court hearings of interest. I believe that my attendances at committee meetings, and my conducting various random reviews of files, are integral to my role to ensure that in my view the maintenance of the highest standards apply to the handling of complaints, Compensation Fund claims and disciplinary matters.

I carry out the duties of the Independent Adjudicator of the Law Society position single-handedly, and on a part-time basis, with emphasis on compliance, efficiency and effectiveness. Being solitary in my role I regularly professionally develop my skills to deliver high quality customer service in my role. I am currently undertaking the Law Society's Diploma in Judicial Skills and Decision-making.

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 led 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.

I wish the Legal Services Regulatory Authority well in their imminent set-up and remit.



Carol Ann Casey  
Independent Adjudicator of the Law Society

30 November 2016

## **Section 1**

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

The Legal Services Regulation Act 2015 will, in due course, assume the adjudicative duties of this Office relating to complaints made against solicitors, excluding compensation fund claims. Until then my Office continues with the following unchanged remit:

#### **Statutory governance**

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

<http://www.irishstatutebook.ie/1997/en/si/0406.html>

<http://www.irishstatutebook.ie/2005/en/si/0720.html>

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

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

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

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

The role of the Independent Adjudicator:

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

#### **Powers of the Independent Adjudicator**

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

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

## Section 2

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

#### Who can use the Independent Adjudicator

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

#### Complaints the Law Society may investigate

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

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

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

#### What the Law Society cannot do

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

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

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

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

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

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

Members of the Complaints and Client Relations Committee, of which there are three divisions, 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 consists 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 and their participation highlights the importance of customer care. It should also be noted that the solicitors who sit on this Committee do so voluntarily and, like the lay members, dedicate substantial time to their committee role.

Each division of the Committee has the same duties and responsibilities and generally meets every six weeks. In order to be quorate there must be a majority of lay members present at each 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 €5,000. Thereafter it is the Regulation of Practice Committee which decides whether to pay the claim in full, pay part of the claim, refuse the claim, or postpone the decision to a later meeting because more information is needed. When the Law Society has made its decision it will write to the claimant. If the Law Society is going to pay only part of their claim, or if it is refusing the claim, it will tell the claimant why.

### **Regulation of Practice Committee**

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

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

### **The Solicitors Disciplinary Tribunal**

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

### **The Independent Adjudicator**

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

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

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

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

### **The Legal Services Regulation Act 2015**

The Legal Services Regulation Act 2015 will, in due course, supersede the complaints remit of the Office of the Independent Adjudicator of the Law Society. The Law Society will continue to deal with complaints for now and the Act provides that the Society will finish off any complaints made up to the date, to be advised, that the new complaints procedure begins.

The Legal Services Regulation Authority’s remit includes having responsibility for regulating the provision of legal services by both solicitors and barristers and an independent complaints structure to deal with complaints about professional misconduct to include an independent Legal Practitioners Disciplinary Tribunal.

The adjudicative functions of the Office of the Independent Adjudicator of the Law Society relating to compensation fund claims do not fall within the remit of the Legal Services Regulatory Authority.

The Act is available on <http://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/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, 2015/2016**

The Law Society’s year was 1 September 2015 to 31 August 2016.

The total number of new complaints received was 1829, of which 313 were deemed inadmissible, leaving a balance of 1516 admissible complaints. 1040 complaints were carried forward, making a total of 2556 complaints handled by the Complaints section during the year.

A further 866 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, as well as records of direct applications made to the Solicitors Disciplinary Tribunal by members of the public and pending complaints.

180 of the admissible complaints made last year were made by solicitors against their colleagues, the balance were complaints made by or on behalf of clients, complaints made by financial institutions and complaints made by counsel.

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

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

	<b>Closed</b>	<b>Under Investigation</b>	<b>Pending before CCRC*</b>	<b>Total</b>
<b>Complaints opened in 15/16</b>	927	532	57	1516
<b>Complaints carried forward</b>	590	389	61	1040
<b>Total</b>	1517	921	118	2556

\*Complaints and Client Relations Committee

The following 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 year end
- Completion of complaint cases
- Completion times of complaints handled by the Law Society
- Source of complaints
- Status of admissible complaints investigated during the year

## Breakdown of complaints

	<b>15/16</b>	<b>14/15</b>	<b>13/14</b>
Admissible Complaints	1516	1162	1526
Inadmissible Complaints	313	299	390
<b>Total</b>	<b>1829</b>	<b>1461</b>	<b>1916</b>

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Allegations of Excessive fees	80	78	128
Allegations of Inadequate Professional Services	307	302	291
Allegations of Misconduct	1129	782	1107
<b>Total</b>	<b>1516</b>	<b>1162</b>	<b>1526</b>

## Excessive fees

Complaints alleging overcharging were broken down as follows:

	<b>15/16</b>	<b>14/15</b>	<b>13/14</b>
Conveyancing	9	6	13
Probate	14	12	24
Litigation	31	28	45
Matrimonial	10	14	21
Other	16	18	25
<b>Total</b>	<b>80</b>	<b>78</b>	<b>128</b>

## Inadequate professional services

Complaints alleging inadequate professional services were broken down as follows:

	<b>15/16</b>	<b>14/15</b>	<b>13/14</b>
Delay	114	103	104
Failure to communicate	71	75	70
Shoddy Work	95	92	76
Other	27	32	41
<b>Total</b>	<b>307</b>	<b>302</b>	<b>291</b>

## Misconduct

Complaints alleging misconduct were broken down as follows:

	<b>15/16</b>	<b>14/15</b>	<b>13/14</b>
Delay	5	2	9
Failure to communicate	30	30	36
Failure to hand over	102	103	125
Failure to account	74	64	84
Undertaking	829	475	703
Conflict of interest	9	10	18
Dishonesty or Deception	10	4	7
Witnesses Expenses	5	6	3
Other	54	64	70
Advertising	-	1	7
Counsels' fees	11	22	45
<b>Total</b>	<b>1129</b>	<b>782</b>	<b>1107</b>

## Complaints and Client Relations Committee statistics

	15/16	14/15	13/14
Number of meetings (+1 special +1 plenary)	17 (+1 special +1 plenary)	19 (+1 special +1 plenary)	22 (+1 special +1 plenary)
Number of new matters referred	198	268	382
Number of complainants invited to attend	5	2	11
Costs levied	€26,500	€27,200	€37,700
Compensation orders	0	0	9
Reprimands	3	6	7
Referrals to Disciplinary Tribunal	140*	64**	319**

\* There were 140 referrals to the Solicitors Disciplinary Tribunal between 1 September 2015 and 31 August 2016. 6 of those referrals were complaints that were opened during that period. The remainder were complaints that were opened prior to 1 September 2015

\*\* A number of these referrals were subject to stays of varying lengths. If resolved during the stay period the referral did not proceed

The Committee utilised the powers contained in the Solicitors (Amendment) Act 2002, which allow it to consider multiple complaints against the same solicitor, in relation to 7 different solicitors this year (7 last year also and 22 the year before). The breakdown this year is as follows:

Practising certificate issued without condition	1
Practising certificate issued without condition but subject to receipt of undertakings	3
Condition imposed restricting solicitor to practising as assistant solicitor	3
<b>Total:</b>	<b>7</b>

## Complaints Status year end

	<b>15/16</b>	<b>14/15</b>	<b>13/14</b>
Case closed	1517	1440	2155
Under Investigation	921	887	1141
Pending before Complaints and Client Relations Committee	118	153	177
<b>Total</b>	<b>2556</b>	<b>2480</b>	<b>3473</b>

## Completion of complaint cases

	<b>15/16</b>	<b>14/15</b>
Complaints Resolved	484	356
No grounds for complaint but assistance provided	70	44
Withdrawn/Abandoned	125*	58
Rejected	192	156
Recommendation made	13	5
Direction made	3	4
Other**	34	35
Referred to Solicitors Disciplinary Tribunal	6	5
<b>Total</b>	<b>927</b>	<b>663</b>

\* Withdrawn is 118; Abandoned is 7

\*\* These 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 2015/2016 complaints was 69.81 days

The average completion time for 2014/2015 complaints was 67.12 days

The average completion time for 2013/2014 complaints was 90.70 days

	<b>15/16</b>	<b>14/15</b>	<b>13/14</b>
Complaints Closed in less than 30 days	316=34.09%	235=35.44%	311=32.57%
Complaints Closed in less than 60 days	203=21.9%	148=22.32%	174=18.22%
Complaints Closed in less than 90 days	147=15.86%	105=15.84%	110=11.52%
Complaints closed in less than 180 days	189=20.39%	126=19.00%	196=20.52%
Other	72=7.77%	49=7.39%	164=17.17%
<b>Total</b>	<b>927=100%</b>	<b>663=100%</b>	<b>995=100%</b>

## Source of complaints

	<b>15/16</b>	<b>14/15</b>	<b>13/14</b>
Complaints made by Solicitors	180	181	370
Complaints made by parties other than solicitors	1336	981	1156
<b>Total</b>	<b>1516</b>	<b>1162</b>	<b>1526</b>

## Status of admissible complaints investigated during the year

	<b>15/16</b>	<b>14/15</b>	<b>13/14</b>
Case closed	927	663	957
Under Investigation	532	452	517
Pending before Complaints and Client Relations Committee	57	47	52
<b>Total</b>	<b>1516</b>	<b>1162</b>	<b>1526</b>

## Section 4

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

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

#### Compensation Fund statistics

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

##### Calendar year 2015

255 claims received

€8,971,731 claimed

€248,843 paid

##### Calendar year 2014

467 claims received

€8,749,077 claimed

€3,252,331 paid

##### Calendar year 2013

299 claims received

€4,542,976 claimed

€2,652,576 paid

#### Compensation Fund developments in the six months to 30 June 2016

In the six months ended 30 June 2016, 84 claims were received (140 for the same period last year). Excluding invalid claims refused, these claims amounted to €1,376,533 (€517,585 last year). Payments were made in the sum of €340,314 (€10,368 last year) in respect of claims, and claims amounting to €1,036,219 (€507,217 last year) are still under consideration.

The net assets of the fund are valued at €18 million as at 30 June 2016, the same as last year. The annual contribution to the fund was €760 per solicitor for 2016 (the same since 2013). Similar to recent years, insurance cover for €50 million in excess of €5 million is in place for the year ending 31 December 2016.

#### Regulation of Practice activities during the year

Similar to recent years, the Law Society's investigating accountants conducted approximately 400 investigations of practices this year. The Regulation of Practice Committee comprises of 4 divisions. During 2015 the Committee met 17 times, for 10 scheduled, 5 emergency and 4 special meetings.

The committee met 17 times during the year, for 10 scheduled, 5 emergency and 2 special meetings.

Arising from these meetings the committee decided to:

- Refer 5 solicitors to the Solicitors Disciplinary Tribunal on foot of findings disclosed in the investigation reports on their practices (9 referrals last year and 13 the year before);
- Refer 2 solicitors to the Solicitors Disciplinary Tribunal arising from matters which occurred in practices in which they were employed as assistant solicitors;
- Refer one solicitor to the Solicitors Disciplinary Tribunal for inquiry as to whether he was a fit person to remain on the Roll of Solicitors in view of a number of criminal convictions obtained against him;
- Refer 7 solicitors to the Solicitors Disciplinary Tribunal for failure to file an annual accountant's report within the statutory timeframe (16 referrals last year and 9 the year before);
- Apply to the High Court to suspend the practising certificates of 4 solicitors (2 applications last year and 6 the year before);
- Levy contributions amounting to €37,300 towards the cost of investigations (€34,000 last year and €44,600 the year before);
- Impose conditions on 2 solicitors' practising certificates where the solicitors had unsatisfied judgments (3 last year and 1 the year before);
- Apply to the High Court for an order freezing the accounts of 2 solicitors where dishonesty was discovered;
- Apply to the High Court pursuant to Section 18 of the *Solicitors (Amendment) Act 2002* for an order compelling a solicitor to comply with the Solicitors Accounts Regulations;
- Apply to the High Court pursuant to Section 18A of the *Solicitors (Amendment) Act 1994* as substituted by Section 43 of the *Civil Law (Miscellaneous Provisions) Act 2008* for an order to enforce payment of fines imposed by the Solicitors Disciplinary Tribunal.

**Within the Law Society's 2016 Annual Report, at page 35-36, the following excerpts are worthy of note to the Independent Adjudicator:**

"As part of the initiative to align committee work with the Society's strategic objectives, the committee agreed planned actions for 2015 to 2017. These include reviewing implementation of the *Legal Services Regulation Act 2015*; reviewing anti-money laundering procedures; minimising claims on the compensation fund; providing regulatory information to the profession; and dealing with "claims harvesting" websites."

"With the increased volume of cyber-attacks, the Society issued several warnings and is developing a dedicated cybersecurity area on the Society's website, which will contain alerts and general guidance.

While claims on the compensation fund have levelled off, the committee has noted a number of unusual claims relating to staff misappropriation, gambling problems and purported investment advice. The committee stresses the need for all firms to be alert to the wide range of risks they face.

A practice note was published in the August/September 2015 Gazette (page 48) to highlight the importance of properly completing compensation fund claim forms and submitting all supporting documentation. Incomplete forms are returned."

"The implementation of the Solicitors Accounts Regulations 2014 has impacted reporting accountant's reports. To assist reporting accountants, the Society contacted reporting accountants

with the new report form, which can be accessed on the Law Society website without a password and saved in Word format. We updated FAQs and published a reporting accountant's checklist."

"The committee is increasing use of Section 59 of the Solicitors (Amendment) Act 1994 to impose conditions on practicing certificates in appropriate cases. Conditions range from second signatory on client account to practising under supervision."

## Section 5

### BREAKDOWN OF MATTERS REFERRED TO THE INDEPENDENT ADJUDICATOR

This section of the Annual Report highlights the breakdown of cases examined by the Independent Adjudicator within her reporting year from 1 October 2015 to 30 September 2016<sup>1</sup>. These matters, save where mentioned, all went through the Law Society's investigation process within the Regulation Department, 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.

- **The Independent Adjudicator received 126 formal new requests to examine matters (169 last year and 164 the year before).** These are broken down as follows:
  - **96 (139 last year and 122 the year before)** complaint referrals were examined and adjudicated;
  - **24 (25 last year and 21 the year before)** Compensation Fund claim referrals were examined and adjudicated, again I believe the highest ever for my office. (These statistics do not fall within the Law Society's statistics mentioned in section 4 of this Annual Report.); and
  - **6 (5 last year and 21 the year before)** 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

#### Breakdown of complaint related matters

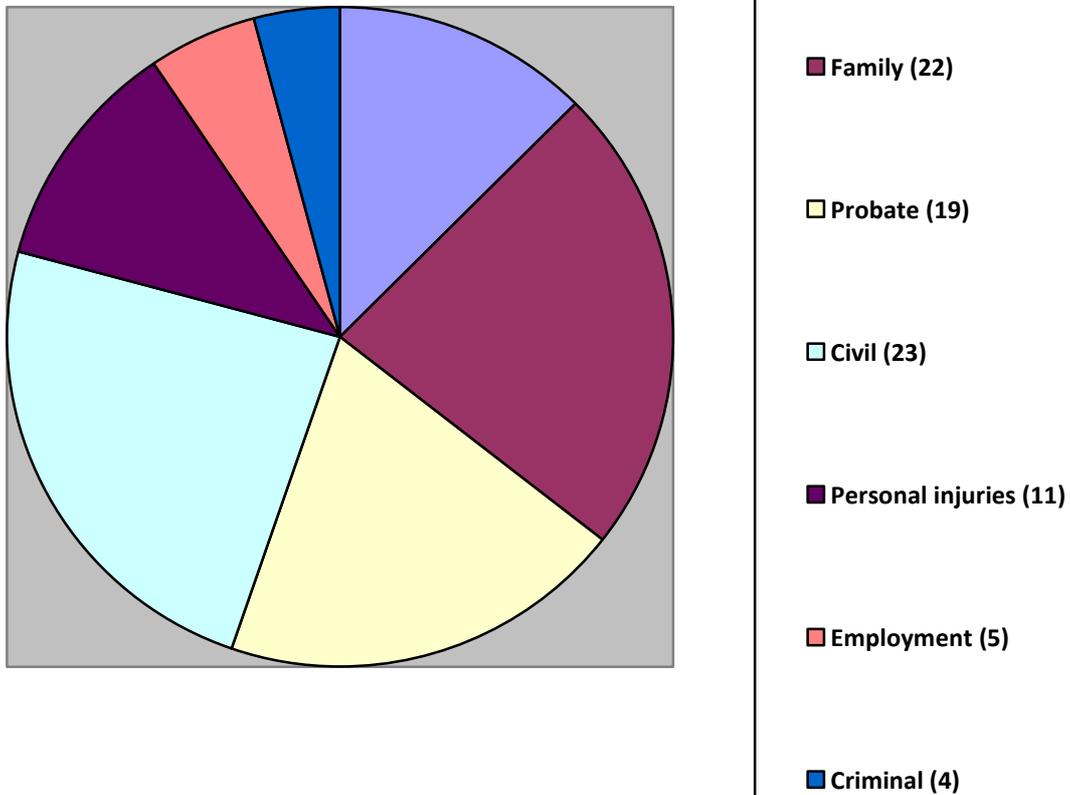
- Of the 96 complaints that were examined by the Independent Adjudicator, one had been before the Complaints and Client Relations Committee for direction (5 last year).
- 10 of the 96 complaints examined by the Independent Adjudicator prompted correspondence from the Independent Adjudicator to the Complaints and Client Relations Section (10 last year).
- Of the 10 files referred back to the Complaints and Client Relations Section the matters centred around the following issues:
  - In Independent Adjudicator's opinion the matter seemed to be out of time at the inception of the investigation

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<sup>1</sup> The Law Society's Complaints and Compensation Fund Claims reporting year is from 1 September to 31 August

- As an investigator, the use of an exclamation mark in correspondence with a solicitor was not appropriate
  - Enquiry about compliance with Section 68 of the Solicitors Acts
  - Draft report was sent to parties which was not a draft in the Independent Adjudicator's opinion
  - A complainant asked the Law Society to return two letters to him which were still on file
  - Letter about the handling of the file that related to a solicitor retaining a person's paperwork if they were not a client
  - Email about a different matter on a file
  - File was closed by Law Society without the solicitor replying to the Society's request for their bill of costs and confirmation of their Section 68 compliance
  - The remit of a complaint was questioned
  - The Law Society inadvertently did not close a matter with a solicitor when doing so with a complainant.
- No matters were referred to the Complaints and Client Relations Committee by the Independent Adjudicator this year;
  - The 96 complaint matters that were adjudicated upon centred upon the following complaint disciplines:
    - Civil **(23)** (39 last year; 43 previous year)
    - Family **(22)** (11 last year; 14 previous year)
    - Probate **(19)** (32 last year; 26 previous year)
    - Conveyancing **(12)** (33 last year; 18 previous year)
    - Personal injuries **(11)** (10 last year; 11 previous year)
    - Employment **(5)** (5 last year; 6 previous year)
    - Criminal **(4)** (9 last year; 0 previous year)
  - See illustration on page 28 which exhibits these matters by the number of complaints received;

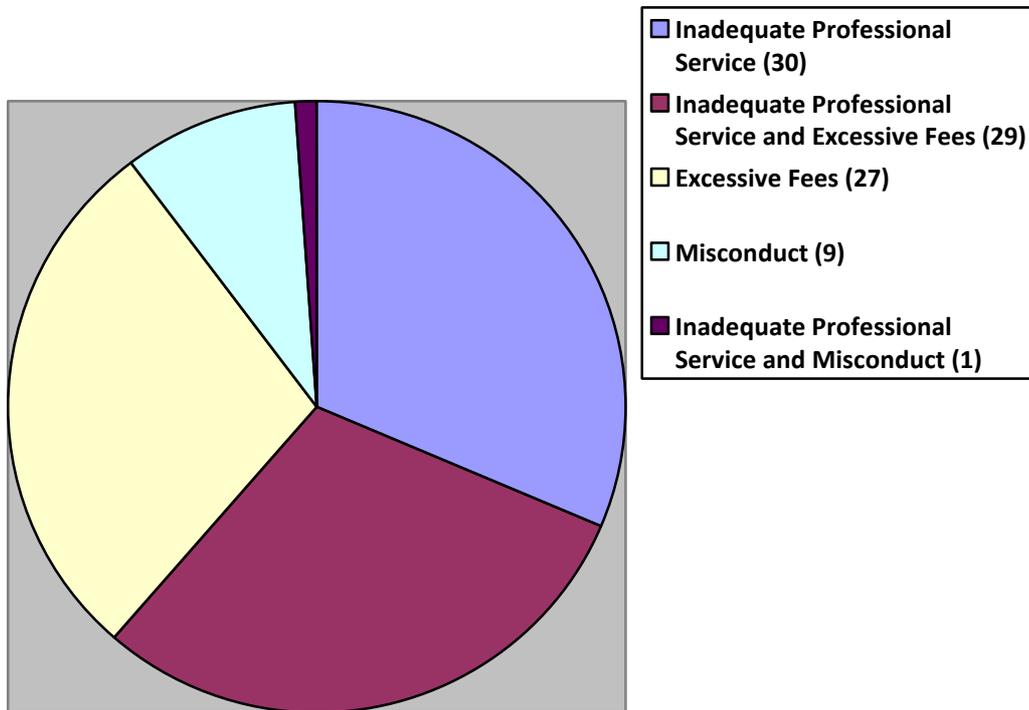
**Breakdown on complaint matters which were referred to the Independent Adjudicator from 1 October 2015 to 30 September 2016**



- All complaints adjudicated upon fell into one or a combination of these three categories:
- **Inadequate professional services** (Section 8 of the Solicitors (Amendment) Act 1994);
- **Excessive fees (overcharging)** (Section 9 of the Solicitors (Amendment) Act 1994); and
- **Misconduct** (Section 3 of the Solicitors (Amendment) Act 1960 as amended by Section 24 of the Solicitors (Amendment) Act 1994 and by Section 7 of the Solicitors (Amendment) Act 2002).

See page 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 2015 to 30 September 2016**



- In addition to the 96 complaint matters adjudicated, 6 matters were ineligible/inadmissible for my examination of their contents for the following reasons:
  - matter was under ongoing investigation with the Law Society;
  - matter was out of time (2 matters);
  - no reply to Independent Adjudicator;
  - the complainant needed to refer their matter to the Law Society before coming to the Independent Adjudicator; and
  - numerous emails about process with one complainant, who technically was out of time.
- The volume of enquiry calls to this office remain at a similar scale to that of previous years. The majority of calls related to complaint matters as opposed to Compensation Fund matters.
- Fewer leaflets on the Law Society's 'Complaints about Solicitors' brochures were dispatched by my Office this year probably because complainants are more seasoned on using technology.

## **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.

- Consistent to last year, 24 Compensation Fund claim matters were referred to my Office for adjudication (25 last year and 21 year before);
- Of the 24 matters, 9 resulted in my correspondence to the Financial Regulation Section of the Regulation Department of the Law Society for the following reasons:
  - Duplication of letters sent to a claimant and the inadequate regard of a reasonable timeframe to handle this stressed claimant's matter;
  - Question over data protection issue with decision letter sent to the wrong party;
  - Question regarding the oversight of validating that files have been appropriately closed (one claimant did not inadvertently receive his decision correspondence for some time);
  - Question as to why the Law Society would meet a claimant (again) once a claim had been decided and no new evidence had been proffered, and also that no minute/record of the individual meeting was on file;
  - Duplication of letters sent to a claimant and the inadequate regard of a reasonable timeframe to handle this stressed claimant's matter; and
  - Of the 9 matters 6 included a number of handling delays in terms of the Law Society's correspondence with claimants, or their solicitors, and/or in processing through to the Regulation of Practice Committee.

## Section 6

### EXAMPLES OF ADJUDICATED COMPLAINTS AND COMPENSATION FUND CLAIM MATTERS

#### Complaint appeals to the Independent Adjudicator

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

##### **Matter 1 – Civil matter - clarification of instructions**

The complainant alleged that she gave her file to the solicitor to prosecute a civil claim over a suite of furniture. Her matter transferred from the Small Claims Court to the Judge's List in the District Court. No letter of engagement was issued to the complainant and no payment was sought by the solicitor. The Complainant alleged that her case was struck out because the solicitor's non-attendance. The solicitor believed that he was not engaged as a solicitor as the complainant had assistance from her brother, who is a solicitor. On the face of the investigation by the Law Society it appeared that there was no client\solicitor relationship. However, the Independent Adjudicator queried if this was the case, why did the solicitor retain the complainant's original file when he said she was not a client, and sought further investigation on this point. Upon further queries by the Independent Adjudicator with the Law Society, she was satisfied that the complainant left her documentation as she departed the solicitor's office, and the solicitor had no engagement with the complainant again until after the return date, i.e., no instructions were agreed contractually between the parties. The Law Society promptly obliged on the Independent Adjudicator's requests and followed up with the parties before she concluded the matter to her satisfaction.

##### **Matter 2 – Civil matter – vociferous complainant**

This matter was examined by the Independent Adjudicator in 2011 and further in 2012. The complainant persistently continued correspondence with the Law Society adding what she believed to be new information. It was this information that was further examined by the Independent Adjudicator. The complainant believed that the solicitor was in breach of Section 68(3) of the Solicitors Acts in terms of the amount received from her settlement cheque relating to a road traffic accident. The Independent Adjudicator found the Law Society to be professional, fair and reasoned in dealing with this vociferous complainant. The reason this matter is included is to highlight that the complainant was querulous rude and demanding of the Law Society and of the Office of Independent Adjudicator, yet she received fair and reasoned service throughout her engagement with the respective bodies.

##### **Matter 3 – Criminal matter – closing a file prior to attaining confirmation of the Section 68 compliance requested as well as the bill**

This was a criminal matter in which the complainants believed their solicitor allegedly neither delivered an appropriate service nor charged appropriately. This matter was before the Complaints and Client Relations Committee on 12 September 2012 at which it was "adjourned generally". The

complaints re-ignited their matter on 30 March 2015 with the Law Society as they believed they had liberty to revert to the Law Society. The Independent Adjudicator found that the Law Society, and the solicitor, delayed in their correspondence on a couple of occasions at this stage. The prime reason for referring the matter back to the Law Society was that having sought the solicitor's Section 68 letter and bill the file was closed without these being attained. Much correspondence ensued and the solicitor said that he no longer had the bill as the matter was over five years old yet offered to re-draw a bill which the complainant did not take up. The Independent Adjudicator was then satisfied that appropriate action had been taken by the Law Society before closing the file and duly closed the matter in her office also. It should be noted that the complainants endeavoured to re-open previously dealt with matters through the auspices of the Independent Adjudicator which were not acceded to.

**Matter 4 – Criminal matter – investigation initiated as a third party**

The Independent Adjudicator questioned the Law Society as to whether this complaint was a third party complaint investigation as it appeared to her that the complainant was the payer for the solicitor's professional services for her brother who was the client. She advised that she had expected to see the complainant's brother's signed approval being requisitioned before the Society's investigation initiated. She noted that the solicitor in his initial response to the Law Society clarified that the complainant's brother was his client. She further noted that the complainant's brother subsequently wrote to the Law Society after its decision which she said she believed was fortuitous. The Independent Adjudicator noted the Law Society's response to her however her point was that she believed this investigation initiated without the actual complainant's signed approval, which arrived much later in the investigation.

## **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 – Data Protection and correspondence**

Having examined this matter the Independent Adjudicator was satisfied with the Law Society's decision and handling of this conveyancing related matter save for one administrative issue. The Law Society inadvertently sent their decision letter with an accompanied cheque from the Compensation Fund to the wrong firm of solicitors for the claimant. The cheque was duly returned from the firm saying they did not have a client by that name. Two issues arose for the Independent Adjudicator on which she wrote to the Law Society. Firstly, she wanted to know what the Law Society did about this matter in terms of compliance with data protection monitoring. Secondly, she advised that she would have expected the Law Society to apologise for the oversight to the recipient firm who promptly attended to the matter. The Independent Adjudicator first wrote to the Law Society on this matter on 17 February 2016, followed by letters dated 21 March 2016, 3 June 2016, 4 August 2016 and an email dated 4 October 2016, none of which have been acknowledged or replied to as yet. In the latter the Independent Adjudicator advised that she intended to raise this matter in her Annual Report.

### **Matter B – Compensation Fund Claim that highlights the level of Committee work**

This matter was before the Office of the Independent Adjudicator on three occasions in aggregate. She believed that the Law Society directed the appropriate decision in this matter yet she had the following administrative comments which she first wrote to the Law Society on 3 March 2016:

1. The Independent Adjudicator questioned why this matter progressed to the length it did when fundamentally it was not within the 6 month notification timeframe. She noted that the claimant's solicitor was afforded the opportunity, at the inception (and conclusion) of this matter, to support his allegation that the claim was submitted earlier as stated.
2. The Independent Adjudicator asked the Law Society about the central storage of information that is related to a Compensation Fund file. She noted that there were a number of references to correspondence that were not on the file submitted to her that she believed were relevant to the claim. She appreciated that there were numerous Law Society personnel referenced throughout this matter and reiterated the importance of central recording of data.
3. The Independent Adjudicator believed that there were numerous handling delays in this matter, especially in responding to the claimant's solicitors, that should not have occurred. She saw no reason why holding letters could not have been sent where delays were likely to occur. This she believed was, and is, important customer service.
4. The Independent Adjudicator noted that her office was referenced in third party proceedings and she asked to be advised in such circumstances.
5. Telephone attendances occurred that were not minuted on the file which the Independent Adjudicator believed would have been appropriate to record given the nature of the

aggregate claim's contents.

The Independent Adjudicator's letter above referenced followed with further correspondence from her dated 3 June 2016, 4 August 2016 and an email dated 4 October 2016, none of which have been acknowledged or replied to as yet. In the latter the Independent Adjudicator advised that she intended to raise this matter in her Annual Report. She believes it is disrespectful not to acknowledge correspondence, when one of the tenets of her correspondence with the Law Society in this matter relates to delays.

**Matter C – Compensation Fund Claim that highlights (a) how long a complainant and subsequent claimant can be within the Law Society process and (b) compensation fund administrative handling delays**

This claimant, through no fault of the Law Society, had an elongated process in his complaint initially and subsequently with his compensation fund claim submitted to the Law Society. The Complaints and Client Relations Committee initially made a finding some time ago and issued a direction which the solicitor failed to comply with. The Society brought an application before the President of the High Court (in relation to a separate matter) looking for an order striking the solicitor's name off the roll of solicitors. This was granted in 2014. As the Society exercised the ultimate sanction available to it the Committee considered there was nothing to be gained by commencing further disciplinary proceedings and directed the Law Society to close its file on this matter.

The Law Society reminded the complainant that he had the option to make a claim on the Law Society's compensation fund stating that grants from the fund are made in respect of losses sustained "in consequences of dishonesty" on the part of the solicitor.

It was then that the complainant, now claimant, made a claim on the compensation fund. No evidence was proffered to the Regulation of Practice Committee to suggest that the losses were sustained in consequence of dishonesty on the part of the solicitor and the claim was refused. The claimant was afforded the opportunity to make any further submissions in support of his claim which may be referred back to the Regulation of Practice Committee.

What is set out above is to the satisfaction of the Independent Adjudicator, however, the administrative handling in the lead up to the matter being brought before the Regulation of Practice Committee is not. She noted that the claimant wrote to the Law Society on 26 November 2015, which was promptly acknowledged on 30 November 2015. The next correspondence advising the matter was under review was on 8 April 2016, which followed a further letter saying the matter was "still under review" on 27 June 2016. The matter was before the Regulation of Practice Committee on 1 September 2016. The Independent Adjudicator deemed these delays to be excessive, especially for a claimant, that has been within the complaints arena of the Law Society over many years.

The Independent Adjudicator opined that the Law Society, in its initial correspondence, should set an expectation as to when it would expect to bring a claimant's matter to the Regulation of Practice Committee. This would help to manage claimants' expectations, and workload planning if more than preceded at such a time in question. Should this have happened in this matter it would have been helpful to an elderly claimant.

**Matter D – Compensation Fund Claim that highlights the importance of validating oversight before a matter is closed**

This compensation fund claim was appropriately handled by the Law Society, save for some

administrative delays, and the decision reached was to the Independent Adjudicator's satisfaction. However, the Law Society's decision letter was inadvertently not dispatched to the claimant and it therefore took considerable time for him to be informed of the decision on his matter which was initiated by a call from the claimant. The Independent Adjudicator wrote to the Law Society that this questioned the oversight of validating or checking that matters are appropriately concluded before being filed as closed. Nevertheless, she noted that the Law Society wrote a sincere apology which she deemed was satisfactory.

**Matter E – Compensation Fund Claim that highlights the importance of meeting notes where meetings between a claimant and the secretariat occur**

This matter related to an undertaking to discharge monies regarding the sale of a property. It was decided by the Regulation of Practice Committee on 18 October 2012 and subsequently examined by the Independent Adjudicator on 12 July 2014 on which she believed the matter was "handled fairly". She considered her notes from that time which noted "unusual" for the Law Society to have met with the claimant in this matter, which had happened. In 2015 the claimant emailed the Law Society and was informed by replying email on 9 September 2015 that they "would be happy to meet you again".

Whilst the Independent Adjudicator was satisfied with the Regulation of Practice Committee's decision, she was not satisfied with meeting communications with the claimant. Firstly, that the decision of the Committee had been disseminated and no new evidence was put forward at that stage. Secondly, and importantly, there was no minute of the claimant's meeting with the Law Society on the file. The Law Society proffered the reason for this meeting was that the claimant indicated that he wished to discuss the possibility of putting further submissions following a claim being refused. Whilst this may have been the case protocols for when meetings should or could occur should be decided and stuck to at secretariat level, particularly when there are time resourcing issues.

**\* Since writing the above referenced sample Compensation Fund claim matters the Law Society has responded to the administrative handling matters identified by the Independent Adjudicator. See further in Section 7 below.**

## Section 7

### OBSERVATIONS ON COMMITTEE ATTENDANCES AND RANDOM REVIEWS

On two occasions throughout the year I attended the Regulation Department to randomly review files that had not been referred to my Office. This assists towards validating my own satisfaction that files are handled and managed correctly by the relevant sections of the Regulation Department of the Law Society. I randomly select a number of files from the listings of both the Complaints and Client Relations Section and Financial Regulation Section, and then the selected files are made available for my inspection in the Law Society to review.

I observed at 12 committee meetings during the year: 9 times in aggregate at the three divisions of the Complaints and Client Relations Committee and 3 times at the Regulation of Practice Committee.

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

- I observed, with interest, a vice-chairman's view at a meeting I observed at during the year, that a solicitor's update to a committee should highlight the tasks to be done, who is going to do them and by when they will be done. I could not agree more.
- I would like to see more member diversification on Committees. For a profession that has more female than male members I would expect it to espouse more gender balance on the committees, that fall within my remit to comment on, in both solicitor and lay memberships. In addition, as I have mentioned in many annual reports, I would like to see more lay nomination groups represented on committees to be reflective of the clientele before the Society. These comments said, I understand that a female vice-chairperson has been appointed for the year ahead of the Complaints and Client Relations Committee, and also that two of the four divisions of the Regulation of Practice Committee are now chaired by women which increases that Committee's female membership to over 30%.
- I would like to see 'chairman' superseded with 'chairperson' in line with good governance and indeed for female committee chairs. In nine years I have not seen a female chair of any committee I have oversight of. I have seen a vice-chair role held for a number of months (and the resignation was due to a regulatory appointment).
- Where a committee directs a full and comprehensive response from a solicitor by a certain date, it must be that, fulsome and comprehensive, and unequivocally answer the questions or update accordingly as directed. I would like to see more sanctions put in place for serial offenders against regulatory body directions. Solicitors advising solicitors must also adhere to this timeframe ensuring sufficient time is given to their clients in everyone's interests.
- The Secretariat, let alone the sitting committee, cannot be expected to deal with the volume of correspondence they often receive the day of or day before a meeting, usually from solicitors, or the solicitors representing them. For example, which astonished me, on one occasion this year I observed that voluminous material arrived into a sitting Complaints and Client Relations Committee meeting and was given to a member of the Secretariat for a forthcoming agenda item that morning. As stated above, I would like to see more sanctions bestowed by the regulatory body for solicitor impoliteness and disregard to the communicated timeframe process. In this regard, I note that the Regulation of Practice Committee impose an

automatic €300 levy on solicitors who had failed to file written submissions within the timescale outlined in the Society's correspondence to them.

- I like to see a solicitor apologising to a committee for being before them and especially where there is an acceptance of responsibility. I observed only one genuine apology on my twelve committee observances this year.
- Some solicitors want extensive time before a Complaints and Client Relations Committee meeting to go through their rebuttal and responses. It might be helpful to set expectations with those solicitors who have not been before a committee on a previous occasion in advance of such an attendance.
- Solicitors can also disseminate too much information on the day of a committee meeting.
- I find it difficult to reason where a solicitor might say to a committee that he or she had "a mental block" dealing with Law Society correspondence. This may not help the credence of their rebuttal to the matter at hand. I reference the importance of advising health support and advice from LawCare Limited to such solicitors.
- It surprised me that occasional decision-making in respect of compensation fund claims was made by exchange of emails. I observed at a Regulation of Practice Committee meeting in September 2016 that effective from that date agreement would either be by committee meeting or by conference call, which in my opinion would be good, and normal, practice and stewardship.
- Solicitors are often unfamiliar with their own files, do not bring appropriate papers with them when attending before a Committee and can, in fact, be complacent about their attendance before a Committee. This shows nobody up but themselves.
- Whilst this may change with the Legal Services Regulatory Authority being in situ, in my view from my observatory attendance at various committee meetings, counsel representing solicitors before their professional committees is not the same as solicitors representing their profession who know their regulatory body better.
- I welcome that chairmen introduce the people sitting around the table, and in which capacity they do so, to all persons before them. This includes my introduction as an observer not sitting at the meeting table when I am in attendance.

## **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 are my views on the Complaints and Client Relations Section's statistics this year:

- New admissible complaints received by the Law Society dropped considerably again this year (1516 this year, 1162 last year, 1526 previous year);
- Of the new 1516 admissible complaints (1162 last year), 829 related to undertakings (475 last year) leaving 687 for all other new complaints. There were exactly 687 new admissible complaints last year also excluding undertakings;
- Referrals from the Complaints and Client Relations Committee to the Solicitors Disciplinary Tribunal increased this year to 140 from 64 last year (and 319 the year before). Of the 140 referrals to the Solicitors Disciplinary Tribunal between 1 September 2015 and 31 August 2016 6 were complaints that opened during that period with the remainder being complaints that were opened prior to 1 September 2015;
- Aggregate complaints relating to misconduct increased considerably this year to 1129 (from 782 last year and 1107 the year before), and of which 829 relate to undertakings. As referrals to the Solicitors Disciplinary Tribunal are misconduct related this figure correlates to the point above;
- Complaints being referred to the Complaints and Client Relations Committee are down considerably again this year to 198, from 268 last year and 382 the year before. There are less than half the referrals to the Committee from the 2012/2013 statistics which had 465;
- I noted that there were no compensation orders directed by the Complaints and Client Relations Committee similar to last year (9 in 2013/2014) (this is where the Committee can direct the solicitor to pay up to €3,000 to a complainant);
- Average case completion times by the Complaints and Client Relations Section was up on last years to 69.81 days (67.12 last year and 90.70 the year prior);
- Complaints made by solicitors are comparable to last year 180 (181 last year and 370 the year before);

- Complaints made by parties other than solicitors increased substantially this year to 1336 from 981 last year and 1156 the year before;
- Complaints relating to Excessive Fees and Inadequate Professional Services are comparable to last year, yet complaints relating to Misconduct have considerably increased to 1129 this year from 782 last year and 1107 the year before. This is predominantly due to the unexpected increase in undertaking related complaints which increased to 829 this year from 475 last year and 703 the year before;
- Multiple complaints about the same solicitors have featured every year in statistics since I have taken office, however not this year which is an appealing trend;
- Complaints relating to counsels' fees are down considerably again this year which is also good (11 this year, 22 last and 45 the year before);
- There were no compensation orders similar to last year and 3 reprimands, 6 last year and 7 the year before;
- Within the case completion statistics, there was an appreciable increase in abandoned cases of 118 this year to 51 last year; in matters where there were no grounds for complaint but assistance was provided was 70 this year and 44 last year and resolved matters increased to 484 from 356 last year;
- The number of Complaints and Client Relations Committee meetings has reduced to 17 this year from 19 last year and 22 the year before. Each year there has been an additional plenary and special meeting.

#### **Increase in complaint numbers**

New admissible complaints received by the Law Society are up considerably by 23.35% to 1516 from 1162 last year of which 829 relate to undertakings, 475 last year, and a 42.70% increase. It is noted that the reason for increased undertaking complaints cited by the Law Society is attributable to delays on the part of some banks in bringing forward historic cases rather than indicating any new deterioration in standards in the profession. It is surprising why these undertaking complaints have taken so long to surface considering some of the banks have been extensively involved in undertakings over many years. [For ease of clarity, the Solicitors Disciplinary Tribunal in its 2011 Annual Report (page 8) set out a clear 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*". Some time on, this is still my preferred definition of an undertaking.]

#### **Section 68 of the Solicitors (Amendment) Act 1994**

Some solicitors can still be non-compliant with their obligations under Section 68 of the Solicitors (Amendment) Act 1994. The Law Society in many cases addresses non-compliance of Section 68 obligations by proposing that the solicitor concerned discount a portion of the fees payable. [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.]

It should also be noted that where a solicitor provides additional services to that originally instructed and for which their fees notification complied with the Solicitors Acts, they will be required to

further submit written notification to their client in accordance with Section 68 of the Solicitors (Amendment) Act 1994 for this additional or separate work. Further, I am aware that the Complaints and Client Relations Committee has held that where a solicitor quotes a fee and does not subsequently revert to the client to advise that their fee will increase, the solicitor is bound by the original quotation.

I reference again the Guidance and Ethics Committee practice note on *“The dos and don’ts of section 68 – re-visited”* in the Gazette (January/February 2015, p.48-49).

I was delighted to see the chairman of the Complaints and Client Relations Committee referencing the Lay Members’ report last year in this context also, which I wholly agree with: *“The lay members regard the requirement to provide a (meaningful) section 68 letter – especially one which clarifies the cost implications of court proceedings etc. – as a very serious matter, which is designed to protect clients’ interests, and will seek to take appropriate action in the case of any solicitor coming before the committee who has not issued such a letter.”*

Where a solicitor is in breach of Section 68(1) of the Solicitors (Amendment) Act 1994 the sanction may be the imposition of a reprimand or referral to the Solicitors Disciplinary Tribunal, or in appropriate cases a reduction of the fee. Despite what complainants might think though a solicitor is entitled to be paid for work done.

#### **Recovery of costs from solicitors**

I note costs levied by the Complaints and Client Relations Committee decreased again this year to €26,500 from €27,200 last year to €37,700 the year before. This was somewhat surprising considering there was an 23.35% increase in new admissible complaints to the Law Society this year. Whilst I appreciate this may be correlated to both reduced complaints and committee sittings (2 less than last year), I am interested to know how much of all levied monies has actually been collected from the Law Society. It appears that most is paid with some not, for reasons of referral to the Solicitors Disciplinary Tribunal, suspension, bankruptcy, etc. As can be seen in an exemplified case in section 6 above, I wrote to the Law Society once during the year to recoup costs levied where a solicitor did not reply to Law Society correspondence repeatedly. In this regard, I am aware that Regulation of Practice Committee impose an automatic €300 levy on solicitors who had failed to file written submissions within the timescale outlined in the Society’s correspondence to them.

Suffice it to say, which I reiterate from past Reports, 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’ recusant 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, members of the Committee reading 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.

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

Referrals by the Complaints and Client Relations Committee to the Solicitors Disciplinary Tribunal are up from last year yet down from the year before: 140, 64 and 319 respectively. In reviewing the Solicitors Disciplinary Tribunal Annual Report whilst their year-end is different to the Law Society’s there appears to be consistency on trends just stated. I am of the opinion that for the Complaints and Client Relations Committee (made up of solicitors 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**

Related to the point above, the increase in the number of referrals to the Solicitors Disciplinary Tribunal, and the rate at which they are being lodged, means that the Tribunal itself is under pressure and the backlog has moved from the Law Society to the Tribunal. I note, within the Tribunal's 2015 Annual Report, page 4, that sittings have been consistent this year, 113, to last year 114, and the previous two years were 96 respectively.

### **Advertising misconduct related complaints**

Advertising is enforced by a dedicated division of the Regulation of Practice Committee aiming at improving compliance levels and so ensure a level playing field for solicitors who advertise their services. I noted that the Chairman of the Regulation of Practice Committee said in the Law Society's 2014/2015 Annual Report that significant developments were anticipated in the coming year in this area. It should be added that the Law Society highlighted its top 10 items for its annual year report 2014/2015 placing special focus at number 6 on raising awareness in the profession about the Solicitors (Advertising) Regulations 2002. Since then misconduct related to advertising complaints no longer fall within the remit of the Complaints and Client Relations Section's statistics. The Chairman of the Regulation of Practice Committee said within the current Annual Report "*The Society has continued its strategy of proactively highlighting the importance of compliance with the Solicitors (Advertising) Regulations 2002. Practice notes were published in the Aug/Sept 2015 Gazette on legal advice columns and claims harvesting websites. Guidelines to the regulations, providing examples of prohibited advertisements, were published. A presentation on the regulations has been delivered at numerous bar association seminars. The Society offers an advertisement vetting service.*"

### **Additional comments relating to complaint handling**

- Where a solicitor writes to a client, enclosing the Law Society's leaflet on charges and refers to the basis of his charges as outlined in the leaflet, this is considered by the Law Society, as compliance with Section 68(1) of the Solicitors (Amendment) Act 1994.
- Where a solicitor does not appropriately issue a letter in compliance with Section 68 of the Solicitors (Amendment) Act 1994, this does not disentitle a fee to be charged. I have seen some references this year to Judge Peart's Judgement in *A&L Goodbody v. Colthurst*, [2003] IEHC 74.
- Once a complaint is submitted to the Law Society "*new complaints cannot be entertained once the investigation has commenced*" as set out in the Law Society's *Complaints about Solicitors* leaflet, yet in reality matters this may not always be feasible.
- Where a solicitor is required to attend before the Complaints and Client Relations Committee the Law Society usually informs solicitors that late applications for adjournments will only be granted in exceptional circumstances. If an application is sought on medical grounds, a medical report (not a medical certificate) will be required. With regard to costs, they advise that if the Committee is obliged to adjourn a matter because of the failure of a solicitor without reasonable cause to respond appropriately and in a timely manner, for example if a solicitor submits documentation on the eve of a meeting, the Committee may direct the solicitor to contribute to the costs thereby incurred, up to a maximum of €3,000. Both of these notifications appease me.
- Complainants often complain to my Office that the Law Society did not respond to their correspondence once a decision had been reached. I find that the Law Society make their

decision and engage in clarification correspondence however do not further investigate, unless further substantial supplemental documentary evidence is submitted. Again, as expressed above, it is up to a complainant to ensure that they submit their complaint conclusively to the Law Society at the outset.

- An allegation of negligence is an issue of law reserved for the courts; the Law Society is not allowed to decide such complaints. Complainants should speak with an independent solicitor with regard to legal options available to them. The Law Society maintains a list of solicitors who are prepared to take actions against colleagues. These details can be found on the Law Society's website under 'Making a complaint'.
- Following on from this last point, 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"*.
- The Law Society usually cannot deal with a complaint against a solicitor who is acting for a third party unless the complaint is endorsed by a complainant's solicitor or there is clear prima facie evidence of fraud or illegality.
- Where a complainant writes that they hope to receive compensation they should note that the Law Society has very limited jurisdiction to compensate clients where the professional service received from a solicitor was inadequate. The maximum amount of compensation that the Society could award in those circumstances is €3,000. If it is the complainant's view that they are entitled to compensation as a result of the way in which a solicitor handled their matter they should seek independent legal advice.
- Where a complainant initiates a complaint to which the solicitor responds, and the complainant is delayed commenting on his response, the Law Society will wait a reasonable timeframe, however in fairness to the solicitor it can point out to the complainant that they cannot hold the file open indefinitely. Any solicitor against whom a complaint is made is entitled to have the matter dealt with expeditiously, especially if many months have lapsed.
- Proceedings cannot be issued for the recovery of costs under the terms of legislation until the Law Society's investigation of a complaint of excessive fees has been concluded. The complainant cannot be compelled to have the bills taxed. Further, the Complaints and Client Relations Committee consists of majority lay members and is not designed to carry out the functions of the Taxing Master or to anyway replace his/her role.
- The Law Society whilst having a statutory obligation to try and resolve complaints if at all possible may suggest that the complainant might give consideration to whether or not their matter would benefit from being referred to some form of mediation.
- Where a client has made a complaint solely of excessive fees there is a statutory provision whereby a solicitor cannot issue proceedings until the Law Society has concluded its investigation. If a complainant complains about service as well as fees, the Law Society may not be in a position to investigate their matter. However once proceedings have concluded and if there are issues that a complainant may then wish to raise with the Law Society which were not dealt with by the Court, they can contact the Law Society at that time.

- I like to see the Law Society telling complainants that the Solicitors Acts impose an obligation to seek to resolve complaints about inadequate professional service and excessive fees before considering the imposition of a sanction. In pursuance of that obligation, they often write to ascertain what a complainant would consider to be a satisfactory resolution of their complaint so they can put their proposals to the solicitor to see if the matter can be resolved. They also advise that if resolution cannot be reached the papers may be referred to the Complaints and Client Relations Committee for their determination. The Law Society often equally ask a solicitor if he or she has any proposals to make and if so the Law Society would be happy to convey them to the complainant. I believe this is a fair and transparent process.
- It can arise that a client will instruct a new solicitor during an investigation. If a complainant wishes to change solicitor during a complaint investigation they are obviously perfectly at liberty to do so. If their complaint is upheld, the Law Society's Complaints and Client Relations Committee would then have the discretion to direct the solicitor to waive some or all of his fees for the work carried out to date. If their complaint is rejected, that would be the end of the Law Society's involvement.
- 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.
- I noted last year a substantial decrease in complaints relating to undertakings from financial institutions yet there has been appreciable increase again this year. Mr John Elliot, Registrar and Director of Regulation, said in the Law Society's Annual Report 2016 that *"this can be attributed to delays on the part of some banks in bringing forward historic cases rather than indicating any new deterioration in standards in the profession."* Complaints related to undertakings were 829 this year (475 last year and 703 the prior year). It should be noted that complaints relating to undertakings are outside my remit.
- I wrote in last year's Annual Report that if trends continue with decreased multiple complaints (numerous complaints against the same solicitor) it may not be necessary to have an annual multiple complaints meeting this year. I am pleased to say, not because I referenced this, but that a multiple complaints meeting was not necessary to convene due to depleting multiple complaints and this meeting was a Practising Certificate meeting.
- Where a complaint clearly discloses evidence of misconduct that 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.
- For four consecutive years I have written that the Complaints and Client Relations Committee should be using a tablet device thus discarding the voluminous paper, secretariat resources, distribution costs, physical risk carrying such papers, etc. for perhaps 1000+ pages per person per meeting. I simply do not understand why this is not happening and note that the Regulation of Practice Committee, for example, are using this medium since 2013.
- Related to this point, I was pleased to see that the Regulation Department is in the middle of a two-year project ('System 360') to achieve a more user-friendly electronic environment for its members. In this regard, I would hope that such technological advances might also consider the

implementation of electronic committee papers to the Complaints and Client Relations Committee.

## **Observations on the Law Society's Compensation Fund Claims**

### **The Independent Adjudicator's comments on the Law Society's Compensation Fund Claim statistics**

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

- Key points to note for the six months to 30 June 2016 are:
  - 84 claims received from 140 for the same six-month period in 2014;
  - valid claims increased to €1,376,533 from €517,587 for the same six-month period in 2014;
  - payments from the Compensation Fund increased to €340,314 from €10,386 for the same six-month period in 2014;
  - higher value claims were under investigation amounting to €1,036,219 from €507,217 for the same six-month period in 2014;
- Higher value claims were under investigation in 2015 amounting to €1,036,219 from €507,217 in 2014;
- Less referrals to the Solicitors Disciplinary Tribunal and President of the High Court in 2105;
- Levy contributions amounted to €37,300 towards the cost of the investigation, yet median over the last three years: €37,300, €34,000 and €44,600 respectively;
- Consistent Compensation Fund Claims were examined and adjudicated upon by me this year, 24 this year (25 last year and 21 the year before). (These statistics do not fall within the Law Society's statistics mentioned in section 4 of this Annual Report.)
- With regard to Compensation Fund claims, I observed last year, and again this year, that claimants expect the Law Society to do lots of calculations and sort through their paperwork. I believe claimants should be obliged to make an orderly paper submission with reasonable calculations done. I understood last year that the Financial Regulation Section are looking to improve their claims procedures to include redrafting of the Compensation Fund Claim form and explanatory booklet to ensure more fulsome applications are received before an investigation commences. Such documentation could include balancing statements, bills of costs, etc. showing the intended use of the claimed funds. I am pleased to note that the Law Society has updated its claims procedures which are on the Law Society's website. I understand that work on the compensation fund claim forms and the guide to claimants is also in progress.

### **Comment on the Financial Status of the Compensation Fund**

The Chairman of the Regulation of Practice Committee, Chris Callan, stated 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 surplus (representing an excess of income over expenditure after taxation) of €265,354 for the year ended 31 December 2015, as compared with a surplus of €633,248 for the year ended 31 December 2014. The decrease of €367,894 in the surplus for 2015 as compared to 2014 is attributable to a decrease in 2015 of €819,326 in income, a decrease of €1,570,620 in expenditure (as compared with 2014), an increased adjustment of €1,094,574 in the fair value movements arising on revaluation of investments, together with an increase in taxation amounting*

to €24,614.”

### **Nature of Compensation Fund claims**

I have observed that the nature of Compensation Fund claims received over the last number of years has changed considerably from high media profile Compensation Fund claims in the past. Claims now seem to be more in relation to fees paid and the extent to which the Compensation 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. I have also noticed generally that claims, at least from those adjudicated in my Office, are often for smaller monies despite more voluminous than before. I have examined a number of Compensation Fund Claims matters this year that were refused based on consequential loss which is not the responsibility of the Law Society.

### **Regulation of Practice Committee's Remit**

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 is worth stating that dishonesty is beyond negligence. I think it is important to be transparent that grants from the Compensation Fund are made in relation to losses that were sustained in consequence of dishonesty on the part of a solicitor. As such, in considering claims, the Law Society's Regulation of Practice Committee is concerned only with acts or omissions that constitute dishonesty. The Compensation Fund is governed by Section 21 of the Solicitors Act 1960, as substituted by Section 29 of the Solicitors (Amendment) Act 1994, and amended by Section 16 of the Solicitors (Amendment) Act 2002, which provides that grants are made in respect of losses sustained "*in consequence of dishonesty*" on the part of a solicitor.

The Regulation of Practice Committee also polices the profession's compliance with the Solicitors Accounts Regulations and with aspects of the Solicitors Acts not assigned to other regulatory committees. Examination of this latter obligation falls outside the remit of my Office.

### **Administrative handling delays**

As can be seen in the sample matters presented in Section 6 above, I am dissatisfied with Financial Regulation's handling of my correspondence, additional to the respective matters in hand. In my office term to date, I have not experienced such delays or discourtesy which has surprised me immensely. It is also disappointing to have to comment through the fora of my Annual Report. This said, the Law Society are responding positively to the compensation fund administrative delays I highlighted within Section 6 above. I understand that a detailed action plan has been put in place to resolve the administrative areas for improvement to include the appointment of a claims supervisor, claims will be dealt with in order of receipt and that any correspondence from the Independent Adjudicator will be drawn to the attention of a senior executive.

Within my 9 letters to Financial Regulation, 6 of them included reference to administrative handling delays in investigating Compensation Fund Claims. I encourage communication with claimants and/or their solicitors if delays are likely to occur on an investigation. In recent times I specifically wrote that I would like the Law Society to alter their initiating correspondence with claimants, and/or their solicitors, to ensure that expectations are set in terms of how long a matter might take, which now duly happens. As referenced above, the Law Society are looking at the Financial Regulation's administrative handling delays proactively and are appointing a claims supervisor towards enhanced stakeholder service.

I do not believe individual claimant meetings should occur if the Secretariat is over-stretched to deliver on compensation fund claim matters in hand (see example matters in Section 6 above).

## Additional comments relating to Compensation Fund Claims

- If a potential claimant is looking for advice as to what steps, they should take to claim compensation they should consult with an independent solicitor. Where a solicitor is deceased, they should note that claims for compensation are subject to time limits and run off cover and do not last indefinitely. If they wish to obtain details of a solicitor's professional indemnity insurance they should contact the Practice Regulation Section in the Law Society.
- I think it is worth noting that the figure of €600 plus VAT that the Law Society can award for a solicitor completing a Compensation Fund Claim matter is a benchmark fee used by the Law Society's Regulation of Practice Committee in determining reimbursement of professional fees in matters where a client's deeds have to be stamped, the title registered, and the title certified for the lenders. The Committee will make such a grant where it is established that a claimant sustained a loss due to dishonesty on the part of a solicitor, and that the claimant sustained a loss by putting the solicitor in funds to discharge professional fees.
- Also, it is worth noting that lack of documentary evidence alleging a complaint cannot be investigated, similar to claims made on the Compensation Fund. It is up to the submitting party to ensure that they support their complaint or claim comprehensively.
- Claimants on the Compensation Fund must answer Law Society questions posed in order to process a claim investigation. It is worth reiterating that the Law Society does not pay penalties and interest due on any claim.
- Relating to Interest, I think it is also worth clarifying that pursuant to the Solicitors Accounts Regulations 2014, a solicitor shall "*in respect of client monies which are received by him or her or his or her firm for or an account of a client hold such client monies in a client account which is a deposit account and shall account to the client for interest thereon while so held*". Similarly, for clarification, a deposit account is defined in the Act as "*a deposit account or a savings account or a deposit receipt account maintained in the name of a solicitor or his or her firm at a bank and designated as a client account of that solicitor or his or her firm*".
- When a solicitor takes over another solicitor's files their due diligence should encapsulate that they are in sufficient funds to carry out the instructions. I understand that this can arise from time to time through the Compensation Fund.
- It may be worth stating that the onus is on the Law Society's Financial Regulation Section to ensure that a solicitor took money before a claim is processed.

Finally, and importantly, I believe some delays in correspondence have been excessive this year and not good customer service. In an effort to try and abate this problem, I wrote to the Financial Regulation Section that I believed in its initial correspondence with claimants, or their solicitors, they should set an expectation as to when it expects to bring the respective matter to the Regulation of Practice Committee to at least manage expectations against current workload. I understand that the Financial Regulation Section of the Law Society will now be writing to claimants or their solicitors to manage expectations in this regard.

## General comments/observations

- Whilst my complaint adjudication numbers are down slightly on last year, my work was more laborious this year due to a number of factors such as some matters were more complex; a considerable amount of complainants reverted to me a number of times after my decision; there were a number of particularly contentious complainants that required an appreciable amount of time; some research on the backgrounds of two complainants was required to assure myself on their bona fides particularly after telephone communications; and there was more administrative work in dealing with communications with other stakeholders.
- One solicitor wrote to me during the year stating *“As you can no doubt appreciate, irrespective of the merits or otherwise of any complaint made by a client to the Law Society, dealing with the complaint causes stress and worry for the solicitor concerned. When you review the file you will appreciate that responding to the complainant’s complaint involved significant work and submission of a significant body of documentation to the Law Society. I complied with the recommendations in every respect.”* Some solicitors go the extra mile to ensure their voice is equally heard. I reiterate from my Foreword above where I say *“As the Independent Adjudicator of the Law Society of Ireland 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.”* This applies to all matters, and with all parties.
- The breakdown of complaint matters that were before the Independent Adjudicator this year is interesting primarily because of the changed diversification. For example, conveyancing related complaints were typically high as were probate, yet both have been topped in my statistics by civil and family related matters. Within the Law Society’s statistics, it is fair to say that most undertaking complaints relate to conveyancing, which are outside the remit of my Office as mentioned on page 42 above. I am aware that the Law Society records discipline when logging complaints about fees. It is appreciated that the breakdown of matters could be superfluous information yet is data of interest to the Independent Adjudicator.
- During the year the Independent Adjudicator wrote to the Law Society about some administrative matters such as the omission of attachments, the use of what I believed to be an inappropriate exclamation mark in correspondence, return of correspondence requested to a complainant, oversight of the wrong email placed on a file, and a draft Law Society report sent to a solicitor and complainant saying draft when it was a final report.
- The Law Society, and by default the Office of the Independent Adjudicator, is accepted to fall within the schedule of regulated bodies within the Ombudsman (Amendment) Act 2012. A number of complainants have referred their matters to the Office of the Ombudsman after the Independent Adjudicator’s examination and decision. It is noted such referrals are complainants’, and indeed claimants’, rights. The thought has pondered the Independent Adjudicator’s mind many times about how many rights of review a complainant or claimant can ascertain and whether this is fair and just. To put this in context, currently for example in a misconduct complaint matter, a complainant can go to the Law Society for an investigation into their matter, has a right to refer the handling of their matter for examination by the Independent Adjudicator, has a right to refer their aggregate matter to the Solicitors Disciplinary Tribunal and a right to go to the Office of the Ombudsman. The Independent Adjudicator appreciates that the Solicitors Regulatory Authority will bring about change in this structure. To date, the Office of the Ombudsman has not overturned any decision of the Independent Adjudicator or the Law Society.

- Since taking office, I have conducted the same approach for conducting my examination of files in which I handwrite narrative notes on matters. This is to validate my thinking and reasoning, and also due to the volume of matters that I examine to ensure I appropriately recall the content should follow-up communications ensue. It should be noted that my review of files is based on the Law Society's files which I ascertain and return upon my adjudication. Such notes are now disclosable to the Office of the Ombudsman for file requisitions.
- I noted that there were two Gazette articles: in March 2016 (page 35) setting out an Overview of the Legal Services Regulatory Act and in April 2016 (page 42) on the new complaints and disciplinary system. These were helpful for the profession.
- I believe it is worth referencing that non-compliance with requests made under the data information legislation is not for the Law Society to investigate.
- Sometimes there is little to be achieved, and unwarranted expense for the Law Society, to pursue a matter where the solicitor has already been struck off the Roll of Solicitors.
- The Law Society does not investigate complaints received by email unless an original signed complaint is submitted. The Independent Adjudicator does not examine matters received by email. Procedures must be followed as the Law Society's files are subject to my examination, and my files are subject to the Ombudsman's review.
- When examining matters that may relate to a solicitor's alleged tardiness, I am equally cognisant that clients can sometimes be slow giving instructions to their solicitor and then expect turnaround actions to be fulfilled.
- 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 questioned whether a practising certificate should be issued in full while levies remain unpaid. I understand that the Law Society continues to examine all options open to it in circumstances where a levy imposed by a committee remains unpaid. Legal opinion is to the effect that the withholding of a practising certificate or some form of conditional issuance would not be lawful in circumstances where the Solicitors Acts provide for alternative legal mechanisms of collection, for example as a liquidated debt or under section 43 of the Civil Law (Miscellaneous Provisions) Act 2008. I am further advised that a system is being established by the Law Society to enhance its capacity to capture ongoing costs and will be rolled out when all information is gathered.
- Practices are inspected not only by investigating accountants but also by investigating solicitors as appropriate, and there continues to be, from my random reviews, a good correlation of data between various Law Society sections. This is crucial to ensure maximum efficiency of the Regulation Department. Also the files reviewed in my random reviews were consistent with my observations of committees and matters coming to my Office.
- The Law Society must ensure that telephone calls with solicitors, complainants or claimants are noted to the respective files.
- It is important for complainants to remember the Law Society's function in addressing complaints of professional misconduct; it is not a court and cannot make the type of orders some complainants expect.

- Differences of opinion arise frequently between a solicitor and their client. The Law Society cannot reconcile two different versions of events when facts differ between the complainant and the solicitor. I also observed that complainants can sometimes be economical with the truth and facts in their complaint to the Law Society.
- I have attended in an observing capacity before the Solicitors Disciplinary Tribunal and President of the High Court. I have been observing on some of the same solicitors' matters for a very long time. I am pleased to see the President's proactivity, which to my lay mind, has an impact on the profession, let alone a myriad of resourcing costs incurred by the professional body.
- It is worth noting that solicitor members of Law Society committees, and of the Solicitors Disciplinary Tribunal, give of their time voluntarily to the profession. I have scant regard for solicitors who are dismissive of their regulatory body and for the often unavoidable costs that can result thereof. Linked to this, it is simply unacceptable for a solicitor not to appear when listed to do so before a hearing or committee meeting.
- Sometimes complainants and claimants expect the Law Society, and indeed my Office, 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.
- I believe it is worth pointing out, for all parties, reappraisal of what a client can expect from a solicitor as:
  - every client is entitled to receive a prompt and efficient professional service from his solicitor and can make a complaint to the Law Society if he feels he has not received the appropriate level of service;
  - a client is entitled to be informed that the solicitor dealing with the file is unable to continue to provide such service and who in the office will be dealing with the file, either on a temporary or permanent basis;
  - the client is also entitled to be told the reason for such delays if there are any significant delays.

## Section 7

### SUMMARY OF STATISTICS

#### Summation

- In aggregate complaint numbers for the Independent Adjudicator, Complaints and Client Relations Section and Financial Regulation Section are all reasonably comparable to the 2012/2013 reporting year with increases or decreases in the intervening periods.

#### Independent Adjudicator statistics

- In this reporting year 96 complaints were adjudicated (139 last year) and 24 compensation fund claims (25 last year) yet the complexity and workload was higher this year to my prior adjudicative years. Last year saw the highest volume of complaints and compensation fund claims adjudicated by this Office.

#### The Law Society's Complaints and Client Relations statistics

- Of the new 1516 admissible complaints (1162 last year), 829 related to undertakings (475 last year) leaving 687 for all other new complaints. There were exactly 687 new admissible complaints last year also excluding undertakings. It is noted that the reason cited by the Law Society for increased undertakings is attributable to delays on the part of some banks in bringing forward historic cases rather than indicating any new deterioration in standards in the profession. It is surprising why these undertaking complaints have taken so long to surface considering some of the banks have been extensively involved in undertakings over many years. I should add that from my oversight I believe that there has not been a deterioration in standards in the profession.
- Referrals from the Complaints and Client Relations Committee to the Solicitors Disciplinary Tribunal increased this year to 140 (from 64 last year and 319 the year before), 6 of which were complaints that opened during 1 September 2015 to 31 August 2016 with the remainder being complaints that were opened prior to 1 September 2015.
- Complaints being referred to the Complaints and Client Relations Committee are down considerably again this year to 198, from 268 last year and 382 the year before. This could be perceived to a strong Secretariat.

#### The Law Society's Compensation Fund Claim statistics

- There was an 83% reduction in claims received by the Financial Regulation Section of the Law Society in 2015 (255) to 2014 (467). The Independent Adjudicator therefore questions why the Financial Regulation Department is so stretched in responding to correspondence considering the decreasing number of claims. It is also disappointing to have to comment through the fora of my Annual Report on this matter.
- Key points relating to the Compensation Fund to note for the six months to 30 June 2016 are:
  - 84 claims received down from 140 for the same six-month period in 2014;
  - valid claims increased to €1,376,533 from €517,587 for the same six-month period in 2014;
  - payments from the Compensation Fund increased to €340,314 from €10,386 for the same six-month period in 2014;
  - higher value claims were under investigation amounting to €1,036,219 from €507,217 for the same six-month period in 2014.
- Despite the above six month statistics to 30 June 2016, the Compensation Fund paid out 13 times less in 2015 than it did in 2014 amounting to €248,843 and €3,252,331 respectively.

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