



An tÚdarás Rialála
Seirbhísí Dlí
Legal Services
Regulatory Authority

Independent Complaints Handling

Complaints about
solicitors and barristers

Report 1 - 2021

*From 7 September 2020
to 26 March 2021*



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Foreword by the Chief Executive Officer



Dr Brian J. Doherty

I am pleased to introduce the first bi-annual report of 2021 into the operation of the new independent complaints function of the Legal Services Regulatory Authority. This report documents trends and statistics for the past six months, from 7 September 2020 to 26 March 2021.

The period covered in this report coincides with the Covid-19 pandemic and the ongoing restrictions which have had a dramatic impact on the way we all live and work. Of the 18 months in which the LSRA has been receiving and investigating complaints relating to legal practitioners, 12 have now been conducted under Covid-19 restrictions.

This report includes details for the first time of:

- **Deliberations and determinations of the independent Complaints Committee which handles misconduct complaints;**
- **Determinations of complaints by the LSRA's Complaints and Resolutions Officers;**
- **The mediation and informal resolution of complaints; and**
- **The regulation of the advertising of legal services.**

These achievements and developments have taken place against a challenging backdrop not only of Covid-19 workplace restrictions, but a 33% increase in the number of complaints. A total of 805 complaints were received during the current reporting period, compared to 605 for the previous six month period. In addition, complaints staff handled a total of 2,352 phone calls and emails requesting information and/or complaints forms during the current reporting period, a 46% increase on the previous period.

One unfortunate side effect of the necessary workplace restrictions is that some parts of the complaints handling process that would be straightforward in an open office environment now take more time than we would like. One such example is the decisions taken in relation to the admissibility of complaints. The LSRA has recruited more resources, reviewed processes and increased efficiency where possible. However, a lot of the processes upon which we rely for the smooth running of our complaints function require a collaborative approach which is made more difficult by the current restrictions. It is hoped that the measures that we have taken to improve timeliness and efficiency will enhance the experiences of both consumers and legal practitioners who are required to engage in the complaints process.

As I said above, this report marks the first time we will have reported on complaints that have been determined to be admissible and where the LSRA has attempted to informally resolve or to mediate the issue of complaint between the legal practitioner and the complainant. A trend that is emerging from these first cases is the marked willingness of complainants to engage fully with the informal resolution or mediation process but a lack of willingness in some cases on the part of the legal practitioners.

An important message for legal practitioners is that where the LSRA is of the view that an agreement to resolve a complaint is unlikely, including where the legal practitioner fails to engage with the process, the LSRA can, following formal notification to the parties, move to determining the complaint. Indeed, we are reporting for the first time on determinations in such cases that have been made by the LSRA's Complaints and Resolution Officers. These cases relate to allegations of excessive costs and inadequate legal services.

This report also reflects the work of the Complaints Committee, established by the LSRA but independent in its decision-making, in its consideration of complaints of misconduct. My thanks to the members of the Committee for their hard work and commitment.

As in our two previous reports, we have chosen to highlight case studies relevant to emerging themes in the complaints that we receive in the hope that they are of benefit to both legal practitioners and consumers of legal services. As we are of the view that a significant number of the complaints we receive in relation to probate and wills would be avoided through better understanding and communication, we have paid particular attention to that issue.

This report contains details for the first time of complaints and concerns about the advertising of legal services we have received since we took over responsibility of this important area in December 2020. I would strongly encourage all legal practitioners to review their on-line and other advertising to ensure that these are in line with the new Advertising Regulations 2020.

I am still heartened by the engagement of both legal practitioners and complainants in efforts to resolve complaints at an early stage. I am concerned, however, by the reluctance of some legal practitioners to address concerns and complaints that are raised with them in a productive and proactive manner. In our experience to date, early and open engagement with the complaints process will always lead to a quicker and more effective resolution of the matter at hand.

Dr Brian J. Doherty
April 2021

Introduction

The LSRA began receiving and investigating complaints relating to solicitors and barristers (collectively referred to as legal practitioners) on 7 October 2019. The LSRA is required under section 73(1) of the Legal Services Regulation Act 2015 to report on the performance of its complaints function at intervals of no greater than six months. This is the third such complaints report, and the first for the year 2021, and it reports on the performance of the complaints function for the period from 7 September 2020 to 26 March 2021.

The LSRA is responsible for the regulation of legal services by legal practitioners and also for ensuring the maintenance and improvement of standards in the provision of such services.

Under the Act, the objectives of the LSRA include protecting and promoting the public interest; protecting and promoting the interests of consumers relating to the provision of legal services; encouraging an independent, strong and effective legal profession; and promoting and maintaining adherence to the professional principles of the legal profession. The professional principles referred to require legal practitioners to act with independence and integrity, act in the best interests of their clients, maintain proper standards of work, comply with such duties that are rightfully owed to the court and comply with their duties of confidentiality to their clients.

The purpose of these reports is to inform consumers, legal professionals and the wider public about the matters that we investigate, the issues and behaviour that commonly give rise to complaints, and the outcomes of complaints that are made to us. In doing so, it is hoped that there will be increased consumer awareness about these issues. It is also hoped that legal practitioners find the reports useful in identifying the types of acts or omissions that can lead to complaints and ensuring that their delivery of legal services is of the highest standard possible.

To that end, this report contains a summary of our independent complaints process, a summary of the nature and types of the complaints that we have received, as well as a series of case studies based on anonymised complaints. As before, we hope that these case studies will be of particular use to both legal practitioners and consumers of legal services in understanding the nature of the LSRA's complaints handling and the lessons that can be learned from the complaints we receive.

Independent Complaints Handling

Under the independent complaints handling regime as set out in Part 6 of the Act, the LSRA became responsible for complaints which previously were made to the professional bodies for solicitors and barristers – the Law Society of Ireland and the Bar of Ireland respectively.

Prior to the introduction of the LSRA's complaints handling function, the Law Society investigated complaints in relation to solicitors based on the statutory framework set out in the Solicitors Acts 1954 to 2011.

Prior to the introduction of the LSRA's complaints handling functions, complaints in respect of barristers were not governed by statute. The Bar of Ireland, through the Barristers Professional Conduct Tribunal, was responsible for these complaints. It remains responsible for investigating complaints in respect of acts or omissions that took place prior to the relevant complaints sections of the Act coming into force i.e. misconduct by a barrister that is alleged to have occurred prior to 7 October 2019.

Both the Law Society and the Bar of Ireland will continue to investigate any complaints that were made to those organisations prior to 7 October 2019 until they are concluded.

What types of complaints can the LSRA deal with?

The three grounds for complaints under the Act are:

- the legal services provided by the legal practitioner were of an inadequate standard;
- the amount of costs sought by the legal practitioner for legal services was excessive;
- the legal practitioner performed an act or omission which amounts to misconduct under the Act.

Misconduct is broadly defined in the Act and includes an act or omission which involves fraud or dishonesty, or which is likely to bring the profession into disrepute. It also includes the provision of legal services which were of an inadequate standard to a substantial degree, or the seeking of grossly excessive costs.

Complaints under the Act's three grounds are classified by the LSRA into a range of categories as part of an administrative process to aid our reporting. For example, complaints alleging inadequate standards of legal services and excessive costs are recorded by areas of work such as litigation, conveyancing, probate and family law. Complaints alleging misconduct are recorded under categories that relate to the nature of the act or omission that gives rise to the complaint.

Who can make a complaint to the LSRA?

The complaints system – including who can make a complaint – differs depending on the specific grounds of complaint.

Complaints of inadequate services and excessive costs

Complaints about inadequate legal services or excessive costs can be made to the LSRA by either the client of a legal practitioner or a person acting on behalf of a client.

Complaints in connection with legal services or costs must be received by the LSRA within three years of the act or omission, or within three years of the client becoming aware of the act or omission (or from when they ought reasonably to have become aware of the act or omission).

Complaints of misconduct

Any person, not just a client, can make a complaint to the LSRA where he or she believes there is evidence of misconduct on the part of a legal practitioner. There is no statutory time limit for complaints relating to alleged misconduct.

How to make a complaint

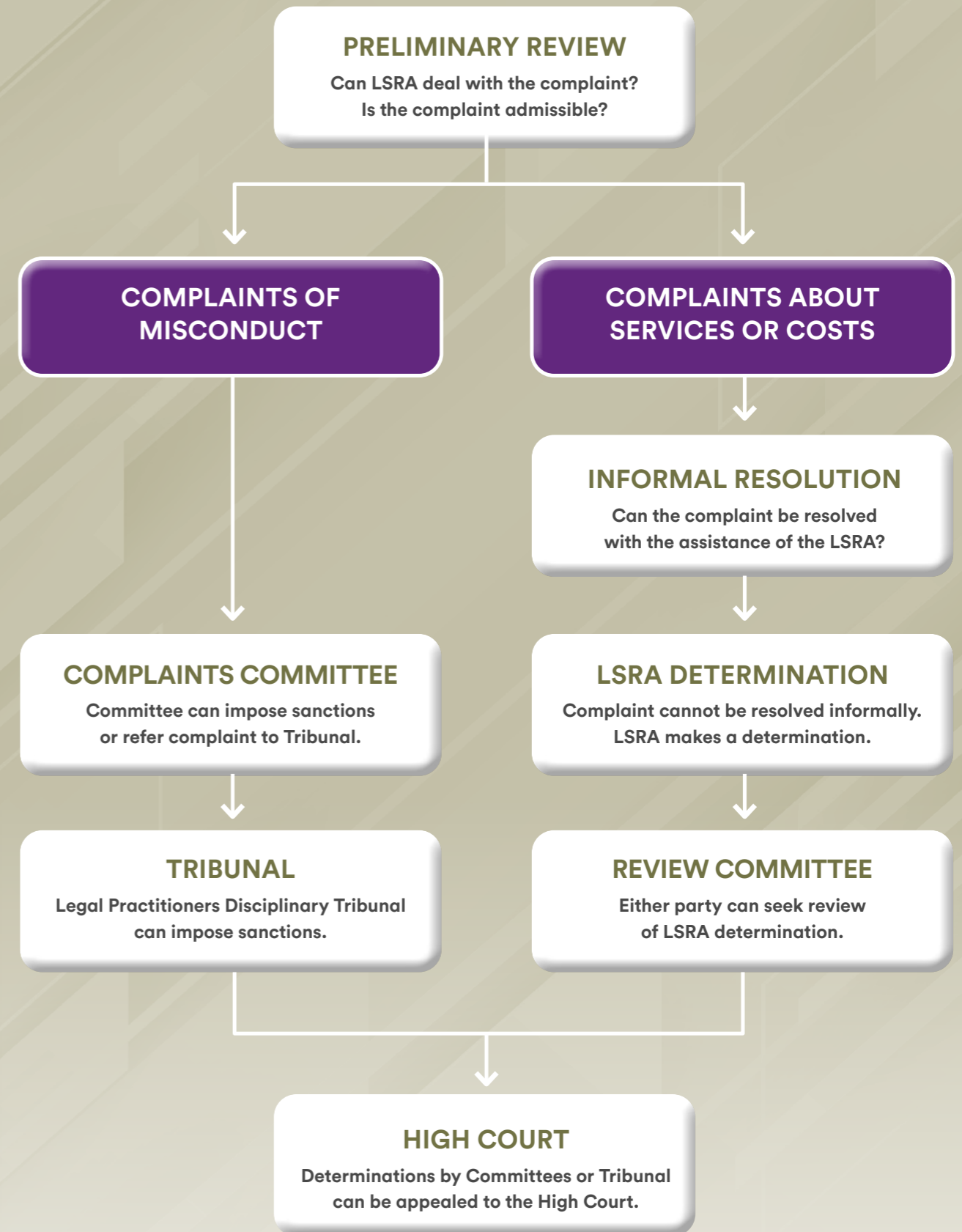
Complaints must be made to the LSRA in writing and they can be submitted by post or email. A complaints form is available on the LSRA website for download, along with information guides for the assistance of both consumers and legal practitioners. Complainants are encouraged to use the complaints form where possible. To comply with the public health restrictions imposed by the government as a result of the Covid-19 pandemic, complaints staff are working remotely. Therefore, all correspondence should be submitted by email if possible. Correspondence submitted by ordinary post will take longer to process which may result in delay progressing the preliminary review.

How we can assist

As the LSRA is independent in the operation of its functions, our complaints staff cannot advise complainants about the nature and content of their complaint or indeed whether or not to make a complaint. However, LSRA staff are available to assist in answering any questions about the complaints process and are available by telephone during the hours listed on our website.

Should anyone need assistance in making their complaint, they should consider contacting the Citizens Information Service. There is a link to the Citizens Information Service website on the LSRA website to locate the nearest centre, as well as links to the Free Legal Advice Centres and the National Advocacy Service.

Complaint Journey



The Complaints Process

The Act and associated Regulations set out detailed processes for the handling of complaints about legal practitioners, including a series of statutory deadlines which must be observed.

Complaints handling begins with all files opened initially as queries. Complaints staff then scrutinise these files to decide whether a query should be classified as a complaint or can be dealt with as a query. This process is an important stage in the complaints handling process and can generate a considerable amount of correspondence between complaints staff and complainants to clarify details of issues raised.

Preliminary review for admissible and inadmissible complaints

Once a query is classified as a complaint, the LSRA is required under the Act to conduct a preliminary review to determine whether or not the complaint is admissible. In essence, this means that complaints staff gather evidence from both the complainant and the legal practitioner.

As part of this process, the LSRA must notify the legal practitioner of the complaint in writing, provide the legal practitioner with a copy of the complaint, and request a written response with observations within 21 days. Complaints staff may also at this preliminary review stage request additional information in writing from either the complainant or the legal practitioner.

Legal practitioners are encouraged to provide a full response to the allegations made and to provide any relevant evidence that they may have at this stage. It is often necessary to seek further information from the complainant and/or from the legal practitioner in order to ensure that the LSRA has sufficient material upon which to base its decision in relation to the admissibility of a complaint.

Informally resolving complaints

The LSRA encourages early resolution of complaints where appropriate. The informal resolution of complaints between parties can take place before the complaint has been determined to be admissible.

In addition, once a complaint has been determined to be admissible, the Act requires the LSRA to invite the parties to make efforts to resolve matters where those complaints relate to:

- legal services of an inadequate standard;
- excessive costs; or
- misconduct which, if substantiated, would constitute legal services of an inadequate standard to a substantial degree.

Approaches to informal resolution range from telephone mediation provided by the LSRA's trained staff by way of conference calls, to face-to-face meetings (pre Covid-19), or the appointment of an external mediator. The approach to informal resolution will depend on the nature of the complaint and what the parties agree to.

In compliance with the terms of the Mediation Act 2017, the LSRA's qualified staff are affiliated to the Mediators' Institute of Ireland and are fully trained to deal with this aspect of the legislation. The mediation is quite separate to the investigation and determination of the complaint, which is effectively placed on hold to allow the mediation process to take place.

Determination of complaints

If not resolved, complaints relating to inadequate legal services or excessive fees are determined by the LSRA Complaints and Resolutions Unit.

Should the LSRA determine that the legal services provided by a legal practitioner have been of an inadequate standard, and that it is appropriate to do so, the LSRA can direct the legal practitioner to:

- Rectify the issue at their own expense or at the expense of their firm;
- Take such other action as the Authority may specify – the cost of which should not exceed €3,000;
- Transfer any documents relating to the issue to another legal practitioner nominated by the client;
- Pay to the client a sum not exceeding €3,000 in compensation for any financial or other loss suffered by the client.

Should the LSRA determine that the amount of costs sought by a legal practitioner was or is excessive, and that it is appropriate to do so, the LSRA can direct the legal practitioner to:

- Refund, without delay, all or some of any amount already paid by the client to the legal practitioner; or
- Waive, all or some of the amount billed.

The LSRA can also decide to make a determination that the costs sought were not excessive and that the legal services delivered were not inadequate.

Review Committee's review of LSRA determinations

Once the LSRA has made a determination of a complaint, the legal practitioner or complainant can request that the determination or any directions made by the LSRA be reviewed by the Review Committee.

The Review Committee is an independent committee composed of three persons, two of whom are lay persons and one of whom is a legal practitioner. The Review Committee considers any requests for review made to it and provides both the complainant and the legal practitioner with an opportunity to make a statement in writing as to why the determination of the LSRA was incorrect or unjust.

Following their consideration of the determination made by the LSRA as well as any statements made by the complainant and the legal practitioner, the Review Committee can:

- Confirm the LSRA determination;
- Send the complaint back to the LSRA with directions for it to be dealt with again;
- Issue one or more directions to the legal practitioner, for example to waive or refund fees, to rectify an error or to pay compensation, as it considers appropriate.

Complaints Committee – misconduct complaints

The Complaints Committee considers and investigates complaints of alleged misconduct against legal practitioners that are deemed to be admissible and are then referred to it by the LSRA.

The LSRA established the Complaints Committee in 2020. It is independent in its decision-making.

The Committee is made up of 27 members comprised of 15 lay members, eight solicitor members nominated by the Law Society and four barrister members nominated by the Bar Council (Bar of Ireland). The Committee is split into three groups, each of nine members, and from these groups Divisional Committees sit to investigate complaints that have been referred to them. Divisional Committees sit as either a five or three person committee, but always with a lay majority and a lay chairperson. The Divisional Committees sit on a rolling basis throughout the year at approximately at six week intervals. The Complaints Committee can request the complainant or legal practitioner to supply information or documentation relating to the complaint and can also require either party to verify information by way of an affidavit. The Complaints Committee can also require the complainant and the legal practitioner to appear before the Committee for the purposes of the investigation of the complaint.

The Complaints Committee can refer more serious matters on to the Legal Practitioners Disciplinary Tribunal (LPDT) for further investigation where appropriate.

If the Complaints Committee considers that the complaint does not warrant referral to the LPDT, but is one that warrants the imposition of a sanction, it can do so and these sanctions include:

- **Directing the legal practitioner to complete the legal service or arrange for the service to be completed by a legal practitioner nominated by the complainant at the expense of the legal practitioner;**
- **Directing the legal practitioner to participate in a professional competence scheme;**
- **Directing the legal practitioner to waive or refund fees;**
- **Directing the legal practitioner to take other action in the interest of the complainant;**
- **Directing the legal practitioner to comply with undertaking(s);**
- **Directing the legal practitioner to withdraw or amend an advertisement made by the legal practitioner;**
- **Directing the legal practitioner to pay compensation to the complainant not exceeding €5,000;**
- **Directing the legal practitioner to pay costs to the LSRA;**
- **With the consent of the legal practitioner (failing which the matter will proceed to Legal Practitioners' Disciplinary Tribunal) impose a condition on the practising certificate of the legal practitioner.**

Number and Nature of Complaints Received

During the reporting period from 7 September 2020 to 26 March 2021, the LSRA received a total of 2,352 phone calls and e-mails requesting information and/or complaint forms. This compares with 1,271 emails and phone calls received during the previous reporting period.

A total of 1,077 files were opened initially as queries. Following an assessment of these files, a total of 805 were then categorised as complaints. For a file to be categorised as a complaint, it means that the query received by the LSRA meets the definition in the Act of a complaint and contains enough information so that it can be processed by the LSRA's complaints staff. Of the 805 complaints received in the reporting period, a total of 783 related to solicitors and 22 related to barristers.

The largest category of complaints received in the reporting period related to alleged misconduct. Of the 805 complaints received, 462 (57%) were in respect of alleged misconduct. A total of 291 complaints (36%) related to alleged inadequate legal services, and a further 52 (7%) came under the category of alleged excessive costs. Full details are provided in the chapter Complaints Statistics.

Complaint outcomes

A total of 294 complaints were closed in the reporting period. Of these, 104 (35%) were deemed to be inadmissible and closed and 146 (51%) were closed pre-admissibility – that is before a decision was made as to whether the complaint was admissible under the Act. Of the 146 complaints files closed in the pre-admissibility process, 61 (42%) were withdrawn and 85 (58%) were resolved.

A total of four complaints which were deemed admissible were resolved in the LSRA's Informal Resolution process with the assistance of the LSRA's mediation staff. Two further complaints were resolved between the parties after the complaint had been determined to be admissible and referred to the Complaints Committee for investigation.

A total of six complaints were determined by the LSRA in the reporting period and directions were issued to the legal practitioners in five of those cases. In one case the LSRA determined that the legal services that had been provided were inadequate and directed that the legal practitioner pay compensation to the complainant of just under €1,000. Both the complainant and the legal practitioner have accepted this direction and the matter has now been closed.

In two of the cases that were determined a review has been requested by one of the parties to the complaint. These requests for review will now be considered by the Review Committee. The other three cases that have been determined by the LSRA are within the period of time in which a review of the determination can be requested by the legal practitioner or the complainant.

A full breakdown of case completions is provided in the chapter Complaints Statistics. Further details of cases that have been determined by the LSRA and the outcome of reviews undertaken by the Review Committee will be provided in the next report.

Complaints Committee

The first Complaints Committee meeting was held on 5 November 2020, and there have been a further nine meetings since then. A total of 31 cases have been referred to the Complaints Committee in the reporting period for investigation. A total of six cases have been referred on to the Legal Practitioners Disciplinary Tribunal (LPDT) for further investigation, and five cases have been closed as the Committee found no evidence of misconduct.

The Complaints Committee upheld a further two complaints which it did not consider necessary to refer to the LPDT.

One related to communications with the complainant who was the joint owner of a property that had been sold. The Complaints Committee upheld the complaint but no directions or measures were imposed by the Committee in the case.

The second case related to an allegation that a legal practitioner had misled his client as to the work undertaken. The legal practitioner was directed to make a payment to the complainant of €500 as compensation for financial or other loss suffered by the complainant.

A total of 16 cases currently remain under investigation by the Complaints Committee.

Themes Emerging from Complaints

The number of complaints received by the LSRA has increased significantly to 805 in this period, up 33% over the previous reporting period. The nature of the complaints we received and the emerging themes have however remained quite consistent. We have focused on issues relating to probate and wills in this report as we continue to receive high volumes of complaints relating to the administration of estates, both regarding legal services and costs.

Failure to communicate remains a significant feature of most complaints. In misconduct cases, this relates primarily to legal practitioners not responding promptly or at all to communications from fellow legal practitioners. In many cases these complaints are made to us after a sequence of emails or letters have been sent to practitioners by another legal practitioner including concluding with a threat to make a complaint to the LSRA in the absence of a response. In most cases therefore such complaints could be easily avoided by issuing a prompt response to the original communication received.

In this report we highlight the following issues:

Cybercrime during Covid-19

The Covid-19 health crisis has led to a growth in online fraud attacks and hacking activities with cyber criminals taking advantage of the fact that people are now doing much more business online.

Solicitors and their clients are among those targeted by online criminals through fraudulent emails that impersonate solicitors' firms. In one case that has come to our attention, a client who was in the process of purchasing a property received an email purporting to be from their solicitor.

The impersonation email advised the client that the solicitor had changed his bank account and directed the client to lodge money for the property purchase to a new account. The client did so, but the money was transferred not to the legitimate solicitor's bank account but to an account set up by the fraudster. The client was defrauded out of a significant sum of money.

If you are dealing with a solicitor's firm, please take note that solicitors rarely change their banking details. If you receive a notice from the firm that they have done so, you should contact them directly either in person (if Covid-19 restrictions permit) or by phone to confirm that this is indeed the case. It is best to avoid disclosing any details about your own bank account by email.

Legal practitioners should clearly advise their clients, either in person or by phone, of their bank account details and tell them that any changes to those details will never be communicated via email.

It is the executor/ administrator who is the client in probate matters

We receive a large number of complaints from beneficiaries in estates, many of whom are simply frustrated at the length of time an estate is taking to be administered. Responsibility for the administration lies with the executors/administrators, and it is they who are the solicitors' clients. Solicitors act on instructions from, and agree the fees with their clients, the executors/administrators.

It is therefore appropriate, in most cases, that the issues raised in the complaint be addressed by the executors/administrators. Where disputes of this sort arise, it may often be necessary for the parties to seek independent legal advice. The LSRA is concerned that there may be an unrealistic expectation among some beneficiaries as to the role and remit of the LSRA when investigating complaints of this type. The LSRA will frequently not be in a position to resolve what on investigation is actually found to be a longstanding family dispute. Beneficiaries must, therefore, take up these matters with the executor(s)/administrator(s) in the first instance, and if matters cannot be resolved, consider seeking independent legal advice.

Regulation of advertising by legal practitioners

The LSRA assumed responsibility for regulating advertising by legal practitioners on 18 December 2020. Advertising by solicitors was previously regulated by the Law Society of Ireland under the Solicitors Advertising Regulations 2019. This is the first time that statutory rules for advertising have been set out for barristers.

The Legal Services Regulation Act 2015 (Advertising) Regulations 2020 apply to print, audio and visual advertisements, including online advertising. The regulations apply to solicitors, firms of solicitors and barristers as well as limited liability partnerships (LLPs) who advertise their legal services. They also apply to groups of legal practitioners, who share a facility, premises or cost of practice, and who advertise themselves as a group.

While legal practitioners are allowed to advertise their legal services, some prohibitions on the content and form of advertisements exist.

Prohibitions in the regulations include:

- The use of the phrases “no win no fee”, “no foal no fee” and “free first consultation” or similar in advertisements which refer to personal injuries as part of the legal services provided.
- Advertisements which include an amount of possible damages for personal injury claims that are not based on the Book of Quantum produced by the Personal Injuries Assessment Board or guidelines by another statutory body.
- Advertisements in any form in an inappropriate location such as a hospital, clinic, doctor’s surgery, funeral home, cemetery, crematorium or similar.
- Advertisements which solicit, encourage or offer inducement to a person or a group to make claims for personal injuries or seek legal services in connection with such claims.
- Advertisements which refer to the “success rate” of a legal practitioner.

Also not permitted under the regulations are advertisements which are likely to bring the legal profession into disrepute; are in bad taste; reflect unfavourably on another legal practitioner; are false or misleading.

An advertisement must also state by whom it is published.

LSRA investigation and enforcement

Under the Advertising Regulations 2020, the LSRA may carry out investigations into particular advertisements either on foot of a complaint received or on its own initiative.

Consumers can notify the LSRA of a breach or alleged breach of the regulations. The main features of the LSRA’s role in relation to advertising are:

- The LSRA may decide that a particular advertisement may contravene the regulations or the Legal Services Regulation Act 2015.
- If so, the LSRA will give the legal practitioner time to restrict the publication of the advertisement or take other steps it directs.
- The LSRA can apply to the High Court for an order prohibiting a legal practitioner from contravening the regulations.

Complaints and concerns about advertising of legal services

Anyone who has concerns that an advertisement for legal services breaches the rules as set out in the Advertising Regulations can notify the LSRA. We will consider the concerns raised, and may choose to investigate. Separately, where it is considered that the publication by a legal practitioner of an advertisement constitutes misconduct under the Legal Services Regulation Act 2015, a complaint can be made to the LSRA.

In the reporting period, the LSRA has received a total of 44 complaints and notifications of concerns relating to the advertising of legal services. The LSRA has written to three legal practitioners informing them of possible breaches of the Advertising Regulations. Two of these letters were issued on foot of concerns raised with the LSRA and one on foot of a complaint.

In all three instances the legal practitioner resolved the issue by withdrawing or amending the advertisement. The LSRA encourages all legal practitioners to review their online, print and other advertising to ensure that it is fully compliant with the new regulations.

Focus on Wills and Probate

The administration of estates by solicitors generates a significant number of complaints. On investigation, in many cases, the complaint relates to misunderstandings of the different roles and responsibilities of the executor/administrator and the solicitor.

In this section we provide information and guidance to both members of the public and legal practitioners about this important legal services area.

Key issues in making wills

For the public

Actions to take in drawing up wills:

- It is a good idea to make a will to ensure that your loved ones know your wishes for your funeral and what you want to happen to your property after your death. It is also important to review your will periodically to ensure that your will is kept up to date as your family and financial circumstances change.
- Think carefully about your choice of executors – you can name/nominate more than one in your will. Are they likely to be able to understand and cope with the work involved? If your will was made some years ago, is that still the case?
- Assets in joint names will generally pass outside of your will to the jointly named survivor. Is that what you want?
- It makes sense for at least one executor to also be a beneficiary in the will as they will have the same interest as the other beneficiaries in having the estate administered quickly and in limiting the administration costs to the estate.

The role of executors:

- It is the executors named in a will who are responsible for administering an estate. Solicitors can only complete the work if they are provided with all the necessary instructions and paperwork by the executors.

- It is for the executors to communicate with the will's beneficiaries. Solicitors generally only communicate with the executor(s), who is/are their client. One of the reasons for this is to keep the solicitor's legal fees down – the more people a solicitor has to deal with, the more work is required, and the higher the fees.

For solicitors/legal practitioners

Actions to take in drawing up wills:

- Take detailed attendance notes when taking instructions from your client for a will.
- Make sure the testator (the person making the will) understands the need to include in the instructions the reasons for any decisions that might seem unusual or strange to his/her potential beneficiaries.
- Make sure the testator understands the need to make a good choice in the selection of executor(s) and consider whether it is preferable to appoint at least two executors. It is also often sensible to have at least one executor who is also a beneficiary.
- Clarify with the testator where their assets are held and whether they are in a sole name or are jointly held with another person or persons.
- Be clear about your fees – and update your client of changes

- As a solicitor, you may be asked to make a will in which the testator names you as the executor. If you are appointed executor in a will, ensure there is a charging clause in the will and that neither you nor a partner in the practice has witnessed the will.
- There are many moving parts in administering an estate and even the most straightforward matter can become complicated very quickly. Be very clear in your fee notice (also known as a section 150 letter) what your fee quote covers and what it does not. If you are subsequently instructed by your client, the executor(s), to undertake work that is outside the original fee quote, clarify with your client how that work is to be charged.

Probate practitioners, in particular, must keep this under review, and send out further section 150 notices (s150(5)) where appropriate. Probate practitioners should, in most cases, be in a position to update their section 150 notice at the point the Grant of Probate is applied for, as at that point they will have a very clear idea about the size of the estate, the outlays and the remaining work. It is particularly important that they do so if a more general quote was provided initially.

Maintain regular communication:

- Make sure you keep the executor(s), your client(s), informed regarding the progress of the administration. Remind your client that it is their responsibility to keep the beneficiaries advised of progress. The LSRA is of the view that complaints relating to probate and wills could be avoided in most cases by clear communication with all parties particularly in relation to the roles and responsibilities of all involved and also in relation to the timeframe under which the work will be progressed.

Who does what in wills and probate

There are several legally defined roles when it comes to wills and probate, and the person appointed to each role has specific responsibilities when it comes to administering the property (estate) of the deceased person who may have either made a will or died intestate without a will.

The key roles are:

Executor: An executor is appointed in a will as the person who is responsible for dealing with the estate of the person who has died. An executor's powers commence on the death of the testator. There may be more than one executor for a single will. The executor(s) are responsible for taking out a Grant of Probate.

Administrator: An administrator is the person who is responsible for dealing with a deceased person's estate in cases where there is no will. Usually the administrator is the next of kin or a relative of the deceased person. The administrator(s) must obtain a legal document called a grant of administration in order to have the authority to deal with the estate.

Beneficiary: A beneficiary is someone who inherits something in a will – all or part of the deceased person's estate.

Testator: A testator is a person who writes/makes a will. A will is a written document that sets out what the testator would like to happen generally, including what should happen to their possessions after they die. There are strict rules governing the execution and witnessing of wills. If a person dies without leaving a will, this is called 'intestate'.

Duties and powers of personal representative

These are to administer the estate. This includes:

- Identifying the assets (items owned) and liabilities (such as unpaid bills) of the deceased person.
- Identifying beneficiaries and notifying them of their bequest under the will/share on intestacy.
- Paying the funeral expenses.
- Identifying, getting control of the assets. Arranging for valuations of all property which was owned by the deceased including land, shares, bank accounts etc.
- Finding out what debts have to be paid.
- Applying for a Grant of Probate/Administration.
- Notifying the spouse (or civil partner) about their legal rights.
- Making sure the entitled beneficiaries or next of kin get what they are entitled to, and that ownership of property is passed on correctly.
- Distributing the assets to the beneficiaries.

In carrying out their duties, the personal representatives must make decisions about the estate. Where appropriate, they should take legal advice from their solicitor and other professional advice possibly from auctioneers and valuers, stockbrokers, tax advisors and others. They are responsible for consulting with and informing the beneficiaries of the estate regarding decisions that may affect them. A personal representative can be held personally liable for acts taken in the administration of an estate which cause losses to the estate and its beneficiaries.

The personal representative has the power to:

- Deal with the estate (for example, to sell it to pay debts or distribute to beneficiaries).
- Represent the deceased in legal actions and to settle legal actions against the deceased's estate.

The personal representative is obliged to:

- Distribute the assets as soon as possible. The personal representative may be sued by the beneficiaries if the estate is not distributed within a year of the date of death of the testator without good reason.
- Preserve the assets of the deceased until they are distributed and to protect the assets from devaluation. For example, make sure that all assets are properly insured.

The role of the solicitor and relationship with executor/administrator

The executor or administrator may decide to engage a solicitor to administer the estate on their behalf. The solicitor takes his/her instructions from the executor(s)/administrator(s) and they are the clients. The solicitor will be obliged to furnish the executor(s) /administrator(s) with a note of their costs (known as a section 150 notice) for administering the estate. The solicitor should be clear with their clients regarding the work they will do for the fees quoted.

It is the executor(s)/administrator(s) responsibility to keep the beneficiaries advised regarding the administration. If the executor(s)/administrator(s) instruct the solicitor to do this then it will likely substantially increase the costs payable to the solicitor. All costs associated with the administration of an estate are borne by the estate.

Terms in wills and probate

Grant of Probate/ Grant of Administration: The process of applying to court for a “grant” that entitles a person or persons to administer a deceased’s estate. The Grant of Probate applies where there is a will and confirms the right of the executor to administer the estate of the deceased. The Grant of Administration is the term where there is no will and the person has died intestate. They are both legal documents that allow the executor(s)/administrators to collect all assets of the deceased and administer the estate.

Estate: A person’s estate is generally all the possessions or assets they legally own in their sole name at the date of death. All debts, including outstanding taxes must be paid before the ‘estate’ is distributed among the beneficiaries in accordance with the will. If the deceased died intestate, the division of the estate is prescribed by legislation. Generally any assets in joint names will pass outside the estate to the survivor(s).

Personal Representative: This is a generic term for the executor or administrator after the Grant of Probate/Administration is issued. The duties and powers of the personal representative are the same whether the deceased died testate or intestate (with or without having made a will).

Case Studies

This section contains a selection of anonymised case studies based on actual cases dealt with by the LSRA in this reporting period. Details may have been altered to ensure anonymity, but the cases should serve to illustrate the nature of the complaints received.

Complaint of misconduct resolved quickly due to prompt corrective action by solicitor

Type of Complaint: Misconduct

A firm of solicitors made a complaint against a solicitor who it alleged had breached an undertaking to discharge fees due. The complainant firm maintained that it was owed fees following work done in relation to the administration of an estate.

The complainant firm had written to the solicitor several times but had not received any responses to requests for status updates. The complaint alleged misconduct on the grounds that the firm had failed to honour a professional promise or “undertaking” to discharge costs due to it within a specified time.

Actions taken by Complaints and Resolutions Team

The LSRA contacted the solicitor who was the subject of the complaint, setting out the grounds of the complaint.

Outcome: Complaint Resolved

Upon receipt of correspondence from the LSRA, the solicitor who was the subject of the complaint immediately contacted the complainant firm to apologise for and explain the delay. The solicitor also promptly discharged the fees due to the complainant firm.

Lessons for the Public

Solicitors are bound by their undertakings and a complaint alleging breach of undertaking will be considered a complaint alleging misconduct.

Lessons for Practitioners

When dealing with a complaint, it is always best to engage in the process and try to resolve the complaint as quickly as possible.

Clarity from complainant about outcome sought helped with swift resolution of services complaint

Type of Complaint: Inadequate Legal Services

A former client of a solicitor complained that the solicitor had failed to carry out his instructions correctly in relation to the registration of property with the Land Registry. The client subsequently engaged a new solicitors’ firm which completed the registration as requested and then billed the client for the agreed services. The complainant then asked the former solicitor to reimburse these costs in full. The former solicitor did not reply to this request.

Actions taken by Complaints and Resolutions Team

The LSRA sent the complaint to the solicitor and sought a response. The solicitor indicated that he wished to resolve the issue and was prepared to pay the complainant for the costs incurred. The LSRA liaised between the parties and ultimately the complainant was reimbursed in full.

Outcome: Complaint Resolved

Lessons for the Public

When making your complaint to us, it is helpful if you indicate from the outset what you want to achieve in order to resolve the issue. In our complaint form, we ask you to state what you would consider to be a satisfactory outcome of your complaint. It helps us to know what your expectations are so we can advise you about what you can expect from our process. It also means that practitioners can be told clearly by us what they can do to fix the problems their actions may have caused.

Lessons for Practitioners

If you accept that there is merit to a complaint and engage promptly with the LSRA, complaints may be resolved quickly. The LSRA wants to assist in the resolution of complaints where possible and appropriate. Our focus is on looking forward and trying to resolve matters to the satisfaction of both parties.

Misconduct complaint not upheld as solicitor acted correctly in probate case

Type of Complaint: Misconduct

A complaint was made by a woman who had been left a one third share in the residue or remainder of an estate. The complainant alleged the solicitor was refusing to forward her share of the deceased's estate to her.

Actions taken by Complaints and Resolutions Team

The complaint was put to the solicitor by the LSRA with an invitation to respond. The solicitor set out the circumstances of the administration of the estate and the instructions received at the time the will was drawn up. The facts of the case were complicated because, outside, of the will the complainant had also been nominated by the deceased to inherit funds the deceased had left in an account.

The solicitor maintained that the instructions when the will was drafted were that this money should form part of the estate covered by the will. The solicitor told the complainant this. However, the complainant proceeded to collect the money from the account. The money made up around half of the total cash assets of the deceased's estate. The complainant refused requests to return the money to the estate. The will's executor then instructed the solicitor that the remainder of the estate be divided equally between the other beneficiaries, and the solicitor carried out these instructions.

Outcome: Complaint Inadmissible

Lessons for the Public

When you are making your will, be very clear about all the assets you own and wish to include in your estate. If your circumstances change after you made your original will, it is important to update the document. The solicitor acts upon the instructions of the executor of your will, and not those of the beneficiaries.

Lessons for Practitioners

When drafting a will, make sure that the instructions you receive are clear to both you and your clients. Clients should be thoroughly questioned to ensure full disclosure of all savings and assets that they wish to bequeath as part of their estate. You should carry out checks with clients so that they understand exactly what will form part of their estate and what falls outside it.

Solicitor administering an estate was following the law in acting on instructions of executor

Type of Complaint: Misconduct

The complainant was a beneficiary of his late father's estate who died intestate. The solicitor was acting for the administrator of the estate who was the complainant's mother.

The complainant was due a share of his father's estate under the Succession Act 1965. He alleged that delays in the distribution of the estate were due to the solicitor. He also maintained that the solicitor did not always supply him with information which he had requested.

Actions taken by Complaints and Resolutions Team

In line with our preliminary review processes, we put the complaint to the solicitor and received a prompt reply on the matter. The complainant also had an opportunity to comment on the solicitors' response. The solicitor explained that a portion of the family farm was being sold so that the complainant could receive his share of the estate. The sales process was underway but was impacted by the Covid-19 pandemic and other factors. The solicitor stated that his client, the administrator of the estate, was elderly and house bound. This meant that there were sometimes delays in the solicitor receiving instructions from his client.

Outcome: Complaint Determined to be Inadmissible

Having reviewed the information provided by both parties, the documentation showed that the solicitor had tried to provide information when appropriate to all beneficiaries, including the complainant, while balancing this with his primary responsibility to his client, the complainant's mother. The preliminary review did not find sufficient evidence to support the allegation of misconduct on the part of the solicitor and therefore the complaint was determined to be inadmissible.

Lessons for the Public

When it comes to the administration of an estate of a deceased person, the executor is legally responsible for keeping the beneficiaries updated as to the progress being made by the solicitor. You should therefore direct your queries and concerns to the executor, not directly to the solicitor. If relations are strained between you and the executor, it is best to work on resolving issues directly. By seeking regular direct updates from the solicitor as a beneficiary, you are likely to add to delays and increased costs.

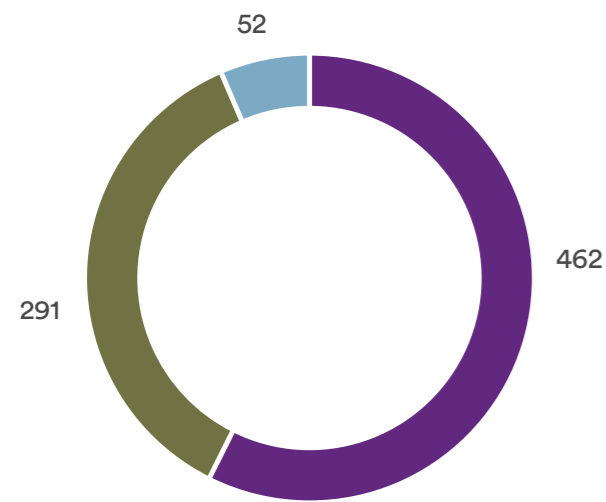
Lessons for Practitioners

You may find yourself in a difficult situation when family disputes arise regarding the distribution of estates. You must always proceed with your work in accordance with the law and acting on instructions from your client, the executor. It is a good idea to explain clearly to beneficiaries at the outset that you will not routinely correspond directly with them on an individual basis as this will only add to your administrative costs.

Complaints Statistics

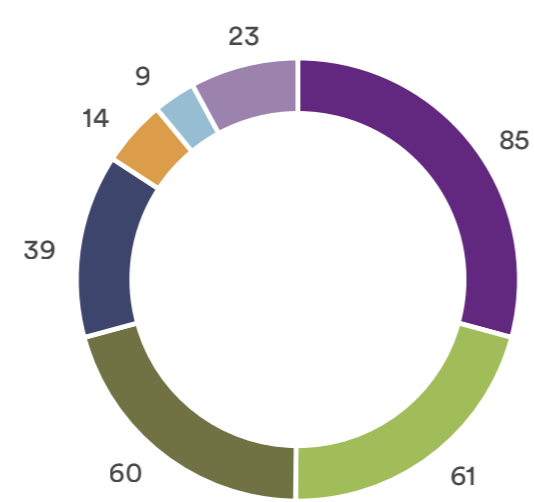
Complaints from 7 September 2020 to 26 March 2021

All Complaints



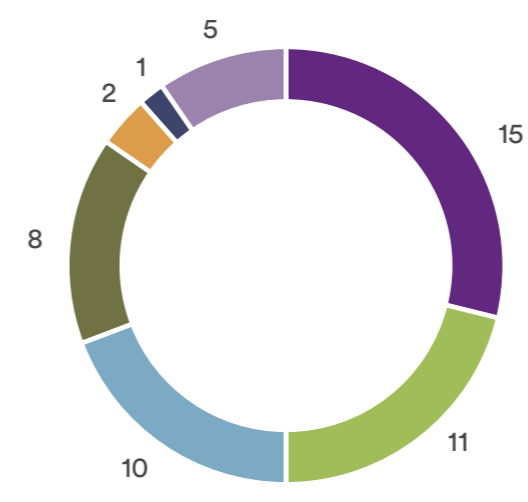
● Misconduct	462	(57.4%)
● Inadequate Services	291	(36.1%)
● Excessive Costs	52	(6.5%)
TOTAL	805	

Inadequate Services



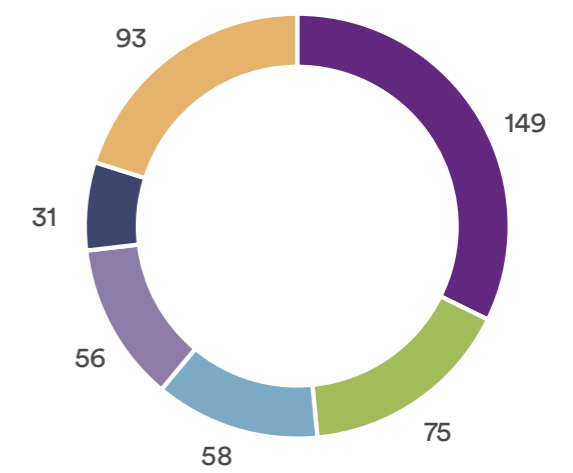
● Litigation	85	(29.2%)
● Conveyancing	61	(20.9%)
● Probate	60	(20.6%)
● Family	39	(13.4%)
● Crime	14	(4.8%)
● Employment	9	(3.0%)
● Other	23	(7.9%)
TOTAL	291	

Excessive Costs



● Litigation	15	(28.8%)
● Probate	11	(21.1%)
● Family	10	(19.2%)
● Conveyancing	8	(15.3%)
● Crime	2	(3.8%)
● Employment	1	(1.9%)
● Other	5	(9.6%)
TOTAL	52	

Misconduct



● Conduct bringing the profession into disrepute	149	(32.2%)
● Failure to communicate	75	(16.2%)
● Failure to hand over	58	(12.5%)
● Undertaking	56	(12.1%)
● Failure to account	31	(6.7%)
● Misc less than 5%	93	(19.8%)
TOTAL	342	

Table 1: Case Completion

Case Completion from 7 September 2020 to 26 March 2021	
Inadmissible	104
Withdrawn	61
Abandoned	0
Resolved	91
Determined by LSRA	6*
Upheld by Complaints Committee	2
Not upheld by Complaints Committee	5
Withdrawn at Complaints Committee	1
Referred to Disciplinary Tribunal	6
Deferred	10
Other	13
TOTAL	299

* One determined complaint closed and five await review or are within review request period.



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