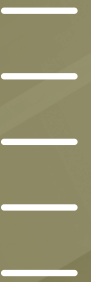




An tÚdarás Rialála
Seirbhísí Dlí
Legal Services
Regulatory Authority

Independent Complaints Handling



Complaints about
solicitors and barristers

Report 2 - 2021

*From 27 March 2021
to 3 September 2021*

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Foreword by the Chief Executive Officer



Dr Brian J. Doherty

I am pleased to introduce the second bi-annual report of 2021 into the operation of the independent complaints function of the Legal Services Regulatory Authority. This report documents trends and statistics, from 27 March 2021 to 3 September 2021.

The report is the fourth published by the LSRA on the operation of its complaints function. It reflects on another busy period for the organisation. The LSRA has recruited more staff and increased the resources to deal with the high level of complaints. We are already seeing the impact of these increased resources in reduced timelines for decision making. As the country begins to move out of the restrictions put in place due to the Covid-19 pandemic, the LSRA will seek to further improve timeliness and efficiency and to improve the experiences of both consumers and legal practitioners who engage in the complaints process.

In previous reports, I highlighted the number of complaints that are resolved by legal practitioners and complainants through positive engagement early in the complaints process. I am pleased to report that this trend continues. A total of 275 complaints files were closed in the pre-admissibility process – that is before a decision was made as to whether the complaint was admissible under the Act. Of these 183 (67%) were resolved between the parties through early engagement.

The figures for this reporting period of complaints relating to inadequate legal services and excessive costs that have been successfully informally resolved post admissibility are, however, not as encouraging. It

is of ongoing concern that some legal practitioners are not engaging positively with the LSRA in our attempts to seek a resolution of complaints through informal resolution or mediation. A trend that I have previously commented on, and which shows signs of continuing, 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.

It is hoped that that more legal practitioners will accept the LSRA's invitation to informally resolve or mediate complaints in the future. Informal resolution represents an opportunity for legal practitioners to resolve a complaint on terms that are acceptable to them without the matter proceeding to determination by the LSRA.

Where it is not possible to resolve a complaint, or where the legal practitioner chooses not to engage with the informal resolution or mediation process, the LSRA can determine the complaint and has the power to direct the legal practitioner to undertake measures such as refunding or waiving fees or the transfer of files. The LSRA made determinations in 21 complaints during this reporting period.

This report includes details of the first sitting of the independent Review Committee which reviews determinations made by LSRA complaints staff. It also includes details of the determinations of the independent Complaints Committee which handles misconduct complaints. I am grateful to the members of both committees for their commitment and diligence in their consideration of complaints.

This report again draws attention to the risks posed by cybercrime. Although this is something which is not brought to the attention of the LSRA on a frequent basis, the potential impact on the client and the legal practitioner when it does occur is life changing. It is for that reason, that we again highlight the need for care and vigilance when conducting electronic bank transfers and transactions.

As in our previous reports, we have chosen to highlight a number of 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.

I remain heartened by the early engagement of both legal practitioners and complainants in efforts to resolve complaints in a pragmatic and proactive way. There are, however, some legal practitioners who appear to be reluctant to engage with the complaints process and to address concerns and complaints that are raised with them in a productive and proactive manner. I would again encourage legal practitioners to engage with the LSRA, to engage early and, where possible, to find solutions and resolutions to the issues that arise. In our experience, this leads to a more positive outcome for both the legal practitioner and the complainant.

Dr Brian J. Doherty
October 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 (the Act) to report on the performance of its complaints function at intervals of no greater than six months. This is the fourth such report, and it reports on the period from 27 March 2021 to 3 September 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 the 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 in ensuring that their delivery of legal services is of the highest standard possible.

To that end, this report contains an overview of our independent complaints handling process, a summary of the nature and types of the complaints that we have received, the outcomes of complaints considered by the Complaints and Review Committees, 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 and investigate.

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.

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 legal 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

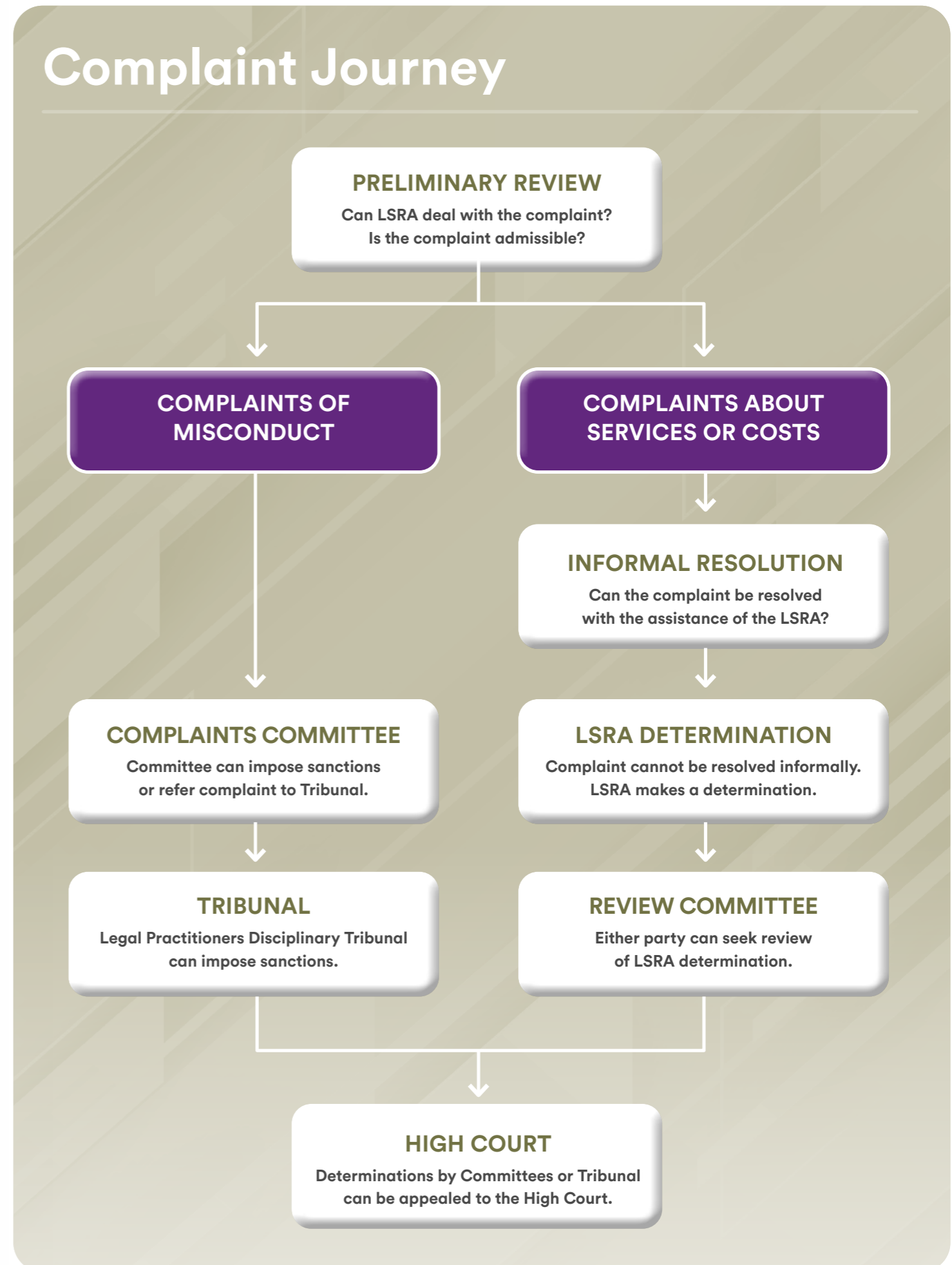
Complaints must be made to the LSRA in writing and they can be submitted by post or email. A complaints form is available on the LSRA website for download, along with information guides for the assistance of both consumers and legal practitioners. Complainants are encouraged to use the complaints form where possible. To comply with the public health restrictions imposed by the government as a result of the Covid-19 pandemic, a small number of our complaints staff continue to work remotely. Therefore, we continue to advise that all correspondence is submitted by email if possible. Correspondence submitted by ordinary post may take longer to process which could 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, the Free Legal Advice Centres or the National Advocacy Service.

If you require particular assistance accessing our services, you can contact our Access Officer whose details are on our website (www.lsra.ie).



The Complaints Process

The Legal Services Regulation Act 2015, together with the Regulations enacted pursuant to the Act, set out detailed processes for the handling of complaints about legal practitioners, including a series of statutory deadlines which must be observed.

All complaints received are designated a file reference and opened initially as a query. Complaints staff then scrutinise each file to decide whether a query should be classified as a complaint or is more appropriately dealt with as a query. This process is an important stage in the complaints handling process as complaints staff clarify the issues that have been 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 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
- the provision of legal services of an inadequate standard to a substantial degree that, if substantiated, would constitute misconduct.

Approaches to Informal Resolution include telephone mediation provided by the LSRA's trained staff (by way of conference calls), face-to-face meetings (pre Covid-19) and the appointment of an external mediator. The approach to Informal Resolution taken in a particular complaint 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 about services and costs

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 LSRA 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 make a determination that the costs sought were not excessive or 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 be reviewed by the Review Committee.

The independent Review Committee sits as a three person committee, composed of two lay persons and one legal practitioner. The Review Committee considers all 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 its 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 about legal practitioners that are 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. These comprise a total of 15 lay members, eight solicitor members nominated by the Law Society, and four barrister members nominated by the Bar of Ireland (Bar Council).

The Complaints Committee is split into three groups, each with nine members. Divisional Committees drawn from these three groups sit to investigate complaints, as either a five or three person committee. Divisional Committees always have a lay majority and a lay chairperson. The Divisional Committees sit on a rolling basis throughout the year at approximately 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 it 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 impose sanctions including:

- 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 the Legal Practitioners Disciplinary Tribunal) impose a specified restriction or condition on the practising certificate or the practice of the legal practitioner.

Number and Nature of Complaints Received

During the reporting period from 27 March 2021 to 3 September 2021, the LSRA received a total of 1,236 phone calls and e-mails requesting information and/or complaint forms. A total of 857 files were opened initially as queries. Following an assessment of these files, a total of 673 were then categorised as complaints. Of the 673 complaints, a total of 654 related to solicitors and 19 related to barristers.

The largest category of complaints received related to alleged misconduct. A total of 443 complaints (66%) were in respect of alleged misconduct. A total of 193 complaints (29%) related to alleged legal services of an inadequate standard and a further 37 (5%) came under the category of alleged excessive costs (overcharging).

This trend is largely consistent with the pattern seen in the three previous complaints reports. Complaints relating to alleged misconduct increased as a proportion of the total (66% in this reporting period compared to 57% in the previous one). Complaints of inadequate legal services decreased (total 29% in this reporting period compared to 36% in the previous report). Complaints relating to excessive costs also decreased (5% in this reporting period, down from 7% in the previous one).

Full details and a further breakdown of these figures are provided in the Statistical Breakdown of Complaints section of this report.

Complaint Outcomes

A total of 646 complaints were closed in this reporting period. Of these, 316 (49%) were deemed to be inadmissible following consideration by the LSRA and closed and 275 (42%) were closed pre-admissibility – that is before a decision was made as to whether the complaint was admissible under the Act.

Of the 275 complaints files closed in the pre-admissibility process, 183 (67%) were resolved with the assistance of the LSRA. In addition, 59 (21%) were withdrawn by the complainant. The consideration of a further 21 (8%) complaints was deferred due to ongoing related proceedings, and there were a further 12 (4%) complaints that could not proceed to admissibility for a variety of other reasons.

Further details are supplied below of some of the 371 complaints which were closed post admissibility. These include 10 complaints resolved with the assistance of the LSRA's trained mediation staff, 13 complaints determined by the LSRA, 32 complaints closed by the Complaints Committee and two complaints closed by the Review Committee.

The tables in the Case Completion section of this report detail all closed complaint outcomes in the current reporting period.

Informal Resolution

As mentioned above, 183 complaints were resolved by the parties during the pre-admissibility process in this period – that is before a decision was made as to whether the complaint was admissible under the Act.

In a total of 64 complaints of inadequate legal services or excessive costs were which were determined to be admissible, the parties were invited to make efforts to resolve matters in the LSRA's Informal Resolution process.

In six complaints, there was no response to the invitation by either the complainant or the legal practitioner. In 28 complaints the legal practitioner chose not to engage with the process and in 14 complaints the complainant chose not to engage.

In the reporting period a total of 10 complaints were resolved in the Informal Resolution process with the assistance of the LSRA's trained mediation staff. In six other complaints, where both parties engaged, it was not possible to resolve the case.

LSRA Determinations

As stated above, admissible complaints of inadequate legal services and excessive costs that are not resolved in the Informal Resolution process proceed to determination by the LSRA.

A total of 21 complaints were determined by the LSRA in the reporting period and directions were issued to the legal practitioners in 17 of those complaints.

Cases that have been determined by the LSRA's complaints staff can be reviewed by the Review Committee should either or both parties request such a review within 30 days of notification (the review period). Where the 30 days expires without a review request, the LSRA's determination is binding upon the parties. For this reason, these reports only report on the nature of determinations and directions made by LSRA complaints staff where the 30 day review period has expired.

Of the 21 determinations made in this reporting period, eight are currently outside of the review period and are therefore considered closed and can be reported on here. These eight determinations and directions are as follows:

- In four complaints where the LSRA determined that the legal services provided were inadequate, the solicitor in three of the cases was directed to transfer the file held by them to another solicitor and in one case hand over the file to their client. In all four complaints, the solicitor was directed to waive all outstanding fees owed.
- In one complaint where the LSRA determined that the legal services provided were inadequate, the legal practitioner was directed to complete an application to the Land Registry at their own expense and to keep the client advised of progress.
- In one complaint where the LSRA determined that the legal services provided were inadequate, the legal practitioner was directed to pay compensation to the client to cover financial or other loss. In that case, the legal practitioner was directed to pay €1,070 in respect of service charges that were due from the previous owner of a property.
- In one complaint where the LSRA determined that the legal services provided were inadequate, the legal practitioner was directed to provide a full bill of costs, a financial statement and a narrative of the status of each case as regards work done and work remaining to be completed.
- In one complaint where the LSRA determined that the legal services provided were inadequate, the legal practitioner was directed to pay compensation of €500 to the client to cover financial or other loss suffered by the client.

The remaining 13 complaints are still within the 30 day review period and the LSRA has received requests for review in three of those complaints to date. We will report on the outcomes of those 13 complaints in the next complaints report.

LSRA determinations in previous reporting period

The LSRA can now report on five of the six LSRA complaints staff determinations that were made in the previous reporting period and documented in the last complaints report. These determinations were still within the 30 day review period at the time of publication of that report, and for this reason could not be reported on in detail. In three of these complaints, the LSRA upheld the complaints with the following directions:

- In a complaint of excessive costs, the LSRA directed the legal practitioner to refund €1,000 plus VAT to the client.
- In a complaint of legal services of an inadequate standard, the LSRA directed the legal practitioner to refund 50% of the fee paid by the client for the services provided.
- In a complaint of legal services of an inadequate standard, the LSRA directed that the legal practitioner pay compensation to the client of €750 plus VAT for financial or other loss caused by the inadequate service.
- In the other two complaints, reviews of LSRA determinations were underway at the time of the last report. The results of those reviews by the Review Committee are reported on below.

Full details of LSRA determinations are contained in Table 2 in the Case Completion section of this report.

The Review Committee

The Review Committee sat once in the current reporting period to consider the two LSRA determinations mentioned above that were made in the previous complaints reporting period and where reviews were requested.

- In the first complaint, the LSRA determined that the legal services that had been delivered were inadequate, but had not considered it to be appropriate, having regard to all the circumstances concerned, to issue a direction to the legal practitioner. The complainant in the case requested a review by the Review Committee. The Review Committee gave both the complainant and the legal practitioner the opportunity to make a statement in writing as to why the determination by the LSRA was incorrect or unjust. The Review Committee upheld the LSRA's determination that the services delivered were inadequate but decided that a direction should have been made in the case. The Review Committee directed the legal practitioner to pay compensation to the complainant of €1,200.
- In the second complaint, the LSRA complaints team had found that the legal services that had been delivered were inadequate and had directed that the legal practitioner discharge additional costs incurred by the client of €2,153 and also directed that the legal practitioner pay compensation to the client for financial or other loss of €1,344.50. The legal practitioner requested a review by the Review Committee. Having considered submissions made in the case, the Review Committee confirmed the original determination made by the LSRA.

The Complaints Committee – misconduct complaints closed

The Complaints Committee met on 12 occasions in the reporting period and considered a total of 48 complaints. In nine complaints, the Complaints Committee required the legal practitioner and the complainant to appear before the Committee for the purposes of the investigation of the complaint.

The Complaints Committee closed a total of 32 complaints in this period. The breakdown is as follows:

- Seven complaints were resolved by the parties. Of these, four were resolved prior to the Complaints Committee commencing its investigation and three were resolved during the course of the investigation. As the complaints were resolved to the satisfaction of the complainant, the Complaints Committee did not continue with its investigation of the complaints.
- Nine complaints were referred by the Complaints Committee to the Legal Practitioners Disciplinary Tribunal (LPDT) for further investigation.
- Five complaints were closed by the Complaints Committee as the complaint was not upheld and, therefore, did not warrant the issuing of a direction or the taking of any further measures. In one of the five cases closed the LSRA was advised that the subject matter of the complaint was under investigation by the Law Society and had already been referred by them to the Solicitors Disciplinary Tribunal. This meant that the Complaints Committee could not further consider the case.

- In a total of ten complaints, the Complaints Committee upheld the complaints and addressed sanction. In five of these complaints, directions were issued by the Committee. These directions are outlined below.
- One complaint was found to be a duplicate complaint and was closed.

Directions of Complaints Committee

- A complaint related to the non-payment of counsel's fees. The solicitor was directed by the Complaints Committee to pay the sum of €2,500 towards the LSRA's costs. That complaint is a case study in this report.
- A complaint related to a failure to undertake any work over an extensive period in connection with a boundary rectification issue on the basis that title deeds had been mislaid. This was eventually resolved, but not after extensive further delay coupled with a failure to respond to correspondence from the LSRA. The solicitor was directed to complete the work, to keep the LSRA updated on the progress of the work and also to pay the LSRA the costs of its investigation in the sum of €2,500.
- A complaint related to extensive delay in a family law case. The practitioner was directed to waive all fees, hand over the file to the complainant and pay compensation to the complainant of €5,000.
- A complaint related to a failure to progress and communicate with a client in respect of a personal injury claim. The solicitor was directed to waive all fees and hand over the file to the complainant.
- A complaint related to a failure by a solicitor to comply with an undertaking to pay a Non

Principal Private Residence (NPPR) charge in respect of a residential property. Although the solicitor resolved the failure to comply with the undertaking, the Complaints Committee directed that the solicitor pay a contribution of €1,350 towards the costs incurred by the LSRA in the investigation of the complaint.

The five remaining complaints were of a financial nature and, as the complainants were already pursuing claims on the Law Society's Compensation Fund, those complaints were upheld by the Complaints Committee but with no sanctions imposed.

A full breakdown of the cases considered by the Complaints Committee is provided in Table 4 in the Case Completion section of this report.

In a small number of complaints before the Complaints Committee, legal practitioners have not responded to correspondence in a timely manner, or sometimes, have not responded at all.

Practitioners should note the powers the Complaints Committee have under the Act to recover the costs of their investigation. Where the Complaints Committee considers it to be reasonable and appropriate, it can direct a legal practitioner to pay up to €5,000 towards the costs incurred by the LSRA in investigating the complaint. Where the Complaints Committee determines that the legal practitioner has in the course of the investigation "refused, neglected or otherwise failed, without reasonable cause, to respond appropriately", the legal practitioner can be directed to make a further contribution of up to €2,500.

Failure to respond to correspondence from the LSRA may also be taken into account by the Complaints Committee when considering whether a complaint should be referred to the LPDT.

Themes Emerging from Complaints

In this report the LSRA highlights the following emerging issues:

Cybercrime

The LSRA is aware that cyberattacks are increasing in both number and sophistication. The LSRA is, therefore, emphasising again the need for sensible, cautious behaviour, good clear communication and, for solicitors' firms, the importance of regular training for all staff.

Solicitors and their clients are among those targeted by online criminals through fraudulent emails that impersonate solicitors' firms. These emails often advise the client that the solicitor has recently changed their bank account and direct the client to lodge money to the new account. This method has been used to defraud clients of significant sums of money.

Clients of solicitors should be aware 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 or by phone (not by email) to confirm that this is, indeed, the case. It is best to avoid disclosing any details about your own bank account by email. Solicitors should advise their clients of their bank account details and tell them that any changes to those details will never be communicated via email.

The LSRA is also aware of instances where solicitors' computer systems have been hacked, with cyber criminals then in a position to monitor the solicitors' internal emails, and, at the appropriate time, amend payment details on emails passing between colleagues in the firm. Unlike the above scenario, this type of attack can be repeated a number of times over a short period before the issue comes to light with particularly devastating consequences for the firm involved.

Where necessary, solicitors should confirm all bank details over the phone both with clients and other employees. Any discrepancy should raise a red flag that should be checked immediately by phone or in person.

Complaints from banks in respect of outstanding undertakings

Solicitors routinely give undertakings to financial institutions that they will be responsible for doing certain things connected with their clients' purchase of a property, for example, to stamp and register the transaction in order to give the necessary security for the mortgage.

Although the LSRA is aware that complaints of failing to discharge an undertaking were a major feature of the Law Society's investigation of complaints following the financial crash, they have not to date been received by the LSRA in any great volume.

The LSRA has, however, recently been informed by representatives of one particular bank that following a recent review they have identified over 400 instances where they believe the solicitor has not discharged an undertaking. During the period covered by this report the LSRA received a total of 123 complaints from banks relating to outstanding solicitors' undertakings. Failure to comply with an undertaking is investigated as a complaint of alleged misconduct.

The LSRA is taking this opportunity to remind solicitors about the importance of ensuring that undertakings are complied with in a timely fashion, that policies and procedures are put in place to manage compliance and that correspondence from financial institutions, following up on outstanding undertakings, is not ignored.

Complaints relating to unpaid counsels' fees

Barristers cannot issue proceedings to recover their fees, so they are reliant upon their instructing solicitor to ensure that they are paid. Solicitors are, in turn, obliged to use their best endeavours to ensure that fees are recovered and paid in a timely fashion.

In the event that fees are not paid, a barrister can make a complaint of alleged misconduct. The LSRA is aware that there has historically been a reluctance amongst some barristers, especially junior counsel, to lodge complaints about the failure of their instructing solicitors to discharge their fees, particularly where there is an ongoing professional relationship.

The LSRA has received a relatively small number of complaints from individual barristers in relation to unpaid fees. However, many are now engaging third parties to recover unpaid fees on their behalf. A number of agencies routinely send complaints of misconduct to the LSRA in relation to the non-payment of counsels' fees. These include the Bar of Ireland's in-house Practice Support and Fee Recovery Department. That department has advised us that they are receiving more instructions to submit complaints, particularly from junior barristers, and are concerned about the non-payment of relatively modest fees for District Court work including that funded under the Legal Aid Scheme.

The LSRA has raised this issue in previous reports and again reminds solicitors of their obligations set out in paragraphs 8.3 and 8.4 of the Law Society's Guide to Good Professional Conduct. We address this issue in more detail in a case study in this report.

Case Studies

The following section contains a selection of anonymised case studies based on actual cases dealt with by the LSRA in this reporting period. Details of the cases may have been altered to ensure anonymity, but the cases should serve to illustrate the nature of the complaints received. It is hoped that these “real life” cases will illustrate many of themes in this report.

Costs and services complaint inadmissible

Type of Complaint: Excessive Costs and Services of an Inadequate Standard

The client engaged a solicitor in a personal injury matter. He said that when the case settled, the solicitor had retained monies from the award that were due to him and had failed to account to him for all the costs that he had incurred.

Outcome: Complaint Inadmissible – Without Substance or Foundation

In responding to the complaint, the solicitor furnished a copy of an agreement signed by the client on the day the case settled that set out an agreed sum which would be retained from the award to cover any shortfall in costs. The solicitor had fully accounted to the client for all the costs that were recovered and, though the shortfall was greater than the amount retained by the solicitor, the client had not been charged any further costs. The complaint was determined to be inadmissible as the solicitor had been clear with the client in relation to his liability for costs on the day they agreed to settle the case.

Lessons for the Public

In a litigation matter, even if you are successful, you may still have a liability for costs. If your case settles, your solicitor should clearly set out your potential liability for costs, so that you are fully aware of your exposure to costs before you agree to settle the case. It should also be clear to you what the settlement terms are and, if you believe you have incurred expenses, full details of your expenses should be provided to your solicitor who can advise about their recovery.

Lessons for Practitioners

If you are deducting monies from a settlement, you must have the client’s signed agreement. Clients must be advised of their potential exposure to costs before they sign the settlement agreement. Clients must also be advised of the need to provide full details of all expenses with supporting documents to ensure that they are recovered.

Excessive costs complaint upheld and solicitor directed to refund complainant

Type of Complaint: Excessive Costs

The client engaged a solicitor in a family law matter and was given an estimate at the outset that the solicitor’s professional fee would be in the region of €3,000 to €4,000. The work was undertaken over a number of years. In the final bill, the solicitor charged a professional fee of €5,000 and referred to an hourly rate of €250 per hour. The solicitor did not advise the client at any stage that the costs were being charged on a time posting basis or that they anticipated they would not be able to remain within the estimate given at the outset.

Outcome: Complaint Upheld

The complaint was determined to be admissible and, as attempts to resolve the complaint informally were not successful, the LSRA proceeded to determine the complaint. The LSRA found that the costs were excessive and that the sum of €1,000 plus VAT should be refunded to the complainant.

Lessons for the Public

When you instruct a solicitor, you are entitled to a clear notice about the legal costs that will be incurred or that are likely to be incurred. If the legal practitioner becomes aware of a factor that will significantly increase those costs, you must be provided with a new revised Costs Notice.

Lessons for Practitioners

You are bound by any fixed costs estimate that you give a client. You must provide a new Cost Notice as soon as you become aware that the costs are likely to be significantly greater than the original costs estimate provided.

Complaints Committee directed solicitor to pay LSRA costs in misconduct complaint

Type of Complaint: Misconduct

A barrister complained he had not been paid fees due for work on Criminal Legal Aid matters. The work spanned a number of years and dated back in some cases to 2016. The barrister provided evidence to indicate that he was due around €20,000 in unpaid fees.

Outcome: Complaint Upheld

The complaint was made admissible and referred by the LSRA to the Complaints Committee which investigates misconduct complaints. During the investigation of the complaint by the Complaints Committee, the complainant indicated that all fees due to him had since been discharged and that he was prepared to withdraw the complaint. The Committee considered the complaint and decided that their investigation should continue in the public interest. The Committee found the solicitor did not discharge the fees due to counsel in a timely manner and also that he had not replied to correspondence from the LSRA. The solicitor was directed by the Complaints Committee to pay the sum of €2,500 towards the LSRA's costs.

Lessons for the Public

If a solicitor receives funds to discharge fees due to a barrister (counsel), they are obliged to pass them on without unreasonable delay. If a solicitor fails, without reasonable cause, to pass on fees received that are due to counsel, that can be considered as a complaint of misconduct.

Lessons for Practitioners

If you are in funds to pay counsels' fees, those fees should be discharged without unreasonable delay. If you are not in funds, you are obliged to use your best endeavours to secure fees due to counsel. As this case shows even if the counsel's fees are discharged during the investigation of the complaint, and even if the barrister withdraws the complaint as a consequence, that does not mean that the investigation into the non-payment will not proceed.

Expiry of three year time limit meant services complaint inadmissible

Type of Complaint: Inadequate Legal Services

The complaint related to fees charged by the solicitor in relation to a successful compensation claim which was settled in 2014. The complaint related to alleged lack of explanation around the fees charged and whether expenses were recovered from the other party in the proceedings. The complaint was categorised and assessed in accordance with an alleged legal service of an inadequate standard in accordance with section 51 (1) (a) of the 2015 Act.

Outcome: Complaint Inadmissible – Out of Time

The LSRA determined that the complaint was inadmissible because the complaint was not made within the three year time limit for complaints of this nature. The LSRA was satisfied that the case, including the costs, was settled in 2014. The complainant had remained a client of the solicitor for many years afterwards and the fees had not been queried by the client over that time.

Lessons for the Public

If you are in anyway unclear about the fees being charged or, indeed, what the charges relate to, you should raise this with your solicitor at an early stage and seek clarification. Clients must be mindful that there are time limits which apply to bringing a complaint. The LSRA is not permitted to investigate complaints of excessive costs or inadequate legal services that fall outside of the three year time limit.

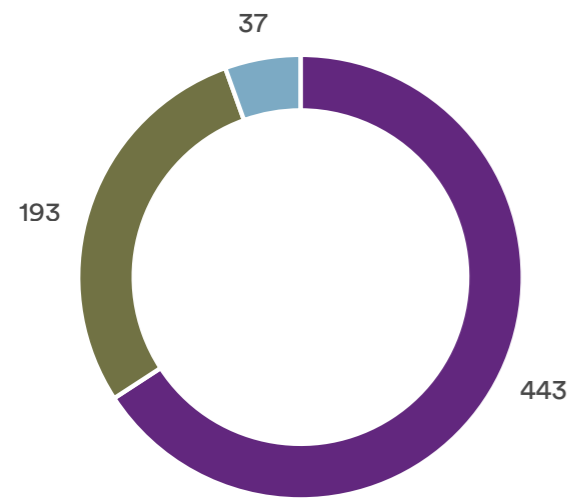
Lessons for Practitioners

In order to avoid complainants being unsure of what the costs relate to, you should be as transparent as possible in your invoicing about what costs are associated with what work. You should seek to clarify any queries as soon as they arise.

Complaints Statistics

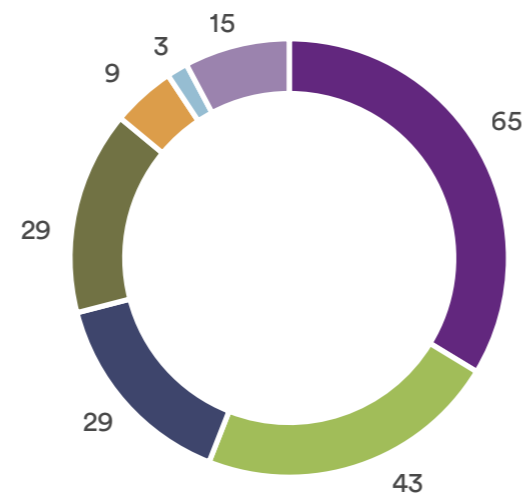
Complaints received from 27 March 2021 to 3 September 2021

All Complaints



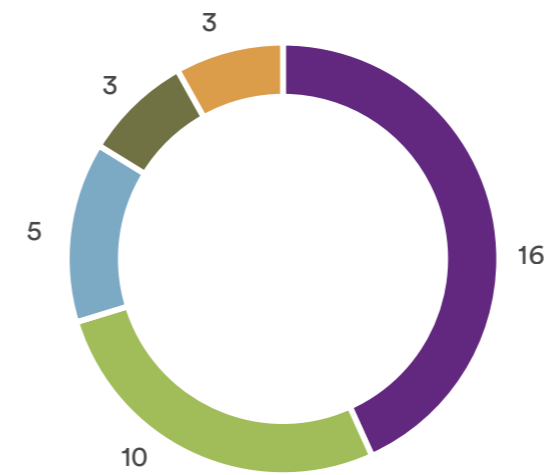
● Misconduct	443	(65.8%)
● Service of an Inadequate Standard	193	(28.7%)
● Excessive Costs	37	(5.5%)

Legal Services of an Inadequate Standard



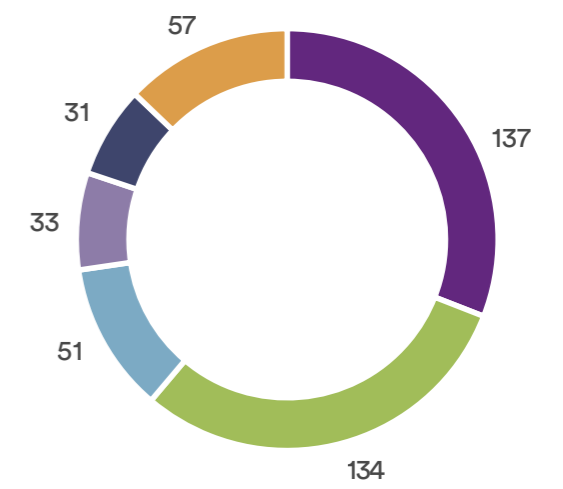
● Litigation	65	(33.7%)
● Conveyancing	43	(22.3%)
● Probate	29	(15.0%)
● Family	29	(15.0%)
● Crime	9	(4.7%)
● Employment	3	(1.5%)
● Other	15	(7.8%)
TOTAL	193	

Excessive Costs



● Litigation	16	(43.2%)
● Family	10	(27.0%)
● Conveyancing	5	(13.5%)
● Probate	3	(8.1%)
● Other	3	(8.1%)
TOTAL	37	

Misconduct



● Conduct bringing the profession into disrepute	137	(31.0%)
● Undertaking	134	(30.2%)
● Failure to hand over	51	(11.5%)
● Failure to account	33	(7.4%)
● Failure to communicate	31	(7.0%)
● Misc less than 5%	57	(12.8%)
TOTAL	443	

Case Completion Statistics

Complaints Closed from 27 March 2021 to 3 September 2021

Table 1: Summary of Case Completions

Complaints Closed Pre-admissibility	
Resolved	183
Withdrawn	59
Deferred	21
No Longer Practising	2
Other	10
Total complaints closed pre-admissibility	275
Complaints Closed Post-admissibility	
Inadmissible	316
Determined by LSRA	13
Resolved in Informal Resolution	10
Closed by Complaints Committee	32
Total complaints closed post-admissibility	371
TOTAL COMPLAINTS CLOSED	646

Table 2: Determined by LSRA Complaints Staff

Determination Date	Upheld/Direction to Legal Practitioner	Section of the Act	Appeal to Review Committee
25/01/2021	Discharge additional costs of €2,153 and pay compensation of €1,344.50	s60(6)(b)&(d)	26/02/2021 (See Table 3)
25/02/2021	Reduce fee by €1,000 plus VAT and refund to client	s61(6)(a)	
8/03/2021	Reduce fee by 50% and refund balance	s60(6)(b)	
05/03/2021	Pay compensation of €750 plus VAT to client	s60(6)(d)	
05/03/2021	No direction		01/04/2021 (See Table 3)
15/05/2021	Provide detailed fee note and update on four cases as regards work done/outstanding	s60(6)(a)	
17/05/2021	Hand over file to client and waive remaining fees	s60(6)(c)	
27/05/2021	Register property, provide regular updates and waive fee	s60(6)(a)	
03/06/2021	Transfer file to new solicitor within 45 days	s60(6)(c)	
22/06/2021	Transfer file to new solicitor within 30 days without seeking further costs	s60(6)(c)	
01/07/2021	Transfer file to new solicitor within 30 days without seeking further costs	s60(6)(c)	
05/07/2021	Discharge arrears of service charges of €1,070	s60(6)(b)	
04/08/2021	Pay compensation of €500 to client	s60(6)(d)	

Table 3: Closed by Review Committee

No.	Date of Determination	Direction	Section of the Act	Date of Meeting	Outcome of Review Committee
1	25/01/2021	Upheld. Discharge additional costs of €2,153 and pay compensation of €1,344.50. Appealed by LP to Review Committee.	Section 60(6)(b) & (d)	28/06/2021	Determination and direction confirmed.
2	05/03/2021	Upheld. No Direction		28/06/2021	Determination confirmed. Varied to direct payment of compensation of €1,200 under Section 60(6)(d).

Table 4: Closed by Complaints Committee - Summary

Referred to LPDT	Not Upheld	Upheld/Direction	Resolved	Other
9	5	10	7	1

Table 5: Listing of Complaints Committee Determinations

No.	Date of Committee Meeting	Act or Omission	Determination
1	15/04/2021	Failure to register purchase	Not upheld S70(12)
2	22/04/2021	Failure to comply with undertaking	Referred to LPDT S71(7)
3	22/04/2021	Failure to redeem mortgage on sale	Not upheld S70(12)
4	28/04/2021	Failure to account	Referred to LPDT S71(7)
5	28/04/2021	Failure to hand over files	Referred to LPDT S71(7)
6	09/06/2021	Failure to register purchase	Referred to LPDT S71(7)
7	24/06/2021	Substantial inadequate services	Not upheld S70(12)
8	24/06/2021	Failure to hand over will	Not upheld S70(12)
9	15/07/2021	Substantial inadequate services	Upheld – direction S71(5)(d)&(h) Provide regular updates/ Pay costs of €2,500 to LSRA
10	15/07/2021	Failure to pay counsel	Upheld – direction S71(5)(i) Pay costs of €2,500 to LSRA
11	15/07/2021	Substantial inadequate services	Upheld – direction S71(5)(c)(i)(d)&(g) Waive fees/Hand over file/Pay compensation of €5,000 to complainant
12	21/07/2021	Failure to account	Referred to LPDT S71(7)
13	21/07/2021	Failure to account	Referred to LPDT S71(7)
14	21/07/2021	Failure to account	Referred to LPDT S71(7)
15	21/07/2021	Failure to pay expert	Upheld – no direction

Table 5: Listing of Complaints Committee Determinations
(Continued)

No.	Date of Committee Meeting	Act or Omission	Determination
16	21/07/2021	Failure to pay counsel	Upheld – no direction
17	21/07/2021	Failure to account	Upheld – no direction
18	21/07/2021	Failure to account	Upheld – no direction
19	21/07/2021	Failure to account	Upheld – no direction
20	26/08/2021	Substantial inadequate services	Upheld – direction S71(5)(c)(i) & (d) Waive fees/Hand over file
21	26/08/2021	Failure to comply with undertaking	Upheld - direction S71(5)(h) Pay costs of €1,350 to LSRA
22	02/09/2021	Substantial inadequate services	Not upheld S70(12)
23	02/09/2021	Failure to comply with undertaking	Referred to LPDT S71(7)
24	02/09/2021	Failure to register purchase	Referred to LPDT S71(7)



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