

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



Year ending 30 September 2019

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 2019 -

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

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FOREWORD

The role of the Independent Adjudicator of the Law Society of Ireland 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, 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.

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 professionally develop my skills to deliver high quality customer service in my role.

As an overview of my adjudicative year: 102 adjudications were completed (127 last year during which one person had 11 complaints), 8 inadmissible complaints and Compensation Fund claim applications were handled, 6 requisitions and handling of requests from the Ombudsman, 2 random reviews of files were conducted, along with 12 committee meeting attendances in an observing capacity.

I wish the Legal Services Regulatory Authority success in its inaugural year. The Law Society continues to deal with complaints made to it before 7 October 2019 and will finish off any complaints made up to this date. Similar applies to the Independent Adjudicator's handling of complaints. 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.

Finally, I acknowledge my professional relationship with the Law Society of Ireland. Whilst I am independent and with clear boundaries, I would like to commend the work of the Complaints and Client Relations Section, led by Ms Linda Kirwan, and the Financial Regulation Section 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 I observe on within my remit for facilitating my observing on their respective committees on an ongoing basis throughout the year, and for presiding over increasingly fair and reasoned decisions.



Carol Ann Casey
Independent Adjudicator of the Law Society

16 December 2019

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, D02 X361 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. In addition, the Law Society is permitted to investigate complaints from non-clients in relation to misconduct.

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;
- Unless there are 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.

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 the Committee. 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. The focus of the Committee, where appropriate, is on resolution.

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.

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 of Solicitors 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 is required to maintain the Compensation Fund 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 right of a client to go directly to the Solicitors Disciplinary Tribunal ceased on 7 October 2019.

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 Regulatory Authority

Part 6 of the Legal Services Regulation Act became effective on 7 October 2019. The Legal Services Regulation Act 2015 supersedes the complaints remit of the office of the Independent Adjudicator of the Law Society. The Law Society continues to deal with complaints made to it before 7 October 2019 and the Act provides that the Society will finish off any complaints made up to this date. Similar applies to the Independent Adjudicator's handling of complaints.

The Legal Services Regulation Act 2015 established the Legal Services Regulatory Authority. Its remit includes 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 Act is available on <http://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/pdf> and details of the Legal Services Regulatory Authority can be found on <http://www.lsr.ie>.

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 Ombudsman

Members of the public who are dissatisfied with the adjudicative decision of the Independent Adjudicator of the Law Society may refer their matter to the Ombudsman. The role of the Ombudsman is not meant to be an appellate body but rather can examine how the Law Society handles (or is perceived to handle) complaints or compensation fund claims made by members of the public.

Complaint and Compensation Fund Escalation Process Diagram

COMPLAINT ESCALATION PROCESS ONCE INITIATED TO THE LAW SOCIETY (UP TO 7 OCTOBER 2019)

(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 |
|---|--|

The Ombudsman

The High Court

COMPENSATION FUND CLAIM ESCALATION PROCESS ONCE INITIATED TO THE LAW SOCIETY (ONGOING)

(from top to bottom)

Financial Regulation Section
Regulation Department
The Law Society

Regulation of Practice Committee

Independent Adjudicator of the
Law Society

The Ombudsman

The High Court

Section 3

STATISTICS FROM COMPLAINTS AND CLIENT RELATIONS SECTION OF THE REGULATION DEPARTMENT OF THE LAW SOCIETY, 2017/2019

The total number of new complaints received was 1274 (1113 last year and 1407 previous year), of which 306 (253 last year and 261 the previous year) were deemed inadmissible, leaving a balance of 968 (860 last year and 1146 previous year) admissible complaints. 754 (875 last year and 1039 previous year) complaints were carried forward, making a total of 1,722 (1735 last year and 2185 previous year) complaints handled by the Complaints Section during the year.

149 (167 last year) complaints, many of which were made against the same solicitors, were referred to the Complaints and Client Relations Committee.

Complaints alleging misconduct are up by 81 to 491 from last year reflecting modest increases in most categories. Complaints about solicitors' undertakings increased slightly this year to 174 from 153, reversing the downward trend of the preceding 2 years. Complaints alleging excessive fees and inadequate professional services were at a similar level to last year.

104 of the 968 admissible complaints made last year (75 of the 860) were made by solicitors against their colleagues.

The Complaints and Client Relations Section opened a further 729 files (826 last year), consisting of a mix of queries, requests for information from members of the public and the profession, potential complaints and records of direct applications made to the Disciplinary Tribunal by members of the public.

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

| | Closed | Under Investigation | Total |
|---------------------------------------|---------------|--------------------------------|--------------|
| Complaints opened in 18/19 | 583 | 385 | 968 |
| Last year | | | |
| Complaints carried forward | 481 | 273 | 754 |
| Last year | | | |
| Total | 1064 | 658 | 1722 |
| Last year | | | |

*Complaints and Client Relations

The following 8 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
- Completion of complaint cases
- Completion times of complaints handled by the Law Society
- Source of complaints

Breakdown of complaints

| | 18/19 | 17/18 | 16/17 |
|-------------------------|--------------|--------------|--------------|
| Admissible Complaints | 968 | 860 | 1146 |
| Inadmissible Complaints | 306 | 253 | 261 |
| Total | 1274 | 1113 | 1407 |

| | | | |
|---|------------|------------|-------------|
| Allegations of Excessive fees | 100 | 94 | 95 |
| Allegations of Inadequate Professional Services | 377 | 356 | 360 |
| Allegations of Misconduct | 491 | 410 | 691 |
| Total | 968 | 860 | 1146 |

Excessive fees

Complaints alleging overcharging were broken down as follows:

| | 18/19 | 17/18 | 16/17 |
|--------------|--------------|--------------|--------------|
| Conveyancing | 12 | 14 | 11 |
| Probate | 21 | 14 | 14 |
| Litigation | 36 | 36 | 34 |
| Matrimonial | 22 | 19 | 28 |
| Other | 9 | 11 | 8 |
| Total | 100 | 94 | 95 |

Inadequate professional services

Complaints alleging inadequate professional services were broken down as follows:

| | 18/19 | 17/18 | 16/17 |
|------------------------|--------------|--------------|--------------|
| Delay | 125 | 95 | 139 |
| Failure to communicate | 98 | 94 | 83 |
| Shoddy Work | 133 | 138 | 98 |
| Other | 21 | 29 | 40 |
| Total | 377 | 356 | 360 |

Misconduct

Complaints alleging misconduct were broken down as follows:

| | 18/19 | 17/18 | 16/17 |
|-------------------------|--------------|--------------|--------------|
| Delay | 3 | 2 | 9 |
| Failure to communicate | 38 | 33 | 21 |
| Failure to hand over | 111 | 97 | 92 |
| Failure to account | 69 | 41 | 51 |
| Undertaking | 174 | 153 | 404 |
| Conflict of interest | 14 | 12 | 16 |
| Dishonesty or Deception | 11 | 8 | 13 |
| Witnesses Expenses | 1 | - | 3 |
| Other | 49 | 46 | 55 |
| Counsels' fees | 21 | 18 | 27 |
| Total | 491 | 410 | 691 |

Complaints and Client Relations Committee statistics

| | 18/19 | 17/18 | 16/17 |
|-------------------------------------|--------------------------------|--------------------------------|--------------------|
| Number of meetings | 18 (+1 special, +1 plenary) | 19 (+3 special, +1 plenary) | 19 (+3 special) |
| Number of new matters referred | 149 | 167 | 189 |
| Complainants attending | 7 | 9 | 5 |
| Costs levied | €7,700 | €14,050 | €17,200 |
| Compensation orders | 3 | 3 | 0 |
| Reprimands | 2 | 2 | 0 |
| Referrals to Disciplinary Tribunal* | 8* | 23 | 28 |

* Includes complaints brought forward

The Committee considered applications for practising certificates from 2 solicitors and directed that in both cases that the solicitors' practising certificate issue subject to conditions.

Completion of complaint cases

| | 18/19 | 17/18 | 16/17 |
|---|------------|------------|------------|
| Complaints Resolved | 213 | 209 | 342 |
| No grounds for complaint but assistance provided | 71 | 47 | 67 |
| Withdrawn | 51 | 35 | 61 |
| Abandoned | 10 | 12 | 9 |
| Rejected | 181 | 206 | 211 |
| Recommendation made | 4 | 12 | 14 |
| Direction made | 1 | 4 | 2 |
| Referred to Solicitors Disciplinary Tribunal | 3 | 0 | 4 |
| Other | 49 | 26 | 29 |
| Total | 583 | 551 | 739 |

Completion times of complaints handled by the Law Society

The average completion time for 2018/2019 complaints was 89.91 days

The average completion time for 2017/2018 complaints was 80.17 days

The average completion time for 2016/2017 complaints was 86.13 days

| | 18/19 | 17/18 | 16/17 |
|---|-----------------|-----------------|-----------------|
| Complaints Closed in less than 30 days | 155=26.59% | 157=28.49% | 191=25.85% |
| Complaints Closed in less than 60 days | 105=18.01% | 129=23.41% | 152=20.57% |
| Complaints Closed in less than 90 days | 91=15.61% | 79=14.34% | 119=16.10% |
| Complaints closed in less than 180 days | 148=25.39% | 125=22.69% | 193=26.12% |
| Other | 84=14.41% | 61=11.07% | 84=11% |
| Total complaints closed | 583=100% | 551=100% | 739=100% |

Source of complaints

| | 18/19 | 17/18 | 16/17 |
|--|--------------|--------------|--------------|
| Complaints made by Solicitors | 104 | 75 | 112 |
| Complaints made by parties other than solicitors | 864 | 785 | 1034 |
| Total | 968 | 860 | 1146 |

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:

Half year from 1 January to 30 June 2019

74 claims received
€3,686,753.18 claimed
€1,021,956.26 paid

Calendar year 2018

168 claims received
€8,131,998.20 claimed
€1,868,173.97 paid

Calendar year 2017

178 claims received
€2,311,546.32 claimed
€1,392,998.40 paid

Calendar year 2016

145 claims received
€4,206,407.31 claimed
€1,553,045.97 paid

The net assets of the fund are valued at €23 million, as at 30 June 2019. The annual contribution to the fund was €720 per solicitor for 2019. This was reduced from €760 in 2018, which was possible due to the steady stewardship of funds. Insurance cover for €50 million in excess of €5 million is in place for the year ending 31 December 2019.

Regulation of Practice activities during the year

The Law Society's investigating accountants conducted approximately 375 investigations of practices throughout the year.

The Regulation of Practice Committee comprises of 4 general divisions plus a Compensation Fund Claims division, an advertising regulations division, an investment sub-committee and plenary sessions. During the year the Committee met 20 times for 17 scheduled and 3 special meetings.

Arising from these meetings, the committee decided to:

- levy contributions amounting to €8,750 towards the cost of investigations;
- refer 23 solicitors to the Solicitors Disciplinary Tribunal (17 of these cases related to late filing of reporting accountants' reports); and
- apply to the High Court pursuant to the Solicitors Acts in 4 cases.

A judicial review challenged a decision to reject an application for compensation from the Compensation Fund. This was successfully resisted with costs. The judge ruled that the Committee's deliberations and decision were sound as to substance and procedure.

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 2018 to 30 September 2019. 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 116 new formal written requisitions to examine matters (138 last year). These are broken down as follows:

- **94** complaint referrals were examined and adjudicated (114, 141 and 96 for respective recent previous years);
- **8** Compensation Fund claim referrals were examined and adjudicated (13, 12 and 24 for respective recent previous years). (These statistics do not fall within the Law Society's statistics mentioned in section 4 of this Annual Report); and
- **8** complaint referrals were inadmissible for varying reasons (11, 9 and 6 for respective recent previous years). Such reasons include 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, and 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).

The Independent Adjudicator received 6 requisitions from the Ombudsman (16 and 11 for respective recent previous years). 4 of the 6 related to complaints and 2 of the 6 related to a compensation fund claim matter. So far, 4 of the 6 referrals have been concluded by the Ombudsman. The Ombudsman has not overturned any decision made by the Independent Adjudicator to date.

In addition, the Independent Adjudicator 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. She also observed on matters before the President of the High Court and the Solicitors Disciplinary Tribunal. Further she conducted 2 random reviews of complaints and financial regulation files in the Law Society during the year. Such aggregate attendances and reviews help her to correlate and validate chains of matters that initiate before the Law Society.

Breakdown of complaint related matters

Of the 94 complaints that were examined by the Independent Adjudicator this year, 5 had been before the Complaints and Client Relations Committee for direction (14 last year, 7 year before).

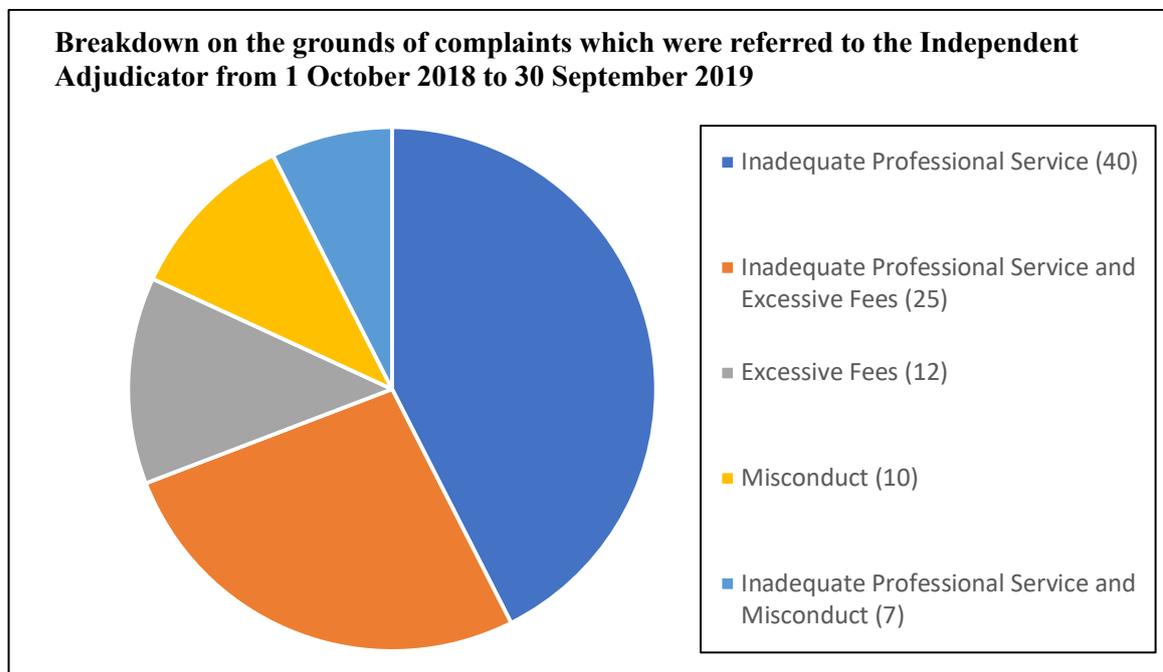
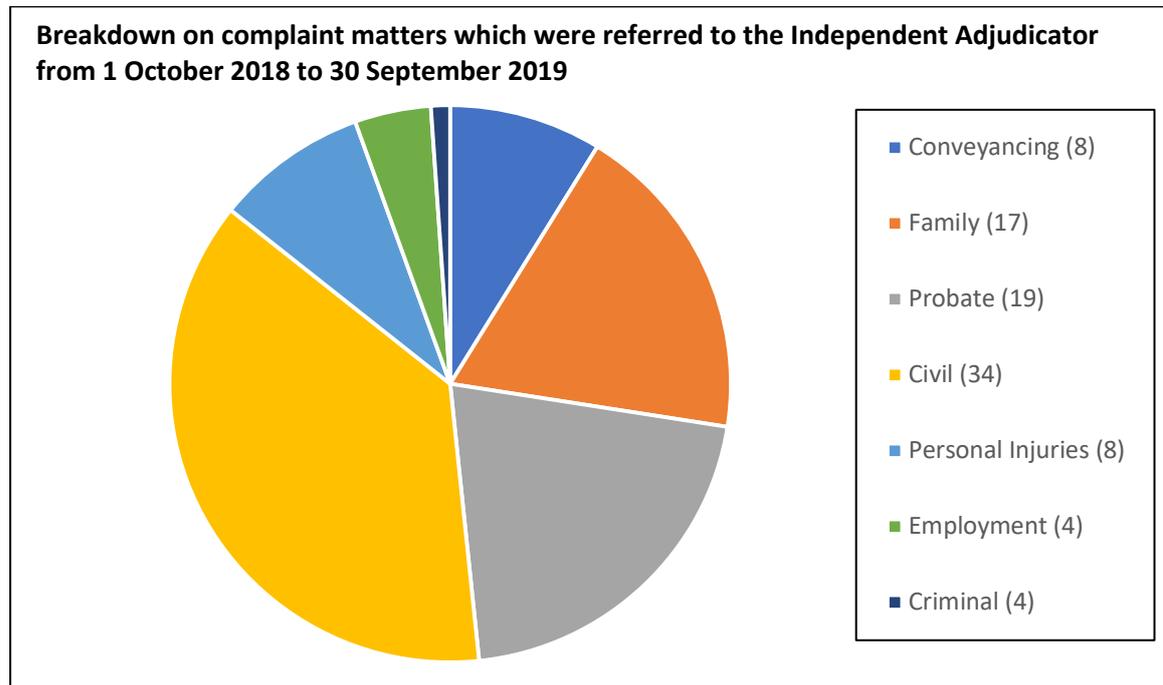
The Independent Adjudicator suggested that one matter be brought before the Complaints and Client Relations Committee during the year;

4 of the 6 requisitions made by the Ombudsman are complaint related matters, 2 of which are closed as not upheld with the remaining 2 under investigation;

15 of the 94 complaints examined by the Independent Adjudicator prompted correspondence from the Independent Adjudicator to the Complaints and Client Relations Section (18 last year, 10 year before). Of the letters to the Complaints and Client Relations Section during the year the matters centred around the Independent Adjudicator's opinion on:

- a complainant was not given the opportunity by the Law Society to comment on specific letters when sent to her;
- a view that insufficient reasons for a decision were provided to a complainant;
- closing letter to complainant on a number of matters did not advise opportunity to refer her matter to Independent Adjudicator;
- why Law Society did not advise a managing partner that a complaint against a solicitor in his practice had been sent;
- an observation about a solicitor's letterhead;
- supporting reasons for decision were not afforded to complainants in two matters, for example "The Committee considered the papers submitted to the Society and did not uphold your complaint";
- numerous letters on one matter, which is ongoing through no fault of the Law Society and on which it is regularly keeping the Independent Adjudicator appraised;
- on two matters the Law Society should have concluded its 'draft file reviews' as 'file reviews';
- whilst the Independent Adjudicator understands that a solicitor's professional standing could be at stake in a complaint investigation, she thinks both parties should be afforded the opportunity to comment on factual inaccuracies, not just the solicitor, for transparency. She also expressed that response with comments could be requested within a specific timeframe;
- enclosures not attached to complainants in correspondence from the Law Society;
- the Independent Adjudicator's view that where a file subject matter is deemed 'sensitive' within data protection legislation, such as in family or personal injury related matters, then explicit consent should specifically be ascertained by the Law Society at the point of retrieving the solicitor's original file;
- the eligibility of a file to come before the Independent Adjudicator when endorsed by a solicitor;
- delay in the Law Society's correspondence to a complainant;
- correspondence post a file request from the Ombudsman;
- where a file was in abeyance, the Independent Adjudicator proposed that the matter be put before the Complaints and Client Relations Committee as the Law Society had proposed in earlier course;
- where it appeared to the Independent Adjudicator that an investigation commenced outside the Law Society's normal timeframe to investigate a matter considering the conclusion of a solicitor's services;
- a closed file did not investigate and decide on all aspects of the complaint and the Independent Adjudicator sought a more fulsome response on an outstanding matter in the complaint; and
- a complaint form was not signed prior to the Law Society initiating its investigation.

Breakdown of complaints matters and categories



In addition to the 94 complaint matters adjudicated, 8 matters were ineligible/inadmissible for my examination of their contents for the following reasons:

- matters were under ongoing investigation with the Law Society;
- matter had been previously examined by the Independent Adjudicator and complainant did not advise same in their subsequent referral;
- did not revert to the Independent Adjudicator; and
- matter was not for the Law Society or Independent Adjudicator to investigate or examine.

The volume of enquiry calls and emails 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 their use of 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.

8 Compensation Fund claim matters were referred to my office for adjudication (13 last year, 12 year before).

3 of the 8 claims were made directly by claimants, the remaining 5 were made by claimants' solicitors.

Of the 8 matters, the Independent Adjudicator wrote to the Financial Regulation Section of the Regulation Department on 2 matters for the following reasons:

- document dissemination to which the Independent Adjudicator was advised the matter was referred to the Law Society's Administration and Risk Team and they made decisions based on the correspondence; and
- delays in reverting to a claimant.

1 of the 8 compensation fund claims examined by the Independent Adjudicator has been referred by claimants to the Ombudsman for further enquiry and closed as not upheld (a further requisition by the Ombudsman had not been before the Independent Adjudicator this year).

Breakdown of Ombudsman referral matters to the Independent Adjudicator

8 matters were requisitioned by the Ombudsman this year. 4 of the 8 matters had been decided by both the Law Society's Complaints and Client Relations Section and the Independent Adjudicator.

2 of the 8 matters had been decided by both the Law Society's Financial Regulation Section and Regulation of Practice Committee and the Independent Adjudicator; 1 of the 2 had not been before the Independent Adjudicator and had gone directly to the Ombudsman inappropriately.

No matters to date have been overturned by the Ombudsman.

Section 6

EXAMPLES OF ADJUDICATED COMPLAINTS AND COMPENSATION FUND CLAIM MATTERS

Example complaint referrals 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: Conveyancing – Inadequate Professional Services

This matter related to the handling of a conveyance whereby the complainant believed he was defrauded his booking deposit. This he believed was a result of the solicitors' actions and lack of IT security infrastructure as their IT system was hacked and he lost his deposit. The firm were adamant that they would neither cover any misappropriation of client moneys from their firms' own funds or trigger their PII. The Law Society deemed that it was not a matter for the Complaints Section of the Law Society as it did not fall into the realm of an inadequate professional service or professional misconduct related complaint, yet it afforded him the right to refer his matter to the Head of Financial Regulation. Whilst this met the Independent Adjudicator's satisfaction, she had noted that the complainant alleged that the solicitor "verbally offers a payment of €10,000 if I sign certain documents supplied by his firm...". She enquired of the Society and proposed that a follow-up email it wrote to the Head of Financial Regulation is sent to ensure a suitable communication was disseminated, as appropriate.

Matter 2: Civil - Inadequate Professional Services and Misconduct

The complainant said he employed a solicitor to file for bankruptcy in April 2015 for which he paid in full. The Society initiated its investigation through that firm yet the solicitor in question had left the firm. The firm tried to resolve the matter themselves with the Law Society, which was not to the satisfaction of the complainant. The Independent Adjudicator asked the Law Society for its reasons why it only contacted the firm and why it did not contact the solicitor directly who was named as the responding solicitor on two complaint forms that had been submitted to the Society. The Law Society took the view that the complaint should be put to the solicitor who moved from the firm and to whom the complainant paid the fee as the solicitor that he initially instructed. The matter remains ongoing.

Matter 3: Family – Inadequate Professional Services and Excessive Fees

The complainant believed she endured a traumatic experience in her divorce matter which was led by the solicitor. Subsequent to the Independent Adjudicator's decision the complainant took issue with correspondence issued by the Independent Adjudicator that included her decision on the matter. The complainant used two different names in her signed complaint and email to the Independent Adjudicator. The adjudicative correspondence was sent to the complainant to the name and address on her posted signed letter that sought a review of her matter. The occupier of that property address opened her post, telephoned the office of the Independent Adjudicator and asked that no further correspondence be sent to that address. The Independent Adjudicator emailed the complainant, who

expressed dissatisfaction with her that correspondence was posted to the wrong postal address. The Independent Adjudicator scanned a copy of her letter to the complainant confirming the letter was sent to the address requisitioned. The complainant subsequently apologised to the Independent Adjudicator.

Matter 4: Conveyancing – Professional Misconduct

The complainant inherited a property that he then wished to sell and on which issues arose. The Law Society and the Independent Adjudicator did not uphold his complaint on the basis that there was no evidence of alleged misconduct on the part of the solicitor. The Independent Adjudicator noted that the solicitor was not informed that the Law Society had considered this matter until he received a letter from the Independent Adjudicator. She also noted that the complainant was not afforded the right to refer his complaint to the Independent Adjudicator once the Law Society had made its decision. The Independent Adjudicator wrote to the Law Society on both points. The solicitor telephoned the Independent Adjudicator upon receipt of her letter. His concern related to him not being aware that the matter was being considered by the Law Society in the first instance and whether his name was on record.

Matter 5: Civil – Inadequate Professional Services

This matter has been to the Independent Adjudicator on two occasions, and to the Ombudsman and Garda Ombudsman. The complainant believed new evidence was presented which did not appear to be the case and was not upheld by any body the matter was referred to. The reason it is referenced as an exemplar matter the Independent Adjudicator reviewed is due to the threatening and impolite communications by the complainant to her. The Independent Adjudicator remains resolute to her remit and handling of communications in an appropriate and respectful manner, despite that not always being reciprocated.

Example Compensation Fund referrals 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:

Matter A: Conveyancing

This matter had 9 compensation fund claims against it. The claimant alleged that the solicitor was dishonest and an embezzler leading to loss of her property. This was a voluminous matter and the Independent Adjudicator was satisfied with the Law Society's handling of it. However, she noted a human error in that a confidential internal document that also contained data relating to other clients of the solicitor was inadvertently sent to the solicitor. The Law Society had promptly contacted the solicitor to shred this document yet he had unfortunately sent it to his client. The Independent Adjudicator wrote to the Law Society to ask if any action had been taken to notify the other parties whose name was disseminated. She was also informed that the information disseminated referenced two different clients but this did not include address information for them. She was further advised that the Administration and Risk Executive was immediately informed and copied with the solicitor's reply on the matter so they were aware and made their decisions based on this. The investigator believed it was then not a matter for the Financial Regulation Department once the Administration and

Risk Team had been provided with the information sought. The Independent Adjudicator noted that this predated the GDPR implementation date. The Law Society further clarified to the Adjudicator that the recipient of the documentation agreed to shred the documentation.

Matter B:

Law Society reference: CF.5938/IF

The claimants are joint property owners. They were unsure if a purchase completed as they believed that the solicitor may not have stamped the deeds or registered ownership of the properties. They submitted a claim on the Compensation Fund in November 2014. There were considerable delays in the early years on handling this matter yet then the matter progressed in a timely manner. The Law Society advised on a number of occasions that the Committee considered the costs of professional fees plus VAT to be “loss consequent on the client of a solicitor being deprived of the amount or value of the loss sustained”. The reason why this case study is included is to highlight that the delays the Independent Adjudicator referenced in the past has not been a trend in what she reviews in present times.

Section 7

OBSERVATIONS ON COMMITTEE ATTENDANCES AND RANDOM REVIEWS

- 7.1 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.
- 7.2 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 subsequently advised my opinion on them, as applicable, to the relevant Section.
- 7.3 As advised in the previous section of this Annual Report, 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. I do not deliberate or participate in matters before committees that I observe at.
- 7.4 During the year I observed committees engage on rich conversation regarding matters such as the consistency of levying costs on solicitors for non-attendance, whether the committee is too lenient on complacency of attendances/non-attendances, and whether a solicitor in question made best endeavours on a matter. These discussions were robust, challenging and relevant to the remit of the respective committee.
- 7.5 The Law Society can provide solicitors who are requested to attend before a committee with the names of colleagues who are available to assist them in preparing for and presenting before committees. Some solicitors may be true to previous form and need such a specialised solicitor to assist them to progress the complaints. Solicitors can often be remiss to appreciate that at the other end there is a complainant seeking conclusion.
- 7.6 When a solicitor is notified to attend a Law Society committee meeting they should take the requisition to attend seriously, and attend.
- 7.7 Despite all the Law Society communications, it remains surprising that correspondence and documentation often arrive on the day of a meeting from solicitors, or their representatives. Simply put this is disrespectful to the Society, its secretariat and committee members, and may not permit fair perusal of its contents instantaneously.
- 7.8 The Complaints and Client Relations Committee is many things yet it is not a court of appeal on a matter nor an advisory committee as some complainants may be inclined to think and it has to stay within its remit. I like when I see a chairman of a committee taking the time to explain to a complainant the committee's role in trying to resolve a matter.

- 7.9 It is noted that some clients can be very difficult and regrettably can stalk solicitors unfairly and inappropriately.
- 7.10 The importance of giving reasons for decisions is both natural justice and key to good complaint management. Such reasons could be that the complaint did not disclose evidence of inadequate professional service, misconduct or excessive fees explaining why. The Ombudsman likes to see expressed reasons given for decisions made also.
- 7.11 Where a committee directs a reply within 14 days it means exactly that and solicitors should not take such a direction lightly. Such replies should be fulsome in content providing evidence of measurable progress also.
- 7.12 By the nature of the process, a complainant is participating with the investigation; however the solicitor does not always willingly co-operate and the process of interviewing a solicitor may assist with securing their cooperation.
- 7.13 When a solicitor attends before a committee meeting he or she hears the decision in real time. I am satisfied from the many matters I have examined that the decision is nearly always communicated promptly after a meeting by the Secretariat to both the complainant and the solicitor.
- 7.14 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.
- 7.15 The Law Society can inform attending solicitors before Complaints and Client Relations Committee meetings that it exercises the statutory powers of the Society in respect of complaints. The secretary to a committee assists the committee in the discharge of its functions and reports to it. The secretary does not exercise the statutory powers to the committee and it would be entirely inappropriate for the secretary to seek to interfere or challenge its views.
- 7.16 It is pleasing to regularly hear committee lay members say that they are there to protect the client. I think this provides a balanced and objective non-legal perspective.
- 7.17 Matters before a committee will generally adjourn if late papers are submitted, particularly if voluminous. Timelines are provided for submitting paperwork and they need to be respected so committee members can be duly prepared for deciding on a matter.
- 7.18 The Complaints and Client Relations Committee decided that following an investigation of a complaint where a solicitor had failed to respond in a timely fashion, it will consider whether to require payment of a contribution towards the costs incurred in consequence of the solicitor's refusal, or failure to communicate.
- 7.19 I wish to acknowledge the stellar contribution of the lay members of the respective Law Society committees on which I observe whom I believe enhance the vigorous decision-making process. I also place high regard on the solicitor members who give voluntary extensive time to their professional body.

Section 8

OBSERVATIONS ON COMPLAINT HANDLING

Observations on the Complaints and Client Relations Section's statistics this year

- 8.1 New admissible complaints received by the Law Society have increased since last year to 968 from 860 last year
- 8.2 Of the new 968 admissible complaints, 491 related to misconduct of which 174 related to undertakings (complaints relating to misconduct was 410 last year of which 153 related to undertakings). This shows that complaints about solicitors' undertakings, despite being slightly higher than last year, are still at a very low scale compared to that of over 10 years' ago which is positive.
- 8.3 There were 8 referrals from the Complaints and Client Relations Committee to the Solicitors Disciplinary Tribunal down from 23 last year.
- 8.4 Of the 377 inadequate professional services complaints this year (356 last year), 125 related to delay (95 last year).
- 8.5 Complaints being referred to the Complaints and Client Relations Committee have reduced this year at 149 to 167 last year.
- 8.6 The average case completion time by the Complaints and Client Relations Section was 89.91 days, increasing from 80.17 last years. Cognisance is taken of the Law Society's resource planning and allocation for the Legal Services Regulatory Authority.
- 8.7 104 of the 968 complaints were made by solicitors against their colleagues (75 of 860 last year).
- 8.8 The costs levied by the Complaints and Client Relations Committee reduced considerably to €7,700 from €14,050 last year which continues to show a downward trend over recent years.
- 8.9 Referrals by the Complaints and Client Relations Committee to the Solicitors Disciplinary Tribunal are down considerably again this year to 8 from 23 last year (140 three years ago).
- 8.10 The committee met in plenary session or in divisions 20 times during the year, and dealt with 149 new matters.

Views on or relating to complaint handling this year

- 8.11 Following a summary set out in a complaint form there is a conflict of evidence between a complainant's version of what occurred with regard to his/her complaints and the solicitor's version, the Law Society will not be in a position to reconcile two different versions of events.
- 8.12 Complainants should be aware that taking legal action against a solicitor is quite separate and distinct from making a complaint to the Law Society about the conduct of a solicitor. Making a

complaint would not stop the statute of limitations from running in relation to the institution of legal proceedings.

- 8.13 In section 2.2 of the Guide to Professional Conduct for Solicitors (page 10) there is a section on the proper standard of legal services in which "A solicitor should use his utmost skill and care in acting on behalf of his client. The standard of care expected is that of a reasonably careful and skilful solicitor who has the relevant experience. The standard should also take into account the fact that the relationship of a solicitor and client is a fiduciary relationship". Under Section 8 of the Solicitors (Amendment) Act 1994, the Law Society has the power to impose sanctions for inadequate services.
- 8.14 The Guide to Good Professional Conduct for Solicitors, 3rd Edition at 10.8 further sets out that copying the client's file must be done at a solicitor's own expense. As a result, it surprises me that communication within complaint correspondence arises on this from time to time as solicitors should be aware of this requirement in the first instance.
- 8.15 It is acknowledged for future matters not under my jurisdiction that Section 68 of the Solicitors (Amendment) Act 1994 has been superseded by Section 150 of the Legal Services Regulation Act 2015. However, within my jurisdiction, where a solicitor writes to a client, enclosing the Law Society's leaflet on charges and explains the basis of his charges as outlined in the leaflet, this is not considered by the Law Society, as compliance with Section 68(1) of the Solicitors (Amendment) Act 1994. Further, where a solicitor does not appropriately issue a letter in compliance with Section 68 of the Solicitors (Amendment) Act 1994, this does not automatically disentitle a fee to be charged.
- 8.16 If a solicitor engages a costs accountant to draw up a bill, he is liable for those costs as per the High Court Judgement in the case of Castle Brand Limited. However, the cost accountant's fees for negotiating costs with the defendants would be a chargeable fee to a client.
- 8.17 In current times I continue to find it astonishing that clients can allege they paid their solicitor in cash and have no receipt. Unless there is proof of payment, the Law Society cannot make a determination on such a matter.
- 8.18 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 complainant.
- 8.19 When a complainant chooses to challenge a bill that has been drawn by a legal cost accountant, the Law Society generally does not intervene in that regard. This is a matter for the individual to seek independent legal advice in relation to their solicitor's bill.
- 8.20 I have scant regard for solicitors who unduly delay responding 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.

- 8.21 Related to the above point, where a person 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.
- 8.22 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) is generally required. With regard to costs, it advises 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. It should be remembered that the primary duty of solicitors before the Complaints and Client Relations Committee is to resolve the matter themselves, without needing the Law Society's involvement.
- 8.23 Where a solicitor is accompanied by a support person to a committee meeting, such as a life partner, the support person is not automatically entitled to address the committee.
- 8.24 The Law Society itself has a statutory obligation to try and resolve complaints if at all possible. 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, it often writes to ascertain what a complainant would consider to be a satisfactory resolution of their complaint so it can put their proposals to the solicitor to see if the matter can be resolved. It also advises that if resolution cannot be reached the papers may be referred to the Complaints and Client Relations Committee for its 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. Further, it may suggest that the complainant give consideration to whether or not their matter would benefit from being referred to some form of mediation. I believe this is a fair and transparent process.
- 8.25 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, that 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”*.
- 8.26 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.
- 8.27 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.

- 8.28 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 and proceedings are pending, 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.
- 8.29 As a suggestion, no more than 10MB should be permitted in a complainant submission or solicitor rebuttal made by email to the Law Society.
- 8.30 The Law Society cannot consider third party fees or outlay when looking at an alleged excessive fees matter.
- 8.31 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 and they are at liberty to refer their matter to the Independent Adjudicator.
- 8.32 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. Therefore, complainants should be explicit in their initiating allegation(s) against whom their complaint(s) are against.
- 8.33 It is important to understand that the role of the Law Society is limited to investigating the specific complaint made against a solicitor; it is not its role to act on a complainant's behalf or represent him/her and it is not in a position to accept instructions from complainants.
- 8.34 When letters or complaint forms are illegible to investigate, I welcome seeing that the Law Society ask whether or not the individual would be in a position to meet somebody at their local Citizen Information Centre who may be in a position to review their complaint and assist them with any clarification.
- 8.35 The Law Society does not usually meet complainants to discuss complaints as complaints are subject to independent review so should be in writing. A copy of the Society's information leaflet is sent to complainants for their assistance on the complaint process. Since the Society's investigation is subject to review by the Independent Adjudicator of the Law Society, it asks that complainants please correspond with the Society in writing so that there is a clear record of all communications on the file.
- 8.36 The Law Society has to work within the relevant legislation, and complaints do have to be made to the Society within 5 years of the work being completed or the fees being charged. Complainants must complete the full complaint form and return it to the Society so it can review whether or not their complaint is an admissible complaint.
- 8.37 The Complaints & Client Relations Committee reserves the right, at the conclusion of the investigation of a complaint, to require a contribution towards costs from the solicitor as may be applicable to a matter in hand.

- 8.38 The Law Society is an independent body separate from the Legal Aid Board and it has no input into decisions made by the Board in relation to applications for legal aid.
- 8.39 Complainants regularly complain to my office that the Law Society did not respond to their correspondence once a decision had been reached. The Law Society makes its decision and can engage in clarification correspondence however it does not further investigate unless substantial supplemental documentary evidence is submitted. It is therefore up to a complainant to ensure that they submit their complaint conclusively to the Law Society at the outset. Further, when the file is closed the Law Society's role does not extend to advising how a complainant should proceed in any civil claim. That function should be guided by the advice of a solicitor in private practice.
- 8.40 Finally, it should be noted that the Law Society does not need a complaint about a solicitor to investigate a matter.

Section 9

OBSERVATIONS ON COMPENSATION FUND CLAIMS HANDLING

Observations on the Financial Regulation Section's Compensation Fund Claim statistics this year

- 9.1 Claim numbers have decreased slightly to 168 from 178 last year. Also, for the first six months of this year, there were 74.
- 9.2 The net assets of the fund are valued at €23 million, as at 30 June 2019. The annual contribution to the fund was €720 per solicitor for 2019. This was reduced from €760 in 2018, which was possible due to the steady stewardship of funds. Insurance cover for €50 million in excess of €5 million is in place for the year ending 31 December 2019.
- 9.3 The Law Society's investigating accountants conducted approximately 375 investigations of practices in the year.
- 9.4 During 2017 the Committee levied less contributions amounting to €8,750 towards the cost of its investigations by comparison to €16,000 last year and €43,500 the previous year.

Views on or relating to Compensation Fund handling this year

- 9.5 The Solicitors (Compensation Fund) Regulations 2018 (SI 548/2018) came into operation on 1 February 2019. The regulations extend the time limit for making a claim on the compensation fund from six months to 12 months, and incorporate a new application form for claiming refunds of money paid to a solicitor, with accompanying guidance published on the Society's website.
- 9.6 Dishonesty is beyond negligence. 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.
- 9.7 Misconduct does not necessarily mean dishonesty. Overcharging is not misconduct or dishonesty unless it is gross overcharging and will be reviewed on a case-by-case basis.
- 9.8 Compensation Fund Claim matters for consequential loss are generally refused as this is not the responsibility of the Law Society.
- 9.9 The Regulation of Practice Committee polices the profession's compliance with the Solicitors Accounts Regulations and with aspects of the Solicitors Acts not assigned to other regulatory committees. Examination of this latter obligation falls outside the remit of my office.
- 9.10 The Law Society does not have statutory approval to make an ex gratia payment in terms of compensation fund claims.
- 9.11 Some claimants do not complete their Compensation Fund claim form comprehensively especially the box that requests the date (or approximate date) they first became aware of their loss being claimed on the Fund. Such cases will necessitate probing by the Law Society.

- 9.12 Further, claims often do not disclose appropriate documentary evidence as requested by the Law Society to support the content of a Compensation Fund Claim submitted. Claimants must answer in a fulsome manner 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.
- 9.13 Some claims are made by individuals when they should be made by the companies of which they are/were a director.
- 9.14 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 so 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.
- 9.15 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.
- 9.16 The onus is on the Law Society's Financial Regulation Section to ensure that a solicitor took money before a claim is processed.
- 9.17 Claimants saying they provided funds to solicitor to do transactions must be proven, especially happens in stamp duty allegations of paying solicitor.
- 9.18 I provided an observation to the Financial Regulation Section during the year about being more mindful about making communications as understandable as possible, particularly when they are dealing directly with lay people. I appreciate that there is an ever-present tension between trying to make things understandable, and providing an accurate representation of what the legislation says. However, we mutually appreciated that even if one needs to convey something reasonably complex, it can often be broken up into more intelligible small sentences, or even set out in bullet points. I believe that this approach would be beneficial.

Section 10

General observations and comments

The following sets out general comments and matters of interest during the year:

- 10.1 Sometimes complainants are not happy with my decision and seek a meeting with me such as referring to meeting that might prove mutually helpful. Once my decision is made with supporting reasons, it is up to a complainant or claimant to refer their matter to the Solicitors Disciplinary Tribunal or Office of the Ombudsman.
- 10.2 Lay people can be frightened of the law and it is up to solicitors to appease such worry.
- 10.3 I reiterate the importance of the Law Society using plain English and breaking up sentences as suggested at 9.19 above.
- 10.4 Some cases, such as family law, can take a huge amount of work and solicitors are best placed to appraise their clients regularly on fees. The subject matter is emotive and the solicitor needs to ensure that they are clear throughout also. Such a process could save on potential excessive fees complaints at a later date.
- 10.5 As a good practice, I took regard for a solicitor's email that said at the bottom under their disclaimer: "Please note that the bank account included in our Section 68 letter to you is the only account we request clients to lodge money to. If you ever receive an email from any source or which looks like it came from this office requesting you to lodge funds to a different account, do not do so and please contact us immediately. We cannot be responsible for money lodged to any other account."
- 10.6 Despite being mindful that complaints and compensation fund correspondence is subject to my independent review, there can, at times, be a lot of unnecessary paper printed to files due to email transmissions. It is wondered whether front and back copying could be done to be more environmentally friendly, and consideration of whether it is necessary to print out all emails with previous emails to files.
- 10.7 If there is a dispute on fees, the logical decision is to either complain to the Law Society or to tax. Further, proceedings cannot be issued for the recovery of costs under the terms of legislation without the Law Society's consent until its investigation of a complaint of excessive fees has been concluded. The Complaints and Client Relations Committee consists of majority lay members, is not designed to carry out the functions of the Taxing Master or to in any way replace his/her role.
- 10.8 Closing a matter, for example having Land Registry dealing number progress, does not necessarily finalise a complaint. A complaint may not solely be about the matter finalising as it may include other factors such as delays by the solicitor. Solicitors should be aware that an Inadequate Professional Service finding could be made in such circumstances and their timely and fulsome correspondence with the Law Society is expected.
- 10.9 The office of the Director General does not entitle him to intervene directly with individuals in matters which fall within the Society's regulatory jurisdiction.

- 10.10 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.
- 10.11 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.
- 10.12 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.
- 10.13 I have scant regard for solicitors who are dismissive of their regulatory body and the unavoidable costs that can result in their non-attendance before committees, ignoring correspondence, etc.
- 10.14 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.
- 10.15 I believe it is worth pointing out, for all parties, re-appraisal 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 working on 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.
- 10.16 I appreciate I work in the service dissatisfaction industry yet displaced aggression towards the writer by complainants and claimants is not helpful towards progressing the matters in hand.
- 10.17 The types of enhanced administration I dealt with during the year included:
- Data Access Requests;
 - Complainants not providing sufficient information to progress their investigation;
 - Complainants being more demanding in terms of wanting real-time responses to their emails and to know when exactly their matter would be examined by me (I now set time expectations in my initiating correspondence which assists this); and
 - Impolite telephone calls and emails from disgruntled and querulous complainants, whose dissatisfaction is most often displaced towards me.
- 10.18 As a good practice in my office I return papers to complainants, claimants or solicitors every six months if not at the time of concluding my file review. All sensitive data is immediately returned as it is inappropriate for my office to retain such information. I reiterate that my office examines the Law Society's handling of matters, and not evidence at first hand.

- 10.19 If a complainant or claimant sends unrelated information such as newspaper extracts, the Law Society and my office regularly returns them as not relevant to the investigation / adjudication in hand.
- 10.20 Some matters that come to the Law Society and indeed my office may not be matters that the Law Society can resolve, with other fora being more appropriate.
- 10.21 The Law Society does not give legal advice to members of the public; this is reserved for solicitors in practice to deliver as a professional service.
- 10.22 Solicitors are always on the Roll of Solicitors regardless if they are practising or not. A solicitor is entitled to use the title solicitor in his or her private correspondence so long as it is noted in the correspondence (header or footer) that they are not practising, otherwise they could be deemed to be holding themselves out as a solicitor entitled to practice.
- 10.23 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'.

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