



An tÚdarás Rialála
Seirbhísí Dlí
Legal Services
Regulatory Authority

REVIEW OF THE OPERATION OF THE LEGAL SERVICES REGULATION ACT 2015



**Report to the Houses
of the Oireachtas**

September 2025



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Executive Summary

The Legal Services Regulatory Authority (LSRA) has conducted its second review of the operation of the Legal Services Regulation Act 2015, as amended (the Act) in accordance with section 6 of the Act.

Following the first review of the operation of the Act under section 6, legislative amendments were introduced under the Courts and Civil Law (Miscellaneous Provisions) Act 2023 which primarily amended the levy provisions through which the LSRA was then funded. Amendments were also introduced to improve the ability of the LSRA to properly maintain the Roll of Practising Barristers.

Following the required statutory public consultation process as part of the second review of the Act, 15 submissions were received from organisations and private individuals. The LSRA has given due consideration to these submissions and has also conducted an in depth analysis of the Act in light of operational experience garnered since the commencement of the LSRA's complaints function in 2019, the implementation of other parts of the Act and the amendments to the Act.

The LSRA now reports to each House of the Oireachtas on the findings and conclusions of its review along with recommendations for amendments to the Act, the Solicitors Acts 1954 to 2015 (the Solicitors Acts) and to other statutory instruments as appropriate.

Following the second review of the operation of the Act, the Solicitors Acts and other statutory instruments, the LSRA has concluded that legislative amendment is still required to ensure the effective operation of the Act and the delivery of the LSRA's strategic objectives and functions including the efficient operation of the complaints process under Part 6 of the Act.

The LSRA has therefore identified a series of priority recommendations that would have an immediate and significant impact on the efficient operation of the LSRA's complaints process.

The LSRA also remakes a series of recommendations that were included in the first section 6 review of the Act including a number of recommendations necessary to correct drafting anomalies and technical errors where they have been found in the Act to date.

The LSRA also considers a series of 79 recommendations for amendments proposed by the Law Society to the Solicitors Acts to be appropriate. The 79 recommendations by the Law Society deal with issues such as data sharing, amendments to legislation, practising certificates and other matters relating to practice and complaints, disciplinary and court matters.

As part of the public consultation the LSRA received a submission from the Office of the Legal Costs Adjudicator (OLCA), in relation to Part 10 of the Act. This submission and the recommendations made therein is summarised in part three of this report and reproduced here in full as an appendix.

The LSRA is of the view that the recommendations made in this report are necessary and appropriate for the effective and efficient operation of the Act.

The 28 priority recommendations for legislative amendment of Part 6 of the Act made by the LSRA are as follows:

Recommendation 1:

The LSRA recommends that section 57 of the Act be amended to allow the LSRA to determine a complaint to be inadmissible in circumstances where the LSRA is of the view that the complaint submitted is one that is manifestly inadmissible and that there is no requirement to seek a response from the legal practitioner. Where the Authority makes such a determination, it shall notify the complainant concerned of its determination under this subsection and of the reasons for its determination.

Recommendation 2:

The LSRA recommends that sections 60 and 61 of the Act be amended to prohibit a legal practitioner from issuing court proceedings against a complainant once notified of a complaint alleging excessive costs or services of an inadequate standard until the matter has been determined.

Recommendation 3:

The LSRA recommends that the Act be amended to allow the LSRA, in appropriate matters, to invite the legal practitioner and the complainant to a complaint to participate in the mediation or informal resolution of a complaint at any stage of the complaints process including the pre-admissibility stage.

Recommendation 4:

The LSRA recommends that the Act should be amended to allow the LSRA the discretion not to invite the parties to a complaint to make efforts to resolve a matter where the LSRA is of the view that an agreement or resolution between the parties is unlikely to be reached.

Recommendation 5:

The LSRA recommends that the provisions of section 60(6) and section 61(6) of the Act be merged to allow the LSRA to direct any of the full range of directions listed in either complaints of excessive costs or of inadequate service.

Recommendation 6:

The LSRA recommends that section 60(6)(c) of the Act be amended to allow documents to be transferred directly to the client without the need to nominate another legal practitioner.

Recommendation 7:

The LSRA is of the view that section 62(5) of the Act should be amended to allow the Review Committee to determine a review by setting aside the determination of the Authority in its entirety and should be amended to allow the Review Committee to determine a review by more than one of the specified determinations.

Recommendation 8:

The LSRA recommends that section 62 of the Act should be amended to allow that where the Review Committee remits a complaint to the Authority to be dealt with again under section 60 or section 61 that the Authority is not required to invite the parties to resolve the matter under section 60(1) or section 61(1) or to request further statements from the parties under section 60(5) or section 61(5).

Recommendation 9:

The LSRA recommends that section 62 of the Act be amended to ensure that the Review Committee may only review the determination of the Authority on one occasion and that once any matter is remitted to the Authority to be dealt with again with such directions as the Review Committee consider appropriate or necessary, that matter can no longer be the subject of a further review.

Recommendation 10:

The LSRA recommends that Part 6 of the Act be amended to allow the LSRA to take any investigative action that it considers appropriate to gather any necessary evidence for the consideration of the Complaints Committee prior to the Complaints Committee convening to consider the complaint, and that such investigative action is enforceable and to set out the consequences for any person or entity who obstructs or prevents such action

Recommendation 11:

The LSRA recommends that section 70 of the Act be amended to require the Authority to furnish to the Complaints Committee all documents submitted by the Legal Practitioner and documents held by the LSRA that it considers relevant to the complaint(s) and be amended to require the LSRA to furnish documents received or prepared during the course of its investigation.

Recommendation 12:

The LSRA recommends that section 70(3) of the Act should be amended to allow the LSRA to furnish a copy of the complaints documentation to the legal practitioner and to request the legal practitioner to furnish to the Complaints Committee the legal practitioner's response to the complaint and complaints documentation and any further exchanges of documents in advance of the Complaints Committee sitting for the first time to consider the complaint.

Recommendation 13:

The LSRA recommends that Part 6 of the Act be amended to provide the LSRA with a general investigative power to take what steps it considers necessary to investigate a complaint that is under consideration of the Complaints Committee so that the Complaints Committee has all of the necessary material it requires in order to consider and investigate any matters referred to it.

Recommendation 14:

The LSRA recommends that section 71(5)(d) of the Act be amended to substitute the word “client” for the word “complainant”.

Recommendation 15:

The LSRA recommends that section 72 of the Act be amended to allow the complainant to appeal a determination or direction of the Complaints Committee to the High Court.

Recommendation 16:

The LSRA recommends that section 35 of the Act be amended to ensure that there is absolute clarity that the LSRA may apply to the High Court for an order compelling a legal practitioner, complainant or other person to comply with the Act or so as to avoid a contravention or a likely contravention of a provision of the Act.

Recommendation 17:

The LSRA recommends that Part 6 of the Act be amended to ensure that there is absolute clarity that the LSRA and the Complaints Committee are provided with the power to compel legal practitioners to provide information/documentation when sought by the LSRA or by the Complaints Committee for the purposes of the consideration and investigation of complaints and such power is enforceable, and to set out the consequences for a party who fails to comply with any such requirements.

Recommendation 18:

The LSRA recommends that section 70(9) of the Act be amended to permit the LSRA to compel the legal practitioner **and/or** the complainant to attend before the Complaints Committee and to set out the consequences for a party who fails to comply with any such requirements.

Recommendation 19:

The LSRA recommends that section 70(9) of the Act be amended to ensure that there is absolute clarity that the Complaints Committee are provided with the power to compel the legal practitioner and/or the complainant to attend before the Complaints Committee when required by the Complaints Committee and such power is enforceable, and to set out the consequences for a party who fails to comply with any such requirements.

Recommendation 20:

The LSRA recommends that the definition of misconduct under section 50 of the 2015 Act be amended to include the failure of a legal practitioner to cooperate with an LSRA investigation and a Complaints Committee investigation. The Complaints Committee should also be empowered to refer matters of non-cooperation by a legal practitioner directly to the LPDT when determining a complaint where there was non-cooperation from the legal practitioner or to deal with the matter directly.

Recommendation 21:

The LSRA recommends that section 216 of the Act be amended to allow for sufficient service by electronic means only, of all notices, determinations and any other correspondence relating to matters under Part 6 of the Act or other parts of the Act as applicable.

Recommendation 22:

The LSRA recommends that any monetary amounts referred to in Part 6 should be set by way of regulation by the LSRA with the consent of the Minister.

Recommendation 23:

The LSRA invites the Department to consider whether a definition of “client” of a legal practitioner is required in Part 1 of the Act.

Recommendation 24:

The LSRA recommends that that the 2015 Act should be amended to ensure that there is absolute clarity that only a client can make misconduct complaints relating to grossly excessive costs under 50(1)(l) or of the delivery of legal services of a substantially inadequate standard under 50(1)(b).

Recommendation 25:

The LSRA recommends that Part 6 of the Act be amended to properly define the process to be followed by the LSRA to investigate an act or omission by a legal practitioner where no complaint has been received.

Recommendation 26:

The LSRA recommends that Part 6 of the Act be amended to permit the LSRA to investigate grounds of misconduct that may arise during the course of an investigation but that were not subject of the initial complaint, and consider those new grounds of misconduct with the initial complaint.

Recommendation 27:

The LSRA recommends that section 69(3) of the Act be amended to remove the limit on the number of members of the Complaints Committee appointed by the LSRA and to allow the LSRA to set the number of members of the Complaints Committee by way of regulation with the approval of the Minister. Similarly the LSRA recommends that section 75(1) of the Act be amended to remove the limit on the number of LPDT Members and to allow the LPDT to set the number of Tribunal members by way of regulation and with the approval of the Minister.

Recommendation 28:

The LSRA recommends that section 57 of the Act be amended to allow the LSRA to determine that part of a complaint is admissible whilst also determining other parts of the same complaint to be inadmissible.

The 4 recommendations for legislative amendment made by the OLCA are as follows:

OLCA Recommendation One:

Section 140(7)(a) makes reference to a determination made under section 158(1) of the Act. This appears to be an error and should be amended to refer to section 157(1) of the Act.

OLCA Recommendation Two:

Paragraph 18 of the Eight Schedule to the Courts (Supplemental Provision) Act 1961 be amended to remove the 10 year limit on appointment as a legal costs adjudicator.

OLCA Recommendation Three:

Section 155 be amended to provide that a section 151 agreement shall, unless an adjudicator for special reason to be stated in their determination otherwise directs, apply to an adjudication.

OLCA Recommendation Four:

s.157 be amended to provide for:

1. A decision being made orally or in writing at the election of the parties or the adjudicator,
2. A decision to contain the matters currently specified in subsection 9.
3. Where the decision results in additional matters to be determined, the decision is not complete until such additional matters are dealt with,

No obligation to furnish a decision to a non-participating party.

Sections 160 & 161 be amended to provide for:

Time should not run until any additional cost matters are dealt with.

PART 1: Introduction

1.0 Background and Context

1.1 The Legal Services Regulatory Authority (LSRA) was established by the Minister for Justice and Equality on 1 October 2016 by virtue of S.I. 507 of 2016 in accordance with section 7 of the Legal Services Regulation Act, 2015 (the Act).

1.2 Under the Authority's current Three-Year Strategic Plan 2022-2025, the LSRA's strategic vision is:

"To protect and promote the public interest and the interests of consumers of legal services whilst encouraging an independent, strong, competitive legal profession with high standards of professionalism and integrity"

1.3 The Mission statement of the LSRA is derived from section 13(1) of the Act and states as follows:

"The Legal Services Regulatory Authority will regulate the provision of legal services by legal practitioners and will ensure the maintenance and improvement of standards in the provision of legal services in the State."

1.4 Under section 13(4) of the Act, the Authority has six statutory objectives. These are to:

- (1) Protect and promote the public interest.
- (2) Support the proper and effective administration of justice.
- (3) Protect and promote the interests of consumers relating to the provision of legal services.
- (4) Promote competition in the provision of legal services in the State.
- (5) Encourage an independent, strong and effective legal profession.
- (6) Promote and maintain adherence to the professional principles of legal practitioners specified in the Act.¹

1.5 Under section 13 of the Act the LSRA's functions are to:

¹ Section 13(5) of the Act outlines the professional principles of legal practitioners as follows:

- (a) That legal practitioners shall
 - (i) act with independence and integrity,
 - (ii) act in the best interests of their clients,
 - (iii) maintain proper standards of work,
- (b) that legal practitioners who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court by virtue of being legal practitioners, shall comply with such duties as are rightfully owed to the court, and
- (c) that, subject to any professional obligation of a legal practitioner, including any obligation as an officer of the court, the affairs of clients shall be kept confidential.

- (1) Keep under review and make recommendations to the Minister in respect of:
 - a. admission requirements of the Law Society, Bar Council, and Honorable Society of King's Inns;
 - b. availability and quality of education and training including ongoing training for the solicitors' and barristers' professions;
 - c. policies in relation to admission and, or, entitlement to practice of the Law Society, Bar Council and the Honorable Society of the King's Inns;
 - d. professional codes;
 - e. the organisation of the provision of legal services in the State.
- (2) Disseminate information in respect of the education and accreditation requirements and any other matters referred to above as the LSRA thinks fit.
- (3) Specify the nature and minimum levels of professional indemnity insurance required.
- (4) Establish and administer a system of inspection of legal practitioners for the purposes of the Act.
- (5) Receive and investigate complaints.
- (6) Maintain the roll of practising barristers.
- (7) Promote public awareness and disseminate information to the public in respect of legal services, including the cost of such services.
- (8) Keep the Minister for Justice and Equality informed of developments in respect of the provision of legal services including their cost.
- (9) Keep the Minister informed of developments in respect of the provision of legal services and make recommendations to assist the Minister in coordinating and developing policy.
- (10) Undertake, commission or assist in research projects and other activities in respect of the provision of legal services which may increase public awareness and promote an improvement in standards for their provision, and make recommendations to the Minister for Justice and Equality.
- (11) Perform any other functions conferred by the Act or by regulations made under it.

- 1.6 Under section 6 of the Act (section 6), the LSRA is required to periodically review the operation of the Act and to make a report to each House of the Oireachtas of its findings and conclusions, including such recommendations to the Minister resulting from the review as the LSRA considers appropriate.
- 1.7 The recommendations shall include such recommendations for amendments to the Act, the Solicitors Acts or any instrument made under those Acts, as the Authority considers appropriate arising from its findings and conclusions.
- 1.8 The LSRA made its first report under section 6 to each House of the Oireachtas on 29 March 2019. This is the second report made under section 6.
- 1.9 In conducting the review under section 6, the LSRA is required under subsection (3) to consult with the Competition and Consumer Protection Commission, professional bodies and such other persons, as the Authority considers appropriate for such purpose. Section 2(1) of the Act defines “professional bodies” as *“the Bar Council, the Law Society, the Honorable Society of King’s Inns or such other body of legal practitioners as the Authority may prescribe.”* Section 2(1) of the Act defines “prescribed” as “prescribed by way of regulations under this Act”. As of the time of writing, the LSRA has not prescribed any other body of legal practitioners as a professional body under the Act.
- 1.10 The LSRA conducted a public consultation for the purposes of preparing this report. The LSRA has also conducted a detailed analysis of the Act incorporating the views of those with operational responsibility for delivering the wide remit of the LSRA including the members of the Review and Complaints Committees and the Legal Practitioners Disciplinary Tribunal.
- 1.11 Report under Section 6**
- 1.12 Part 2 of this report provides an overview of the provisions of each of the 15 parts of the Act and provides a high level summary of the operation of the Act by reference to the work that has been undertaken by the LSRA and other agencies since their commencement.
- 1.13 Part 3 of the report outlines the public consultation process in compliance with section 6(3) of the Act. A summary of all of the submissions received in relation to section 6 is provided as well as any appropriate commentary. All of the submissions received will be published on the LSRA website at www.lsr.ie once the report has been laid before the Houses of the Oireachtas.
- 1.14 Finally, Part 4 of the report contains the 65 recommendations for amendment to the Act and other legislative instruments by the LSRA under section 6(1)(b) of the Act. The LSRA is of the view that the recommendations made will positively impact on the operation of the complaints function and allow the LSRA to increase its effectiveness and efficiency as a statutory regulator of the provision of legal services.

- 1.15 Part 4 also contains the four recommendations made for amendments to the Act and other legislation by the Office of the Legal Costs Adjudicator in their submission to the LSRA and also the 79 amendments recommended by the Law Society and considered appropriate by the LSRA.

PART 2: The Operation of the Legal Services Regulation Act, 2015

2.0 Introduction

- 2.1 The Legal Services Regulation Act 2015 (the Act) was signed into law on 30 December 2015. Section 1(2) of the Act provides for the commencement of the Act by Ministerial order *“either generally or by reference to any particular purpose or provision, and different days may be so fixed for purposes or different provisions”*.²
- 2.2 There are 15 Parts to the Act, 12 of which are directly relevant to the functions of the LSRA. Of the three Parts that are not directly relevant to the LSRA, Part 10 Legal Costs, is primarily focussed on the establishment of the Office of the Legal Costs Adjudicator, Part 11 of the Act relates to Legal Costs in Civil Proceedings and is primarily directed at the Courts, which is also the case with Part 15 related to Clinical Negligence Actions.
- 2.3 At the time of writing 8 commencement orders have been issued and the entirety of the Act has been commenced with the exception of the following sections:
- Section 46 insofar as it relates to multi-disciplinary practices;
 - Section 47(1) insofar as it relates to multi-disciplinary practices;
 - Section 47(3)-(7) insofar as they relate to multi-disciplinary practices;
 - Section 102 multi-disciplinary practices and professional codes;
 - Section 103 insofar as it relates to multi-disciplinary practices;
 - Sections 106-112 establishment of multi-disciplinary practices;
 - Sections 114,115 powers of the Authority in relation to multi-disciplinary practices;
 - Section 121(2) review of multi-disciplinary practices 2 years after commencement;
 - Section 180 Amendment of section 48 of Solicitors Act of 1954;
 - Section 196 Amendment of section 10 of Solicitors Act of 1994;
 - Section 199 Monitor appointed by Authority may attend committee meetings;
 - Section 201 insofar as subsections (1)(c) and (1A) relate to multi-disciplinary practices;
 - Section 219-221 Clinical Negligence Actions (Part 15).

² With the exception of s. 100, the commencement of which, also by way of Ministerial order, was linked to the receipt of a statutory report on legal partnerships as provided for under s. 118 of the Act. This section was ultimately subject to amendment in the Courts and Civil Law (Miscellaneous Provisions) Act 2023.

2.4 The Provisions of Part 1 and Part 2 of the Legal Services Regulation Act 2015: Preliminary and General and the Legal Services Regulatory Authority

- 2.5 On 19 July 2016, the Legal Services Regulation Act 2015 (Commencement of Certain Provisions) Order 2016 (S.I. 383/2016), provided for the commencement on that date of various provisions in Parts 1 and 2 of the Act.
- 2.6 Part 1 of the Act includes provisions setting out the Act's short title, the methodology and manner by which the various parts of the Act would be commenced, the collective citation of the Solicitors Acts 1954 to 2011 and provides various definitions that are relevant to the further provisions of the Act. Part 1 also provides for the making of regulations under the Act by the Minister or the Authority, which regulations may contain such incidental, supplementary and consequential provisions as the party making the regulations considers necessary or expedient. Part 1 also allows for the payment out of the public purse of expenses incurred by the Minister in the administration of the Act.
- 2.7 Finally section 6 in Part 1 of the Act provides for the periodic review of the operation of the Act. The within report is the second report provided for under the provisions set out in that section.
- 2.8 Part 2 of the Act "Legal Services Regulatory Authority" provides that the Minister shall, by order, appoint a day to be the establishment day for the purposes of the Act. By virtue of the Legal Services Regulation Act 2015 (Establishment Day) Order 2016 (S.I. 507/2016), the Minister subsequently appointed 1 October 2016 as the establishment date for the LSRA.
- 2.9 Part 2 also provides for the establishment of the Legal Services Regulatory Authority, as a body corporate with perpetual succession and a seal, to perform the functions conferred on it by or under the Act. The LSRA is entitled to sue and be sued in its corporate name and can enter into or execute contracts or instruments on behalf of the LSRA by persons authorised to act in that behalf.
- 2.10 Part 2 also deals with the membership of the 11 person Authority and terms of membership including the necessary expertise that the members should have, the nominating bodies and the manner of and procedure for appointment. This part introduces a requirement for the Authority to have a majority of 'lay members' and no fewer than four members of either gender on the Authority.
- 2.11 Part 2 further provides for the terms of appointment of members of the Authority, who act on a part-time basis and provides for the payment of expenses to members, and the procedure by which a member may resign and be replaced. The part also provides for the disqualification from office of members of the Authority for various

specified reasons and for a statutory process for the removal from office of a member of the Authority for various specified reasons.

- 2.12 Section 13 of Part 2 identifies the Authority's functions and regulatory objectives and provides that subject to the Act, the Authority shall be independent in the performance of its functions. This section identifies the Authority's regulatory objectives and the professional principles of practitioners are set out in section 13(5) of the Act. Further subsections provide a general power for the Authority to do anything which it considers necessary or expedient to enable it to perform its functions, the capacity for the Authority to perform its functions through or by the chief executive or any other member of staff duly authorised on that behalf by the Authority, and a statutory presumption that such performance has been authorised until the contrary is proven. The Authority may also provide for the performance of one or more of its functions by a committee, under the general direction of the Authority.
- 2.13 Part 2 goes on to provide for the holding of meetings by the Authority, the means by which such meetings shall be held, the quorum for meetings and various related matters including the manner in which votes are taken at meetings, if required.
- 2.14 Section 15 provides that members of the Authority, members of a committee of the Authority or the chief executive of the Authority shall cease to hold such positions if elected or appointed to various specified political or judicial offices. Members of staff of the Authority shall stand seconded from employment by the Authority in such circumstances.
- 2.15 Section 16 of Part 2 provides for the establishment of Committees by the Authority including provisions for the appointment of persons to committees, the removal of members of committees, the manner in which committee procedures are regulated and the payment of fees or allowances for expenses.
- 2.16 Section 17 of Part 2 provides for the power of the Authority to enter into contracts with persons or bodies or to appoint consultants and advisers to assist it in the performance of its functions.
- 2.17 Section 18 provides for the power of duly authorised officers of the Authority to compel a legal practitioner to provide such officer with information or documentation that he or she would otherwise be entitled to refuse to produce on the grounds of legal professional privilege when required to do so for the purpose of enabling the Authority to discharge its functions under the Act. Section 19 provides for the handling by the Authority and its staff of confidential information, the circumstances in which and to whom it may legitimately be disclosed, and the procedure by which privilege may be claimed and adjudicated upon.

- 2.18 The remainder of Part 2 provides for the preparation and submission by the Authority of strategic plans and annual reports to the Minister. The Authority is also provided with the power to issue Codes of Practice and with a general and ongoing power to review the professional codes that have been adopted by or on behalf of the professional bodies specified in the Act. Further sections deal with the appointment of the Chief Executive and the staff of the Authority including provisions for the transfer of suitable qualified staff from the Law Society and the Bar of Ireland. Provision is also made to allow the Authority to introduce a superannuation scheme for the Authority.
- 2.19 Part 2 also sets out the accounting and audit responsibilities of the LSRA and the Chief Executive and also establishes the accountability of the Chief Executive to the Public Accounts Committee and the Joint Oireachtas Committee on Justice.
- 2.20 Section 32 of the 2015 Act states that the Minister shall advance to the Authority out of moneys provided by the Oireachtas such amount or amounts as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of expenditure by the Authority in the performance of its functions.
- 2.21 Section 33 requires the Authority to prepare and submit to the Minister a report specifying the number of persons admitted to practise as solicitors and barristers during that year and to include an assessment as to whether or not the number of persons admitted to practise as barristers and solicitors in that year is consistent with the public interest in ensuring the availability of such services at a reasonable cost.
- 2.22 Section 34 requires the Authority to prepare and furnish reports to the Minister, following appropriate public consultation processes, on the education and training of legal practitioners in the State, the unification of the solicitors' profession and the barristers' profession, the creation of a new profession of conveyancer and such matters as the Minister may, from time to time, request the Authority to report on.
- 2.23 Section 35 allows the Authority to apply to the High Court for an order prohibiting a legal practitioner or other person to contravene the 2015 Act or the Solicitors Act 1954-2015 or any regulations made under those Acts. Finally, section 36 allows for any offence under the Act to be prosecuted summarily by the Authority.
- 2.24 The Operation of Part One and Part Two of the 2015 Act**
- 2.25 This section outlines a high level summary of how Part One and Part two have operated in practice since their commencement.

- 2.26 The Legal Services Regulatory Authority was established by the Minister for Justice on 1 October 2016 by virtue of S.I. 507 of 2016 in accordance with section 7 of the Legal Services Regulation Act 2015. The Authority held its first meeting on 26 October 2016 and has held regular meetings thereafter. Approved minutes of all Authority meetings are published on the Authority's website www.lsr.ie
- 2.27 Dr Brian J. Doherty has been the Chief Executive of the LSRA since his appointment under section 24 of the Act on 14 September 2017.
- 2.28 As required by section 20 of the Act the LSRA's First Strategic Plan, which covered the period 2018-2020, was submitted to the Minister in April 2018 and subsequently published on the Authority's website www.lsr.ie The LSRA has published subsequent Strategic Plans for the periods 2019-2022 and 2022-2025.
- 2.29 The LSRA has, in compliance with section 21 of the Act submitted an annual report to the Minister and to the Oireachtas Joint Committee on Justice for every year since 2016. In 2025 the LSRA submitted its ninth annual report under section 21 of the Act. The LSRA has also submitted its annual statement of accounts in compliance with section 28 of the Act to the Comptroller and Auditor General.
- 2.30 By 1 November 2016 (i.e. one month after establishment date, as required by section 23 of the Act) the Authority had received professional codes from the Honorable Society of King's Inns, the Law Society and the Bar of Ireland. The professional bodies continue to submit such professional codes as are required on an ongoing basis.
- 2.31 On 4 July 2018 the Chairperson of the LSRA and the Chief Executive attended, on foot of a written invitation, before the Joint Oireachtas Committee on Justice to give evidence on the operation of the Legal Services Regulatory Authority. The Chief Executive also attended and gave evidence before the Joint Oireachtas Committee on Justice on 18 June 2024.
- 2.32 The LSRA currently has 69 staff appointed as per section 25(1) of the Act. A number of Law Society staff transferred to the LSRA in 2018 and 2019 under the provisions of section 26 of the Act.
- 2.33 As required under section 33 of the Act the LSRA has submitted an annual report on the admission policies of the legal profession since the commencement of section 33 of the Act by SI No 502 Legal Services Regulation Act 2015 (Commencement of Certain Provisions) (No. 2) Order 2019. The LSRA has submitted six of the annual reports to date. The reports, known as the Pathways to the Professions reports, are available on the LSRA website.
- 2.34 Under section 34 of the Act the LSRA was required to report on a number of matters to the Minister. The LSRA has fully complied with its obligations under this section.

- 2.35 Under section 34(1) of the Act a report in relation to the education and training of legal practitioners in the State was required to be submitted to the Minister within 2 years of the establishment day of the Authority of 1 October 2016. Following extensive public consultation, the report under section 34 was submitted to the Minister for Justice in September 2018. This report was accompanied by an independent expert review of the existing arrangements for education and training of legal practitioners which the Authority commissioned Hook Tangaza consultants to prepare.
- 2.36 Following extensive further research and public consultation on the topic of legal education and training, including a symposium hosted by the LSRA in 2019, the LSRA submitted a further report titled *“Setting Standards”* to the Minister for Justice in November 2020.
- 2.37 The report made two key recommendations: firstly, that a competency framework should be introduced for all legal practitioners and secondly, that an independent Legal Practitioner Education and Training Committee (the LPET Committee) should be established which would be responsible for ensuring that new and existing providers of legal education adhere to the standard required by the competency framework, for monitoring the quality of legal education and also encouraging innovation and diversity.
- 2.38 Following discussions with the Department of Justice on how best to move forward with the implementation of the recommendations made by the Authority in the *Setting Standards* report, the Authority established a Committee under section 16 of the Act. The section 16 Education and Training Committee is currently working on preparing the groundwork for the delivery of the competency framework and the LPET Committee.
- 2.39 Under section 34(2) of the Act a report on the unification of the solicitors’ profession and barristers’ profession was required to be submitted to the Minister within 4 years of the establishment day of the Authority of 1 October 2016. The report entitled *“Greater than the sum of its parts? Consideration of unification of the Solicitors’ Profession and Barristers’ Profession”* was submitted to the Minister in September 2020.
- 2.40 The report followed an extensive public consultation and included a detailed comparison with other jurisdictions. The report concluded that there was no compelling evidence to support the unification of the solicitors’ profession and barrister’s profession and recommended that the solicitor’s profession and barristers’ profession in the State should not be unified at this time.

- 2.41 The Authority considered that it may be appropriate for it to give further detailed consideration to the unification issue at a future date. The Authority undertook to return to the matter no less than five years from the date of the submission of the report to the Minister.
- 2.42 Under section 34(1)(c) of the Act a report on the creation of a new profession of conveyancer was required to be submitted to the Minister within a time period specified by the Minister in a written notice. The Authority submitted its report *“Consideration of a new profession of Conveyancer”* to the Minister in November 2023. The report was accompanied by an independent *“Research Study on the Creation of a new Profession of Conveyancer”* which the Authority commissioned Indecon Economic Consultant to prepare.
- 2.43 The Authority found that whilst establishing a conveyancer profession would further the Authority’s statutory objective of promoting competition in the delivery of legal services, the barriers, risks and regulatory costs associated with the establishment of a new profession of conveyancer in Ireland are too significant to justify its creation in the absence of wider reforms.
- 2.44 The Authority recommended that the following reforms be prioritised:
- Digitalisation of the conveyancing system;
 - Enhanced price transparency requirements for solicitors in relation to conveyancing services and their costs; and
 - Targeted national awareness campaigns for consumers aimed at allowing them to make informed decisions when seeking conveyancing services.
- 2.45 Under section 34(1)(d) of the Act the Authority is required, following appropriate consultation processes, to prepare and furnish a report to the Minister on such matters as the Minister from time to time request the Authority to report on. Following a request from the Minister for Justice under section 34 the LSRA prepared and submitted a series of reports to the Minister in which it set out to explore, understand and address the challenges facing early career solicitors and barristers.
- 2.46 The final of the four reports submitted, *“Breaking Down Barristers: Addressing the challenges facing early career legal professionals”* made 32 recommendations for reforms which are intended to address the findings of the research undertaken which established that aspiring and earlycareer solicitors and barristers face a range of economic and other barriers on their career pathways and that these barriers are magnified for certain groups groups and have a negative impact on diversity in the legal profession.

- 2.47 The Minister for Justice accepted the recommendations and requested that the LSRA prepare an implementation plan. The implementation plan was submitted to the Minister in September 2024. The LSRA, the Honorable Society of King's Inns, the Law Society of Ireland and the Bar of Ireland have formed an Implementation Working Group to progress the implementation of the 32 recommendations.

2.48 The Provisions of Part 3 of the Legal Services Regulation Act 2015: Inspections

- 2.49 Part 3 of the 2015 Act permits the Authority to appoint both members of its staff and other persons that it sees fit to be Inspectors. All appointed inspectors are to be furnished with a warrant card and any appointment or revocation must be in writing. Any Inspector has the power to carry out an inspection for the purposes of the investigation of any complaint made under the Act or to ensure compliance with requirements imposed by the Act, regulations made under the Act or any code of practice issued by the Authority.
- 2.50 Part 3 sets out the powers of inspectors to enter and inspect the businesses of legal practitioners and to inspect and take copies of any books, records, accounts or documents. An inspector can also require the legal practitioner or any person present at the place concerned to produce such records. Inspectors can also apply to the High Court for the power to seize and retain records and data equipment and to secure a place for later inspection. Inspectors can also be accompanied in conducting inspections by members of An Garda Síochána.
- 2.51 Part 3 gives the LSRA the power to apply to the High Court for an order directing someone to comply with an inspection and introduces criminal offences of obstructing or interfering with an inspector, interfering with the power of an inspector by removing, deleting, destroying or defacing books, records, accounts or other documents and failing to comply with a request to answer a question by an inspector.
- 2.52 Finally Part 3 requires an inspector to report to the Authority within 21 days of completion of the inspection and allows for any such report to be admitted in evidence in any complaints proceedings under Part 6 of the Act or the Solicitors Acts 1954 to 2015.

2.53 The Operation of Part 3

- 2.54 The LSRA has conducted a small number of inspections of the business premises of legal practitioners since the commencement of Part 3 of the Act in October 2019.
- 2.55 The physical inspection of the business premises of legal practitioners was, of course, not possible during the years of the Covid-19 medical emergency.

- 2.56 The LSRA is also of the view that the use of inspection powers for the purpose of an investigation or to ensure compliance with the Act or any regulations made under is a power that should be used carefully. In May 2025, Ireland signed the *European Convention for the Protection of the Profession of Lawyer* which introduces safeguards for lawyers who are the subject of an inspection.
- 2.57 The LSRA has appointed four of its staff to act as Inspectors under section 37(1) of the Act. No external staff have been appointed as Inspectors under section 37(1)(b) to date.
- 2.58 The LSRA Inspectors have not yet been required to apply to the High Court to be accompanied by members of An Garda Síochána for the purposes of an inspection under section 40 of the Act, nor have they had to apply to the High Court for an order directing a person to comply with a requirement of an Inspector.

2.59 The Provisions of Part 4 of the Legal Services Regulation Act 2015: Holding of Clients' Monies by Legal Practitioners

- 2.60 Part 4 of the 2015 Act relates to the holding of clients' moneys by legal practitioners.
- 2.61 Part 4 prohibits the holding of clients' moneys by barristers. Part 4 also permits the Minister for Justice to prescribe by regulation a class or classes of solicitors who may not hold clients' moneys or who may hold moneys subject to conditions.
- 2.62 Part 4 does not permit a solicitor to hold clients' moneys where a condition or restriction has been placed on a solicitor's practising certificate.

2.63 The Operation of Part 4

- 2.64 Under section 120 of the Act the LSRA was required to engage in a public consultation and to report to the Minister within 12 months of the establishment day of the Authority of 1 October 2016 in relation to a number of matters relating to barristers.
- 2.65 One of the issues that had to be the subject of the consultation and subsequent report was *"the extent, if any, to which the restriction on legal practitioners, other than solicitors, holding the moneys of clients, as provided under section 45, should be retained."*
- 2.66 The LSRA reported to the Minister under section 120 of the Act in September 2017.
- 2.67 In relation to the restriction on legal practitioners, other than solicitors holding moneys of clients, the Authority concluded that the only situation in which it may be

necessary, or desirable, for barristers to hold client moneys would be where a barrister is a partner within a legal partnership or a multi-disciplinary practice.

- 2.68 The LSRA recommended that *“Barristers, who are not members of a Legal Partnership or a Multi-Disciplinary Practice, should not be permitted to hold client moneys”*.
- 2.69 The LSRA further recommended that the possibility of barristers holding client moneys as part of a legal partnership or a multi-disciplinary practice to be considered as part of the then ongoing consultations and consideration of those issues. The LSRA also recommended that any regulatory and associated costs of barristers holding client moneys as part of a legal partnership or multi-disciplinary practice should be borne by those barristers in so far as is possible unless such an approach would make those business models uneconomical.
- 2.70 Multi-disciplinary practices have not yet been introduced as a model for legal service delivery in the state. Legal Partnerships were introduced in 2024. The prohibition under section 45 of the Act on legal practitioners, other than solicitors, holding moneys of clients remains in place.
- 2.71 Under regulation 16(3) of the Legal Services Regulation Act 2015 (Legal Partnerships) Regulations 2024 a practising barrister in a legal partnership shall not hold moneys of clients, whether as a partner in a legal partnership or as an employee of a legal partnership. Under the same regulation a solicitor-barrister legal partnership is required to have systems and controls in place to ensure that a practising barrister does not hold the moneys of clients within the meaning of the 2015 Act and the Regulations.
- 2.72 The LSRA introduced a Code titled *“Code of Practice for Practising Barristers”* under section 22 of the Act. Part 3 (III) of the Code at 3.19 states as follows, *“A practising barrister shall not hold moneys of clients. This applies whether the practising barrister is a self-employed barrister, an employed barrister, or a barrister in a legal partnership or limited liability partnership.”*
- 2.64 In its first section 6 review of the operation of the Act, the LSRA considered this matter as it relates to Legal Partnerships. The Authority reported that it had sought the advices of Senior Counsel *“to the effect that the prohibition is on the individual and not on the partnership generally. Senior Counsel advised that it would be possible to operate a partnership between solicitors and barristers that satisfies the requirements of the Act and in particular section 45(1). However, effective internal controls would be necessary in the partnership.”*
- 2.65 The LSRA recommended at recommendation 20 in the first section 6 review that the *“issue of legal partnerships holding client monies be clarified and the internal controls required specifically addressed by way of legislative amendment.”*

- 2.66 No regulations have been made by the Minister under section 45(2) of the Act prescribing a class or classes of solicitors who may not hold the moneys of clients, or who may hold such moneys subject to such conditions as may be provided for in the regulations.

2.67 The Provisions of Part 5 of the Legal Services Regulation Act 2015: Matters Relating to the Protection of Clients of Legal Practitioners

- 2.68 Part 5 of the Act codifies matters relating to the protection of clients of legal practitioners.
- 2.69 Part 5 makes it mandatory for all barristers and solicitors, subject to some exceptions, to have professional indemnity insurance in place at the time of the provision of legal services. For barristers the policy must comply with regulations made under section 47 of the 2015 Act and for solicitors the policy must comply with regulations made under section 26 of the Solicitors (Amendment) Act of 1994.
- 2.70 Part 5 also permits the LSRA to approve a group scheme of professional indemnity insurance for practising barristers where the scheme is provided under the aegis of a professional body.
- 2.71 Legal practitioners are prohibited from knowingly making a false or misleading declaration of a material nature for the purpose of obtaining professional indemnity insurance.
- 2.72 Part 5 requires the LSRA to make regulations in relation to the professional indemnity insurance required to be maintained by practising barristers, multi-disciplinary practices and limited liability partnerships other than in relation to practising solicitors. The Authority is also required to consult with the professional bodies before the making of regulations.
- 2.73 Finally, Part 5 allows legal practitioners to limit their civil liability to a client by way of a contract.

2.74 The Operation of Part 5

- 2.75 The LSRA has made two sets of regulations in the exercise of powers under section 47 of the Act relating to professional indemnity insurance since the commencement of the provisions of Part 5.
- 2.76 The Legal Services Regulation Act 2015 (Professional Indemnity Insurance) Regulations 2019 S.I. No. 572 of 2019 were issued in November 2019 and dealt primarily with the obligations on barristers to maintain minimum standards of professional indemnity insurance.

- 2.77 Those regulations were subsequently repealed and replaced by the Legal Services Regulation Act 2015 (Professional Indemnity Insurance for Barristers) Regulations 2024 S.I. No. 490 of 2024 which contains regulations relating to the minimum standards of professional indemnity insurance for sole practitioner barristers and for barristers in legal partnerships.
- 2.78 The Bar of Ireland provides the LSRA with evidence of PII for each of their members every year. The non-Law Library practising barristers send their evidence of PII directly to the LSRA. The insurance year for most barristers runs from 1 April to 31 March of the following year. For the 2023/2024 insurance year, the LSRA received evidence of insurance from 2,148 barristers. For the 2024/2025 insurance year, the LSRA received evidence of insurance from 2,112 barristers.
- 2.79 Each certificate of insurance is checked to see if it meets the minimum level of indemnity cover and the permissible self-insured excess requirements.

2.80 The Provisions of Part 6 of the Legal Services Regulation Act 2015: Complaints and Disciplinary Hearings in Respect of Legal Practitioners

- 2.81 Under Part 6 of the Act, the LSRA is responsible for complaints against solicitors and barristers.
- 2.82 Under Part 6 the LSRA can receive and investigate three types of complaint:
- That the legal services provided were of an inadequate standard;
 - That the amount of costs sought by a legal practitioner for legal services was excessive;
 - That an act or omission of a legal practitioner constitutes misconduct under the Act.
- 2.83 Section 50 of Part 6 contains a broad definition of misconduct which 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.
- 2.84 Only a client, or a person acting on their behalf, can bring a complaint to the LSRA where the client considers that the legal services provided were of an inadequate standard or that the amount of costs sought were excessive.
- 2.85 Any person can make a complaint of misconduct to the LSRA.
- 2.86 Complaints in relation to legal services or costs must be received by the LSRA within three years of the date on which the legal services were provided or the bill of costs

issued or within three years of the client becoming aware of the inadequate legal services or excessive costs (or from when they ought reasonably to have become aware of the same.)

- 2.87 There is no statutory time limit for complaints relating to alleged misconduct.
- 2.88 Once a complaint has been received, the LSRA is required under the Act to conduct a preliminary review to determine whether or not the complaint is admissible. 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 the legal practitioner's observations.
- 2.89 Part 6 also provides the LSRA with the ability to request additional information from the legal practitioner or the complainant at preliminary review stage.
- 2.90 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.
- 2.91 If not resolved, complaints relating to inadequate legal services or excessive costs can be determined by the LSRA.
- 2.92 Should the LSRA determine that the legal services provided by a legal practitioner have been of an inadequate standard, 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 cannot exceed €3,000;
 - Transfer any documents relating to the issue which is the subject of the complaint to another legal practitioner nominated by the client;
 - Pay to the client a sum not exceeding €3,000 in compensation for any financial loss or other loss suffered by the client.
- 2.93 Should the LSRA determine that the amount of costs sought by a legal practitioner was or is excessive, 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.

- 2.94 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.
- 2.95 Part 6 of the Act contains provisions for the establishment and operation of the Review Committee. The Review Committee sits as a three person committee comprised of two lay persons and one legal practitioner. 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 as appropriate, including to waive or refund fees, to rectify an error or to pay compensation.
- 2.96 Decisions of the Review Committee can be appealed to the High Court.
- 2.97 Part 6 of the Act also contains provisions for the establishment and operation of the Complaints Committee. The Complaints Committee is made up of 27 members, comprised of not fewer than eight members nominated by the Law Society; not fewer than four members nominated by the Bar of Ireland, and the remainder being made up of lay members appointed by the Authority.
- 2.98 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 that the complainant and the legal practitioner to appear before it for the purposes of the investigation of the complaint.
- 2.99 Following consideration of the complaint, the Complaints Committee can refer matters to the Legal Practitioners Disciplinary Tribunal (“the LPDT”) for an inquiry.
- 2.100 If the Complaints Committee does not determine that the complaint warrants referral to the LPDT, but is one that warrants the imposition of a sanction, the Committee can impose a range of sanctions without the consent of the legal practitioner. These include directing the legal practitioner to perform or complete the service which is the subject of the complaint, directing the legal practitioner to participate in a professional competence scheme, to waive or refund fees, to comply with an undertaking or to amend or withdraw an advertisement.
- 2.101 The Complaints Committee may also direct the legal practitioner to pay a sum not exceeding €5,000 as compensation to the client of financial or other loss and may direct that they pay a sum not exceeding €5,000 as a contribution to the costs incurred by the Authority in investigating the complaint.

- 2.102 The Complaints Committee can also determine that the legal practitioner has, in the course of the investigation refused, neglected or otherwise failed, without reasonable cause, to respond appropriately in a timely manner to a written request from the Committee and where the Authority has incurred additional costs in relation to the investigation of the complaint can direct the legal practitioner to pay a sum to the Authority not exceeding €2,500 by way of contribution to the costs.
- 2.103 The Complaints Committee can also, with the consent of the legal practitioner, direct the Law Society in the case of a solicitor to impose a specified restriction on their practising certificate or in the case of a barrister direct the LSRA to impose a restriction or condition in respect of his or her practice as a barrister.
- 2.104 Section 72 of the Act allows the legal practitioner or the Authority to appeal a determination of the Complaints Committee to the High Court.
- 2.105 Section 73 requires the LSRA to publish a report on the performance of its functions under Part 6 every six months. The report is to include the number and type of complaints received by the Authority during the period, the general nature and outcome of those complaints, the number of complaints referred to the Complaints Committee and the outcome of those complaints including sanction. The report may include the name of the legal practitioner subject of the Complaints Committee determination where the LSRA considers it appropriate.
- 2.106 Part 6 of the Act also established the LPDT to consider complaints of alleged misconduct referred to it by the LSRA or by the Law Society.
- 2.107 The LPDT has 33 members consisting of 21 lay members, six solicitor members and six barristers all of whom are appointed by the President of the High Court. It sits in divisions of a minimum of three members, with a lay majority and lay chair.
- 2.108 LPDT inquiries are generally held in public with oral evidence and the LPDT has the same rights and powers as the High Court in relation to the enforcement of the attendance of witnesses and the production and discovery of documents. The LPDT can subpoena witnesses to attend and give evidence, including under cross-examination.
- 2.109 The LPDT can make findings of misconduct by a legal practitioner and can impose a wide range of sanctions. The sanctions available to the LPDT include imposing an advice, admonishment or censure on the legal practitioner, directing the legal practitioner to participate in one or more professional competence schemes, directing the legal practitioner to waive or refund fees, directing the legal practitioner to complete certain legal services and imposing conditions on the legal practitioner's practising certificate.

- 2.110 The LPDT can also impose a range of monetary sanctions on the legal practitioner following a misconduct finding but the total amount of which cannot exceed €15,000.
- 2.111 The LPDT can also make a recommendation to the High Court that the legal practitioner be restricted in the type of work that they do, that they be prohibited from practising without supervision or that they be suspended from practice or permanently struck off the Roll of solicitors or the Roll of Practising Barristers.
- 2.112 Where the LPDT makes a finding of misconduct against a legal practitioner the LSRA is obliged to arrange for the publication of the determination of the LPDT, the name of the legal practitioner the nature of the misconduct and the sanction imposed.
- 2.113 Where following a recommendation of the LPDT the High Court makes an order striking the name of a solicitor from the Roll of Solicitors or the name of a barrister from the Roll of Practising Barristers or suspending either a solicitor or barrister from practice, the Authority is required to publish a notice of the operative part of the order in Iris Oifigiúil and also publish the notice in such manner as the Authority may consider appropriate.
- 2.114 Section 89 of the Act states that complaints made to the Authority and documents created or furnished to the parties entitled to receive them under Part 6, proceedings and documents associated with an LPDT inquiry, a report made by the LPDT to the High Court or a notice published by the Authority in relation to an order made by the High Court are all absolutely privileged.
- 2.115 Section 90 of the Act allows the LSRA to apply to the High Court where the legal practitioner fails to comply with a determination of the LSRA or the LPDT for an order directing compliance.
- 2.116 Part 6 also contains transition provisions in relation to complaints in relation to barristers and solicitors where the behaviour complained of predates the commencement of the Act.
- 2.117 Finally, section 94 purports to provide the Authority, in the performance of its functions under Part 6 in relation to a complaint made in respect of a solicitor, with the ability to exercise any power conferred on the Law Society under the Solicitors Act 1954 to 2015.

2.118 The Operation of Part 6

- 2.119 The LSRA began receiving and investigating complaints against solicitors and barristers on 7 October 2019. Since that date the LSRA has received 8,178 complaints. Of these 7,896 related to solicitors and 282 related to barristers.

2.120 Complaints to the LSRA must be made in writing and can be submitted by physical post or electronically by e-mail. The LSRA has a dedicated e-mail address for the receipt of complaints. A complaint form is available on the LSRA website for download. The LSRA website also has information guides for the assistance of both consumers and legal practitioners. The LSRA has also recently produced videos that explain various elements of the complaints process.

2.121 All complaints that are 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 part of the process allows complaints staff to clarify the issues that have been raised with the complainant.

2.122 Notification of Complaints (LSRA Recommendations 1 and 2)

2.123 Once a query has been classified as a complaint, the LSRA is required under Part 6 to conduct a preliminary review to determine whether or not the complaint is admissible. At this stage, the LSRA must notify the legal practitioner of the complaint in writing, provide the complainant with a copy of the complaint and request a written response with observations on the complaint within 21 days. The LSRA also provide the legal practitioner with a leaflet explaining the complaints process and directing them to support services that are available.

2.124 In the case of complaints against solicitors, the LSRA is also required to notify the Law Society of the complaint and to provide any documents that were submitted with the complaint to the Law Society.

2.125 The LSRA has no discretion in this regard. Even if it is clear from the outset that the complaint will ultimately be determined to be inadmissible due for example to the nature of the complaint being made or because the complaint is clearly without substance or foundation or is out of time, the LSRA is still required under the Act to notify the legal practitioner, notify the Law Society in the case of complaints against solicitors and to request a written response.

2.126 The LSRA has received feedback from multiple legal practitioners as to the frustration that this sometimes causes. The LSRA has also seen a number of instances where complainants have made multiple complaints against the same legal practitioner in the knowledge these complaints must be provided to the legal practitioner and they must be invited to respond to them. There is some risk in these circumstances that a person may abuse the process in an attempt to harass or annoy a legal practitioner.

2.127 The Law Society in their second submission to the LSRA have also raised this issue recommending that the LSRA should *“be entitled to make a determination that a*

complaint is inadmissible without the need to notify the legal practitioner concerned of the complaint in the event that it determines that the complaint is manifestly inadmissible.”

- 2.128 The LSRA is of the view that the legislation should be amended to provide the LSRA with the discretion to determine a complaint to be inadmissible at this stage and without the requirement to seek a response from the legal practitioner. This recommendation is outlined in **Recommendation 1** by the LSRA.
- 2.129 Complaints staff may also at this preliminary review stage, request additional information in writing from either the complainant or the legal practitioner.
- 2.130 The LSRA has frequently encouraged legal practitioners to provide a full response to allegations made and to provide any relevant evidence that they may have at the preliminary review stage.
- 2.131 It is also often necessary to seek further information from the complainant and/or from the legal practitioner in order to ensure that the LSRA has sufficient information and material at this stage upon which to base its decision on the admissibility of a complaint.
- 2.132 Around 48% of all complaints closed by the LSRA are determined to be inadmissible at this stage.
- 2.133 Another issue that has arisen in relation to the notification of complaints is where the LSRA has notified the legal practitioner of the receipt of a complaint in respect of a bill of costs issued by the legal practitioner and before an admissibility decision has been taken in the complaint the legal practitioner issues court proceedings in an attempt to get a judgment in relation to the fees before the complaint is made admissible. The LSRA is of the view that section 61(9) of the Act should be amended to prevent legal practitioners from issuing proceedings in respect of any bill that is the subject of a complaint until that complaint has been determined by the LSRA. Similarly, there is a concern that upon notification of a complaint relating to services of an inadequate standard, that a legal practitioner will, before an admissibility decision is made, issue court proceedings in an attempt to obtain judgment in relation to the services of an inadequate standard complaint of. The LSRA is of the view that section 60 of the Act should be amended to prevent legal practitioners from issuing proceedings in respect of any inadequate legal services that is the subject of a complaint until that complaint has been determined by the LSRA. This is outlined in **Recommendation 2** by the LSRA.

2.134 Informal Resolution of Complaints (LSRA Recommendations 3 and 4)

- 2.135 The LSRA encourages the early resolution of complaints between the parties where appropriate. The informal resolution of complaints between parties can take place before the complaint has been determined to be admissible.
- 2.136 However, the statutory requirement for the LSRA to attempt to invite the parties to make efforts to resolve matters only arises once the complaint has been determined to be admissible and where the complaint relates 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.
- 2.137 In compliance with the Mediation Act 2017 (as amended), the LSRA has a team of qualified staff who are affiliated to the Mediator's Institute of Ireland and are fully trained to deal with this aspect of the legislation. The LSRA also has a panel of external mediators that it can call on to assist with the resolution of the complaint. However, as the cost of the external mediator is split between the parties while the use of the LSRA's mediators is free no-one has ever requested the intervention of an external mediator in a complaint.
- 2.138 Informal resolution is conducted in most cases by way of individual phone calls with the LSRA mediator. The mediator generally calls the parties separately to see if there is a way for the parties to resolve the complaint to their satisfaction. Although the approach to informal resolution may vary in each complaint depending on the nature of the complaint, group calls, and/or face-to-face meetings can all be considered. The process is conducted separately to the investigation and determination of the complaint which in effect only occurs if the matter cannot be resolved. None of the material generated in the informal resolution process can be used in any disciplinary, civil or criminal proceedings or communicated to any person other than the persons participating in the attempt to resolve the complaint.
- 2.139 The LSRA has produced guidelines for the resolution of complaints by mediation or informal means as required by section 67 of the Act and these are available on the LSRA website.
- 2.140 The LSRA has found that almost one in four complaints received were closed as informally resolved between the parties. The majority of these were resolved prior to a decision being taken on the admissibility of the complaint. In contrast in the first five years of the operation of the complaints process of the 745 instances in which the LSRA invited the parties to attempt to resolve the matter subject of the complaint post admissibility, the offer was only accepted by both parties in 399 complaints or in 53% of matters. Of those only 199 or 27% were successfully resolved.
- 2.141 The LSRA is therefore of the view that the legislation should be amended to allow for the LSRA to assist in the mediation of the complaint at any stage of the complaints process including the pre admissibility stage. This recommendation is set out as **Recommendation 3** by the LSRA.

2.142 The LSRA is also of the view that the legislation should be amended to allow the LSRA the discretion not to invite the parties to make efforts to resolve a matter where the LSRA considers that an agreement or resolution between the parties is unlikely to be reached in the matter. This is set out in **Recommendation 4** by the LSRA.

2.143 Such a requirement can be unhelpful and distressing to complainants and legal practitioners in certain circumstances and the required time period to respond to invitations to make efforts to resolve a matter lengthens the time in which a complaint can be resolved by the LSRA.

2.144 Determination of complaints about services and costs (Recommendations 5 and 6)

2.145 Where following a reasonable period, the LSRA considers that an agreement or resolution between the parties is unlikely to be reached in the matter, it may give notice to the client and the legal practitioner that it proposes to determine the complaint. The LSRA then invites the client and the legal practitioner to furnish a statement to it setting out their respective positions in relation to the matter subject of the complaint. Following a period of 30 days from the Notice the LSRA Complaints and Resolutions Unit can then determine the matter.

2.146 The LSRA can make a determination that the costs sought were not excessive or that the legal services delivered were not inadequate.

2.147 Under section 60 of the Act, should the LSRA determine that the legal services provided by a legal practitioner were of an inadequate standard, and 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.

2.148 Under section 61 should the LSRA determine that the amount of costs sought by a legal practitioner was, or is excessive, and 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.

2.149 These two sections are discrete in their operation. This means that in a complaint of inadequate service the LSRA is unable to direct the legal practitioner to refund fees or to waive all or some of the amount billed even though this may be the most appropriate outcome and in a complaint of excessive costs the LSRA is unable to direct the legal practitioner to pay to the client an amount of compensation even though this may be appropriate in the circumstances.

2.150 The LSRA is of the view that this is overly restrictive and that the full range of directions under section 60(6) and 61(6) should be available to the LSRA in determining a complaint of either inadequate services or excessive costs as set out in **Recommendation 5** by the LSRA.

2.151 As set out in **Recommendation 6** by the LSRA, the LSRA is also of the view that it should be able to direct a legal practitioner to transfer any documents to another legal practitioner nominated by the client or directly to the client themselves. This is not currently possible under the Act and in instances where the matter subject of the complaint has actually concluded complainants have been required to engage a new legal practitioner simply for the purpose of receiving the documents.

2.152 Review of LSRA Determinations (Recommendations 7, 8 and 9)

2.153 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.

2.154 The LSRA established the Review Committee in 2020.

2.155 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.

2.156 Following its consideration of the determination made by the LSRA, as well as any statements made by the complainant and the legal practitioner, pursuant to section 62(5) the Review Committee can:

- Confirm the LSRA determination;
- Remit the complaint to the Authority, with such directions as the Review Committee considers appropriate or necessary to be dealt with again under section 60 or 61 as the case may be, or
- Issue one or more directions to the legal practitioner, that the Authority is authorised to issue under section 60(6) or section 61(6), as the case may be.

- 2.157 As set out in **Recommendation 7** by the LSRA, the LSRA is of the view that the Review Committee should also be specifically empowered to set aside the determination of the LSRA in its entirety where it disagrees with the LSRA's determination of the complaint. This will allow the Review Committee to bring finality to the complaint.
- 2.158 The LSRA is also concerned that the Act permits the Review Committee to determine the review by one of three powers only under section 62(5). The LSRA is of the view that this is overly restrictive and that more than one power under section 62(5) should be available to the Review Committee when determining a review.
- 2.159 The LSRA considers that it is appropriate to provide the Review Committee to determine a review by more than one of the specified directions. In this regard, it may be the case that the Review Committee wish to confirm the LSRA's determination but also direct further directions to the legal practitioner under section 60(6) or section 61(6) of the Act.
- 2.160 As set out in **Recommendation 8** by the LSRA, the LSRA is also of the view that where the Review Committee remits the complaint to the Authority to be dealt with again under section 60 or section 61 that this should not require the Authority to invite the parties to make efforts to resolve the matter under section 60(1) or 61(1) or to request further submissions from the parties under section 60(5) or 61(5). The LSRA is of this view as the complaint and the complainant and legal practitioner have had several opportunities to provide submissions at the stage where the Review Committee decide to remit the matter to the Authority. The LSRA also considers that a complaint which has been appealed to the Review Committee and remitted to the Authority is unlikely to be resolved by the parties.
- 2.161 The LSRA is also concerned that the Act as currently drafted allows for the determination of the LSRA to be reviewed and remitted to the Authority to be dealt with again only for that too to be the subject of a further review by the Review Committee the outcome of which may be that the matter is remitted once more to the Authority and a such a cycle continues endlessly. This is set out in **Recommendation 9** by the LSRA.
- 2.162 Determination of misconduct complaints (Recommendation 10, 11, 12, 13 and 27)**
- 2.163 Where the Authority decides that a complaint is admissible, and, if the complaint were substantiated, the conduct or failure would constitute misconduct in relation to the provision by the legal practitioner of legal services which were of an inadequate standard to a substantial degree, the Authority must invite the complainant and the legal practitioner to make efforts to resolve the matter that is the subject of the complaint in a prompt manner.

- 2.164 Where such complaints are not resolved and in all other types of misconduct complaints deemed admissible, the Authority refers the complaints to the Complaints Committee, which considers and investigates complaints of alleged misconduct about legal practitioners.
- 2.165 The LSRA established the Complaints Committee under section 69 of the Act in 2020. The Complaints Committee is independent in its decision-making.
- 2.166 The Committee is made up of 27 members. These are comprised of not fewer than eight members nominated by the Law Society; not fewer than four members nominated by the Bar of Ireland (formerly the Bar Council); and the balance made up of lay members appointed following a competitive selection process.
- 2.167 The Complaints Committee is currently split into four groups. Divisional Committees drawn from these 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. They also meet on an *ad hoc* basis to consider individual complaints when it is necessary to do so.
- 2.168 The Act currently requires that the Complaints Committee consists of a minimum of 8 solicitor members who are persons nominated by the Law Society and a minimum of 4 barrister members who are persons nominated by the Bar Council. The LSRA is of the view that the split of 4 barristers members and 8 solicitor members of the Complaints Committee does not reflect the breakdown in complaints the Complaints Committee considers.
- 2.169 An increase in the number of meetings of Complaints Committee is currently unviable in circumstances where the Complaints Committee members sit in divisions of 3 or 5 and the availability of all members in each division to attend meetings is challenging.
- 2.170 The removal of the limit of 27 members of the Complaints Committee will facilitate the processing of complaints more quickly and will provide the LSRA with more flexibility to process complaints as demands ebb and flow.
- 2.171 By way of contrast, section 62 of the Act does not specify a limit to the number of members of the Review Committee. Section 62(2) of the Act specifies that the Review Committee is to be composed of 3 persons, 2 of whom are lay members and one of whom shall be a legal practitioner, and it does not specify a minimum number of legal practitioner members of the Review Committee. The LSRA considers that this flexibility facilitates the efficient operation of section 62.

- 2.172 As set out in **Recommendation 27** by the LSRA, the LSRA is of the view that the limit of 27 members of the Complaints Committee pursuant to section 69(3) of the Act is overly restrictive. The LSRA recommends that section 69(3) of the Act is amended to allow the LSRA to set by way of regulation the number of members of the Complaints Committee including the minimum number of members nominated by the Law Society and the Bar of Ireland. Such regulations would require the consent of the Minister. The LSRA also recommends that the same flexibility be permitted for the Legal Practitioners Disciplinary Tribunal. The Tribunal since its establishment has dealt with applications almost primarily in relation to the solicitors and the same difficulties arise.
- 2.173 The Complaints Committee can require 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.
- 2.174 The Complaints Committee can refer more serious matters on to the Legal Practitioners Disciplinary Tribunal (LPDT) for an inquiry, where appropriate.
- 2.175 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 the following directions to 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;
 - Participate in a professional competence scheme;
 - Waive or refund fees;
 - Take other action in the interest of the complainant;
 - Comply with undertaking(s);
 - Withdraw or amend an advertisement made by the legal practitioner;
 - Pay compensation to the complainant not exceeding €5,000;
 - 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.
- 2.176 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.

- 2.177 Where the Complaints Committee determines that the legal practitioner has in the course of its investigation “refused, neglected or otherwise failed, without reasonable cause, to respond appropriately,” the legal practitioner can be directed to make a further contribution to the LSRA’s costs of up to €2,500.
- 2.178 The LSRA estimates that approximately 72% of all complaints received had at least one misconduct ground. That means that just under three quarters of all of the complaints received have the potential to be considered by the Complaints Committee.
- 2.179 Under the existing process, when a complaint of misconduct is received, the parties are notified and the legal practitioner is invited to comment on the complaint. Once the complaint is determined to be admissible it is then referred to the Complaints Committee for their investigation.
- 2.180 Section 70 does not envisage the matter being investigated prior to the consideration by the Committee. However, as set out in **Recommendation 10** the LSRA is of the view that the process should be amended to allow for any investigative action the LSRA determines to be appropriate to gather any necessary evidence for the consideration of the Complaints Committee before they sit for the first time to consider the complaint. The LSRA is also of the view that power to compel the production of documentation or information at this stage would be required to use this amendment effectively and that such power should be enforceable. Section 70 does not envisage the matter being investigated prior to the consideration by the Committee.
- 2.181 Under section 70 where the Authority refers a complaint to the Complaints Committee the Authority furnishes to the Committee a copy of the complaint and any documents that have been submitted by the complainant and a summary of the complaint.
- 2.182 Section 70 does not require that the documents already submitted by the Legal Practitioner in the pre-admissibility stage of the process be furnished to the Complaints Committee. The LSRA recommends that section 70 of the Act be amended to require the Authority to furnish to the Complaints Committee all documents submitted by the Legal Practitioner and documents or information held or acquired by the LSRA that it considers relevant to the complaint(s) as set out in **Recommendation 11** by the LSRA.
- 2.183 Section 70(3) states that on receipt of the documentation referred to the Complaints Committee, the Committee shall request the legal practitioner to furnish his or her response to the complaint to the Committee, within a reasonable time frame. The Complaints Committee is also required to furnish a copy of the documents to the legal practitioner. In practice, this means that the Complaints Committee has to sit in every case for the sole purpose of requesting the legal practitioner to furnish a response

and then adjourn the matter until a future date so that the response can be considered.

- 2.184 The LSRA is of the view that this is incredibly inefficient and builds unnecessary delay into the process.
- 2.185 The LSRA recommends at **Recommendation 12** that section 70(3) of the 2015 Act should be amended to allow the LSRA to furnish a copy of the complaints documentation to the legal practitioner and to request the legal practitioner to furnish to the Complaints Committee the legal practitioner's response to the complaint and complaints documentation and any further exchanges of documents, in advance of the Complaints Committee sitting for the first time to consider the complaint.
- 2.186 The LSRA also recommends at **Recommendation 13** that Part 6 be amended to provide the LSRA with a general investigative power to take what steps it considers necessary to investigate a complaint that is under consideration by the Complaints Committee. This will allow the LSRA to progress matters in a more efficient manner between sittings of the Committee and will also allow the Committee to direct the LSRA to take any investigative steps that might be required between sittings and therefore increasing the timeliness and efficiency of the process.

2.186 Power of the Complaints Committee to Specify Measures (Recommendation 14)

- 2.187 Where the Complaints Committee is of the view that the act or omission which is the subject of the complaint is not one which should be referred to the LPDT, but where it determines that it warrants a sanction, section 71 of the 2015 Act provides the Complaints Committee with a range of measures which it can direct the legal practitioner to undertake.
- 2.188 One such direction under section 71(5)(d) states that the Complaints Committee can direct the legal practitioner take such other action in the interests of the client as the Committee may specify. However the LSRA is of the view that this should refer to complainant and not client as any person can make a complaint of misconduct.

The LSRA recommends that section 71(5)(d) and section 68 of the Act be amended to substitute the word "client" for the word "complainant" as set out in **Recommendation 14**.

2.189 Appeals of Determinations of the Complaints Committee (Recommendation 15)

- 2.190 Section 72 of the Act allows the legal practitioner or the Authority to appeal a determination of the Complaints Committee to the High Court. The LSRA is of the view that this creates a potential imbalance and should be amended to allow the complainant to also have the right to appeal.

As set out in **Recommendation 15**, the LSRA recommends that section 72 of the Act be amended to allow the complainant to appeal a determination or direction of the Complaints Committee to the High Court.

2.191 Legal Practitioners Disciplinary Tribunal (Recommendation 27)

- 2.192 The Legal Practitioners Disciplinary Tribunal (LPDT) is an independent statutory tribunal established under section 74 of the Legal Services Regulation Act 2015. The LPDT was established in 2020. The LPDT has issued a set of regulations the Legal Practitioners Disciplinary Tribunal Regulations 2021 S.I. No 786 of 2021.
- 2.193 The LPDT's role is to consider complaints of alleged misconduct referred to it by the LSRA and the Law Society of Ireland. The LPDT is the successor body to the Solicitors Disciplinary Tribunal and the Barristers Professional Conduct Tribunal.
- 2.194 The LPDT's 33 members, including its Chairperson, were appointed by the President of the High Court in November 2020. Its membership consists of 21 lay members, six solicitors and six barristers. It sits in divisions of a minimum of three members, with a lay majority including a lay chair.
- 2.195 The LPDT began receiving applications from both the Law Society and the LSRA in 2022. In 2023 it received a total of 22 applications, 16 from the Law Society and 6 from the LSRA. In 2024, the LPDT received a total of 37 applications, 15 from the Law Society and 22 from the LSRA. Of the 22 applications from the LSRA 21 related to solicitors and one related to barristers. To date, in 2025, the LPDT has received 100 applications, 12 from the Law Society and 88 from the LSRA.
- 2.196 All applications received in 2025 relate to solicitors. The LSRA recommends as part of Recommendation 27 that the LPDT be allowed to set the membership of the Tribunal by way of regulation with the consent of the Minister. This will allow greater flexibility in arranging for sittings of the Tribunal and allow for greater efficiency in the management of applications to the Tribunal.
- 2.197 The LPDT does not accept direct applications from complainants or from other parties.
- 2.198 In 2023, the LPDT began holding both case management hearings and inquiry hearings. Case management hearings commenced in April 2023 and inquiry hearings commenced in June 2023. The LPDT has, to date, made determinations i.e. a finding of whether or not there has been misconduct on the part of the legal practitioner in almost 60 complaints since its establishment.
- 2.199 LPDT inquiries are generally held in public, with oral evidence. The LPDT has the same rights and powers as the High Court regarding the enforcement of the attendance of witnesses, as well as the production and the discovery of documents. It can subpoena witnesses to attend and give evidence, including under cross-examination. The LPDT has developed some guidance documents to assist in its work, including a guidance note on sanctions.

2.200 Where the LPDT makes a finding of misconduct, it can impose a wide range of sanctions. These include:

- Imposing an advice, admonishment or censure on the legal practitioner;
- Directing the legal practitioner to participate in one or more professional competence schemes;
- Directing the legal practitioner to waive or refund costs;
- Directing the legal practitioner to complete certain legal services;
- Imposing conditions on the legal practitioner's practising certificate;
- Imposing a range of monetary sanctions, the total amount of which cannot exceed €15,000;
- Making a recommendation to the High Court that the legal practitioner be restricted in the type of work they can do;
- Making a recommendation to the High Court that the legal practitioner be prohibited from practising without supervision;
- Making a recommendation to the High Court that the practitioner be suspended from practice or struck off permanently from the Roll of Solicitors.

2.201 Where the LPDT makes a finding of misconduct against a legal practitioner the LSRA has an obligation, subject to any appeal of the decision, to arrange for the publication of: the determination of the LPDT; the name of the legal practitioner concerned; the nature of the misconduct; and the sanction imposed. Since 2024, the LSRA has arranged for the publication of LPDT determinations. A full list of all LPDT determinations published to date can be found on the LPDT's website. For complaints about solicitors, the LSRA also publishes LPDT findings in the Law Society Gazette.

2.202 Where, following a recommendation of the LPDT, the High Court makes an order striking the name of a solicitor off the Roll of Solicitors, or the name of a barrister off the Roll of Practising Barristers or suspending either a solicitor or barrister from practice, the LSRA is required to publish a notice of the operative part of the order in Iris Oifigiúil and will also publish the details on the LSRA website.

2.203 Non-Cooperation of Legal Practitioners with the Complaints Process- Power to Compel (Recommendations 16 and 17)

2.204 Since the commencement of the complaints process in October 2019, the issue that impacts most on the timeliness and efficiency of the handling of complaints is when legal practitioners fail to cooperate with the LSRA and fail to engage with and reply to requests for information.

- 2.205 Although the vast majority of legal practitioners engage with and cooperate with complaint investigations, the LSRA has seen multiple examples where legal practitioners do not reply to correspondence relating to the pre-admissibility process, and then fail to engage and do not respond to the invitation to mediate the complaint and then fail to provide a statement setting out their position on the complaint. Then once the complaint has been determined and the legal practitioner is subject to a determination and direction, they fail to comply with the direction therefore requiring the LSRA to take proceedings in the High Court.
- 2.206 It is clear from a review of the Act that there was a legislative intention that the LSRA has the power to compel cooperation from legal practitioners and other parties when necessary. However the wording of section 35 of the Act requires amendment to ensure there is absolute clarity to reflect this intention.
- 2.207 Section 18(2) of the Act states as follows, *“Notwithstanding the relationship between, or rights and privileges of, a legal practitioner and his or her client, a legal practitioner shall, if so requested by a person authorised in that behalf by the Authority, provide the person with any information (in such form as that person may specify) or documentation which is required by the Authority for the purpose of enabling the Authority to discharge its functions.”*
- 2.208 However, the Act does not clearly provide the Authority with the power to enforce section 18(2).
- 2.209 Section 35 states as follows,
- “(1) Where, on the application of the Authority, it is shown to the satisfaction of the High Court—*
- (a) that a legal practitioner or any other person has contravened, is contravening or is likely to contravene any provision of this Act or regulations made under it, or*
- (b) that a legal practitioner who is a solicitor, or any other person has contravened, is contravening or is likely to contravene any provision of the Solicitors Acts 1954 to 2015 or regulations made under those Acts,*
- the Court may by order prohibit the legal practitioner or other person concerned from contravening that provision, notwithstanding that any such contravention may constitute an offence.”*
- 2.210 However, section 35 requires amendment to ensure there is absolute clarity that allows for High Court orders prohibiting the legal practitioner or other person from contravening a provision of the Act and allows for High Court orders compelling the legal practitioner or other person to comply with a provision of the Act or avoid a

contravention or a likely contravention of a provision of the Act. As set out in **Recommendation 16**, the LSRA recommends that section 35 of the 2015 Act be amended to ensure that there is absolute clarity that the LSRA may apply to the High Court for an order compelling a legal practitioner, complainant or other person to comply with the Act or to avoid a contravention or a likely contravention of a provision of the Act.

- 2.211 Under Section 70(6)(c)(ii) the Complaints Committee may by notice in writing require the legal practitioner to supply specified information relating to the Complaint or such documents as the Committee may require. A similar provision is found at section 70(6)(b) in relation to complainants.
- 2.112 It is apparent that there was a legislative intention that the LSRA has the power to compel cooperation from legal practitioners and other parties when necessary at Complaints Committee stage. Section 70(8) states as follows, "*The legal practitioner concerned shall comply with a notice issued to him or her by the Divisional Committee under subsection (6)(c)*" which relates to a notice of the Complaints Committee and therefore illustrates a deliberate choice by the legislature to provide the power to compel parties. However the Act requires amendment to ensure there is absolute clarity to reflect this intention to provide this power of the LSRA and as to how such power is enforceable.
- 2.113 As set out in **Recommendation 17**, the LSRA recommends that Part 6 of the 2015 Act be amended to ensure that there is absolute clarity that the LSRA and the Complaints Committee are provided with the power to compel legal practitioners to provide information/documentation when sought by the LSRA or by the Complaints Committee for the purposes of the consideration and investigation of complaints and such power is enforceable, and to set out the consequences for a party who fails to comply with any such requirements.
- 2.114 The LSRA may make a complaint of misconduct under s.50(1)(m) which relates to a legal practitioner's act or omission that consists of a breach of the Act or regulations made under it. However this not a satisfactory recourse to immediately deal with the initial complaint.
- 2.215 The LSRA is of the view that a power to compel legal practitioners and other persons to provide information when sought would have a significant positive impact on the efficiency and effectiveness of the complaints process.
- 2.216 Non Cooperation of Legal Practitioners – Power to Compel Attendance before the Complaints Committee (Recommendations 18 and 19)**

- 2.217 Section 70(9) permits the Complaints Committee, having had due regard to the information furnished to it by the Authority, any information or documents provided by the legal practitioner or the complainant and any response furnished to the Divisional Committee by the legal practitioner and any observations furnished by the complainant, to require the complainant and the legal practitioner to appear before the Committee for the purposes of the investigation of the complaint.
- 2.218 Both the complainant and the legal practitioner can be represented at the hearing.
- 2.219 Again, whilst the intention is clearly to give the Complaints Committee the power to compel attendance at hearing, the Act requires amendment to ensure there is absolute clarity to reflect this intention to provide this power of the LSRA and as to how such power is enforceable as set out in **Recommendation 19**.
- 2.220 The LSRA regrettably has seen instances where both parties are required to attend the hearing and only the complainant attends. This can have significant negative impact on the complainant's view of the legal profession and the complaints process.
- 2.221 In the majority of these instances the Complaints Committee only had questions for the legal practitioner but is compelled by the Act to require both the complainant and the legal practitioner to appear before the Committee. This creates an unnecessary burden on the complainant and adds extra expense and inefficiency to the process. The LSRA is of the view that the Act should be amended to allow the Committee to require the legal practitioner and/or the complainant to appear before the Committee as set out in **Recommendation 18**.
- 2.222 Section 94 of the Act attempts to provide the LSRA with powers required to perform its complaints functions but does not work in practice.
- 2.223 Section 94 states, *"The Authority in the performance by it of its functions under this Part in relation to a complaint made as respects a solicitor, may exercise any power conferred on the Law Society under the Solicitors Acts 1954 to 2015."*
- 2.224 Section 94 however is incapable of being used to exercise any power that the Law Society may have relied on.
- 2.225 By way of example the power of the Law Society to apply to the High Court to require a solicitor to attend before the Complaints and Client Relations Committee was contained in section 10 of the Solicitors (Amendment) Act, 1994 as amended by section 12 of the Solicitors (Amendment) Act 2002. Section 10(A)(1) stated as follows,
- "10A.—(1) Where, in relation to a complaint made to the Society alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act, it appears to the Society that the solicitor concerned is obstructing the investigation of the complaint by the Society by refusing, neglecting or otherwise failing, without reasonable cause—*

(a) to respond appropriately in a timely manner, or at all, to correspondence from the Society in relation to the complaint, or

(b) to attend a meeting convened by the Society at which the complaint would be considered,

the Society may apply to the High Court for an order compelling the solicitor to respond appropriately within a specified time to such correspondence or to attend such a meeting.

(2) An order under subsection (1) of this section may provide for censuring the solicitor and requiring the solicitor to pay a money penalty and for such matters of a consequential nature as the Court considers appropriate.

(3) Where an order under subsection (1) of this section requires a solicitor to pay a money penalty, the order shall operate as a judgment against the solicitor in favour of the Society, and the money penalty, when recovered, shall be paid into the Compensation Fund.

(4) In subsection (1) of this section, ‘meeting convened by the Society’ includes a meeting convened by a committee to which functions of the Society which may be performed by the Council have been delegated pursuant to section 73 (as amended by the Act of 1960 and this Act) of the Principal Act.”

- 2.226 Any attempt by the LSRA to use this power fails immediately as it can only be used “*in relation to a complaint made to the Society alleging misconduct*”. It can also only be used to compel attendance at a ‘*meeting convened by the Society*’.
- 2.227 It is also noted that any application by the Law Society to the High Court requiring a solicitor to attend had to be based on the *Law Society* reaching the conclusion “*the solicitor concerned is obstructing the investigation of the complaint by the Society by refusing, neglecting or otherwise failing, without reasonable cause ... to attend a meeting convened by the Society at which the complaint would be considered*”
- 2.228 The LSRA is of the view that the 2015 Act should be amended to provide absolute clarity that the LSRA is provided with an enforceable power to compel legal practitioners or complainants before the Complaints Committee.
- 2.229 **Recommendation 18** by the LSRA recommends that section 70(9) of the Act be amended to permit the LSRA to compel the legal practitioner **and/or** the complainant to attend before the complaints committee. **Recommendation 19** recommends that section 70(9) be amended to ensure there is absolute clarity that the power to compel the legal practitioner to attend before the Complaints Committee is enforceable and sets out the consequences for a party who fails to comply with any such requirements.
- 2.230 The LSRA is also of the view that the definition of misconduct under the 2015 Act should be expanded to include the failure of a legal practitioner to cooperate with an LSRA investigation of a complaint and that the Complaints Committee should be empowered to refer non-cooperation matters directly to the LPDT with the initial complaint where appropriate or to deal with them directly as set out in **Recommendation 20** by the LSRA.

2.231 Service of Notices (Recommendation 21)

2.232 Part 6 of the Act requires the Complaints Committee to serve various notices on legal practitioners who are the subject of the complaints.

2.233 Section 216 of the 2015 Act requires that notices served under the Act should be in writing and served in a number of ways prescribed by the Act including by hand delivery or by registered post. The LSRA is of the view that such service methods are overly restrictive and adds unnecessary cost and delay to the process. The LSRA is of the view that following the Covid-19 medical emergency there is an increased reliance on the use of email and other electronic means of communication, and that this section should be amended to allow for service of notices, decisions and all correspondence via email or other electronic means only.

2.234 The LSRA suggests using the email addresses contained on the Roll of Practising Barristers for barristers and the email addresses made publicly available by the Law Society on the Law Society's website for service of all correspondence including notices and decisions.

2.235 The LSRA notes that other regulators have the ability to send communication relating to complaints to their registrants by electronic means. For example, section 106A of the Nurses and Midwives Act 2011 (as amended) provides the Nursing and Midwifery Board of Ireland to do the following:

“(1)...the notification shall be sent by pre-paid post or electronically to him or her at the address stated in the register of nurses or midwives or candidate register (as the case may be) in which his or her name is or was (as the case may be) entered.

(2) Where the Board or the chief executive officer is required or authorised under this Act to notify a person (not being a registered nurse, former registered nurse, registered midwife, former registered midwife, registered candidate or former registered candidate) who has made an application under this Act of a decision or other matter concerning the application, the notification shall be sent by pre-paid post or electronically to the person at the address stated in the application.”

2.236 The LSRA recommends that section 216 of the Act be amended to allow for sufficient service by electronic means only, of all notices, determinations and any other correspondence relating to matters under Part 6 of the Act as set out in **Recommendation 21** by the LSRA.

2.237 The LSRA also recommends amending s135A (Part 9) of the Act to allow the LSRA to serve all correspondence to include notices and determinations to barristers by email.

2.238 Monetary Amounts in Part 6 (Recommendation 22)

2.239 Part 6 has several sections where a monetary amount is referred to.

2.240 For example, under section 60(6)(d) where the Authority considers that the legal services provided by the legal practitioner were of an inadequate standard, they can direct that the legal practitioner pay to the client a sum not exceeding €3,000 in compensation for financial or other loss. The Complaints Committee similarly under 71(5)(g) can direct the legal practitioner to pay a sum not exceeding €5,000 as compensation for any financial or other loss suffered by the client. The LPDT under section 82(1)(i) can direct that the legal practitioner pay a sum not exceeding €15,000 as restitution or part restitution to any aggrieved party and under section can direct that the legal practitioner pays the whole or part of the Tribunal's costs. However, the LPDT is restricted by section 82(3) in that when imposing one of the monetary sanctions available the aggregate amount of the sums to be paid cannot exceed €15,000.

2.241 The LSRA is of the view that the hard wiring of these amounts into the Act does not allow for increases in the cost of living or inflation and that these amounts will become increasingly anachronistic over time.

2.242 The LSRA is also of the view that capping the aggregate of the LPDT's ability to impose monetary sanctions at €15,000 is unnecessarily low considering the costs of bringing an application to the Tribunal.

2.243 The LSRA is of the view that the LSRA should be permitted to set the amounts of monetary sanctions referred to in the Act by way of periodic regulations. As a safeguard the amounts set by way of periodic regulation could be contingent on the Authority obtaining the consent of the Minister.

2.244 As set out in **Recommendation 22**, the LSRA recommends that any monetary amounts referred to in Part 6 should be set by way of regulation by the LSRA with the consent of the Minister.

2.245 Definition of Client (Recommendation 23)

2.246 The 2015 Act does not include a definition of client.

2.247 The LSRA has received submissions from members of the public who are of the view that beneficiaries in probate matters should be permitted to make complaints of inadequate services or excessive costs.

2.248 They have also expressed the view that beneficiaries would have been considered clients under the Solicitors Acts and that the 2015 Act has taken away a right that existed prior to the Act coming in to force. The LSRA invites the Department to consider whether a definition of "client" of a legal practitioner is required in Part 1 of the Act as set out in **Recommendation 23** by the LSRA.

2.249 The LSRA invites the Department to consider whether it was intended that beneficiaries should be treated as clients and permitted to make complaints of inadequate service or excessive costs and whether a definition of client is required in the Act.

2.250 Definition of Misconduct (Recommendation 24)

2.251 Under section 51(1) of Part 6 a client of a legal practitioner, may make a complaint to the Authority in respect of legal services of an inadequate standard or excessive costs. Under section 51(2) *“a person may make a complaint... where the person considers that an act or omission of the legal person constitutes misconduct.”*

2.253 However, section 51(2) states that “A person may make a complaint to the Authority in respect of a legal practitioner where the person considers that an act or omission of the legal practitioner constitutes misconduct.” This means that only a client of a legal practitioner can make a complaint of inadequate services or excessive costs, but any person can make a complaint of misconduct.

2.254 Section 50 (1) defines the act or omissions that may be considered as constituting misconduct. These include at section 50(1)(b) *“the provision by the legal practitioner of legal services which were, to a substantial degree, of an inadequate standard.”* Section 64(1) requires that where the LSRA decides that a complaint is admissible and that were the complaint to be substantiated it would constitute misconduct within the meaning of section 50(1)(b), the LSRA is required to invite the legal practitioner and the *complainant* to make efforts to resolve the matter.

2.255 Section 50(1)(l) includes in the definition of misconduct an act or omission which consists of seeking an amount of costs in respect of the provision of legal services, that is grossly excessive.

2.256 The LSRA is of the view that only clients of a legal practitioner can make a misconduct complaint of inadequate services to a substantial degree or of charging grossly excessive fees. The LSRA recommends at **Recommendation 24** that that the 2015 Act should be amended to ensure that there is absolute clarity that only a client can make misconduct complaints relating to grossly excessive costs under 50(1)(l) being charged to a legal practitioner’s client or of the delivery of legal services of a substantially inadequate standard under 50(1)(b).

2.257 Own Initiative Complaints (Recommendation 25)

2.258 Section 51(8) states that *“Nothing in this section shall be construed as affecting the power of the Authority to investigate an act or omission of a legal practitioner where no complaint has been received by it in relation to that legal practitioner.”*

- 2.259 The LSRA is of the view that this section represents an attempt to provide the Authority with the power to investigate matters on its own motion.
- 2.260 However, the Act is entirely silent on how the Authority should investigate a complaint where no complaint has been received by it. For example, should the Authority decide to investigate an act or omission of a legal practitioner in the absence of a complaint, should that matter be subject of the pre-admissibility process or should the Authority, in cases of potential misconduct make a referral directly to the Complaints Committee.
- 2.261 The Authority is of the view that the 2015 Act should be amended to properly define the process to be followed by the LSRA to investigate an act or omission by a legal practitioner where no complaint has been received as set out in **Recommendation 25** by the LSRA.

2.261 The Ability to Deal with Elements of Misconduct that Arise (Recommendation 26)

- 2.262 The LSRA has on occasion received complaints which when investigated reveal potential grounds for misconduct that have not been subject of a complaint.
- 2.263 Part 6 does not readily or easily allow for the investigation of grounds for misconduct that come to light in the course of an investigation.
- 2.264 The LSRA is of the view that this is overly restrictive and in **Recommendation 26** the LSRA recommends that legislative amendment is required to ensure that the process confers the LSRA with the powers and remit to deal with any misconduct issues that may arise.

2.265 Part Admissible Complaints

- 2.266 The LSRA frequently receives complaints that contain multiple allegations in relation to a legal practitioner.
- 2.267 In its recent report on the performance of the complaints function under part 6, the LSRA noted that 22% of the complaints received were mixed complaints i.e. complaints with a combination of allegations of misconduct, inadequate legal services and excessive costs.
- 2.268 The 2015 Act is framed for the handling of complaints of a single category and has not taken into account that over one fifth of the complaints received have multiple allegations some of which may be admissible under the Act and others that may be determined to be inadmissible.

- 2.269 The LSRA recommends that for the efficient handling of complaints with multiple allegations that section 57 of the Act be amended to allow the LSRA to specifically determine that part of a complaint is admissible whilst also determining other parts of the same complaint to be inadmissible.

2.270 The Provisions of Part 7 of the Legal Services Regulation Act 2015: Imposition of a levy on the Professional Bodies and Certain Barristers to Cover Expenses of the Authority and the Legal Practitioners Disciplinary Tribunal

- 2.271 Part 7 of the Act establishes the annual levy on the Law Society, Bar of Ireland and certain barristers through which both the LSRA and the LPDT are funded. It includes provisions on how the levy is calculated, apportioned, issued and collected.
- 2.272 Following the first section 6 review and subsequent engagement between the LSRA and the Department of Justice, amendments to Part 7 were introduced in the Courts and Civil Law (Miscellaneous Provisions) Act 2023 (“the 2023 Act”). The 2023 Act amended the levy model to allow for the prospective budgeted net expenditure for both the LSRA and the Legal Practitioners Disciplinary Tribunal to be included as part of the levy calculations.
- 2.273 This changed the levy model from being a retrospective model based on the previous year’s expenditure to a future facing model. The retrospective model limited the amount of money the LSRA could generate and also did not provide for the additional funding needs as the statutory functions of the Authority were rolled out. The new model provides more funding certainty and stability for the Authority.
- 2.274 The 2023 Act also introduced amendments in relation to the Roll of Practising Barristers which created new obligations for barristers to update the LSRA with changes to their details on the Roll no later than 30 days from when the change occurs. The status of barristers as Law Library members, non-Law Library members or in the Full Time Service of the State is a factor in the calculation and apportionment of the levy.

2.275 The Operation of Part 7

- 2.276 The Authority is primarily self-funding by way of a levy of the legal profession, as intended by the Legal Services Regulation Act 2015, as amended.
- 2.277 The levy is raised from practising barristers and solicitors and is based on the Authority’s net expenditure in the levy year, with an adjustment for the budgeted net expenditure for the financial year in accordance with the 2015 Act as amended by the 2023 Act.
- 2.278 The definitions of ‘financial year’ and ‘levy year’ in the Act are: ‘financial year’ means the period of 12 months beginning on 1 January and ending on 31 December, and ‘levy year’ means, in relation to a financial year, the year immediately preceding the financial year.

- 2.279 The relevant legislative amendments in respect of the levy model were introduced in the 2023 Act, which was enacted on 5th July 2023 and which now enables the LSRA to budget for future expenditure and to move towards a more self-sufficient levy-funded model rather than the previous approach, which has necessitated the Authority to seek advances each year from the Department's Vote to supplement its levy income. The first year of operation of the revised levy model was 2023.
- 2.280 Legal practitioners in the full-time service of the State are exempt from the levy.
- 2.281 In November 2019, the LSRA issued the first statutory levy on legal practitioners. The total levy amount has been raised each year since (2019 levy €1.2m, 2020 levy €1.59m, 2021 levy €2.8m, 2022 levy €3.46m), with the 2023 levy, 2024 levy and 2025 levy seeing the implementation of the revised levy model.
- 2.282 The levy amount set in 2023, based on the revised levy model was €5,664,368, in 2024 the levy amount set was €7,068,376 and in 2025 the levy amount set was €6,953,478.
- 2.283 Given the aforementioned legislative amendments, the levy raised in 2023, unlike previous years, was able to factor in budgeted expenditure for the current financial year and hence was based on a larger sum of €5,664,368 million (a 63% increase on the previous year). This increase was prepared and introduced in full consultation with the legal professional bodies, the Law Society of Ireland and the Bar of Ireland. Similar such engagement has been undertaken in 2024 (€7,068,376 an increase of 25%) and in 2025 (€6,953,478 a decrease of 1.6%).
- 2.284 In its implementation since 2019, the levy has enjoyed a very high compliance rate with over 99% of the levy being collected each year
- 2.285 The Provisions of Part 8 of the Legal Services Regulation Act 2015: Legal Partnerships, Direct Professional Access, Multi-Disciplinary Practices and Limited Liability Partnerships**
- 2.286 Legal Partnerships**
- 2.287 Part 8 of the 2015 Act includes provisions to allow the Authority to introduce the frameworks for Legal Partnerships. A legal partnership is a partnership formed under the law of the State by written agreement by two or more legal practitioners, i.e. solicitors or barristers, for the purpose of providing legal services where at least one partner is a practising barrister.
- 2.288 Legal Partnerships may be:
- Solicitor-barrister partnerships where at least one practising solicitor and one practising barrister are partners;
 - Barrister only legal partnerships, where only practising barristers are partners.

- 2.289 Section 100 of the 2015 Act allows for the introduction of Legal Partnerships and provides that a legal practitioner may provide legal services as a partner in, or an employee of, a legal partnership.
- 2.290 Section 1 of the 2015 Act was amended by the Courts and Civil Law (Miscellaneous Provisions) Act 2023 to allow for the introduction of legal partnerships.
- 2.291 Section 100 was subsequently commenced in September 2024.
- 2.292 Section 117 requires the LSRA to maintain a register of legal partnerships that have notified the LSRA that they are a legal partnership.

2.293 Multi- Disciplinary Practices

- 2.294 Part 8 of the 2015 Act allows the Authority to make regulations in relation to the operation and management of multi-disciplinary practices (MDP's). These regulations may specify matters including the written procedures that the MDP's must have in place and to which all partners and employees of the practice are subject, the types of bank accounts that may be opened and kept, the accounting records to be maintained and the standards to be observed in the provision by the practice of legal services.
- 2.295 Section 119 of Part 8 required the Authority to report to the Minister on the establishment, regulation, monitoring, operation and impact of the impact of MDPs in the state within 6 months of the establishment of the Authority. Following submission of this report the Authority was further required, again within 6 months, to conduct a public consultation and submit a second report setting out the recommendations of the Authority in relation to the establishment, regulation, monitoring and operation of MDPs in the State.

2.296 Limited Liability Partnerships

- 2.297 Part 8 of the 2015 Act required the Authority to introduce the framework to allow existing partnerships of solicitors registered with the Law Society of Ireland or legal partnerships registered with the LSRA to apply to the LSRA for authorisation to operate as Limited Liability Partnerships.
- 2.298 Section 126 of the 2015 Act requires the LSRA to establish and maintain a register of all LLPs that have been authorised to operate with limited liability in the state.
- 2.299 In an LLP, that has been properly authorised, each partner will not, as a result of being a partner in the LLP or being held out as a partner in that LLP, be personally liable directly or indirectly for the debts, obligations or liabilities arising in contract, tort or otherwise of the LLP itself, himself or herself, another partner in the LLP or any employee, agent, or representative of the LLP. Effectively all partners listed on the LSRA's register of limited liability partnerships operate with limited liability and their personal assets are protected from the negligence of other partners.

2.300 Direct Professional Access

- 2.301 Section 120 of Part 8 requires the Authority to engage in a public consultation on the extent to which the restriction on legal practitioners, other than solicitors, holding the money of clients should be retained, the retention or removal of restrictions on a barrister receiving direct instructions in a contentious matter from a person who is not a solicitor and the circumstances, manner and mechanisms under which a barrister may hold clients' money.
- 2.302 The section required the Authority to provide a report on these issues relating to barristers within 12 months of the establishment date.

2.303 The Operation of Part 8

2.304 Legal Partnerships

- 2.305 Under section 118 of the 2015 Act, the Authority were required immediately following its establishment, and periodically thereafter, to engage in a public consultation in relation to the regulation, monitoring and operation of legal partnerships.
- 2.306 The Authority was required to conduct its initial consultation and to report to the Minister within 6 months of its establishment date of 1 October 2016.
- 2.307 A *“legal partnership”* is defined in the Act as *“a partnership formed under the law of the State by written agreement, by two or more legal practitioners, at least one of whom is a practising barrister, for the purpose of providing legal services”*.
- 2.308 As neither partnerships of two or more barristers nor partnerships including solicitors and barristers exist in the State, legal partnerships constitute a new form of business structure for the purpose of providing legal services, presenting new regulatory challenges.
- 2.309 On 31 March 2017 the report following public consultation in relation to the regulation, monitoring and operation of legal partnerships, required by section 118 was submitted to the Minister for Justice and Equality. A further report on legal partnerships was submitted to the Minister on 31 July 2017.
- 2.310 A legislative amendment was required to section 1 of the 2015 Act in order to allow the provisions of the Act relating to legal partnerships to be commenced. That amendment was ultimately included in the Courts and Civil Law (Miscellaneous Provisions) Act 2023.
- 2.311 On 8 October 2024 the LSRA introduced the framework to allow legal partnerships to operate in the State.
- 2.312 The framework included the introduction of the Legal Services Regulation Act (Legal Partnerships) Regulations S.I. No 489 of 2024 and a new Code of Practice for Practising Barristers.

2.313 On 26 November 2024, the first legal partnership to be formed was entered onto the LSRA's Register of Legal Partnerships.

2.314 Multi-Disciplinary Practices

2.315 Section 119 of the 2015 Act required the Authority no later than six months following the establishment date of 1 October 2016 to report on the establishment, regulation, monitoring, operation and impact of multi-disciplinary practices in the State.

2.316 A *"multi-disciplinary practice"* is defined as *"a partnership formed under the law of the State by written agreement, by two or more individuals, at least one of whom is a legal practitioner, for the purpose of providing legal services and services other than legal services"*.

2.317 To date, any fee-sharing arrangements between legal practitioners and non-legal practitioners have been either the subject of specific statutory prohibition or otherwise prohibited.

2.318 On 31 March 2017 the LSRA research report on the establishment, regulation, monitoring, operation and impact of multi-disciplinary practices in the State was submitted to the Minister for Justice and Equality under section 119. This report under section 119 can be accessed on the LSRA's website here: <https://www.lsr.ie/wp-content/uploads/2022/10/s119-Report-Final-April-2017.pdf>

2.319 Section 119(3) further required that, within six months of the initial report to the Minister on multi-disciplinary practices, the Authority submit a further report, following a public consultation exercise, including recommendations in relation to the establishment, regulation, monitoring and operation of multi-disciplinary practices.

2.320 This report was submitted to the Minister by the Authority on 29 September 2017. This report under section 119 can be accessed on the LSRA's website here: <https://www.lsr.ie/wp-content/uploads/2019/09/20170929-Section119-Report-FINAL.pdf>

2.321 The report concluded as follows, *"The Authority's resources are currently focused on the introduction of Legal Partnerships, Limited Liability Partnerships and the commencement of the complaints function at the earliest possible date. The subject of MDPs will be further considered after the introduction of these new business models and the commencement of the other important functions of the Authority under the Act."*

2.322 The sections of the 2015 Act which relate to the introduction of the MDPs in the state have not yet been commenced.

2.323 Following the introduction of Legal Partnerships in late 2024, the LSRA will revisit the subject of MDPs.

2.324 Limited Liability Partnerships

- 2.325 The Authority introduced the framework for LLPs, the Legal Services Regulation Act 2015 (Limited Liability Partnerships) (Section 130) Regulations 2019 S.I. No 519/2019 in October 2019. These regulations were ultimately repealed and replaced by S.I. No 488/2024 Legal Services Regulation Act 2015 (Limited Liability Partnerships) Regulations 2024.
- 2.326 The LSRA maintains and regularly updates the LLP Register which is a listing of relevant businesses i.e. partnerships of solicitors, barrister barrister partnerships and barrister solicitor partnerships who have been authorised to operate with limited liability. The LLP register currently has 476 LLPs listed and is updated on the first Monday and third Monday of each month.
- 2.327 Some exceptions to limited liability status exist under the Act and these include where the relevant debt, obligation or liability arises from an act or omission of a partner which involves fraud or dishonesty and which was either the subject of a finding of misconduct or a criminal conviction or where the debt, obligation or liability was incurred by a partner for a purpose that is not related to the business of the LLP.
- 2.328 If the debt, obligation or liability incurred relates to any tax within the meaning of section 960A of the Taxes Consolidation Act 1997, the limitation on liability will not apply.
- 2.329 Section 124 of the 2015 Act provides that enforcement action can still be taken against the property of the LLP in respect of any debt, obligation or liability. Section 124(2) relates to the transfer of property out of the joint ownership of the partners and states that this will constitute a conveyance for the purposes of section 74 of the Land and Conveyancing Reform Act 2009 and section 7 of the Bankruptcy Act 1988.
- 2.330 The forms related to LLPs are available on the LSRA's website at <https://www.lsr.ie/for-law-professionals/limited-liability-partnerships/>, but relevant businesses can request an LLP applications forms from the LSRA's dedicated e-mail address at lsra-limitedpartnerships@lsra.ie. Forms can also be requested in hard copy.
- 2.331 The application form should be completed by a partner in the relevant business and returned to the LSRA. The LSRA also issues an Electronic Funds Transfer form for payment of the relevant processing fee. The LSRA issues the relevant business with an LLP reference number when the LLP has been authorised.
- 2.332 When a correctly completed application form is received, the LSRA checks that the details provided for the relevant business matches the details held by the Law Society or the Authority. The LSRA also confirms that payment has been received and also confirms that the relevant business has professional indemnity insurance in place which complies with the 2015 Act and with the relevant regulations.

- 2.333 If the details provided pass the verification process and payment has been confirmed, the LSRA will add the details of the LLP to the Register of Limited Liability Partnerships and an e-mail will issue to the relevant business notifying them of the decision regarding authorisation and confirming whether or not they have been added to the register.
- 2.334 The relevant business will also be informed of the date from which the authorisation to operate as an LLP will have effect. Any debt, obligation or liability that arises from an act or omission of a partner which took place before the date of authorisation will not be subject to the limitation on liability.
- 2.335 Once authorised an LLP has an obligation to notify its clients and creditors of the fact that it is operating as an LLP, to maintain professional indemnity insurance, to conduct the business of the partnership using a name that ends with either limited liability partnership or the abbreviation LLP and to ensure that the entry on the LSRA's Register of LLPs is up to date and correct.
- 2.336 There are approximately 2,550 partners listed on the Register of LLPs as at 9 June 2025. The LSRA has added 122 partners to the register and removed 49 partners from the register in 2025 following receipt of membership alteration forms from LLPs
- 2.337 A total of 47 LLPs have notified the Authority that they have ceased operating as an LLP since 2019.

2.338 Direct Professional Access

- 2.339 Section 120 of the 2015 Act required the Authority to engage in a public consultation process on certain issues relating to barristers and to report to the Minister within 12 months of the establishment day of 1 October 2016.
- 2.340 These issues included the restriction on barristers from holding the moneys of clients and, in the event that such restrictions were to be lifted, the circumstances and manner in which barristers might hold such moneys and the mechanisms to be applied for the protection of moneys so held.
- 2.341 The Authority was also required to report on the issue of direct access to barristers in contentious matters, whether the restrictions on a barrister receiving instructions in a contentious matter from a person other than a solicitor should be retained or removed, and the necessary administrative, legislative or professional code reforms that are required in the event of retention or removal of the restrictions.
- 2.342 Following consideration of the responses to the public consultation and research conducted by the LSRA the report required under section 120 was submitted to the Minister on 29 September 2017.

2.343 The report concluded that barristers, who are not members of a Legal Partnership or MDP should not be permitted to hold client moneys and that the possibility of barristers holding client moneys as part of a Legal Partnership or MDP to be considered as part of the ongoing consultations and consideration of those issues.

2.344 The Authority also concluded that the regulatory and associated costs of barristers holding client money as part of a Legal Partnership or MDP should be borne by those barristers in so far as is possible unless such an approach would make those business models uneconomical.

2.345 In relation to Direct Access to Barristers in contentious matters, the Authority concluded that it should be permitted in certain circumstances and that barristers wishing to undertake direct access work and clients who wish to directly instruct barristers in contentious matters both be required to apply to the Authority for authorisation. Direct access in contentious matters would also only be permitted in respect of specific categories of cases and that direct access barristers would be prohibited from undertaking functions currently performed by solicitors. Direct access would be optional for barristers and the regulatory and associated costs of permitting direct access would be borne by those barristers who wish to undertake such work in so far as is possible unless such an approach would make it uneconomical. Finally, the Authority recommended that Chapter 2 of Part 8 of the 2015 Act be amended to provide for direct access to barristers in contentious matters. The amendment would provide that direct access in contentious matters would be subject to regulations to be made by the Authority in relation to:

- a) Providing for minimum levels of training and education required for barristers who wish to undertake direct access work;
- b) Authorisation of barristers wishing to offer direct access;
- c) Authorisation of clients who wish to instruct barristers directly; and
- d) The type of work a direct access barrister may undertake.

2.346 The Authority would also be required to codify the professional obligations on barristers arising from direct access and also to set by way of regulation the professional indemnity insurance requirements for direct access barristers.

2.347 Part 8 of the 2015 Act has not been amended to permit the introduction of direct access in contentious matters.

2.348 As part of the *Breaking Down Barriers* Implementation Plan the LSRA has committed to revisiting the introduction of direct access in contentious matters.

2.349 The Provisions of Part 9 of the Legal Services Regulation Act 2015: Obligations on Barristers and the Roll of Practising Barristers

2.350 Part 9 of the 2015 Act requires the LSRA to establish and maintain the Roll of Practising Barristers and to enter on the Roll the name of, and additional information in respect

of, every person who is a practising barrister. The provisions of Part 9 of the 2015 Act were amended by the Courts and Civil Law (Miscellaneous Provisions) Act 2023.

- 2.352 Any person who is a qualified barrister and who intends to provide legal services as a barrister is obliged to apply to the Authority to have his or her name and whether he or she is a member of the Library and/or whether he or she is in the full time service of the State entered on the Roll of Practising Barristers. The Authority, on being satisfied that the person is a qualified barrister and that no LSRA levies for that person remain outstanding, shall enter the name of the person and their details on the roll.
- 2.353 Following the amendments to Part 9 of the Act, practising barristers are required to notify the Authority of any change in their name or their status as a member of the Law Library or whether they are in the full time service of the state no later than 30 days after the change occurs. The amendments allow the Authority to amend the entry of a barrister following notification from the Bar of Ireland. A failure to update the LSRA can constitute misconduct under the 2015 Act.
- 2.354 Part 9 of the 2015 Act introduces prohibitions on unqualified persons providing persons legal services as a practising barrister and a prohibition on persons pretending to be a qualified barrister.

2.355 The Operation of Part 9

- 2.356 The LSRA established the Roll of Practising Barristers in 2018.
- 2.357 The Roll of Practising Barristers is a searchable online register of all barristers entitled to provide legal services in the State.
- 2.358 The Roll is available on the LSRA's website and is an important tool by which members of the public can be assured that any barrister providing legal services is entitled to do so.
- 2.359 The Roll is also a factor in the calculation and apportionment of the annual levy on the legal profession.
- 2.360 Since 31 July 2023, under the 2023 Act, barristers on the Roll are required to:
- Update the LSRA with any change of details including name, postal/email address and practising status.
 - Apply to the LSRA to have their names removed from the Roll where they no longer wish to provide legal services.
- 2.361 On average over the course of a year, the LSRA adds the details of approximately 160 barristers to the Roll. The average turnaround time for applications to be processed is two days.

The current number of barristers on the Roll is 3,076.

These can be broken down as follows:

- Members of the Law library 2,103
- Non-members of the Law Library 973
- In full-time service of the State 333

2.362 All the practising barristers in the full-time service of the State are non-members of the Law Library. The other 640 non-Law Library practising barristers are self-employed or work in the private sector.

2.363 The Provisions of Part 10 of the Legal Services Regulation Act 2015: Legal Costs and the Office of the Legal Costs Adjudicator

2.364 Part 10 of the Act establishes the Office of the Legal Costs Adjudicator, replacing the Taxing Master's Office. It requires the Office of the Legal Costs Adjudicator to maintain a register of determinations and defines the particulars to be recorded in relation to each application. Part 10 requires the Legal Costs Adjudicator to prepare guidelines for the guidance of Legal Costs Adjudicators, legal practitioners and the public.

2.365 Part 10 requires the Office of the Legal Costs Adjudicator to prepare a 3 year strategic plan and an annual business plan and to prepare and submit an annual report.

2.366 Chapter 3 of Part 10 introduces prohibitions on charging legal costs in contentious business as a percentage or proportion of damages and on charging junior counsel's fees as a percentage of senior counsel's fees. Legal practitioners are also prohibited from deducting any amount in relation to legal costs from damages or other moneys that become payable to a client without prior written agreement.

2.367 Part 10 also includes cost transparency measures including requiring the legal practitioner to provide a detailed costs notice in clear language that is easily understood and upon receiving instructions. The legal practitioner is required to update this notice where they become aware of any factor that would make the legal costs likely to be incurred significantly greater than those disclosed in the original notice. The legal practitioner is also required to provide a detailed bill of costs as soon as is practicable following the conclusion of the provision of legal services.

2.368 Part 10 requires legal practitioners to attempt to resolve disputes in relation to costs and also sets out the process for the adjudication of costs and the powers of the Office of the Legal Costs Adjudicator. Part 10 also allows for determinations of the Office of the Legal Costs Adjudicator to be appealed to the High Court.

2.369 The Operation of Part 10

- 2.370 The Office of the Legal Costs Adjudicator was established on 7 October 2019. The commencement of Part 10 established a new regime for the adjudication of legal costs, with the abolition of the Office of the Taxing Master and the work of that Office transferring to the Office of the Legal Costs Adjudicator.
- 2.371 The statutory powers, functions and duties of the Office derive from Part 10 and Schedule 1 of the 2015 Act and are underpinned by the Rules of the Superior Court (Costs) 2019.
- 2.372 The Office of the Legal Costs Adjudicator published “Guidelines on Functional Performance” as required by section 142 of the 2015 Act which outline the manner in which the functions of the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators are to be performed.
- 2.373 One of the main functions of the Office of the Legal Costs Adjudicator is to adjudicate on disputes relating to legal costs. These disputes can be divided into two broad categories of ‘party and party’ costs and ‘legal practitioner and client’ costs.
- 2.374 Party and party costs arise where one party to litigation is ordered by the Court to pay the other party’s legal costs of the action. The Order will provide for those costs to be adjudicated in default of agreement.
- 2.375 Legal practitioner and client costs relate to costs charged by a legal practitioner to their own client. These costs may relate to contentious or non-contentious matters.
- 2.376 The Office consists of two Legal Costs Adjudicators and a Chief Legal Costs Adjudicator. The Office deals with approximately 1,000 matters lodged for adjudication each year.
- 2.377 The Office of the Legal Costs Adjudicator has provided a submission to the review of the 2015 Act which contains a number of recommendations for legislative amendment. This is replicated in full later in this report.

2.378 The Provisions of Part 11 of the Legal Services Regulation Act 2015: Legal Costs in Civil Proceedings

- 2.379 Part 11 of the 2015 Act relates to legal costs in civil proceedings.
- 2.380 Section 169 states that a party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings unless the court orders otherwise having regard to the particular nature and circumstances of the case and the conduct of the proceedings.

2.381 The Operation of Part 11

- 2.382 As stated previously the provisions of Part 11 do not relate to the LSRA.
- 2.383 Sections 168 and 169 were commenced on 7 October 2019 by the Legal Services Regulation Act (Commencement of Certain Provisions) Order 2019 S.I. no 400 of 2019 and have been in force since that date.

2.384 The Provisions of Part 12 of the Legal Services Regulation Act 2015: Patents of Precedence (Senior Counsel)

- 2.385 Part 12 of the Act requires the Authority to establish an Advisory Committee on the grant of Patents of Precedence and sets the membership of the Committee as the Chief Justice, who is the chairperson of the Committee, the President of the Court of Appeal^[1], the President of the High Court, the Attorney General, the Chairperson of the Bar Council, the President of the Law Society and a lay member of the Authority nominated by the Minister.
- 2.386 Part 12 requires the Advisory Committee to establish the criteria to be met by a legal practitioner, a solicitor or barrister, in order for a recommendation to be made by the Committee to the Government that a Patent be granted to him or her.
- 2.387 Part 12 includes the process by which the Government may revoke a grant of a Patent to a legal practitioner.

2.388 The Operation of Part 12

- 2.389 The Advisory Committee on the grant of Patents of Precedence was established by the Authority on 2 April 2020. The Advisory Committee has published the criteria to be met by legal practitioners and the application form and related guidance are available on the Authority's website.
- 2.390 The guidance states, *"The grant of a Patent of Precedence is a mark of excellence in the legal profession in the State which identifies those legal practitioners who provide outstanding legal services on the widest range of specialist advice and advocacy, written and oral, in all courts and fora in respect of national, European and international law. The grant of a Patent of Precedence gives rise to the expectation from clients, colleagues, the judiciary and the public of exceptional legal advice and advocacy, and the highest ethical standards."*

^[1] Section 172 of the 2015 Act was amended by the Courts Act 2019 to include the President of the Court of Appeal as a member of the Advisory Committee.

2.391 Since the establishment of the Advisory Committee (2020 to 2024), the Committee has received 359 applications for the grant of a patent. The Advisory Committee has granted 164 patents with 119 barristers and 45 solicitors being recommended to Government as suitable to receive the title of Senior Counsel. The number of applications received by the Committee in 2025 was 47 (36 barristers and 11 solicitors) with the evaluation process ongoing at time of writing.

2.392 The Provisions of Part 13 of the Legal Services Regulation Act 2015: Amendments of Solicitors Acts 1954 to 2011

2.393 Part 13 includes a series of amendments to the Solicitors Acts 1954 to 2011.

2.394 The majority of these amendments relate to functions in the Solicitors Acts which were previously undertaken by the Minister, the Chief Justice or the Law Society which are now undertaken by the Authority.

2.395 The Operation of Part 13

2.396 Where the Authority is now required to perform a function previously undertaken by the Minister or the Chief Justice under the Solicitors Acts, these are now carried out following liaison with the Law Society.

2.397 By way of example, in relation to professional indemnity insurance, section 201 of the 2015 Act was commenced on 7 October 2019 along with the commencement of other sections in part 13. Section 201(a)(i) amends section 26 of the Solicitors (Amendment) Act 1994, by the substitution of *“The Society may, with the consent of the Authority, make regulations ...”* for the *“The Society may make regulations”*.

2.398 Section 26 of the Solicitors Act 1994, as amended, provides that the Law Society with “the consent of the Authority” may make regulations making provision for indemnity against losses arising from claims in respect of any description of civil liability incurred by a solicitor arising from their practice as a solicitor, by those working in a solicitor firm, and by a solicitor arising from their practice as a solicitor in a legal partnership, multi-disciplinary practice (MDP) or a limited liability partnership (LLP) within the meaning of the 2015 Act.

2.399 In 2022, the Law Society made a submission to the Authority requesting their consent to the making of the Solicitors Professional Indemnity Insurance Regulations 2022. This request was considered by the Authority and a resolution of the Authority was passed on 17 October 2022 allowing the necessary consent to be given.

2.400 Four sections of Part 12 have not yet been commenced. These are as follows:

2.401 Section 180

- 2.402 Section 180 which relates to the amendment of section 48 of the Solicitors Act of 1954. The commencement of this section would mean that the current procedure whereby solicitors who need to apply to back-date their practising certificates must make an application to the President of the High Court would change so that any future application would instead be made to the LSRA.
- 2.403 The Law Society have engaged with the LSRA on this issue and are of the view that the backdating process is *“extremely administratively burdensome”* with around 300 applications being made each year. The Law Society also expressed the view that the LSRA would need a formal application process in place that takes account of all of the necessary proofs that would be required to grant or reject an application and that the procedure would need to be underpinned by regulations.
- 2.404 In their submission to the section 6 review, the Law Society have recommended, at recommendation 31, *“that section 180 of the 2015 Act be amended to confer the power to backdate practising certificates to the Society instead of the Authority, and that the Society be granted the power to charge a fee in excess of €350 per practising certificate backdated.”*
- 2.405 The LSRA can see no pressing regulatory need for the LSRA to take over this backdating of practising certificates and endorse the recommendation of the Law Society in this regard.
- 2.406 However, in the absence of legislative amendment to section 180, the LSRA will engage further with the Law Society and the Courts Service on the feasibility of the LSRA undertaking this function at some point in the future.

2.407 Section 191

- 2.408 Section 191 amends section 10 of the Solicitors Act 1994 with the effect that the Law Society’s power to compel the production of documents in the course of its investigation of complaints would be restricted to complaints received before 7 October 2019.
- 2.409 The provisions of Part 6 of the 2015 Act already proscribe the Law Society’s power to investigate complaints received after 7 October 2019. The commencement of this section would have no operational impact.

2.410 Section 199

- 2.411 Section 199 would provide the LSRA with the power to appoint a monitor to attend and observe any Law Society committee meeting in which the committee is investigating misconduct under their financial regulatory function.
- 2.412 To date the LSRA has not required to attend a meeting of a committee of the Law Society, however, that is not to rule out the possibility of a future requirement to attend.
- 2.413 It should be noted that the Law Society have recommended, at recommendation 30(15) that section 199 of the 2015 of the 2015 Act be amended to provide for the insertion of a section 14D into the 1994 Act, rather than the insertion of section 14C, which already exists.

2.414 Section 201

- 2.415 Subsections (1)(c) and (1A) which relate to multi-disciplinary practices have not yet been commenced. These would only be commenced when the framework for the introduction of MDPs was being commenced.

2.416 The Provisions of Part 14 of the Legal Services Regulation Act 2015: Miscellaneous

- 2.417 Part 14 of the 2015 Act includes a series of miscellaneous provisions including the following:
- 2.418 Section 209 provides that neither the Authority, nor a member of the Authority or the Authority staff shall be liable in damages in respect of any act done or omitted to be done by it, or him or her in the performance of its functions under part 3 or part 6 unless the act or omission concerned was done in bad faith.
- 2.419 Section 210 states that the State will not indemnify the Compensation Fund of the Law Society in respect of any liability of that fund.
- 2.420 Section 212 allows that a barrister in employment may take up paid employment and provide legal services to their employer including by appearing on behalf of that employer in a court, tribunal or forum of arbitration.
- 2.421 Section 215 prohibits a legal practitioner who has accepted instructions to appear in court on behalf of a client is in custody from withdrawing from the client's case without first obtaining permission from the court before which that client is next scheduled to appear.

2.422 The Operation of Part 14

- 2.423 No damages have been awarded to any party as a result of proceedings taken against the Authority, a member of the Authority or any member of staff in relation to the performance of any of its functions.
- 2.424 The LSRA is unaware as to whether the issue of the State indemnifying the Compensation Fund of the Law Society has arisen since the commencement of the 2015 Act.
- 2.425 In the first section 6 review report the LSRA recommended at recommendation 41 that section 41 be amended to provide clarity as to how it will operate in practice. That recommendation is repeated as part of this report. The LSRA is aware of section 212 being relied on in a small number of occasions to allow a barrister in employment to represent their employer. As part of the *Breaking Down Barriers* Implementation Plan the LSRA will provide guidance on the operation of section 212 on its website.
- 2.426 The LSRA is not aware of any complaint having been received in relation to a breach of section 215 of the Act.

2.427 The Provisions of Part 15 of the Legal Services Regulation Act 2015: Clinical Negligence Actions

- 2.428 Part 15 of the Act introduces pre-action protocols in clinical negligence actions.
- 2.429 Part 15 also includes amendments to the Civil Liability and Courts Act 2002 and the Statute of Limitations (Amendment) Act 1991.

2.430 The Operation of Part 15

- 2.431 The provisions of Part 15 have not yet been commenced.

PART 3: Public Consultation and Submissions under Section 6(3)

3.0 The Public Consultation

- 3.1 In conducting the review of the operation of the 2015 Act, the LSRA is required under section 6(3) of the Act to consult with the Competition and Consumer Protection Commission, the professional bodies which are defined under the Act as the Law Society, the Bar Council and the Honorable Society of King's Inns, and such other persons as the Authority considers appropriate for such purpose.
- 3.2 A total of 15 submissions were received. The key points from the submissions received are summarised below. All of the submissions will be published in due course on the LSRA website.

3.3 Submission from Mr Simon Urbanski

In his introduction Mr Urbanski outlines he is a Legal Executive and Notary Public.

Mr Urbanski supports the creation of a regulated profession of 'legal executives'. He states that:

"In other jurisdictions legal executives work closely with solicitors, barristers, in-house counsels; do legal/case research, or attend court hearing with lawyers; some specialise in certain areas of the law such as criminal law or probate."

Mr Urbanski noted that legal executives in other jurisdictions are governed by specific laws and regulations and supervised by professional bodies including, for example the Chartered Institute of Legal Executives in England and Wales, the Law Society of Hong Kong and the New Zealand Institute of Legal Executives. Legal Executives are represented in Ireland by the Irish Institute of Legal Executives.

Mr Urbanski stated that legal executives are slowly being recognised as a profession by some State and semi-state bodies in Ireland and that the "legal executive" grade exists in the civil/public service.

He advocated a discussion towards a formal recognition of the profession of Legal Executive with standards and codes sanctioned by the LSRA. He noted that ILEX has its own code and rules, which could be – upon consultation with the LSRA – be developed further and made legally binding.

Mr Urbanski stated that the LSRA and the IILEX could also produce a legally binding agreement regarding:

- minimum training required to be awarded the title of Legal Executive
- CPD requirements
- permitted areas of practice
- any other conditions deemed essential by the LSRA.

This would allow practising legal executives to practise in a legal establishment and/or as sole practitioners. They could also enjoy a limited right of audience in the courts for the purpose of ending the County Registrar's motion list, adjourning motions and making basic submissions only (on instruction of a solicitor/barrister).

Mr Urbanski said the creation of a third legal profession could expedite access to basic and immediate legal advice. He called upon the LSRA to amend the 2015 Act as follows:

- (1) Section 2(1) by adding a definition of "*practising legal executive*" and "qualified legal executive,"
- (2) Sections 22 and 23 by recognising codes of practice and any professional codes presented by IILEX, or any other professional body/faculty.
- (3) Section 52 by adding any formally recognised representative body for legal executives to the Act.
- (4) By creating Part 16 of the Act and making it the sole part applicable to legal executives employed by the State, private practices, and sole practitioners, or by creating a designated Statutory Instrument to govern the profession of legal executives.

Part 16 of the Act, or a designated Statutory Instrument, would include, for example: minimum requirements to enter the profession of Legal Executive; rules, regulations, and codes applicable to this profession; limited right of audience; scope of limited advice allowed to be given by legal executives; functions of legal executives in employment of the State/private practices, and/or sole practitioners; fees (if applicable); complaints procedure.

3.4 Submission from Mr Kieran Cummins of Eco Advocacy

Mr Cummins, who describes himself as a trained solicitor, made a submission on behalf of Eco Advocacy, a group which champions environmental awareness and justice.

Mr Cummins expressed concerns about the use of strategic litigation against public participation, commonly referred to as SLAPP, and the objectives of the Authority as defined under Section 13(4) of the 2015 Act.

Mr Cummins stated that the 'chilling effect' that SLAPP lawsuits have on public participation in matters of planning or environmental concern merits them being classified as an abuse of process. He requested regulatory clarifications on:

- a. What SLAPP is,
- b. Clarity on what penalised, persecuted, harassed, etc, mean,
- c. Define a person engaged in public participation

He also proposed that codes of conduct be strengthened so that vexatious litigation would be a matter of professional misconduct (if proved).

Mr Cummins recommended a variety of desired legal mechanisms to mitigate against SLAPP, which involve wasted costs orders, updated practice directions to impose security for costs, strike out powers for cases bearing the hallmark of SLAPP, an anti-SLAPP law and reform of defamation laws.

Mr Cummins suggested a confidential complaints mechanism and for LSRA to be empowered to freeze all records and seize and examine all communications between any lawyer and their client so as to identify and confirm whether a lawyer under investigation has enabling the legal intimidation of innocent people through the making of spurious complaints against them to various other authorities.

3.5 Submission from Thomas Deady

Mr Deady provided a submission to the Authority which commented on the issue of the 2015 Act having no definition of client as was contained in the Solicitors (Amendment Act) 1994 as follows:

“client” includes the personal representative of a client and any person on whose behalf the person who gave instructions was acting in relation to any matter in which a solicitor or his firm had been instructed; and includes a beneficiary to an estate under a will, intestacy or trust;”

Mr Deady in his submission cited a Law Society practice note in relation to cost notices (section 68 letters from 2017) which stated as follows:

“The Law Society took the view that the beneficiary indirectly paying costs should receive a copy of the section 68 letter furnished to the legal personal representative. This was the view of the High Court in Condon v Law Society of Ireland ([2010] IEHC 52) and Sandys & anor v Law Society ([2015] IEHC 363)

Mr Deady submitted that the fact that the 2015 Act did not contain a definition of client which had previously existed, *“has effectively abolished the rights that certain beneficiaries of an estate had, prior to the enactment of the current LSRA legislation.”*

Mr Deady further submitted that this “gap in the legislation” should be rectified as a matter of priority.

3.6 Submission from the Alliance for Insurance Reform (AIR)

AIR proposed that timelines be introduced for the processing of complaints by the LSRA, particularly in regard to complaints under the Advertising Regulations. It said

that so-called claims harvesting websites promote or encourage potentially fraudulent claims, and asked that the LSRA use existing legislation and whatever additional legislation and regulation is required to close all operational claims harvesters.

AIR said that a culture of fraudulent, exaggerated, misleading, and vexatious claims has arisen and does not reflect well on the legal profession. This included solicitors sending plaintiffs to certain medical experts who may magnify evidence. AIR proposed that legal practitioners be required to make declaration as to how and why a medical expert report became necessary.

It further proposed that, through an amendment to the 2015 Act or through regulation:

“The LSRA should have a provision such that where any case is dismissed because of false or misleading evidence, per Section 26 of the Civil Liability and Courts Act 2004, the legal practitioners acting for the plaintiff must set out to the LSRA the steps they took to ensure that the court was not misled in any way. Based on that explanation and the facts of the case including comments made by judges, the LSRA should consider whether a disciplinary process is necessary.”

3.7 Submission from the Irish Small and Medium Enterprise Association (ISME)

ISME called on the LSRA to seek the establishment of a full schedule of costs for Circuit Court proceedings, similar to that set out in SI 17/2014 for the District Court. It said that:

“The prohibitive and unpredictable costs of defending an action in the courts, together with the low likelihood of recovery of costs in very many cases, means that defendants are frequently and inappropriately encouraged to ‘settle’ even when the facts of the case do not support the plaintiff.”

ISME described a “settlement mentality” where a defendant has actually or substantively won their case and their own counsel recommends a small settlement for costs for the other side and in practice it does not obey the ‘costs follow the event’ rule in court.

ISME said legal practitioners should be required to append a statutory declaration *“to the effect that they have advised the plaintiff of the necessity to ensure that the affidavit of verification is truthful, honest and accurate in all material respects.”*

It also called for individuals or companies assisting in any way with the identification, capture or presentation of a claim against a third party (so called ‘claims management companies,’ or claims ‘harvesters’) to be regulated by the LSRA under the 2015 Act.

3.8 Submission from Retail Grocery Dairy & Allied Trades Association (RGDATA)

RGDATA, which represents the retail, grocery and allied trades, said its members continue to face considerable insurance cost pressures. It said the LSRA should have greater powers to regulate and control the activities of solicitors, barristers and other legal professionals that could be perceived as *“encouraging or incentivising personal injury, defamation and equality claims, either through advertising, social media posts or the preparation of proforma templates which are circulated to prospective claimants.”*

It also said that the LSRA should have the power to regulate legal professionals who have let their professional membership lapse but still hold themselves out as lawyers.

3.9 Submission from Irish Institute of legal Executives (IILEX)

IILEX requested both the recognition and regulation of legal executives by the LSRA. It stated that legal executives have some statutory recognition by virtue of S.I. 698/2004 Ethics in Public Office (Designated Positions in S.I. 145/2008 Ethics in Public Office (Designated positions in public bodies) Amendment Regulations 2008. It also highlighted section 3(g) of the Solicitors Act 1954 (as amended) which refers to:

“an act done by a person in the employment of a practicing barrister or a solicitor qualified to practice and while acting in the course of such employment by the direction and under the supervision of his employer.”

IILEX stated that while this provision placed legal executives into the same group as clerks and secretaries, it was inconsistent with the requirement that legal executives follow ethics guidelines in their own right.

IILEX referenced comments from then Minister for Justice Frances Fitzgerald in a Dáil debate of 22 April 2015 where she stated:

“I am conscious there are potential benefits and efficiencies for consumers and for the legal services sector in a possibly more developed role for legal executives and other potentially more competitive providers of legal services in the future”... and ...“the regulation of legal executives and other potentially more competitive providers of legal services is something I would consider appropriate for consideration of the new Legal Services Regulatory Authority at the appropriate time.”

IILEX cited a range of state, semi state and private organisations that employ and rely on legal executives for their operations. It noted that in a range of common law jurisdiction countries, legal executives perform roles that do not require broad and extensive legal training. It also cited the then Competition Authority (now CCPC) in a report prepared for the OECD, which stated that: *“a legal profession has no exclusive*

right to perform tasks that do not necessarily require extensive and broad legal professional training.”

ILEX said restrictions on access to legal advice impact people of limited means, while broadening the market for legal services would “*provide a greater choice to the consumer and more competitive legal costs.*”

3.10 Submission of the Chief State Solicitor’s Office (CSSO)

The CSSO stated that as solicitors acting for Government and certain bodies under the aegis of Ministers, it works across a range of legal disciplines with consequent indirect impact on many members of the public.

As such, the CSSO would have a concern to ensure that the right of complaint to the Authority afforded under Part 6 of the 2015 Act is not used as an additional litigation tool.

It highlighted the fact that members of the public are not “clients” of the CSSO for the purposes of section 51(1)(a) of the 2015 Act. Yet it said there may well be circumstances where litigants who are not satisfied with the course of their litigation against the State, may, due to the complex nature of litigation, misunderstand the purpose of this provision, conflating the identity of the legal advisers with the relevant State party to litigation.

The CSSO referred to section 13(4) of the 2015 Act and the Authority’s objective in particular of protecting and promoting the public interest and supporting the proper and effective administration of justice.

It recommend that as part of the LSRA’s guidance on complaint procedures, potential complainants are reminded that any concerns or dissatisfaction with the pace of their claims, as regards other parties to litigation for example, should be addressed by availing of the tools to progress litigation as provided in the Rules of Court.

It further recommended that the Authority should provide ‘clarity’ that the provisions in section 51(1)(a) of the 2015 Act [inadequate standards] relate to the service by a person’s own retained legal practitioner, notwithstanding that under the terms of section 51(2) any person “may make a complaint to the Authority in respect of a legal practitioner where the person considers that an act or omission of the legal practitioner constitutes misconduct.”

The CSSO said legal practitioners rely on the LSRA to exercise its powers in a balanced and fair manner and some cautionary language in the guidance materials would be recommended and welcome.

On the levy, the CSSO said revisions to the model under Part 7 of the 2015 Act appeared balanced and fair. It said the section 97 levy exemption for legal

practitioners in full time service of the State should be maintained for its staff, given the remit of the CSSO as part of the Office of the Attorney General.

The CSSO also commented on the proposed amendment to section 97 in the 2021 Bill to include a definition of ‘legal practitioner in the full-time service of the State’. This states:

“(3) A legal practitioner shall be regarded as a legal practitioner in the full-time service of the State if and while he or she is required to devote the whole of his time to the service of the State as a legal practitioner and is remunerated in respect of such service wholly out of moneys provided by the Oireachtas.”

The CSSO recommended that the Authority further consider if the terms of this draft were sufficiently robust so as not to exclude atypical work patterns.

3.11 Submission from the Competition and Consumer Protection Commission (CCPC)

The CCPC said the introduction of legal partnerships should facilitate the formation of both solicitor-barrister partnerships and barrister-only partnerships. The facilitation of as wide a range of business models as possible will be important to ensure that the legal services sector is opened up to greater competition.

The CCPC stated that any review of the 2015 Act should take into consideration whether any amendments may be necessary to advance the reform agenda in respect of the delivery of legal education and training in the State. It supported the recommendations made by the LSRA in its 2020 report to the Minister for Justice, *Setting Standards: Legal Practitioner Education and Training*. These included the establishment of a Legal Practitioner Education and Training (LPET) Committee as an independent, transparent and accountable body tasked with developing and maintaining a clear definition of the competence and standards required to practise as either a solicitor or barrister, and a common set of competencies and standards for the admission to professional legal training.

The CCPC noted that the LSRA in its report to the Minister stated that the establishment of the LPET Committee would require *“either a significant amendment to the Legal Services Regulation Act 2015 or a fresh statute that would empower the LSRA to establish the LPET Committee whilst also including provision for the LPET Committee’s powers, remit and funding.”*

3.12 Submission of the International Protection Appeals Tribunal (IPAT)

IPAT stated that it has the status as an equivalent of a court or tribunal of first instance within the meaning of Article 267 TFEU, and is tasked with performing the judicial scrutiny function provided for in Article 39 of Directive 2005/95/EC. It pointed out potential issues which it said impacted on the eligibility of whole-time Tribunal Members for appointment to the judiciary and for grants of patents of precedence.

It said the issue stems from the compatibility of the definitions of “practicing solicitor” and “practicing barrister” from section 2 of the 2015 Act with section 62(2) of the International Protection Act 2015 (“the IP Act”).

Judicial appointments

IPAT said there has been a near 650% increase in appeals reaching the Tribunal in a 24 month period and that the number whole-time Tribunal Members must increase significantly in order to enable it to efficiently perform its functions.

“The legal practitioners who offer their expertise and skills to the Tribunal in this way make a substantial contribution to the international protection system and to the wider public good. However, by doing so, these legal practitioners are putting themselves at risk of being at a distinct disadvantage as compared to other legal practitioners: They are appointed for a five-year term only, renewable once, but as their roles are whole-time, they have to close their practice and, as a result, are then not eligible to apply for grants of Patents of Precedence and it appears that their terms as quasi-judicial office holders will also not count in the consideration of their ‘time practising’ with respect to eligibility for judicial appointments.”

IPAT noted that the eligibility criteria for judicial appointments is provided for by section 40 of the Judicial Appointments Commission Act 2023, by reference to the Courts (Supplemental Provisions) Act 1961. It is a requirement to have 12 years of practice as a solicitor/ barrister for appointments to the Superior Courts and 10 years of practice for appointments to the District/Circuit Court, and that an applicant for appointment to the judiciary must have practised for a continuous period of not less than two years immediately before such appointment.

IPAT stated that it does not appear that whole-time Members of the Tribunal can accrue reckonable time while serving as quasi-judicial decision makers in a body considered the equivalent of a first instance court in EU law to count towards the requisite number of total years of practice in order to apply for a judicial appointment. It also does not appear that they can accrue reckonable time while at the Tribunal to count toward the requisite number of years of practise required immediately before such appointment.

IPAT contrasted this situation with that pertaining to Legal Costs Adjudicators. Section 148(10) of the 2015 Act provides that:

“A period during which a solicitor or barrister is the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator shall be reckonable as a period of professional practice for the purposes of an application for appointment as a judge.”

IPAT also drew comparisons with section 14(7) of the Coroners Act 1962 (as inserted by section 32 of the Civil Law (Miscellaneous Provisions) Act 2011) which provides that in respect of Coroners or Deputy Coroners:

“(7) For the purposes of determining eligibility for appointment as a judge of any court established by the Courts (Establishment and Constitution) Act 1961 —

(a) in the case of a person who, is a barrister who, but for this subsection would not be considered to be in practice as a barrister as respects a particular period, service as a coroner for that period shall be reckoned as practice as a barrister,

(b) in the case of a person who is a solicitor who, but for this subsection, would not be considered to be in practice as a solicitor as respects a particular period, service as a coroner for that period shall be reckoned as practice as a solicitor.”

IPAT noted that coroners are independent ‘quasi-judicial’ officers responsible, in the public interest, for investigating reportable deaths and that coroners and deputy coroners are required to be barristers or solicitors having practiced for not less than 5 years, or similarly experienced registered medical professionals.

Therefore, IPAT pointed out that *“solicitors and barristers can accrue reckonable time during their time acting in quasi-judicial roles both as Legal Costs Adjudicators and as Coroners/ Deputy Coroners in a manner not currently available to whole-time Members of the Tribunal.”*

It proposed that the 2015 Act be amended to include other quasi-judicial decision makers (including the whole-time Members of the International Protection Appeals Tribunal) in section 148(10), or an equivalent provision, thus bringing it into line with other quasi-judicial decision makers.

Patents of Precedence

Section 173 of the 2015 Act sets out that the Advisory Committee on Patents of Precedence shall establish the criteria for a legal practitioner to meet in order for a recommendation be made in respect of granting these Patents of Precedence. IPAT in its submission said:

“The idea that lawyers holding office or quasi-judicial position do not satisfy the condition of practising lawyers within the meaning of the LSR Act seems to be incompatible with the eligibility requirements for Tribunal Members as set out in section 62(2) of the IP Act. Section 62(2) of the IP Act sets out the experience required for eligibility to become a Tribunal Member. That consists of not less than 2 years’ experience practising as a solicitor or barrister, in the case of ordinary whole-time and part-time Tribunal Members (other than the Chairperson or Deputy-Chairpersons whose positions require a period of 5 years’ practice).”

IPAT submits that:

“Whole-time Members of the Tribunal ought to be seen as providing legal services to the Tribunal. Further, or in the alternative, the exercise of the quasi-judicial powers of the Tribunal should not be a bar to the granting of a Patent of

Precedence. The interpretation of legal practitioners (practicing solicitors and barristers) in Part 12 of the LSR Act by the Advisory Committee should be expanded to those fulfilling a quasi-judicial function in circumstances where:

(1) it is necessary for the appointment of the legal practitioner to the quasi-judicial role to have the required period of practise; and

(2) the functions performed by the legal practitioner while in the quasi-judicial role are those of an exceptional standard.”

IPAT requested that legal practitioners should not be dis-incentivised from joining the Tribunal by virtue of its impact on reckonable time towards an appointment to the judiciary, and ineligibility to apply for a grant of Patents of Precedence.

3.13 Submission of the Institute of Legal Costs Accountants

The Institute commented on three discrete areas of the 2015 Act as follows:

1. Section 154 (2) which relates to legal costs as between party and party only, and states:

“Where a person who is the subject of the order to pay costs receives a bill of costs prepared in accordance with sub-section (1), that person may, having attempted to agree the bill of costs with the person referred to in sub-section (1), apply to the Chief Legal Costs Adjudicator for adjudication on any matter or item claimed in the bill of costs”.

The reference to sub-section (1) relates to the preparation of a detailed bill of costs in compliance with “any rules of Court relating to the preparation and furnishing of bills of costs”. The relevant rules are within Order 99 of the Rules of the Superior Courts (Costs), 2019 (SI 584 2019).

The Institute stated that while this provision is a most welcome addition (insofar as no corresponding provision previously existed), it does not allow the “paying party” to apply to the Chief Legal Costs Adjudicator for adjudication unless the bill of costs is drawn in accordance with the Rules, i.e. a detailed bill of costs.

At times, there can be inordinate delays by a party entitled to costs in advancing their claim at first instance and other times, such a party may opt to for a summary form bill only. In both such instances, the paying party may be prejudiced by delay, but is precluded from making an application to the Chief, or any, Legal Costs Adjudicator.

The Institute submitted that where the party entitled to costs refuses, neglects or inordinately delays in the provision of a bill of costs (whether in compliance with the Rules or otherwise), the paying party ought to be permitted to make an application, at least for directions, to the Chief Legal Costs Adjudicator.

It may be of note that this facility is available in relation to costs as between a legal practitioner and client by virtue of Section 154(4) and in conjunction with Order 99 Rule 32(1) and 32(2) of the Rules of the Superior Courts (Costs), 2019.

2. Sections 160(1) and 161(1)

Section 160 (1) provides that a party to an adjudication may apply to the Legal Costs Adjudicator within 14 days, for a consideration of his or her determination. In essence, this is a review/reconsideration process.

Section 161 (1) provides that a party to an adjudication may apply to the Court within 21 days, for a review of the Legal Costs Adjudicator's consideration.

The Institute agrees that time limits surrounding legal costs adjudication should be strictly adhered to. Indeed, similar time limits existed prior to implementation of the 2015 Act and introduction of the 2019 Rules.

With the introduction of the 2019 Rules, these time limits have been removed from the Superior Court Rules and are now enshrined in the 2015 Act at sections 160(1) and 161(2).

As it stands, there is no express provision allowing a Legal Costs Adjudicator to extend the time, in special circumstances or otherwise, within which to file a notice of consideration.

The Institute submitted that the Legal Costs Adjudicator ought to have the power to extend the time for the filing of a consideration, as there may be many extenuating circumstances such as approaching the long vacation or illness of any party to the proceedings.

The consideration process is a necessary step to a Court review (appeal) of the Legal Costs Adjudicator's determination so it is a crucial stage, thus worthy of permitting a Legal Costs Adjudicator the discretion to extend time or otherwise.

3. Lodgment or Tender in respect of Costs

The introduction of a lodgment/tender process, and the rules governing such, are provided for in Order 99, Rules 57 to 61 of the Rules of the Superior Courts (Costs), 2019. These rules were enacted by SI No. 584/2019 pursuant to the provisions of inter alia section 143, 152(1), 154 and 163 of 2015 Act.

The Institute submitted that such a fundamental right and process ought to be enshrined in primary legislation. It said the wording of any such legislation ought to be unambiguous; provide express powers of the Legal Costs Adjudicators in certain circumstances (including provision for an application for an extension of time to be made other than to the Legal Costs Adjudicator with seisin of the costs dispute), and provide clarity as to the point at which the Legal Costs Adjudicator ought to be made aware of the existence of a tender or lodgment and the amount thereof.

3.14 Submission of the Honorable Society of King's Inns

The Honorable Society of King's Inns stated *"that it stands over its previous two submissions in relation to the Act and where such recommendations have not been adopted"* the King's Inns repeats the recommendations.

The King's Inns recommend that a new section 85(10) be inserted into the 2015 Act, with the following suggested wording:

"Where the Court makes an order under subsection 7(e) directing the Authority to strike the name of a person who is a barrister off the roll of practising barristers, that person shall thereupon stand disbarred and be removed from the Register of Members maintained by the Honorable Society of King's Inns."

The King's Inns stated that this proposed amendment is necessary in view of the definition of "qualified barrister" under section 2(1) of the 2015 Act and would provide greater clarity and enhanced protection for consumers."

The King's Inns also recommended that the definition of "qualified barrister" be amended by the substitution of "and" for "or" in section 2(1)(a) as follows:

"A 'qualified barrister' means a person who—

(a) has been admitted by the Honorable Society of King's Inns to the degree of Barrister-at-Law and [instead of or] has been called to the Bar of Ireland.... "

The King's Inns said the reasons for the proposed amendment are that:

"On one view, the language of the definition of qualified barrister in section 2(1) suggests that a person can be a barrister without being called to the Bar and thus without enjoying such a right of audience. It is respectfully submitted that it was not the intention of the Oireachtas to change the definition of a barrister in this way."

To avoid unnecessary litigation and confusion, the King's Inns said the definition should be changed to reflect the legally presumed legislative intention and, even as presently worded, probable meaning of the definition.

It further stated that:

"It could not have been the intention of the Oireachtas to define "qualified barrister" in such a way as to include a person who has not been called to the Bar. It could not have been intended that a person who has neither the legal capacity nor qualification generally associated with a barrister – the entitlement to appear and be heard in a court of law – could describe themselves as a "barrister". Indeed, it cannot have been intended that there could be a category of persons who are qualified legal practitioners yet uniquely amongst such legal practitioners do not have a right of audience in court, but are nonetheless described in law as barristers."

In the view of the King's Inns, *"the potential disjunctive reading of "or" in section 2(1)(a) creates interpretative difficulties in the 2015 Act and, in particular, renders section 134 absurd."*

It said this concern was been recognised by the LSRA in the form of Recommendation 7 included in its first section 6 report. Section 134 governs the entry of names onto the roll of practising barristers. Section 134(1) provides as follows:

"A person who has been called to the Bar of Ireland and who intends to provide legal services as a barrister shall apply to the Authority to have his or her name, and additional information relating to him or her, entered on the roll and the Authority, on being satisfied that the person is a qualified barrister, shall enter the name of that person and the additional information concerned on the roll."

The King's Inns also stated that:

"The statutory obligation to apply to the LSRA to have one's name entered on the roll applies to persons who have been called to the Bar of Ireland. It does not therefore extend to all "qualified barristers", as they are currently defined. Consequently, if the definition is not amended (and "or" is read disjunctively) persons who have been admitted to the degree of Barrister-at-Law but who have not been called to the Bar – yet intend to provide legal services as qualified barristers – will be under no obligation to apply for entry on the roll. Furthermore, section 134(1) requires the Authority, following an application to it for entry onto the roll, to satisfy itself that the applicant is a qualified barrister."

"However, under the current section 2(1) definition, a person need not have been called to the Bar to be a qualified barrister; admission to the degree is sufficient. Therefore if a person applies under section 134(1) for entry on the roll of practising barristers, the verification process required to be undertaken by the Authority – whether the person is a "qualified barrister" – will not actually confirm that the person is eligible to apply under section 134. This suggests that a definition of "qualified barrister" which depends upon "or" being construed in a disjunctive way does not reflect the intention of the legislature in passing the 2015 Act."

3.15 Submission from the Council of the Bar of Ireland

The Council of the Bar of Ireland commented on Part 7, Imposition of the Levy and how the levy is applied. It said it had no further amendments to propose at this time, but was anxious that the amendments as set out previously are enacted at the earliest opportunity. This referred to its submissions of the 25 July 2018 which was included in the LSRA's first report under section 6.

The Bar of Ireland said it fully supports the aims of Chapter 3 of Part 10 of the Act in relation to the provision of information to clients in respect of legal fees. However, it suggested that certain aspects of the Chapter are unnecessary or duplicative in

situations where a barrister has been instructed by a solicitor, and such functions are more appropriately performed by the instructing solicitor.

The Council suggest that once a legal practitioner has received instructions from a client, and the solicitor has forwarded the requisite notice under Section 150, that the requirement on any barrister instructed should only be to furnish the instructing solicitor with a notice for onward transmission to the client, encompassing the second or subsequent legal practitioners' fees.

The Bar of Ireland proposed that the obligation would be that encapsulated with Sections (2) (3) and (5) of section 150 of the 2015 Act. It said its intention is not to dilute or diminish the quality of information, or level of information a client is entitled to under section 150 of the Act.

While acknowledging that there is a requirement in all cases to provide a notice under section 150, the Bar of Ireland said certain institutional clients would have a greater control and understanding of such costs and may possibly, if provision were made for it, waive any entitlement to a notice under section 150. In such circumstances, it said section 157 would also need to be amended to reflect that any such waiver cannot be impacted in an adjudication on costs.

In relation to disciplinary matters, the Bar of Ireland said it believed that because of a lacuna in the legislation, regard had to be taken to funding two disciplinary mechanisms since October 2019 – the LSRA's mechanism and the Bar of Ireland's. The Bar accordingly wound up its Barristers' Professional Conduct Tribunal in January 2022. This could potentially leave no disciplinary mechanism for an allegation of misconduct prior to October 2019. The Bar referred to its previous submissions for remediation strategies.

Finally, the Council made a recommendation on section 136 of the 2015 Act, noting that it makes it an offence for an unqualified person to provide legal services as a practising barrister. It said it would also like consideration to be given to creation of a separate offence of an unqualified person holding themselves out as a practising barrister.

3.16 Submission from the Law Society of Ireland

The Law Society of Ireland made two submissions to the section 6 review. Both submissions are included in their entirety as Appendices to this report.

3.17 Office of the Legal Costs Adjudicator

The Office of the Legal Costs Adjudicators submission to the section 6 review is included in its entirety at Appendix One of this report.

PART 4: Recommendations

A Overview

- 4.1 The Legal Services Regulatory Authority has conducted its second review of the operation of the Legal Services Regulation Act, 2015 (as amended).
- 4.2 The LSRA now reports to each House of the Oireachtas on the findings and conclusions of its review along with recommendations for amendments to the 2015 Act, the Solicitors Acts 1954 to 2015 (the Solicitors Acts) and to other statutory instruments as appropriate.
- 4.3 The recommendations are set out in this Part and are set out in the following order.
- 4.4 Firstly, the LSRA identifies the 28 priority amendments to Part 6 of the Act identified following this review.
- 4.5 Secondly, the LSRA sets out the recommendations for legislative amendment from the first section 6 review that have not yet been acted on and are still required in the view of the LSRA.
- 4.6 Thirdly, the LSRA sets out the recommendations for legislative amendment identified by the Office of the Legal Costs Adjudicator in their submission and finally the LSRA reproduces and endorses the recommendations made by the Law Society in their submission to the LSRA.

B The 28 Priority Recommendations for the Amendment of Part 6 of the 2015 Act

Recommendation 1:

The LSRA recommends that section 57 of the Act be amended to allow the LSRA to determine a complaint to be inadmissible in circumstances where the LSRA is of the view that the complaint submitted is one that is manifestly inadmissible and that there is no requirement to seek a response from the legal practitioner. Where the Authority makes such a determination, it shall notify the complainant concerned of its determination under this subsection and of the reasons for its determination.

Recommendation 2:

The LSRA recommends that sections 60 and 61 of the Act be amended to prohibit a legal practitioner from issuing court proceedings against a complainant once notified of a complaint alleging excessive costs or services of an inadequate standard until the matter has been determined.

Recommendation 3:

The LSRA recommends that the Act be amended to allow the LSRA, in appropriate matters, to invite the legal practitioner and the complainant to a complaint, to participate in the mediation or informal resolution of a complaint at any stage of the complaints process including the pre-admissibility stage.

Recommendation 4:

The LSRA recommends that the Act should be amended to allow the LSRA the discretion not to invite the parties to a complaint to make efforts to resolve a matter where the LSRA is of the view that an agreement or resolution between the parties is unlikely to be reached.

Recommendation 5:

The LSRA recommends that the provisions of section 60(6) and section 61(6) of the Act be merged to allow the LSRA to direct any of the full range of directions listed in either complaints of excessive costs or of inadequate service.

Recommendation 6:

The LSRA recommends that section 60(6)(c) of the Act be amended to allow documents to be transferred directly to the client without the need to nominate another legal practitioner.

Recommendation 7:

The LSRA is of the view that section 62(5) of the Act should be amended to allow the Review Committee to determine a review by setting aside the determination of the Authority in its entirety and should be amended to allow the Review Committee to determine a review by more than one of the specified determinations.

Recommendation 8:

The LSRA recommends that section 62 of the Act should be amended to allow that where the Review Committee remits a complaint to the Authority to be dealt with again under section 60 or section 61 that the Authority is not required to invite the parties to resolve the matter under section 60(1) or section 61(1) or to request further statements from the parties under section 60(5) or section 61(5).

Recommendation 9:

The LSRA recommends that section 62 of the Act be amended to ensure that the Review Committee may only review the determination of the Authority on one occasion and that

once any matter is remitted to the Authority to be dealt with again with such directions as the Review Committee consider appropriate or necessary, that matter can no longer be the subject of a further review.

Recommendation 10:

The LSRA recommends that Part 6 of the Act be amended to allow the LSRA to take any investigative action that it considers appropriate to gather any necessary evidence for the consideration of the Complaints Committee prior to the Complaints Committee convening to consider the complaint, and that such investigative action is enforceable and to set out the consequences for any person or entity who obstructs or prevents such action.

Recommendation 11:

The LSRA recommends that section 70 of the Act be amended to require the Authority to furnish to the Complaints Committee all documents submitted by the Legal Practitioner and documents held by the LSRA that it considers relevant to the complaint(s) and be amended to require the LSRA to furnish documents received or prepared during the course of its investigation.

Recommendation 12:

The LSRA recommends that section 70(3) of the Act should be amended to allow the LSRA to furnish a copy of the complaints documentation to the legal practitioner, and to request the legal practitioner to furnish to the Complaints Committee the legal practitioner's response to the complaint and complaints documentation and any further exchanges of documents, in advance of the Complaints Committee sitting for the first time to consider the complaint.

Recommendation 13:

The LSRA recommends that Part 6 of the Act be amended to provide the LSRA with a general investigative power to take what steps it considers necessary to investigate a complaint that is under consideration of the Complaints Committee so that the Complaints Committee has all of the necessary material it requires in order to consider and investigate any matters referred to it.

Recommendation 14:

The LSRA recommends that section 71(5)(d) of the Act be amended to substitute the word "client" for the word "complainant".

Recommendation 15:

The LSRA recommends that section 72 of the Act be amended to allow the complainant to appeal a determination or direction of the Complaints Committee to the High Court.

Recommendation 16:

The LSRA recommends that section 35 of the Act be amended to ensure that there is absolute clarity that the LSRA may apply to the High Court for an order compelling a legal practitioner, complainant or other person to comply with the Act or so as to avoid a contravention or a likely contravention of a provision of the Act.

Recommendation 17:

The LSRA recommends that Part 6 of the Act be amended to ensure that there is absolute clarity that the LSRA and the Complaints Committee are provided with the power to compel legal practitioners to provide information/documentation when sought by the LSRA or by the Complaints Committee for the purposes of the consideration and investigation of complaints and such power is enforceable, and to set out the consequences for a party who fails to comply with any such requirements.

Recommendation 18:

The LSRA recommends that section 70(9) of the Act be amended to permit the LSRA to compel the legal practitioner *and/or* the complainant to attend before the Complaints Committee and to set out the consequences for a party who fails to comply with any such requirements.

Recommendation 19:

The LSRA recommends that section 70(9) of the Act be amended to ensure that there is absolute clarity that the Complaints Committee are provided with the power to compel the legal practitioner and/or the complainant to attend before the Complaints Committee when required by the Complaints Committee and such power is enforceable, and to set out the consequences for a party who fails to comply with any such requirements.

Recommendation 20:

The LSRA recommends that the definition of misconduct under section 50 of the 2015 Act be amended to include the failure of a legal practitioner to cooperate with an LSRA investigation and a Complaints Committee investigation. The Complaints Committee should also be empowered to refer matters of non-cooperation by a legal practitioner directly to the LPDT when determining a complaint where there was non-cooperation from the legal practitioner or to deal with the matter directly.

Recommendation 21:

The LSRA recommends that section 216 of the Act be amended to allow for sufficient service by electronic means only, of all notices, determinations and any other correspondence relating to matters under Part 6 of the Act or other parts of the Act as applicable.

Recommendation 22:

The LSRA recommends that any monetary amounts referred to in Part 6 should be set by way of regulation by the LSRA with the consent of the Minister.

Recommendation 23:

The LSRA invites the Department to consider whether a definition of “client” of a legal practitioner is required in Part 1 of the Act.

Recommendation 24:

The LSRA recommends that that the 2015 Act should be amended to ensure that there is absolute clarity that only a client can make misconduct complaints relating to grossly excessive costs under 50(1)(l) or of the delivery of legal services of a substantially inadequate standard under 50(1)(b).

Recommendation 25:

The LSRA recommends that Part 6 of the Act be amended to properly define the process to be followed by the LSRA to investigate an act or omission by a legal practitioner where no complaint has been received.

Recommendation 26:

The LSRA recommends that Part 6 of the Act be amended to permit the LSRA to investigate grounds of misconduct that may arise during the course of an investigation but that were not subject of the initial complaint, and consider those new grounds of misconduct with the initial complaint.

Recommendation 27:

The LSRA recommends that section 69(3) of the Act be amended to remove the limit on the number of members of the Complaints Committee appointed by the LSRA and to allow the LSRA to set the number of members of the Complaints Committee by way of regulation with the approval of the Minister. Similarly the LSRA recommends that section

75(1) of the Act be amended to remove the limit on the number of LPDT Members and to allow the LPDT to set the number of Tribunal members by way of regulation and with the approval of the Minister.

Recommendation 28:

The LSRA recommends that section 57 of the Act be amended to allow the LSRA to determine that part of a complaint is admissible whilst also determining other parts of the same complaint to be inadmissible.

C Recommendations for Legislative Amendment from the First Section 6 Review

The LSRA repeats the following recommendations made in the first section 6 review for legislative amendment which in the opinion of the Authority are still required.

Following the first review of the operation of the 2015 Act, the LSRA concluded that legislative amendment was required to ensure the effective operation of the Act and delivery of the LSRA's objective and functions.

The LSRA made 42 recommendations for legislative amendment. In particular the LSRA made recommendations that the 2015 Act be amended so as to:

- Ensure that the funding model envisaged by the Act would operate to provide sufficient and sustainable funding to enable the LSRA to perform its functions and fulfil its objectives under the Act,
- Ensure that the Roll of Practising Barristers, as established, fulfils the legislative intention of the Act, and
- Facilitate information and data sharing between the LSRA and the professional bodies.

The LSRA also made a number of recommendations to correct drafting anomalies and technical errors where they had been found in the Act.

Legislative amendment to the 2015 Act introduced by the Courts and Civil Law (Miscellaneous Provisions) Act 2023 dealt primarily with issues relating to the funding model and the Roll of Practising Barristers.

The LSRA repeats the following recommendations made in the first section 6 review for legislative amendment which in the opinion of the Authority is still required.

Recommendation 29:

It is recommended that section 2 be amended to clarify the nature of the provision of legal advice that meets the definition of 2(4)(b) and to introduce a “*de minimis*” test to restrict the scope of the current definition of providing legal advice.

Suggested wording for a further exception to the definition of legal advice :

“... and does not include an opinion on the application of the law provided by a person who is a qualified barrister to another person in circumstances where the Authority or a court of competent jurisdiction is satisfied are so “de minimis” that it would be disproportionate to require the barrister to be treated as a practising barrister for the purposes of this Act.”

Recommendation 30:

It is recommended that the LSRA is provided with the necessary powers to access information that is required for the establishment and enforcement of the Roll of Practising Barristers including the power to compel information from relevant parties where required.

Recommendation 31:

It is recommended that the necessary data sharing provisions are incorporated into the Act to provide for the Law Society to supply the LSRA with any information obtained during the course of a financial investigation that relates to a contravention or likely contravention of the Solicitors Acts.

Recommendation 32:

It is recommended that the LSRA is provided with the necessary power to provide the Law Society with any information obtained during the course of an inspection under Part 3 of the Act that the Law Society may require to exercise its regulatory functions.

Recommendation 33:

It is recommended that appropriate provisions are included in the Act to allow the LSRA to request and receive the information required to enforce section 107(4).

Recommendation 34:

It is recommended that the necessary provisions relating to information sharing be provided in the Act to allow the LSRA to access historic complaints data in relation to complaints that have already been determined in respect of both solicitors and barristers and further to allow access to records of civil and criminal proceedings that have been determined in relation to solicitors and barristers.

Recommendation 35:

It is recommended that section 59 be amended to include the necessary information sharing provisions to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Law Society with any information necessary to allow them to conduct any requested investigation.

Recommendation 36:

The LSRA recommend that the Act be reviewed and the necessary amendments made to ensure that the LSRA can comply with the requirements of GDPR.

Recommendation 37:

It is recommended that a definition of 'registered European lawyer' is included in section 2 of the Act.

Recommendation 38:

It is recommended that section 2 of the Act is expanded to insert the definition of a solicitor as set out in section 3 of the 1994 Act in order to set out the distinction between a 'solicitor' and a 'practising solicitor'.

Recommendation 39:

That section 23 be amended to provide the LSRA with a mechanism to compel professional bodies to provide to the Authority any professional code that has been issued and with an enforcement mechanism should they refuse to comply. Section 23 should also clarify that the test as to whether a professional code relates to the provision of legal services should rest with the LSRA.

Recommendation 40:

It is recommended that section 35 be expanded to allow for applications in respect of a professional body, legal partnership, limited liability partnership or multi-disciplinary practice.

Recommendation 41:

It is recommended that a new provision should be inserted in section 42 to make it an offence for any person to fail to comply with a request from an inspector to provide his/her name and/or home address.

Suggested wording:

"42(2)(a) A person commits an offence if he or she refused to comply with or provides false or misleading information in response to a requirement made of him or her by an inspector under subsection (2)."

Recommendation 42:

It is recommended that section 43(1) of the Act is amended to insert the requirement for the preparation of a report by an inspector of any inspection which relates to paragraph (a) of section 38, i.e. an inspection for the purpose of an investigation of any complaint made or deemed to made under the Act.

Recommendation 43:

It is recommended that the issue of legal partnerships holding client monies be clarified and the internal controls required specifically addressed by way of legislative amendment.

Recommendation 44:

It is recommended that the terms of subsection 50(1)(j) be amended so as to ensure that the definition of misconduct by legal practitioners in relation to acts or omissions that consist of the commission of an arrestable offence is clear and unambiguous and the remit of the LSRA to investigate such an allegation is clearly defined.

Recommendation 45:

It is recommended that section 52(2) of the Act is amended to insert a further provision for the referral of complaints to the Authority by the registrar under section 14C of the 1994 Act.

Recommendation 46:

It is recommended that the word 'shall' in sections 60(1), 61(1) and 64(1) be replaced by the word 'may' to allow the LSRA a discretion as to the circumstances in which the complainant and the legal practitioner will be invited to make efforts to resolve a complaint.

Recommendation 47:

It is recommended that section 68 of the Act is clarified to ensure that all misconduct complaints, including those which have been successfully resolved under section 64 are to be referred to the Complaints Committee.

Recommendation 48:

It is recommended that section 79(2)(b) of the Act be amended to include reference to the Law Society as one of the parties who may make submissions to the Legal Practitioners Disciplinary Tribunal in cases where they have made an application in accordance with section 77(b) of the Act.

Recommendation 49:

It is recommended that section 79(4) of the Act is amended to make reference to the Law Society as a party who may also consent or not to an application made in accordance with section 77(b) of the Act being determined on the basis of affidavits and supporting documentation.

Recommendation 50:

It is recommended that the Act is amended to clarify that determinations can be made by the Disciplinary Tribunal following the holding of an oral inquiry pursuant to section 81 or the consideration of an application pursuant to section 79(4).

Recommendation 51:

It is recommended that section 82(1)(k) of the Act be amended to clarify that a direction from the Legal Practitioner's Disciplinary Tribunal to impose a specified condition on a solicitor's practising certificate should be made to the Law Society.

Suggested wording:

"(k) where the legal practitioner is a solicitor, a direction to the Society that a specified condition be imposed on his or her practising certificate."

Recommendation 52:

It is recommended that section 85(7)(d) be amended to require the Authority to notify the Law Society where a solicitor is suspended from practice as a legal practitioner and subject to such terms and conditions as the Court considers appropriate through an application to the High Court by the Authority.

Recommendation 53:

It is recommended that provision be made in the Act to allow for a solicitor to apply to the High Court for restoration to the Roll of Solicitors.

Recommendation 54:

It is recommended that section 85(7)(f) be amended to require the Authority to notify the Law Society where a solicitor is struck off the Roll of Solicitors through an application made to the High Court.

Recommendation 55:

It is recommended that a new section 85(10) be inserted with the following suggested wording:

"Where the Court makes an order under subsection 7(e) directing the Authority to strike the name of a person who is a barrister off the roll of practising barristers, that person shall thereupon stand disbarred and be removed from the Register of Members maintained by the Honorable Society of King's Inns."

Recommendation 56:

It is recommended that section 87 be amended to allow for an appeal to the Court of Appeal to be made by the Law Society in circumstances where the Law Society is a party to applications before the Legal Practitioners Disciplinary Tribunal that result in orders made by the High Court.

Recommendation 57:

It is recommended that section 90 of the Act be amended to include the Law Society as a party who may bring an enforcement application in respect of orders made by the Legal Practitioners Disciplinary Tribunal.

Recommendation 58:

It is recommended that section 114(4)(a)(iii) be amended to replace the word “finding” with the words “belief of the Authority.”

Recommendation 59:

It is recommended that section 115 of the Act be amended to provide for a statutory power to the High Court to grant, or refuse to grant, an order under section 115(1)(a).

Recommendation 60:

It is recommended that section 115(6) be amended to refer to the multi-disciplinary practice and/or the managing legal practitioner.

Recommendation 61:

It is recommended that the Act be amended to include specific provision for the review of Part 8, Chapter 3 as it relates to limited liability partnerships.

Recommendation 62:

It is recommended that section 135(1) of the Act be amended to capture the further circumstance under section 92(5)(c) in which the High Court may direct the removal of a barrister’s name from the Roll of Practising Barristers.

Recommendation 63:

It is recommended that the European Communities (Lawyers' Establishment) Regulations 2003 (S.I. No. 723 of 2003), the European Communities (Freedom to Provide Services)(Lawyers) Regulations (S.I. No. 58 of 1979) and the European Union (Recognition of Professional Qualifications) Regulations 2017 (S.I. No. 8 of 2017) are reviewed in line with the provisions of the 2015 Act to ensure that there are no instances of conflict and that the LSRA is properly empowered to fulfil its objectives under section 136 in relation to all relevant legal practitioners.

Recommendation 64:

It is recommended that section 212 be amended to provide clarity as to how it will operate in practice.

D Technical and drafting recommendations:**Recommendation 65:**

A number of technical drafting anomalies and errors have come to light in the course of the Review and the following amendments to the Act are recommended to rectify these matters:

- | | |
|-----------|--|
| a) | It is recommended that the subsections of section 18 be renumbered. |
| b) | It is recommended that section 19(3) of the Act be amended to replace the reference to the " <i>Competition Authority</i> " with a reference to the " <i>Competition and Consumer Protection Commission</i> ." |
| c) | Section 43(3) should be amended and the reference to section 42(1) be changed to a reference to section 50(1). |
| d) | It is recommended that section 52(3) of the Act be amended to replace the reference " <i>to the Society</i> " with " <i>to the Authority</i> ". |
| e) | It is recommended that subsections 80(3) and 80(4) are amended to insert the word " <i>the</i> " before the word " <i>opinion</i> ." |
| f) | It is recommended that section 83(2) be amended to refer to a determination made by the Legal Practitioners Disciplinary Tribunal under section 81(8) of the Act. |
| g) | It is recommended that section 85(8) be amended to refer to an order made under subsection (7). |
| h) | It is recommended that section 92(5) be amended to replace the reference from 'subsection' to 'section'. |
| i) | It is recommended that the heading of section 103 of the Act be amended to change the words " <i>limited partnerships</i> " to " <i>legal partnerships</i> ". |
| j) | It is recommended that the heading of section 104 and section 106 of the Act should be amended from " <i>Notification of Authority</i> " to " <i>Notification to Authority</i> ". |

k)	It is recommended that for the purpose of clarifying persons who are considered unqualified to provide legal services as a practising barrister that the word “not” is removed from section 136(c).
l)	It is recommended that section 140(2)(e) is amended to insert the word ‘a’ before the word ‘determination’.
m)	It is recommended that section 140(7) of the Act be amended to correctly refer to a determination made by a Legal Costs Adjudicator under section 157(1) of the Act.

E The recommendations for legislative amendment identified by the Office of the Legal Costs Adjudicator (OLCA)

The Office of the Legal Cost Adjudicator made the following recommendations for amendments to the 2015 Act and other legislation in their submission to the section 6 review.

OLCA Recommendation One:

Section 140(7)(a) makes reference to a determination made under section 158(1). This appears to be an error and should be amended to refer to section 157(1).

OLCA Recommendation Two:

Paragraph 18 of the Eight Schedule to the Courts (Supplemental Provision) Act 1961 be amended to remove the 10 year limit on appointment as a legal costs adjudicator.

OLCA Recommendation Three:

Section 155 be amended to provide that a section 151 agreement shall, unless an adjudicator for special reason to be stated in their determination otherwise directs, apply to an adjudication.

OLCA Recommendation Four:

s.157 be amended to provide for:

4. A decision being made orally or in writing at the election of the parties or the adjudicator.
5. A decision to contain the matters currently specified in subsection 9.
6. Where the decision results in additional matters to be determined, the decision is not complete until such additional matters are dealt with.
7. No obligation to furnish a decision to a non-participating party.

Sections 160 & 161 be amended to provide for:

Time should not run until any additional cost matters are dealt with.

The submission made by OLCA is summarised in Part 3 of this report and reproduced in full in the Appendices.

F Recommendations made by the Law Society in their submission to the LSRA

The recommendations of the Society are as follows:

Recommendation 1 – Data sharing to prevent contravention or likely contravention of the Solicitors Acts 1954 to 2015

It is the recommendation of the Society that the Society is provided with data sharing provisions to allow it to supply the Authority with any information obtained during the course of a financial investigation that relates to a contravention or likely contravention of the Solicitors Acts 1954 to 2015.

Recommendation 2 – Information obtained by inspectors during an inspection

It is the recommendation of the Society that the Authority is provided with the necessary power to provide the Society with any information obtained during the course of an inspection that may be necessary for the Society to exercise its remaining regulatory functions.

Recommendation 3 – Admissibility of complaints to the Authority

It is the recommendation of the Society that the Society and the Solicitors Disciplinary Tribunal be provided with the necessary provisions to provide the Authority with historic complaints data pertaining to solicitors that have previously been determined in order to give effect to section 58 of the 2015 Act.

Recommendation 4 – Sharing information from the Roll of Solicitors

It is the recommendation of the Society that data sharing provisions are put in place to permit the Society to share necessary data from the Roll of Solicitors with the Authority to assist the Authority to process complaints and to prosecute allegations of misconduct against solicitors in the Legal Practitioners Disciplinary Tribunal.

Recommendation 5 – Provision of complaints information to assess financial risks

It is the recommendation of the Society that the Society is provided with a copy of the response (if any) of a solicitor to a complaint made against him or her, and a copy of the letter notifying the parties of the determination of a complaint, to include details of any sanction imposed.

It is the further recommendation of the Society that strong data sharing procedures are put in place permitting the Authority to share data relating to complaints made against solicitors

which would allow the Society to continue to assess the risk profile of solicitors' firms for the purposes of its financial regulation functions and to continue to protect clients' money and the Society's Compensation Fund.

Recommendation 6 – Request by the Authority to the Society to carry out an investigation

It is the recommendation of the Society that necessary data sharing provisions are inserted into section 59 of the 2015 Act to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Society with such necessary information in order to conduct any requested investigation.

Recommendation 7 – Data sharing of complaints and failure to comply with a notice issued by the Complaints Committee

It is the recommendation of the Society, for the purposes of the Society considering whether to refuse to issue a practising certificate or to issue a practising certificate subject to conditions under section 49 of the 1954 Act (as amended), that the Authority be granted data sharing provisions to provide the Society with information concerning the following:

- a) The failure of a solicitor to comply with a notice issued under section 70(6)(c) of the 2015 Act by the Complaints Committee;
- b) The nature and number of complaints made to the Authority against a solicitor in the preceding two years;
- c) Where a solicitor has failed to comply with a direction issued under section 71(1)(a) of the 2015 Act;
- d) Where a solicitor has contravened the Solicitors Acts 1954 to 2015;
- e) Where a solicitor has contravened the 2015 Act or any regulations made under that Act.

Recommendation 8 – Publication of information on complaints

It is the recommendation of the Society that the Legal Practitioners Disciplinary Tribunal be provided with data sharing provisions to provide the Society with the necessary data for the Society to publish information on the number of complaints together with a description of the general nature of those complaints and the outcome of the investigation of those complaints by the Legal Practitioners Disciplinary Tribunal.

Recommendation 9 – The Society to be provided with power to advise the Authority if a person is an unqualified person

It is the recommendation of the Society that the Society be provided with necessary provisions to allow it to share data with the Authority for the purposes of advising the Authority whether a person is an unqualified person for the purposes of section 107(4) of the 2015 Act.

Recommendation 10 – Data sharing for identification of legal partnerships, limited liability partnerships and multi-disciplinary practices

It is the recommendation of the Society that the Authority be permitted to provide the Society with all identifier codes for legal partnerships, limited liability partnerships and multi-disciplinary practices that contain solicitors to ensure the two bodies use similar references when exercising their respective regulatory functions.

Recommendation 11 – Data sharing for the cessation of limited liability partnerships

It is the recommendation of the Society that the Authority be provided with data sharing procedures to ensure the Society is advised of any notified cessation of a limited liability partnership.

Recommendation 12 – Professional indemnity insurance

It is the recommendation of the Society that the Society is enabled to share the professional indemnity insurance details of solicitors with the Authority for solicitors who commence practice in a legal partnership, limited liability partnership or multi-disciplinary practice.

Recommendation 13 – Service of notices

It is the recommendation of the Society that section 216 of the 2015 Act is amended to allow the service of notices under the 2015 Act by email or other electronic means.

Recommendation 14 – Registered European Lawyers

It is recommended that a broad review of the relevant legislative provisions be conducted to ensure that RELs can be effectively regulated as legal practitioners in Ireland.

It is recommended the definition of legal practitioner be expanded to include “RELs” meaning “a lawyer registered with a competent authority in Ireland pursuant to the Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003”.

It is recommended that subsection (b) of the definition of “qualified barrister” be repealed.

It is recommended that the definition of misconduct in section 50 of the 2015 Act be amended by adding the words “or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003” after the word “solicitor” in section 50(1)(e), (f) and (h). A similar amendment in relation to barrister RELs should be made after the word “barrister” in section 50(1)(g).

Section 51(5) of the 2015 Act should be amended by inserting the words “or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003” after the word “solicitor” in this sub-section.

Recommendation 15 – Limitation on use of title “solicitor”

It is the recommendation of the Society that use of the title “solicitor” be limited under primary legislation to “solicitor entitled to practise” as set out under section 54 of the 1954 Act (as substituted) by way of amendment of the definition of ‘solicitor’ under Section 3 of the 1954 Act (as substituted).

Recommendation 16 – Definition of “solicitor”

It is the recommendation of the Society that the definition of a solicitor as set out in section 3 of the 1994 Act is inserted into section 2 of the 2015 Act in order to set out the distinction between a “solicitor” and a “practising solicitor”.

Recommendation 17 – Substituting the new definition of misconduct under the 2015 Act

It is the recommendation of the Society that section 184 of the 2015 Act should substitute, rather than insert, the definition of misconduct under section 50 of the 2015 Act to prevent the repetition of offences under the Solicitors Acts 1954 to 2015.

Recommendation 18 – Apprenticeships in new business models

It is the recommendation of the Society that section 29 of the 1954 Act (as substituted and amended) be expanded to allow an apprentice solicitor to undertake their indentures under a practising solicitor in a legal partnership or multi-disciplinary practice.

Recommendation 19 – Inclusion of new File C in regulations under section 66 of the 1994 Act and section 82 of the 1954 Act

It is the recommendation of the Society that regulations should be made under section 66 of the 1994 Act and section 82 of the 1954 Act in order to reflect the amendment made to section 17 of the 1960 Act, where a new File C will be created. This will ensure that the Sixth Schedule now makes reference to applications, and fees that may be charged in respect of such applications, in respect of File C.

Recommendation 20 – Insertion of reference to the new File C

It is the recommendation of the Society that section 17(3) of the Act of 1960 (as amended) is further amended to include reference to the new File C which could be worded as follows:
“The registrar shall maintain separate files on which all orders made under this Act by the High Court or the Society or by the High Court or the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 shall be entered in the following manner –”

Recommendation 21 – Amended wording for section 17(3) of the 1960 Act

It is the recommendation of the Society that section 17(3) of the 1960 Act (as amended) is further amended to replace any references to the Disciplinary Committee with a reference to the Society for the purposes of applications made for removal from the Roll of Solicitors under section 9 of the 1960 Act.

Recommendation 22 – Amendment for the filing of orders in File B

It is the recommendation of the Society that section 17(3)(b) of the 1960 Act be amended to replace the references to the Solicitors Disciplinary Tribunal with references to the Society for the purposes of filing orders made under section 9 of the 1960 Act in File B which could be worded as follows:

“17(3)(b): on a file to be termed File B, there shall be entered any other order made under this Act by the High Court and any order made under section 9 of this Act by the Society or the High Court.”

Recommendation 23 – Findings of misconduct not precipitated by complaints

It is the recommendation of the Society that section 17(3)(c) of the 1960 Act, as amended by section 190 of the 2015 Act, be amended to delete the phrase *“in relation to a complaint under that Part”* to allow the new File C to show a complete record of a solicitor’s disciplinary history rather than only findings relating to complaints.

Recommendation 24 – Reference to section 14B of the 1994 Act

It is the recommendation of the Society that section 2(2) of the 1994 Act (as amended and substituted) be amended to refer to any complaints made to the Society by the registrar under section 14C of the 1994 Act.

Recommendation 25 – Expanding section 72 of the 1994 Act (as amended) to include the updated collective citation of the Solicitors Acts 1954 to 2015

It is the recommendation of the Society that section 72 of the 1994 Act be amended to update the collective citation for the Solicitors Acts 1954 to 2015 to incorporate any conditions issued on a solicitor’s practising certificate under the 2015 Act.

Recommendation 26 – Power of the Authority to remove a barrister’s name from the Roll of Practising Barristers

It is the recommendation of the Society that section 135(1) of the 2015 Act be amended to capture the further circumstance where the High Court may direct the removal of a barrister’s name from the Roll of Practising Barristers under section 92(5)(c).

Recommendation 27 – Repeal of the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870

It is the recommendation of the Society that that the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870 be repealed in their entirety.

Recommendation 28 – Commencement and cessation in practice regulations

It is the recommendation of the Society that the Society be provided with the express power to make regulations for both the commencement and cessation of solicitors’ practices which should be provided for in primary legislation.

Recommendation 29 – Liability of solicitors and their estates for Society’s costs of practice closure exercises

It is the recommendation of the Society that amendments be introduced to allow the Society to recoup the costs of practice closure exercises by the Society from principal(s), partners or from their estate(s) where appropriate.

Recommendation 30 – Minor amendments to the 2015 Act

- 1 It is suggested that section 19(3) of the 2015 Act should correctly refer to the “Competition and Consumer Protection Commission”
- 2 It is suggested that section 43(3) of the 2015 Act should correctly refer to section 50(1) of the Act rather than section 42(1) as this is the correct section that deals with misconduct
- 3 It is suggested that section 52(3) of the 2015 Act should be amended to replace the reference ‘to the Society’ with the correct reference ‘to the Authority’.
- 4 It is suggested that sections 80(3) and (4) are amended to include the word ‘the’ before the word ‘opinion’.
- 5 It is suggested that an amendment is made to section 83(2) of the 2015 Act to refer to a determination made by the Legal Practitioners Disciplinary Tribunal under section 81(8) of the Act, rather than 81(9).
- 6 It is suggested that section 85(8) of the 2015 Act is amended to refer to subsection (7), rather than subsection (6), where subsection (7) provides that the Court may, by order, direct the imposition of a number of sanctions.
- 7 It is suggested that the heading of section 103 of the 2015 Act is amended to change the words “limited partnerships” to “legal partnerships”.
- 8 It is suggested that the heading of section 104 of the 2015 Act be amended to change the words from “Notification of Authority” to “Notification to Authority”.
- 9 It is suggested that the heading of section 106 of the 2015 Act be amended to change the words from “Notification of Authority” to “Notification to Authority”.
- 10 It is suggested that an amendment to section 114(4)(a)(iii) is made to replace the word ‘finding’ with the word ‘belief’.
- 11 It is suggested that section 115 of the Act is amended to replace any reference to the word ‘notice’ with the word ‘direction’ for clarity and to prevent ambiguity.
- 12 It is suggested that section 136(c) of the 2015 Act is amended to remove the word ‘not’ for the purposes of clarifying persons who are considered unqualified to provide legal services as a practising barrister.
- 13 It is suggested that section 140(2)(e) of the 2015 Act is amended to insert the word ‘a’ before the word ‘determination’.
- 14 It is suggested that section 140(7) of the 2015 Act be amended to correctly refer to a determination made by a Legal Costs Adjudicator under section 157(1) of the Act, rather than section 158(1).

- 15 It is suggested that section 199 of the 2015 Act be amended to provide for the insertion of a section 14D into the 1994 Act, rather than the insertion of section 14C, which already exists.

Recommendation 31 – Backdating practising certificates

It is the recommendation of the Society that section 180 of the 2015 Act be amended to confer the power to backdate practising certificates to the Society instead of the Authority, and that the Society be granted the power to charge a fee in excess of €350 per practising certificate backdated.

Recommendation 32 – Breaches of regulations as circumstances which the Society may consider when issuing a practising certificate

It is the recommendation of the Society that section 49(1)(u), as substituted and amended, be further amended to provide for the insertion of circumstances where there is a breach by a solicitor of any regulations made under the Solicitors Acts 1954 to 2015. Similar amendments should be made to section 59 of the 1994 Act (as amended).

Recommendation 33 – Power to impose practising certificate conditions for multiple years

It is the recommendation of the Society that appropriate amendments are made to section 49 of the 1954 Act (as substituted and amended) and section 59 of the 1994 Act to grant the Society the power to impose practising certificate conditions for multiple years, rather than just the year in question.

Recommendation 34 – Limitation period for an application to appeal the refusal of the Society to grant permission for the employment of an unqualified person

It is the recommendation of the Society that section 60(3) of the 1954 Act (as substituted) be amended to provide for a period of 21 days within which an aggrieved solicitor may make an application to appeal the refusal of the Society to grant permission for the employment of the solicitor as an unqualified person.

Recommendation 35 – Direction to see a registered medical practitioner where concerns arise for the physical or mental health of a solicitor

It is the recommendation of the Society that section 61 of the 1954 Act (as substituted) be amended to include new subsections (6) and (7) to grant the Society the power to direct a solicitor to be examined by a registered medical practitioner where there are concerns regarding the physical or mental health of that solicitor. Suggested wording could be as follows:

“(6) The Society, where it has reason to consider that a solicitor may not be fit to carry on the practice of a solicitor having regard to the state of his physical or mental health, may, for the purposes of subsection (2) of this section, direct that the solicitor be examined by a registered medical practitioner nominated by the Society.

(7) In subsection (8), ‘registered medical practitioner’ means a person who is a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007.”

Recommendation 36 – Requirement for solicitors in new business structures to have a practising certificate in force when providing legal services

It is the recommendation of the Society that section 56(2) of the 1994 Act is amended to provide for the requirement of solicitors practising in legal partnerships, limited liability partnerships or multi-disciplinary practices to have a valid practising certificate in force when providing legal services which could be worded as follows:

“(2) Without prejudice to section 29(5) (as substituted by this Act) of the Principal Act, a solicitor shall be deemed to practise as a solicitor if they engage in the provision of legal services whether as a sole practitioner or as a partner in a solicitor’s practice or as an employee of any solicitor or of any other person or body or as a solicitor practising within any of the practice models provided for in Part 8 of the Legal Services Regulation Act 2015, or as a solicitor in the full-time service of the State within the meaning of section 54(3) (as substituted by this Act) of the Principal Act.”

Recommendation 37 - Removal of practising certificate exemption for solicitors in the full-time service of the State and conveyancing-only solicitors

It is the recommendation of the Society that the exemption from the requirement to hold a practising certificate under section 56(3) of the Solicitors (Amendment) Act 1994 for solicitors in the full-time service of the State and solicitors employed full-time to provide conveyancing services to non-solicitors be removed, but that such solicitors be exempt from paying practising certificate fees.

Recommendation 38 – Suspension of practising certificates

It is the recommendation of the Society that an amendment be made to section 58 of the 1994 Act to provide for further instances where conditions may be imposed on a solicitor’s practising certificate by virtue of the provisions of the 2015 Act which could be worded as follows:

“...or with any conditions specified in a direction relating to a practising certificate under section 59 or directed pursuant to section 14A(3)(b) of this Act or with any conditions imposed on a practising certificate by virtue of a direction given pursuant to section 71(6)(a) or 82(1)(k) of the Legal Services Regulation Act 2015...”

Recommendation 39 – Restriction or suspension of practising certificate where certificate previously issued under section 49 of the 1954 Act (as substituted and amended)

It is the recommendation of the Society that amendments be made to section 59 of the 1994 Act (as amended) to ensure that the Society is not estopped from imposing conditions under section 59 of the 1994 Act (as amended), or seeking the imposition of conditions or suspension under section 58 of the 1994 Act (as amended) before the Disciplinary Tribunal and/or High Court, where the Society has previously issued a practising certificate to that solicitor under section 49 of the 1954 Act (as substituted and amended), even where the Society was aware of circumstances listed under section 49 applying or potentially applying at the time of issue of the practising certificate.

Recommendation 40 – Inclusion of failure to pay levies, contributions, awards, fines and costs under section 49 of the 1954 Act (as substituted and amended)

It is the recommendation of the Society that section 49 of the 1954 Act (as substituted and amended) be further amended to include failure by a solicitor to pay levies and contributions imposed by the Society or the Authority, and awards, fines and costs (following adjudication by a Legal Costs Adjudicator) imposed by order of the Solicitors Disciplinary Tribunal, Legal Practitioners Disciplinary Tribunal and High Court, be included as one of the circumstances under which the Society may make a direction to restrict or refuse a practising certificate. Consequential amendments should also be made to section 59 of the 1994 Act (as amended).

Recommendation 41 – Suspension of practising certificate in the event of criminal conviction or imprisonment

It is the recommendation of the Society that the Society be granted the power to apply to the High Court for an order suspending a solicitor’s practising certificate in the event of that solicitor being convicted of an indictable offence and / or sentenced to a term of imprisonment.

Recommendation 42 – Notification to be given by the Authority to the Society where a solicitor is suspended from practice

It is the recommendation of the Society that an amendment is made to section 85(7)(d) of the 2015 Act requiring the Authority to notify the Society where a solicitor is suspended from practice through an application made to the High Court by the Authority which could be worded as follows:

“(d) that the legal practitioner be suspended from practice as a legal practitioner for a specified period and subject to such terms and conditions as the Court considers appropriate, and, where the legal practitioner is a solicitor and the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Recommendation 43 – Notification from the Authority to the Society where a solicitor is struck off the Roll of Solicitors

It is the recommendation of the Society that an amendment is made to section 85(7)(f) of the 2015 Act requiring the Authority to notify the Society where a solicitor is struck off the Roll of Solicitors through an application made to the High Court by the Authority which could be worded as follows:

“(f) where the legal practitioner is a solicitor, that the name of the solicitor be struck off the Roll of Solicitors and, where the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Recommendation 44 – Application for restoration to the Roll of Solicitors

It is the recommendation of the Society that appropriate provisions be made to the 2015 Act to allow for a solicitor who is struck off the Roll of Solicitors to make an application to the High Court for restoration to the Roll.

Recommendation 45 – Statutory requirement for principals of solicitors’ firms to ensure accuracy of details

It is the recommendation of the Society that a statutory obligation be introduced in primary legislation for principals in solicitors’ practices to ensure that all firm records including title, contact details, number and names of solicitors in the firm are accurate and up to date. Any changes, including solicitors commencing or leaving the practice or any solicitors going on maternity / paternity leave, should be provided to the Society within 14 days, including the relevant dates.

Recommendation 46 – Responsibility of firm principal(s) or partners regarding practising certificates

It is the recommendation of the Society that a statutory requirement be introduced for principals of solicitor firms to ensure that all solicitors in their firm have a valid practising certificate in force before, and throughout, provision of legal services by those solicitors. It should be professional misconduct for a principal of a solicitor firm to permit an unqualified person to practise as a solicitor in their firm.

Recommendation 47 – Prohibition on solicitors' firms providing legal services without a principal in place

It is the recommendation of the Society that solicitors' firms be prohibited from providing legal services, either reserved or unreserved, unless and until there is a solicitor principal in place or a practice manager appointed. The following wording is proposed:

- “(a) Every firm must have a principal with a valid practising certificate or qualifying certificate in place in order to carry on a practice.*
- (b) If a principal with a valid practising certificate or qualifying certificate is not in place, the firm must immediately cease practice until such time as a principal with a valid practising certificate or qualifying certificate is appointed.”*

Recommendation 48 – Statutory definition of “principal” of a solicitors' firm

It is the recommendation of the Society that a statutory definition of “principal” of a solicitors' firm be put in place to ensure that solicitors' practices do not provide legal services, either reserved or unreserved without a principal being in place.

“ “principal” means, with regard to a solicitor firm, :—

- (i) the sole practitioner of any solicitor firm which carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers; or*
- (ii) every partner of a firm being a solicitor or registered lawyer and every person held out as a partner of a firm that carries on or carried on business as a partnership*

with all principals required to be solicitors qualified to practise.”

Recommendation 49 – Repealing section 41(c) of the 1954 Act

It is the recommendation of the Society that the provisions of section 41(c) of the 1954 Act, as substituted, are repealed at the time the regulations under section 217 of the 2015 Act are commenced to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

Recommendation 50 – Repealing section 43 of the 1954 Act

It is the recommendation of the Society that the provisions of section 43 of the 1954 Act, as substituted, are repealed at the time the regulations under section 217 of the 2015 Act are commenced to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

Recommendation 51 – Powers, rights and privileges of the High Court in applications for removal from the Roll of Solicitors

It is the recommendation of the Society that section 15 of the 1960 Act (as substituted and amended) be amended by inserting a new subsection (5) to provide for the powers, rights and privileges of the High Court to be vested in the Society for the purposes of applications for removal from the Roll of Solicitors. The new subsection could be worded as follows:

“(5) For the avoidance of doubt, references to the Disciplinary Tribunal in this section shall be construed as including references to the Society where the Society considers an application made to it under section 9 of this Act.”

Recommendation 52 – Removal from the Roll of Solicitors

It is the recommendation of the Society that an amendment be made to section 16 of the 1960 Act to replace any references to the Solicitors Disciplinary Tribunal with references to the Society to facilitate applications for removal from the Roll of Solicitors.

Recommendation 53 – Extending the prohibition on advertising legal services

It is the recommendation of the Society that section 5 of the 2002 Act (as amended) be amended to replace the reference to “a person who is not a solicitor” with the broader reference of “an unqualified person”.

Recommendation 54 – Publication of notice of suspension or revocation of an authorisation to provide legal services as a limited liability partnership

It is the recommendation of the Society that section 128(8) of the 2015 Act is amended to refer to the publication by the Authority of the suspension of an authorisation under subsection (4) and revocation of an authorisation under subsection (5).

Recommendation 55 – Fee sharing provisions

It is the recommendation of the Society that appropriate amendments be made to section 62 of the 1954 Act to provide for the sharing of fees between solicitors and non-solicitors, where non-solicitors are partners in legal partnerships with a solicitor, to allow the correct functioning of legal partnerships as intended under the 2015 Act.

Recommendation 56 – Legal fees lawfully earned

It is the recommendation of the Society that a statutory defence of “*adequate consideration*” should be provided in respect of legal fees lawfully earned by solicitors in representing clients.

Recommendation 57 – Preparation of a report by an inspector on foot of a complaint made to the Authority

It is the recommendation of the Society that section 43(1) of the 2015 Act is amended to insert the requirement for the preparation of a report by an inspector for the purposes of section 44.

Recommendation 58 – Referral of complaints against solicitors by the registrar

It is the recommendation of the Society that section 52(2) of the 2015 Act is amended to insert a further provision for the referral of complaints to the Authority by the registrar under section 14C of the 1994 Act.

Recommendation 59 – Clarification for section 68 of the 2015 Act

It is the recommendation of the Society that section 68 of the 2015 Act is amended to make the intentions of that section clear which could be worded as follows:

“The Authority shall refer a complaint under section 51(2) to the Complaints Committee and, where applicable, a complaint under section 51(2) where the client and the legal practitioner concerned do not succeed in resolving the matter in accordance with section 64 of this Act.”

Recommendation 60 – Financial sanctions by Divisional Committee not to cause undue hardship on legal practitioners

It is the recommendation of the Society that section 71(9) of the 2015 Act is amended to provide for sanctions of a financial nature issued under section 71(5)(c)(i) to have regard to the means of the legal practitioner concerned.

Recommendation 61 – Regulations relating to the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment should be made to section 79(2)(b) of the 2015 Act to make reference to the Society as one of the parties who may make submissions to the Legal Practitioners Disciplinary Tribunal.

Recommendation 62 – Clarification of powers of the Authority

It is the recommendation of the Society that the powers made available to the Authority under section 94 of the 2015 Act are revised to ensure that the Authority may only exercise such powers conferred on the Society under the Solicitors Acts 1954 to 2015 in relation to the complaints and disciplinary functions under Part 6 of the 2015 Act.

Recommendation 63 – Solicitors Disciplinary Tribunal recommendation to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 7(3)(c)(iv)(II) of the 1960 Act (as substituted and amended) to allow a recommendation of the Solicitors Disciplinary Tribunal to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal.

Recommendation 64 – Order of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 7(9)(d) of the 1960 Act (as substituted and amended) to allow the Solicitors Disciplinary Tribunal, when making an order, to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal.

Recommendation 65 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when censuring a solicitor

It is the recommendation of the Society that section 8(1)(a)(i)(V) of the 1960 Act (as substituted and amended), be further amended to allow the High Court, when making an order under that section, to have regard to findings of misconduct by both the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court and any other order made by the Court under the Solicitors Acts in respect of the solicitor.

Recommendation 66 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when making ancillary orders

It is the recommendation of the Society that section 8(1)(c)(viii) of the 1960 Act (as substituted and amended) be further amended to allow the High Court, when making an order under that section, to have regard to findings of misconduct by both the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court and any other order made by the Court under the Solicitors Acts in respect of the solicitor.

Recommendation 67 – Submissions made by the Society to take into account findings of misconduct by the Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 8(1A)(b) of the 1960 Act (as substituted and amended) to provide for submissions made by the Society to the High Court in relation to the recommendations of the Solicitors Disciplinary Tribunal to include any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court.

Recommendation 68 – Filing of High Court and Legal Practitioners Disciplinary Tribunal orders

It is the recommendation of the Society that section 190(a)(3) of the 2015 Act is not commenced and that a new subsection 1A is inserted into section 17(1) of the 1960 Act which could be worded as follows:

“1A. – A copy of any decision or order made by the High Court and any determination made by the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 in relation to a complaint under that Part in respect of a solicitor shall be filed by the Legal Practitioners Disciplinary Tribunal with the registrar.”

Recommendation 69 – References to Disciplinary Tribunal

It is the recommendation of the Society that section 19(6) of the 2002 Act (as amended) be amended to replace the word “them” with “the Disciplinary Tribunal” to give full effect to the intentions of section 208 of the 2015 Act.

Recommendation 70 – Referral to the Society of alleged misconduct by an apprentice solicitor

It is the recommendation of the Society that provisions be made for the Authority to refer to the Society any complaints made to it of alleged misconduct by an apprentice solicitor.

Recommendation 71 – Determination of applications to the Legal Practitioners Disciplinary Tribunal on the basis of affidavits and supporting documentation

It is the recommendation of the Society that an amendment be made to section 79(4) of the 2015 Act to make reference to the Society as a party who may also consent, or not, to an application being determined on the basis of affidavits and supporting documentation.

Recommendation 72 – Determinations by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that a clarifying subsection be inserted into section 79 of the 2015 Act to clarify that determinations, whether they are made on the basis of affidavits and other supporting documentation or by way of oral evidence, constitute determinations for the purposes of Part 6 of the Act which could be worded as follows:

“For the avoidance of doubt, a reference to a determination made by the Disciplinary Tribunal pursuant to section 79(4) of this Act, or to the holding of an inquiry pursuant to section 81 of this Act, shall be construed as a reference to a determination made pursuant to that section, whether that determination has been made by the Disciplinary Tribunal following the holding of an oral inquiry pursuant to section 81 or the consideration of an application pursuant to section 79(4).”

Recommendation 73 – Direction to the Society to impose a specified condition on a solicitor’s practising certificate

It is the recommendation of the Society that an amendment is made to section 82(1)(k) of the 2015 Act clarifying that a direction by the Legal Practitioners Disciplinary Tribunal to impose a specified condition on a solicitor's practising certificate should be made to the Society which could be worded as follows:

"(k) where the legal practitioner is a solicitor, a direction to the Society that a specified condition be imposed on his or her practising certificate."

Recommendation 74 – Use of digital recording in Disciplinary Tribunals

It is the recommendation of the Society that the Legal Practitioners Disciplinary Tribunal should use digital recording, transcripts should only be produced on request and the party calling for the transcript should be required to pay for same.

Recommendation 75 – Right of the Society to appeal to the Court of Appeal

It is the recommendation of the Society that section 87 of the 2015 Act is amended to make reference to the Society in circumstances where the Society may equally be a party to applications before the Legal Practitioners Disciplinary Tribunal that result in orders made by the High Court.

Recommendation 76 – Enforcement applications to the High Court by the Society

It is the recommendation of the Society that section 90 of the 2015 Act be amended to include the Society as a party who may bring an enforcement application in respect of orders made by the Legal Practitioners Disciplinary Tribunal.

Recommendation 77 – Statutory power for the High Court to grant an order under section 115(1)(a) of the 2015 Act

It is the recommendation of the Society that section 115 of the 2015 Act be amended to provide for a statutory power to the High Court to grant, or to decline to grant, an order under section 115(1)(a).

Recommendation 78 – Section 115(6) of the 2015 Act should refer to the correct parties in an appeal

It is the recommendation of the Society that section 115(6) of the 2015 Act should refer to the right of appeal to the Court of Appeal against an order made under section 115 by the Authority, the multi-disciplinary practice and / or the managing legal practitioner.

Recommendation 79 – Evidence of criminal conviction

It is the recommendation of the Society that both the Society and the Authority be given the statutory right to call for written evidence of criminal conviction of a solicitor or in the case of the Authority, a legal practitioner.

Appendices

Appendix One: Submission from OLCA

Appendix Two: First Submission from the Law Society of Ireland

Appendix Three: Second Submission from the Law Society of Ireland



An tSeirbhís Chúirteanna
Courts Service

Office of the Legal Costs Adjudicator

Submission to the LSRA

Introduction:

This submission is made to the LSRA in connection with the Authority's review of the operation of the Legal Services Regulation Act 2015.

The Office of the Legal Costs Adjudicator was established on the 7th of October 2019. It is the successor to the Office of the Taxing Master and exercises the functions and powers set out in Part 10 of the 2015 Act and the Rules of the Superior Courts.

One of the main functions of the Office is to adjudicate on disputes relating to legal costs. These disputes can be divided into two broad categories of 'party and party' costs and 'legal practitioner and client' costs.

Party and party costs arise where one party to litigation is ordered by the Court to pay the other party's legal costs of the action. The Order will provide for those costs to be adjudicated in default of agreement.

Legal practitioner and client costs relate to costs charged by a legal practitioner, ie a solicitor or barrister, to their own client. These costs may relate to contentious or non-contentious matters.

Part 10 of the 2015 Act and Ord. 99 of the Rules of the Superior Courts, set out the procedure for disputes in respect of these costs to be referred to this office for adjudication.

The Office consists of two Legal Costs Adjudicators and a Chief Legal Costs Adjudicator. Approximately 1,000 matters are lodged for adjudication each year.

The Office has no policy functions under the 2015 Act. Therefore, this submission is confined to matters related to the practical operation of Part 10 of the 2015 Act. It is based on the experience of the adjudicators hearing cases since 2019.

This submission does not address any issues that have arisen in relation to Order 99 of the Rules of the Superior Courts which relates to the adjudication of costs. Any such issues are matters for the Rules Committee.

Section 140 Register of Determinations:

Section 140(7)(a) makes reference to a determination made under section 158(1). This appears to be an error and should refer to section 157(1).

Section 148 Term of Office:

Section 148 amends paragraph 18 of the Eight Schedule to the Courts (Supplemental Provision) Act 1961. Paragraph 18(6)(c) currently limits an adjudicator to a maximum length of appointment to 10 years.

Such a provision could operate to limit the candidates for the position. In the case of a Legal Costs Accountant it would be difficult, if not impossible, for them to return to practice following serving as an adjudicator as they would be precluded from appearing in adjudications as they were previously an adjudicator.

Similarly with solicitors or barristers, it would be difficult to seek to return to practice having ceased to practice for a decade.

This could result in applications only being made by persons who do not intend to return to their previous practice, or who intend to retire at the end of their terms as an adjudicator. This appears to artificially limit the pool of potential applicants unnecessarily.

The fact that an adjudicator must be re-appointed after each 5 year term should provide sufficient safeguards.

Recommendation:

Paragraph 18 of the Eight Schedule to the Courts (Supplemental Provision) Act 1961 be amended to remove the 10 year limit on appointment as a legal costs adjudicator.

Section 151 Agreements:

Section 151 permits a legal practitioner and client to enter into a written agreement concerning the amount and manner of payment of legal costs in relation to a matter. The status of a s.151 agreement entered into by a client with their legal practitioner is unclear on a subsequent adjudication.

Currently, s.151(4) provides that a s.151 agreement shall be 'amenable to adjudication'. s.155(6) requires that an adjudicator 'shall have regard' to the agreement in a legal practitioner and client adjudication.

These sections have given rise to confusion as to how an adjudication should proceed where there is a s.151 agreement in place. For example, if the s.151 agreement provides for the legal practitioner to charge for legal services exclusively on the basis of time at an agreed hourly rate, is the adjudicator obliged to adopt that methodology in assessing the costs, or should the wider factors as set out in Schedule 1 apply which would, effectively, set the s.151 agreement aside.

It appears that the Courts consider that where a s.151 agreement is in place that an adjudicator should be 'very slow' to depart from the agreement and that 'significant weight' should be given to same¹.

If this is the correct approach, that should be clearly set out in the Act so that all parties are clear as to the implications of entering into a s.151 agreement and as to how such agreements are to be dealt with on an adjudication.

Recommendation:

s.155 be amended² to provide that a s. 151 agreement shall, unless an adjudicator for special reason to be stated in their determination otherwise directs, apply to an adjudication.

Section 157 Determinations:

A number of issues have arisen in practice due to the structure and wording of s.157.

As currently structured, s.157 envisages a determination being made and provided to the parties – subsections 1 & 2. Subsection 8 provides for a written report being prepared after the determination is made and only when requested by the parties or where the adjudicator considers it to be in the public interest to do so.

This does not reflect current practice where the decision furnished contains reasons for the allowances made. The determination may be written or oral at the election of the parties.

There are also occasions where following a determination there are additional matters to be determined. These matters are:-

1. Costs of the adjudication in a legal practitioner and client matter pursuant to s.158,
2. Costs of the adjudication where a lodgement/tender is not beaten, pursuant to Ord. 99 r.60.³

In both these instances the initial determination made does not, and cannot, include such matters. This is because the allocation of these additional costs are dependent on the amount of costs allowed in the initial determination⁴.

There is confusion in practice as to when the time limits for a consideration⁵, or a High Court review,⁶ start to run when there are these additional matters to be determined, or where a written report is requested.

All of these issues would be clarified if the section was amended to provide for the initial determination to comply with the requirements of subsection 9. The sole exception being that

¹ See *Buckley v O'Neill* [2018] IEHC 717 and [2023] IECA 288.

² See Appendix for suggested wording

³ The rules on lodgements and tenders are set out the Ord. 99 of the Rules of the Superior Courts.

⁴ For example, s.158 allocates the costs of the adjudication depending on whether 15% or more is deducted from a legal practitioner and client bill of costs.

⁵ s.160(1) provides for a 14 day period from the date of the furnishing of the determination.

⁶ s.161(1) provides for a 21 day period following the making of a determination on a consideration.

the determination should be in writing. Whether a determination is in writing or delivered orally should be at the election of any party to the adjudication or the adjudicator.

The section should also clarify that, for the purpose of time limits, a determination is not finalised until any additional matters relating to s.158 costs, or the consequences of a lodgement are also dealt with.

An exception should be made in relation to lodgements/tenders where a party is seeking a consideration of a determination. In such cases the determination of the costs of the adjudication, arising from a failure to beat a tender/lodgement, should await the outcome of the consideration. This is due to the prohibition on the adjudicator being made aware of the existence of the tender or lodgement during the course of the adjudication.⁷

Another issue frequently arising in practice is where a party to an adjudication does not participate in the process. In those circumstances a strict reading of the Act suggests that time does not start to run until the non-participating party is furnished with the determination. Frequently there are considerable difficulties in furnishing documents to such a party.

Such a party will have been initially served with the notice of application for an adjudication, which provides, amongst other information, the date of the adjudication.⁸ If they choose thereafter not to participate in the adjudication there should not be any obligation that they be furnished with the determination prior to any time limit commencing to run.

Recommendation:

s.157 be amended⁹ to provide for:

1. A decision being made orally or in writing at the election of the parties or the adjudicator,
2. A decision to contain the matters currently specified in subsection 9.
3. Where the decision results in additional matters to be determined, the decision is not complete until such additional matters are dealt with,
4. No obligation to furnish a decision to a non-participating party.

Ss. 160 & 161 be amended¹⁰ to provide for:

Time should not run until any additional cost matters are dealt with.

⁷ Ord.99 r.57(4).

⁸ Ord.99 r.25(1).

⁹ See Appendix for suggested wording

¹⁰ See Appendix for suggested wording

Appendix

Suggested Wording of Sections

Section 155 Matters to be ascertained in course of adjudication of costs

- 155 (6) In the application of *subsection (3)* to an adjudication relating to a bill of costs as between a legal practitioner and his or her client, the Legal Costs Adjudicator shall, unless an adjudicator for special reason to be stated in their determination otherwise directs, apply an agreement (if any) between the legal practitioner and the client in relation to the matter concerned, made under *section 151*.

Section 157 Determination of applications

157. (1) A Legal Costs Adjudicator, having considered an application in accordance with [section 155](#), shall, in accordance with this section, make a determination in respect of that application.

(2) A determination shall, as soon as practicable after it is made, be furnished to the parties who participated in the adjudication.

(3) A determination referred to in *subsection (1)* shall set out the matters or items the subject of the adjudication and a brief outline of the background to the provision of the legal services concerned and the principal issues relating to the context of the provision of those services and—

(a) specify the work involved relating to the matters or items the subject of the adjudication which was considered in reaching the determination,

(b) specify the various stages of the legal services and the stage of the legal process at which such work was carried out by reference to distinct aspects of the course of the work,

(c) set out a summary of the written or oral submissions made by or on behalf of the parties to the adjudication, and

(d) give reasons for his or her determination.

(4) A determination referred to in *subsection (1)* may be given orally or, at the election of any party to the adjudication or the Legal Costs Adjudicator, be in writing.

(5) Subject to the other provisions of this section, and the principles relating to legal costs specified in *Schedule 1*, a Legal Costs Adjudicator shall confirm the charge in respect of an item of legal costs the subject of the application if, having regard to the matters that he or she considered and ascertained under [section 155](#), he or she considers that—

(a) charging in respect of the item is fair and reasonable in the circumstances, and

(b) the amount charged in the bill of costs in respect of that item is fair and reasonable in the circumstances, and

(c) where the item relates to relevant proceedings, that the amount charged is in accordance with a monetary amount prescribed, under section 294 of the Planning and Development Act 2024, in respect of such item.

(6) Subject to *subsection (7)* A Legal Costs Adjudicator shall, if he or she determines that it is fair and reasonable to charge an amount in respect of an item but that the amount of the charge in respect of the item is not fair and reasonable, determine a different amount to be charged in respect of that item.

(7) A Legal Costs Adjudicator shall not determine a different amount to be charged in respect of an item under *subsection (5)* where—

(a) the item in question relates to relevant proceedings,

(b) a monetary amount stands prescribed, under section 294 of the Planning and Development Act 2024, in respect of the item, and

(c) the amount charged in respect of the item is in accordance with that monetary amount

(8) A Legal Costs Adjudicator shall not confirm an amount for a disbursement unless—

(a) there is a valid voucher or receipt in respect of the disbursement, or

(b) the parties have agreed, and the Legal Costs Adjudicator is satisfied, that such a voucher or receipt is not required.

(9) A Legal Costs Adjudicator shall not confirm a charge in respect of a matter or item if the matter or item is not included in a notice referred to in [section 150](#) or, as the case may be, is not the subject of an agreement referred to in [section 151](#), unless the Legal Costs Adjudicator is of the opinion that to disallow the matter or item would create an injustice between the parties.

(10) If a Legal Costs Adjudicator is of the opinion that a party to the application has neglected or refused to provide documents, and that the refusal or neglect would likely be prejudicial to the interests of one or more of the other parties, the Legal Costs Adjudicator shall, in order to minimise the prejudice to those interests—

(a) determine the application to the extent possible in the circumstances, and

(b) determine that only a nominal amount is to be payable to the party who has neglected or refused to provide the required documentation.

(11) In this section "relevant proceedings" means proceedings—

(a) to which Chapter 2 of Part 9 of the Planning and Development Act 2024 applies, and

(b) in relation to which a court has not made an order under subsection (3) or (4) of section 293 of that Act.

Section 160 Consideration

s.160 (7) For the purposes of *subsection (1)* a determination shall not be deemed to have been furnished to a party until such time as the Legal Costs Adjudicator has also determined, where applicable, any costs arising pursuant to s.158.

(8) Where the respective liability of the parties for the costs of the adjudication requires to be determined due the operation of any rules of court made pursuant to s.154(10)(e) relating to lodgements or tenders, any determination of same by the adjudicator shall take place following any determination made pursuant to *subsection (5)*.

Section 161 Review to High Court

s.161 (7) For the purposes of *subsection (1)* a determination shall not be deemed to have been made by a Legal Costs Adjudicator pursuant to s.160(5) until such time as the Legal Costs Adjudicator has also determined, where applicable—

(a) any costs arising pursuant to s.158, or

(b) the respective liability of the parties for the costs of the adjudication due the operation of any rules of court made pursuant to s.154(10)(e) relating to lodgements or tenders.

LAW SOCIETY SUBMISSION



Section 6 review of the Legal Services Regulation Act 2015 and Solicitors Acts 1954 to 2015

Legal Services Regulatory Authority

29 September 2021

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Introduction

- 1.1 The purpose of this submission from the Law Society of Ireland (“the Society”) is to respond to the invitation from the Legal Services Regulatory Authority (“the Authority”) for submissions in relation to a public consultation under section 6 of the Legal Services Regulation Act 2015 (“the 2015 Act”) which states that the Authority shall do as follows:
- (1) (a) not later than 18 months after the establishment day, and not later than the end of each subsequent 3 year period, commence a review of the operation of this Act, and
 - (b) not later than 12 months after the commencement of a review under *paragraph (a)*, make a report to each House of the Oireachtas of its findings and conclusions, including such recommendations (if any) to the Minister resulting from that review as it considers appropriate.
 - (2) Recommendations under *subsection (1)(b)* shall include such recommendations (if any) for amendments to this Act (including amendments to *Part 7*), the Solicitors Acts 1954 to 2015 or any instrument made under those Acts, as the Authority considers appropriate arising from its findings and conclusions.
 - (3) In conducting a review under this section, the Authority shall consult with the Competition and Consumer Protection Commission, professional bodies and such other persons as the Authority considers appropriate for such purpose.
- 1.2 The Society provided its first submission under section 6 of the 2015 Act to the Authority on 27 July 2018. This submission contained 106 recommendations for amendments to the Solicitors Acts 1954. To date, the Society notes that many of these recommendations have not translated into legislative amendments and accordingly a number of those recommendations are repeated in this submission.
- 1.3 The core functions of the 2015 Act were commenced on 7 October 2019 and the Authority has been receiving complaints against legal practitioners since that date. This has provided both the Authority and the Society with practical experience of the operation of the 2015 Act.
- 1.4 As the Society is the professional body for solicitors in Ireland, the Society’s comments in this submission will consider amendments to the Solicitors Acts 1954 to 2015 including Statutory Instruments made under those Acts that the Authority should consider when making its recommendations to the Minister.

2. Executive Summary

- 2.1 The following submission sets out the Society's views in relation to suggested amendments to the Legal Services Regulation Act 2015 and the Solicitors Acts 1954 to 2015, including any Statutory Instruments made under those Acts. For the purposes of this submission, the following terms will be used to define the relevant Acts being referred to:
- 2.1.1 Solicitors Act 1954 ("the 1954 Act")
 - 2.1.2 Solicitors (Amendment) Act 1960 ("the 1960 Act")
 - 2.1.3 Solicitors (Amendment) Act 1994 ("the 1994 Act")
 - 2.1.4 Solicitors (Amendment) Act 2002 ("the 2002 Act").
- 2.2 This submission is made with the objective of protecting the public interest in its interaction with legal services, in particular the services provided by solicitors.
- 2.3 The submission considers matters that are necessary for both the Authority and the Society in order to effectively manage the operation of the Act. Many of the recommendations are made to ensure a better alignment between the Authority and the Society in relation to processes including data sharing, practising certificate matters and clarity of the Authority's and the Society's respective roles across a range of statutes.
- 2.4 The Authority began many of its core functions on 7 October 2019 and this has provided both the Authority and the Society with practical experience of the 2015 Act in operation.
- 2.5 A variety of issues are taken into account in this submission a number of which appeared in the Society's previous submission to the Authority dated 27 July 2018. The Society has categorised the matters arising in this submission under the headings "*Data sharing*", "*Amendments to legislation*", "*Practising Certificates and other matters relating to practice*" and "*Complaints, Disciplinary and Court matters*".
- 2.6 The Authority will be aware from the Society's previous submission on this matter and from practical experience in dealing with the provisions of the 2015 Act, that data sharing between the Society and the Authority is a matter that needs to be urgently addressed so that both bodies may fulfil their statutory obligations.
- 2.7 This will require sharing data *inter alia* to prevent contraventions of the 2015 Act, permitting the Society to share data from the Roll of Solicitors to enable the Authority to properly exercise its functions under Part 6 of the 2015 Act and to permit the Authority to provide the Society with complaints information to assess financial risk and exercise its functions in relation to practising certificates.

- 2.8 Other data sharing provisions suggested should assist in the operation of the new business structures under Part 8 of the 2015 Act and in particular to permit the Society to advise the Authority where a person who applies to be a partner in a multi-disciplinary practice is an unqualified person. The Society would also like to be in a position to provide the Authority with necessary information in relation to professional indemnity insurance where required.
- 2.9 The Society considers that there needs to be a number of legislative amendments made to the Solicitors Acts 1954-2015. In particular, the Society notes that section 216 of the 2015 Act requires amendment to permit the service of notices electronically in ease of the Authority, legal practitioners and clients alike. The Society also suggests limiting the use of the title "*solicitor*" to solicitors who are entitled to practise as well as amending the definition of "*solicitor*" to clarify the distinction between a "*solicitor*" and a "*practising solicitor*."
- 2.10 The Society notes that the 2015 Act does not fully account for lawyers from other EU Member States who seek to exercise their rights to provide legal services in Ireland under EU Directive 98/5/EC ("the Lawyers' Establishment Directive"). The Society makes a number of recommendations including a review of the legislation to ensure that lawyers from other EU Member States who exercise their right to register and provide legal services in this jurisdiction are regulated in a similar manner to other legal practitioners.
- 2.11 It is recommended that there is a substitution of the definition of misconduct under section 184 of the 2015 Act rather than an insertion as this would work to widen those acts or omissions that may constitute misconduct and should prevent ambiguity. It is also suggested that section 29 of the 1954 Act is amended to permit an apprentice solicitor to undertake their indentures in either a legal partnership or a multi-disciplinary practice, once these structures have commenced.
- 2.12 A number of recommendations are made in relation to a new file C created under section 190 of the 2015 Act which is designed to maintain a record of all decisions or orders made by the High Court and the Legal Practitioners Disciplinary Tribunal under the 2015 Act.
- 2.13 The Society suggests that section 135 of the 2015 Act is amended to encompass a further circumstance under which a barrister's name may be removed from the Roll of Practising Barristers which is currently not provided for. The Society also recommends that it be provided with the express power to make regulations for both the commencement and cessation of solicitors' firms.
- 2.14 The Society also considers that amendments should be introduced to permit the Society to recoup costs for practice closures from solicitors or their estates where it is appropriate to do so. A number of minor technical amendments to the 2015 Act are also suggested.

- 2.15 Consideration is given to the Society being made the appropriate body for solicitors to make an application for the backdating of practising certificates rather than the Authority as set out under section 180 of the 2015 Act. The Society also suggests widening its powers to impose conditions on practising certificates to include breaches of any regulations made under the Solicitors Acts 1954-2015 and the power to impose practising certificate conditions for multiple years in appropriate cases.
- 2.16 In circumstances where the Society has concern having regard to the physical or mental health of a practising solicitor, the Society recommends it be provided with the power to direct that solicitor to be examined by a registered medical practitioner nominated by the Society in the event a High Court application is required seeking to appoint another solicitor to manage the firm.
- 2.17 The Society suggests an amendment is made to section 56(2) of the 1994 Act to provide a requirement for solicitors in the new business models under Part 8 of the 2015 Act to hold a valid practising certificate from the Society. It is further proposed that solicitors in the full-time service of the State and solicitors who provide conveyancing services to their non-solicitor employer are no longer exempted from the requirement to apply for or hold a practising certificate, notwithstanding those applicants would continue to be exempt from paying fees.
- 2.18 The Society makes a number of recommendations in relation to the imposition of conditions on a solicitor's practising certificate and circumstances under which the Society may make a direction to restrict or refuse to issue a practising certificate. It is also suggested that the Society be granted the power to make an application for the suspension of a practising certificate in circumstances where a solicitor has been convicted of an indictable offence and / or sentenced to a term of imprisonment.
- 2.19 Consideration is given to statutory requirements for principals in solicitor firms to be responsible for the accuracy of details provided to the Society as well as ensuring all solicitors in a firm hold a valid practising certificate. It is recommended that firms which do not have a principal in place should be prohibited from providing legal services and that a statutory definition of 'principal' is put in place.
- 2.20 The Society reviews a number of matters in relation to movement between the professions including applications for voluntary removal from the Roll of Solicitors. It is suggested that the prohibition on the advertising of legal services is extended beyond its current definition to prevent unqualified persons from advertising these services. It is also recommended that the provisions of section 62 of the 1954 Act are amended to permit solicitors to share fees with barristers in legal partnerships, once commenced.
- 2.21 The Society has identified a number of matters relating to complaints, disciplinary and Court matters which would assist in the Authority, the Society and the Legal Practitioners Disciplinary Tribunal to exercise their respective functions as intended by the 2015 Act. These include matters relating to the reports of inspectors appointed by the Authority and the referral of complaints made to the Authority by the Registrar of Solicitors ("the registrar").

- 2.22 The Society also recognises the need for harmony to be found between the findings made by the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal to ensure that the entire disciplinary history of a solicitor is available to both bodies. Similar observations are made in respect of any High Court applications which arise from findings made by the Solicitors Disciplinary Tribunal or the Legal Practitioners Disciplinary Tribunal.
- 2.23 The Society notes that it retains the power to investigate allegations of misconduct made against an apprentice solicitor. Accordingly, it is recommended that the Authority refers any complaints received concerning alleged misconduct in relation to an apprentice solicitor on to the Society. The Society also suggests that section 79 of the 2015 Act is amended to clarify that determinations by the Legal Practitioners Disciplinary Tribunal may be made either on the basis of affidavits and other documentation or by way of oral evidence.
- 2.24 The Society suggests that section 87 of the 2015 Act requires amendment to permit the Society as a party who may make an appeal to the Court of Appeal from an order of the High Court. It is also noted that section 90 of the 2015 Act should make reference to the Society as a party who may bring an enforcement application in respect of orders made by the Legal Practitioners Disciplinary Tribunal.
- 2.25 The Society considers the recommendations provided in this submission should assist in easing the administrative burden for all parties, to ensure the regulation of solicitors is conducted with ease and clarity for the benefit of the public and the profession.
- 2.26 The recommendations of the Society are as follows:

Recommendation 1 – Data sharing to prevent contravention or likely contravention of the Solicitors Acts 1954 to 2015

It is the recommendation of the Society that the Society is provided with data sharing provisions to allow it to supply the Authority with any information obtained during the course of a financial investigation that relates to a contravention or likely contravention of the Solicitors Acts 1954 to 2015.

Recommendation 2 – Information obtained by inspectors during an inspection

It is the recommendation of the Society that the Authority is provided with the necessary power to provide the Society with any information obtained during the course of an inspection that may be necessary for the Society to exercise its remaining regulatory functions.

Recommendation 3 – Admissibility of complaints to the Authority

It is the recommendation of the Society that the Society and the Solicitors Disciplinary Tribunal be provided with the necessary provisions to provide the Authority with historic complaints data pertaining to solicitors that have previously been determined in order to give effect to section 58 of the 2015 Act.

Recommendation 4 – Sharing information from the Roll of Solicitors

It is the recommendation of the Society that data sharing provisions are put in place to permit the Society to share necessary data from the Roll of Solicitors with the Authority to assist the Authority to process complaints and to prosecute allegations of misconduct against solicitors in the Legal Practitioners Disciplinary Tribunal.

Recommendation 5 – Provision of complaints information to assess financial risks

It is the recommendation of the Society that the Society is provided with a copy of the response (if any) of a solicitor to a complaint made against him or her, and a copy of the letter notifying the parties of the determination of a complaint, to include details of any sanction imposed.

It is the further recommendation of the Society that strong data sharing procedures are put in place permitting the Authority to share data relating to complaints made against solicitors which would allow the Society to continue to assess the risk profile of solicitors' firms for the purposes of its financial regulation functions and to continue to protect clients' money and the Society's Compensation Fund.

Recommendation 6 – Request by the Authority to the Society to carry out an investigation

It is the recommendation of the Society that necessary data sharing provisions are inserted into section 59 of the 2015 Act to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Society with such necessary information in order to conduct any requested investigation.

Recommendation 7 – Data sharing of complaints and failure to comply with a notice issued by the Complaints Committee

It is the recommendation of the Society, for the purposes of the Society considering whether to refuse to issue a practising certificate or to issue a practising certificate subject to conditions under section 49 of the 1954 Act (as amended), that the Authority be granted data sharing provisions to provide the Society with information concerning the following:

- a) The failure of a solicitor to comply with a notice issued under section 70(6)(c) of the 2015 Act by the Complaints Committee;
- b) The nature and number of complaints made to the Authority against a solicitor in the preceding two years;
- c) Where a solicitor has failed to comply with a direction issued under section 71(1)(a) of the 2015 Act;
- d) Where a solicitor has contravened the Solicitors Acts 1954 to 2015;
- e) Where a solicitor has contravened the 2015 Act or any regulations made under that Act.

Recommendation 8 – Publication of information on complaints

It is the recommendation of the Society that the Legal Practitioners Disciplinary Tribunal be provided with data sharing provisions to provide the Society with the necessary data for the Society to publish information on the number of complaints together with a description of the general nature of those complaints and the outcome of the investigation of those complaints by the Legal Practitioners Disciplinary Tribunal.

Recommendation 9 – Society to be provided with power to advise the Authority if a person is an unqualified person

It is the recommendation of the Society that the Society be provided with necessary provisions to allow it to share data with the Authority for the purposes of advising the Authority whether a person is an unqualified person for the purposes of 107(4) of the 2015 Act.

Recommendation 10 – Data sharing for identification of legal partnerships, limited liability partnerships and multi-disciplinary practices

It is the recommendation of the Society that the Authority be permitted to provide the Society with all identifier codes for legal partnerships, limited liability partnerships and multi-disciplinary practices that contain solicitors to ensure the two bodies use similar references when exercising their respective regulatory functions.

Recommendation 11 – Data sharing for the cessation of limited liability partnerships

It is the recommendation of the Society that the Authority be provided with data sharing procedures to ensure the Society is advised of any notified cessation of a limited liability partnership.

Recommendation 12 – Professional indemnity insurance

It is the recommendation of the Society that the Society is enabled to share the professional indemnity insurance details of solicitors with the Authority for solicitors who commence practice in a legal partnership, limited liability partnership or multi-disciplinary practice.

Recommendation 13 – Service of notices

It is the recommendation of the Society that section 216 of the 2015 Act is amended to allow the service of notices under the 2015 Act by email or other electronic means.

Recommendation 14 – Registered European Lawyers

It is recommended that a broad review of the relevant legislative provisions be conducted to ensure that RELs can be effectively regulated as legal practitioners in Ireland.

It is recommended that definition of legal practitioner be expanded to include “RELs” meaning “*a lawyer registered with a competent authority in Ireland pursuant to the Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003*”.

It is recommended that subsection (b) of the definition of “*qualified barrister*” be repealed.

It is recommended that the definition of misconduct in section 50 of the 2015 Act be amended by adding the words “*or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment Regulations 2003*” after the word “*solicitor*” in section 50(1)(e), (f) and (h). A similar amendment in relation to barrister RELs should be made after the word “*barrister*” in section 50(1)(g).

Section 51(5) of the 2015 Act should be amended by inserting the words “*or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003*” after the word “*solicitor*” in this sub-section.

Recommendation 15 – Limitation on use of title “solicitor”

It is the recommendation of the Society that use of the title “*solicitor*” be limited under primary legislation to “*solicitor entitled to practise*” as set out under section 54 of the 1954 Act (as substituted) by way of amendment of the definition of ‘solicitor’ under Section 3 of the 1954 Act (as substituted).

Recommendation 16 – Definition of “solicitor”

It is the recommendation of the Society that the definition of a solicitor as set out in section 3 of the 1994 Act is inserted into section 2 of the 2015 Act in order to set out the distinction between a “solicitor” and a “practising solicitor”.

Recommendation 17 – Substituting the new definition of misconduct under the 2015 Act

It is the recommendation of the Society that section 184 of the 2015 Act should substitute, rather than insert, the definition of misconduct under section 50 of the 2015 Act to prevent the repetition of offences under the Solicitors Acts 1954 to 2015.

Recommendation 18 – Apprenticeships in new business models

It is the recommendation of the Society that section 29 of the 1954 Act (as substituted and amended) be expanded to allow an apprentice solicitor to undertake their indentures under a practising solicitor in a legal partnership or multi-disciplinary practice.

Recommendation 19 – Inclusion of new File C in regulations under section 66 of the 1994 Act and section 82 of the 1954 Act

It is the recommendation of the Society that regulations should be made under section 66 of the 1994 Act and section 82 of the 1954 Act in order to reflect the amendment made to section 17 of the 1960 Act, where a new File C will be created. This will ensure that the Sixth Schedule now makes reference to applications, and fees that may be charged in respect of such applications, in respect of File C.

Recommendation 20 – Insertion of reference to the new File C

It is the recommendation of the Society that section 17(3) of the Act of 1960 (as amended) is further amended to include reference to the new File C which could be worded as follows:

“The registrar shall maintain separate files on which all orders made under this Act by the High Court or the Society or by the High Court or the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 shall be entered in the following manner –”

Recommendation 21 – Amended wording for section 17(3) of the 1960 Act

It is the recommendation of the Society that section 17(3) of the 1960 Act (as amended) is further amended to replace any references to the Disciplinary Committee with a reference to the Society for the purposes of applications made for removal from the Roll of Solicitors under section 9 of the 1960 Act.

Recommendation 22 – Amendment for the filing of orders in File B

It is the recommendation of the Society that section 17(3)(b) of the 1960 Act be amended to replace the references to the Solicitors Disciplinary Tribunal with references to the Society for the purposes of filing orders made under section 9 of the 1960 Act in File B which could be worded as follows:

“17(3)(b): on a file to be termed File B, there shall be entered any other order made under this Act by the High Court and any order made under section 9 of this Act by the Society or the High Court.”

Recommendation 23 – Findings of misconduct not precipitated by complaints

It is the recommendation of the Society that section 17(3)(c) of the 1960 Act, as amended by section 190 of the 2015 Act, be amended to delete the phrase *“in relation to a complaint under that Part”* to allow the new File C to show a complete record of a solicitor’s disciplinary history rather than only findings relating to complaints.

Recommendation 24 – Reference to section 14B of the 1994 Act

It is the recommendation of the Society that section 2(2) of the 1994 Act (as amended and substituted) be amended to refer to any complaints made to the Society by the registrar under section 14C of the 1994 Act.

Recommendation 25 – Expanding section 72 of the 1994 Act (as amended) to include the updated collective citation of the Solicitors Acts 1954 to 2015

It is the recommendation of the Society that section 72 of the 1994 Act be amended to update the collective citation for the Solicitors Acts 1954 to 2015 to incorporate any conditions issued on a solicitor’s practising certificate under the 2015 Act.

Recommendation 26 – Power of the Authority to remove a barrister’s name from the Roll of Practising Barristers

It is the recommendation of the Society that section 135(1) of the 2015 Act be amended to capture the further circumstance where the High Court may direct the removal of a barrister’s name from the Roll of Practising Barristers under section 92(5)(c).

Recommendation 27 – Repeal of the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870

It is the recommendation of the Society that that the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870 be repealed in their entirety.

Recommendation 28 – Commencement and cessation in practice regulations

It is the recommendation of the Society that the Society be provided with the express power to make regulations for both the commencement and cessation of solicitors’ practices which should be provided for in primary legislation.

Recommendation 29 – Liability of solicitors and their estates for Society’s costs of practice closure exercises

It is the recommendation of the Society that amendments be introduced to allow the Society to recoup the costs of practice closure exercises by the Society from principal(s), partners or from their estate(s) where appropriate.

	Recommendation 30 – Minor amendments to the 2015 Act
1	It is suggested that section 19(3) of the 2015 Act should correctly refer to the “Competition and Consumer Protection Commission”
2	It is suggested that section 43(3) of the 2015 Act should correctly refer to section 50(1) of the Act rather than section 42(1) as this is the correct section that deals with misconduct
3	It is suggested that section 52(3) of the 2015 Act should be amended to replace the reference ‘to the Society’ with the correct reference ‘to the Authority’.
4	It is suggested that sections 80(3) and (4) are amended to include the word ‘the’ before the word ‘opinion’.
5	It is suggested that an amendment is made to section 83(2) of the 2015 Act to refer to a determination made by the Legal Practitioners Disciplinary Tribunal under section 81(8) of the Act, rather than 81(9).
6	It is suggested that section 85(8) of the 2015 Act is amended to refer to subsection (7), rather than subsection (6), where subsection (7) provides that the Court may, by order, direct the imposition of a number of sanctions.
7	It is suggested that the heading of section 103 of the 2015 Act is amended to change the words “ <i>limited partnerships</i> ” to “ <i>legal partnerships</i> ”.
8	It is suggested that the heading of section 104 of the 2015 Act be amended to

	change the words from “ <i>Notification of Authority</i> ” to “ <i>Notification to Authority</i> ”.
9	It is suggested that the heading of section 106 of the 2015 Act be amended to change the words from “ <i>Notification of Authority</i> ” to “ <i>Notification to Authority</i> ”.
10	It is suggested that an amendment to section 114(4)(a)(iii) is made to replace the word ‘ <i>finding</i> ’ with the word ‘ <i>belief</i> ’.
11	It is suggested that section 115 of the Act is amended to replace any reference to the word ‘ <i>notice</i> ’ with the word ‘ <i>direction</i> ’ for clarity and to prevent ambiguity.
12	It is suggested that section 136(c) of the 2015 Act is amended to remove the word ‘ <i>not</i> ’ for the purposes of clarifying persons who are considered unqualified to provide legal services as a practising barrister.
13	It is suggested that section 140(2)(e) of the 2015 Act is amended to insert the word ‘ <i>a</i> ’ before the word ‘ <i>determination</i> ’.
14	It is suggested that section 140(7) of the 2015 Act be amended to correctly refer to a determination made by a Legal Costs Adjudicator under section 157(1) of the Act, rather than section 158(1).
15	It is suggested that section 199 of the 2015 Act be amended to provide for the insertion of a section 14D into the 1994 Act, rather than the insertion of section 14C, which already exists.

Recommendation 31 – Backdating practising certificates

It is the recommendation of the Society that section 180 of the 2015 Act be amended to confer the power to backdate practising certificates to the Society instead of the Authority, and that the Society be granted the power to charge a fee in excess of €350 per practising certificate backdated.

Recommendation 32 – Breaches of regulations as circumstances which the Society may consider when issuing a practising certificate

It is the recommendation of the Society that section 49(1)(u), as substituted and amended, be further amended to provide for the insertion of circumstances where there is a breach by a solicitor of any regulations made under the Solicitors Acts 1954 to 2015. Similar amendments should be made to section 59 of the 1994 Act (as amended).

Recommendation 33 – Power to impose practising certificate conditions for multiple years

It is the recommendation of the Society that appropriate amendments are made to section 49 of the 1954 Act (as substituted and amended) and section 59 of the 1994 Act to grant the Society the power to impose practising certificate conditions for multiple years, rather than just the year in question.

Recommendation 34 – Limitation period for an application to appeal the refusal of the Society to grant permission for the employment of an unqualified person

It is the recommendation of the Society that section 60(3) of the 1954 Act (as substituted) be amended to provide for a period of 21 days within which an aggrieved solicitor may make an application to appeal the refusal of the Society to grant permission for the employment of the solicitor as an unqualified person.

Recommendation 35 – Direction to see a registered medical practitioner where concerns arise for the physical or mental health of a solicitor

It is the recommendation of the Society that section 61 of the 1954 Act (as substituted) be amended to include new subsections (6) and (7) to grant the Society the power to direct a solicitor to be examined by a registered medical practitioner where there are concerns regarding the physical or mental health of that solicitor. Suggested wording could be as follows:

“(6) The Society, where it has reason to consider that a solicitor may not be fit to carry on the practice of a solicitor having regard to the state of his physical or mental health, may, for the purposes of subsection (2) of this section, direct that the solicitor be examined by a registered medical practitioner nominated by the Society.

(7) In subsection (8), ‘registered medical practitioner’ means a person who is a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007.”

Recommendation 36 – Requirement for solicitors in new business structures to have a practising certificate in force when providing legal services

It is the recommendation of the Society that section 56(2) of the 1994 Act is amended to provide for the requirement of solicitors practising in legal partnerships, limited liability partnerships or multi-disciplinary practices to have a valid practising certificate in force when providing legal services which could be worded as follows:

“(2) Without prejudice to section 29(5) (as substituted by this Act) of the Principal Act, a solicitor shall be deemed to practise as a solicitor if they engage in the provision of legal services whether as a sole practitioner or as a partner in a solicitor’s practice or as an employee of any solicitor or of any other person or body or as a solicitor practising within any of the practice models provided for in Part 8 of the Legal Services Regulation Act 2015, or as a solicitor in the full-time service of the State within the meaning of section 54(3) (as substituted by this Act) of the Principal Act.”

Recommendation 37 - Removal of practising certificate exemption for solicitors in the full-time service of the State and conveyancing-only solicitors

It is the recommendation of the Society that the exemption from the requirement to hold a practising certificate under section 56(3) of the Solicitors (Amendment) Act 1994 for solicitors in the full-time service of the State and solicitors employed full-time to provide conveyancing services to non-solicitors be removed, but that such solicitors be exempt from paying practising certificate fees.

Recommendation 38 – Suspension of practising certificates

It is the recommendation of the Society that an amendment be made to section 58 of the 1994 Act to provide for further instances where conditions may be imposed on a solicitor's practising certificate by virtue of the provisions of the 2015 Act which could be worded as follows:

“...or with any conditions specified in a direction relating to a practising certificate under section 59 or directed pursuant to section 14A(3)(b) of this Act or with any conditions imposed on a practising certificate by virtue of a direction given pursuant to section 71(6)(a) or 82(1)(k) of the Legal Services Regulation Act 2015...”

Recommendation 39 – Restriction or suspension of practising certificate where certificate previously issued under section 49 of the 1954 Act (as substituted and amended)

It is the recommendation of the Society that amendments be made to section 59 of the 1994 Act (as amended) to ensure that the Society is not estopped from imposing conditions under section 59 of the 1994 Act (as amended), or seeking the imposition of conditions or suspension under section 58 of the 1994 Act (as amended) before the Disciplinary Tribunal and/or High Court, where the Society has previously issued a practising certificate to that solicitor under section 49 of the 1954 Act (as substituted and amended), even where the Society was aware of circumstances listed under section 49 applying or potentially applying at the time of issue of the practising certificate.

Recommendation 40 – Inclusion of failure to pay levies, contributions, awards, fines and costs under section 49 of the 1954 Act (as substituted and amended)

It is the recommendation of the Society that section 49 of the 1954 Act (as substituted and amended) be further amended to include failure by a solicitor to pay levies and contributions imposed by the Society or the Authority, and awards, fines and costs (following adjudication by a Legal Costs Adjudicator) imposed by order of the Solicitors Disciplinary Tribunal, Legal Practitioners Disciplinary Tribunal and High Court, be included as one of the circumstances under which the Society may make a direction to restrict or refuse a practising certificate. Consequential amendments should also be made to section 59 of the 1994 Act (as amended).

Recommendation 41 – Suspension of practising certificate in the event of criminal conviction or imprisonment

It is the recommendation of the Society that the Society be granted the power to apply to the High Court for an order suspending a solicitor's practising certificate in the event of that solicitor being convicted of an indictable offence and / or sentenced to a term of imprisonment.

Recommendation 42 – Notification to be given by the Authority to the Society where a solicitor is suspended from practice

It is the recommendation of the Society that an amendment is made to section 85(7)(d) of the 2015 Act requiring the Authority to notify the Society where a solicitor is suspended from practice through an application made to the High Court by the Authority which could be worded as follows:

“(d) that the legal practitioner be suspended from practice as a legal practitioner for a specified period and subject to such terms and conditions as the Court considers appropriate, and, where the legal practitioner is a solicitor and the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Recommendation 43 – Notification from the Authority to the Society where a solicitor is struck off the Roll of Solicitors

It is the recommendation of the Society that an amendment is made to section 85(7)(f) of the 2015 Act requiring the Authority to notify the Society where a solicitor is struck off the Roll of Solicitors through an application made to the High Court by the Authority which could be worded as follows:

“(f) where the legal practitioner is a solicitor, that the name of the solicitor be struck off the Roll of Solicitors and, where the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Recommendation 44 – Application for restoration to the Roll of Solicitors

It is the recommendation of the Society that appropriate provisions be made to the 2015 Act to allow for a solicitor who is struck off the Roll of Solicitors to make an application to the High Court for restoration to the Roll.

Recommendation 45 – Statutory requirement for principals of solicitors’ firms to ensure accuracy of details

It is the recommendation of the Society that a statutory obligation be introduced in primary legislation for principals in solicitors’ practices to ensure that all firm records including title, contact details, number and names of solicitors in the firm are accurate and up to date. Any changes, including solicitors commencing or leaving the practice or any solicitors going on maternity / paternity leave, should be provided to the Society within 14 days, including the relevant dates.

Recommendation 46 – Responsibility of firm principal(s) or partners regarding practising certificates

It is the recommendation of the Society that a statutory requirement be introduced for principals of solicitor firms to ensure that all solicitors in their firm have a valid practising certificate in force before, and throughout, provision of legal services by those solicitors. It should be professional misconduct for a principal of a solicitor firm to permit an unqualified person to practise as a solicitor in their firm.

Recommendation 47 – Prohibition on solicitors’ firms providing legal services without a principal in place

It is the recommendation of the Society that solicitors’ firms be prohibited from providing legal services, either reserved or unreserved, unless and until there is a solicitor principal in place or a practice manager appointed. The following wording is proposed:

- “(a) *Every firm must have a principal with a valid practising certificate or qualifying certificate in place in order to carry on a practice.*
- (b) *If a principal with a valid practising certificate or qualifying certificate is not in place, the firm must immediately cease practice until such time as a principal with a valid practising certificate or qualifying certificate is appointed.”*

Recommendation 48 – Statutory definition of “principal” of a solicitors’ firm

It is the recommendation of the Society that a statutory definition of “principal” of a solicitors’ firm be put in place to ensure that solicitors’ practices do not provide legal services, either reserved or unreserved without a principal being in place.

“principal” means, with regard to a solicitor firm, :—

- (i) the sole practitioner of any solicitor firm which carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers; or*
- (ii) every partner of a firm being a solicitor or registered lawyer and every person held out as a partner of a firm that carries on or carried on business as a partnership*

with all principals required to be solicitors qualified to practise.”

Recommendation 49 – Repealing section 41(c) of the 1954 Act

It is the recommendation of the Society that the provisions of section 41(c) of the 1954 Act, as substituted, are repealed at the time the regulations under section 217 of the 2015 Act are commenced to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

Recommendation 50 – Repealing section 43 of the 1954 Act

It is the recommendation of the Society that the provisions of section 43 of the 1954 Act, as substituted, are repealed at the time the regulations under section 217 of the 2015 Act are commenced to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

Recommendation 51 – Powers, rights and privileges of the High Court in applications for removal from the Roll of Solicitors

It is the recommendation of the Society that section 15 of the 1960 Act (as substituted and amended) be amended by inserting a new subsection (5) to provide for the powers, rights and privileges of the High Court to be vested in the Society for the purposes of applications for removal from the Roll of Solicitors. The new subsection could be worded as follows:

“(5) For the avoidance of doubt, references to the Disciplinary Tribunal in this section shall be construed as including references to the Society where the Society considers an application made to it under section 9 of this Act.”

Recommendation 52 – Removal from the Roll of Solicitors

It is the recommendation of the Society that an amendment be made to section 16 of the 1960 Act to replace any references to the Solicitors Disciplinary Tribunal with references to the Society to facilitate applications for removal from the Roll of Solicitors.

Recommendation 53 – Extending the prohibition on advertising legal services

It is the recommendation of the Society that section 5 of the 2002 Act (as amended) be amended to replace the reference to “*a person who is not a solicitor*” with the broader reference of “*an unqualified person*”.

Recommendation 54 – Publication of notice of suspension or revocation of an authorisation to provide legal services as a limited liability partnership

It is the recommendation of the Society that section 128(8) of the 2015 Act is amended to refer to the publication by the Authority of the suspension of an authorisation under subsection (4) and revocation of an authorisation under subsection (5).

Recommendation 55 – Fee sharing provisions

It is the recommendation of the Society that appropriate amendments be made to section 62 of the 1954 Act to provide for the sharing of fees between solicitors and non-solicitors, where non-solicitors are partners in legal partnerships with a solicitor, to allow the correct functioning of legal partnerships as intended under the 2015 Act.

Recommendation 56 – Legal fees lawfully earned

It is the recommendation of the Society that a statutory defence of “*adequate consideration*” should be provided in respect of legal fees lawfully earned by solicitors in representing clients.

Recommendation 57 – Preparation of a report by an inspector on foot of a complaint made to the Authority

It is the recommendation of the Society that section 43(1) of the 2015 Act is amended to insert the requirement for the preparation of a report by an inspector for the purposes of section 44.

Recommendation 58 – Referral of complaints against solicitors by the registrar

It is the recommendation of the Society that section 52(2) of the 2015 Act is amended to insert a further provision for the referral of complaints to the Authority by the registrar under section 14C of the 1994 Act.

Recommendation 59 – Clarification for section 68 of the 2015 Act

It is the recommendation of the Society that section 68 of the 2015 Act is amended to make the intentions of that section clear which could be worded as follows:

“The Authority shall refer a complaint under section 51(2) to the Complaints Committee and, where applicable, a complaint under section 51(2) where the client and the legal practitioner concerned do not succeed in resolving the matter in accordance with section 64 of this Act.”

Recommendation 60 – Financial sanctions by Divisional Committee not to cause undue hardship on legal practitioners

It is the recommendation of the Society that section 71(9) of the 2015 Act is amended to provide for sanctions of a financial nature issued under section 71(5)(c)(i) to have regard to the means of the legal practitioner concerned.

Recommendation 61 – Regulations relating to the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment should be made to section 79(2)(b) of the 2015 Act to make reference to the Society as one of the parties who may make submissions to the Legal Practitioners Disciplinary Tribunal.

Recommendation 62 – Clarification of powers of the Authority

It is the recommendation of the Society that the powers made available to the Authority under section 94 of the 2015 Act are revised to ensure that the Authority may only exercise such powers conferred on the Society under the Solicitors Acts 1954 to 2015 in relation to the complaints and disciplinary functions under Part 6 of the 2015 Act.

Recommendation 63 – Solicitors Disciplinary Tribunal recommendation to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 7(3)(c)(iv)(II) of the 1960 Act (as substituted and amended) to allow a recommendation of the Solicitors Disciplinary Tribunal to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal.

Recommendation 64 – Order of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 7(9)(d) of the 1960 Act (as substituted and amended) to allow the Solicitors Disciplinary Tribunal, when making an order, to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal.

Recommendation 65 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when censuring a solicitor

It is the recommendation of the Society that section 8(1)(a)(i)(V) of the 1960 Act (as substituted and amended), be further amended to allow the High Court, when making an order under that section, to have regard to findings of misconduct by both the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court and any other order made by the Court under the Solicitors Acts in respect of the solicitor.

Recommendation 66 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when making ancillary orders

It is the recommendation of the Society that section 8(1)(c)(viii) of the 1960 Act (as substituted and amended) be further amended to allow the High Court, when making an order under that section, to have regard to findings of misconduct by both the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court and any other order made by the Court under the Solicitors Acts in respect of the solicitor.

Recommendation 67 – Submissions made by the Society to take into account findings of misconduct by the Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 8(1A)(b) of the 1960 Act (as substituted and amended) to provide for submissions made by the Society to the High Court in relation to the recommendations of the Solicitors Disciplinary Tribunal to include any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court.

Recommendation 68 – Filing of High Court and Legal Practitioners Disciplinary Tribunal orders

It is the recommendation of the Society that section 190(a)(3) of the 2015 Act is not commenced and that a new subsection 1A is inserted into section 17(1) of the 1960 Act which could be worded as follows:

“1A. – A copy of any decision or order made by the High Court and any determination made by the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 in relation to a complaint under that Part in respect of a solicitor shall be filed by the Legal Practitioners Disciplinary Tribunal with the registrar.”

Recommendation 69 – References to Disciplinary Tribunal

It is the recommendation of the Society that section 19(6) of the 2002 Act (as amended) be amended to replace the word *“them”* with *“the Disciplinary Tribunal”* to give full effect to the intentions of section 208 of the 2015 Act.

Recommendation 70 – Referral to the Society of alleged misconduct by an apprentice solicitor

It is the recommendation of the Society that provisions be made for the Authority to refer to the Society any complaints made to it of alleged misconduct by an apprentice solicitor.

Recommendation 71 – Determination of applications to the Legal Practitioners Disciplinary Tribunal on the basis of affidavits and supporting documentation

It is the recommendation of the Society that an amendment be made to section 79(4) of the 2015 Act to make reference to the Society as a party who may also consent, or not, to an application being determined on the basis of affidavits and supporting documentation.

Recommendation 72 – Determinations by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that a clarifying subsection be inserted into section 79 of the 2015 Act to clarify that determinations, whether they are made on the basis of affidavits and other supporting documentation or by way of oral evidence, constitute determinations for the purposes of Part 6 of the Act which could be worded as follows:

“For the avoidance of doubt, a reference to a determination made by the Disciplinary Tribunal pursuant to section 79(4) of this Act, or to the holding of an inquiry pursuant to section 81 of this Act, shall be construed as a reference to a determination made pursuant to that section, whether that determination has been made by the Disciplinary Tribunal following the holding of an oral inquiry pursuant to section 81 or the consideration of an application pursuant to section 79(4).”

Recommendation 73 – Direction to the Society to impose a specified condition on a solicitor’s practising certificate

It is the recommendation of the Society that an amendment is made to section 82(1)(k) of the 2015 Act clarifying that a direction by the Legal Practitioners Disciplinary Tribunal to impose a specified condition on a solicitor’s practising certificate should be made to the Society which could be worded as follows:

“(k) where the legal practitioner is a solicitor, a direction to the Society that a specified condition be imposed on his or her practising certificate.”

Recommendation 74 – Use of digital recording in Disciplinary Tribunals

It is the recommendation of the Society that the Legal Practitioners Disciplinary Tribunal should use digital recording, transcripts should only be produced on request and the party calling for the transcript should be required to pay for same.

Recommendation 75 – Right of the Society to appeal to the Court of Appeal

It is the recommendation of the Society that section 87 of the 2015 Act is amended to make reference to the Society in circumstances where the Society may equally be a party to applications before the Legal Practitioners Disciplinary Tribunal that result in orders made by the High Court.

Recommendation 76 – Enforcement applications to the High Court by the Society

It is the recommendation of the Society that section 90 of the 2015 Act be amended to include the Society as a party who may bring an enforcement application in respect of orders made by the Legal Practitioners Disciplinary Tribunal.

Recommendation 77 – Statutory power for the High Court to grant an order under section 115(1)(a) of the 2015 Act

It is the recommendation of the Society that section 115 of the 2015 Act be amended to provide for a statutory power to the High Court to grant, or to decline to grant, an order under section 115(1)(a).

Recommendation 78 – Section 115(6) of the 2015 Act should refer to the correct parties in an appeal

It is the recommendation of the Society that section 115(6) of the 2015 Act should refer to the right of appeal to the Court of Appeal against an order made under section 115 by the Authority, the multi-disciplinary practice and / or the managing legal practitioner.

Recommendation 79 – Evidence of criminal conviction

It is the recommendation of the Society that both the Society and the Authority be given the statutory right to call for written evidence of criminal conviction of a solicitor or in the case of the Authority, a legal practitioner.

3. Data sharing

Section 35 of the 2015 Act - Order to prohibit contravention of the 2015 Act

- 3.1 Section 35 of the 2015 Act provides the Authority with the power to make an application to the High Court for an order to prevent a legal practitioner or any other person from contravening or who is likely to contravene any provision of the 2015 Act, the Solicitors Acts 1954 to 2015 or any regulations made under those Acts.
- 3.2 As the Society retains control of the financial regulation of solicitors, circumstances may arise during a financial investigation of a firm whereby the Society becomes aware of a contravention or likely contravention of the Solicitors Acts 1954 to 2015 by a solicitor which would come under the remit of the Authority. As matters currently stand, the Society has no legal method to transmit this information to the Authority.
- 3.3 Accordingly, it is recommended that the Society is provided with the necessary data sharing provisions in order to supply any such data to the Authority that relates to a contravention or likely contravention of the Solicitors Acts 1954 to 2015 that is obtained during a financial investigation.

Recommendation 1 – Data sharing to prevent contravention or likely contravention of the Solicitors Acts 1954 to 2015

It is the recommendation of the Society that the Society is provided with data sharing provisions to allow it to supply the Authority with any information obtained during the course of a financial investigation that relates to a contravention or likely contravention of the Solicitors Acts 1954 to 2015.

Section 38 of the 2015 Act – Information obtained by an inspector appointed by the Authority

- 3.4 Section 38 of the 2015 Act provides for the power of the Authority to appoint an inspector to carry out an inspection of a legal practitioner. The powers of an inspector are set out under section 39 of the 2015 Act which includes powers to inspect and take copies of books, records, accounts or other documents including banking information as the inspector may require for the purposes of discharging their functions.
- 3.5 The information obtained by an inspector during the course of their inspection may reveal matters that fall outside the remit of the Authority and remain in the competency of the Society including, but not limited to, financial matters. In such circumstances, it is recommended that the Authority is provided with the required power to provide the Society with any relevant data obtained during the course of an

inspection that may be necessary for the Society to exercise its financial regulatory functions.

Recommendation 2 – Information obtained by inspectors during an inspection

It is the recommendation of the Society that the Authority is provided with the necessary power to provide the Society with any information obtained during the course of an inspection that may be necessary for the Society to exercise its remaining regulatory functions.

Section 58 of the 2015 Act – Admissibility of complaints

- 3.6 Section 58 of the 2015 Act provides for the admissibility of complaints made to the Authority. One of the grounds that the Authority may reject a complaint under section 58(4) is that the same act or omission that was the subject of a complaint made against a solicitor was previously determined by the High Court, the Society or any of its Committees or the Solicitors Disciplinary Tribunal.
- 3.7 In order for this section to be effective, the Authority needs to have a legal basis to request any historic complaints data from both the Society, including its Committees, and the Solicitors Disciplinary Tribunal. Without the appropriate data sharing provisions in place the Authority will not be able to rely on the provisions of section 58(4) of the 2015 Act.

Recommendation 3 – Admissibility of complaints to the Authority

It is the recommendation of the Society that the Society and the Solicitors Disciplinary Tribunal be provided with the necessary provisions to provide the Authority with historic complaints data pertaining to solicitors that have previously been determined in order to give effect to section 58 of the 2015 Act.

Sharing information from the Roll of Solicitors for processing complaints and prosecuting disciplinary matters

- 3.8 Since 7 October 2019, the Authority exercises powers relating to complaints and disciplinary matters over all legal practitioners. However, the Authority does not have access to the Roll of Solicitors as the Society continues to maintain the Roll of Solicitors and register of practising solicitors.
- 3.9 Accordingly, the Authority does not have information on the enrolment date of a solicitor, their solicitor number, their practising history, their previous practising roles nor any other data relating to the solicitor in their capacity as a solicitor.

- 3.10 When dealing with complaints from members of the public, the Authority may require information from the Roll of Solicitors in order to process such complaints. At a minimum the Authority needs to be satisfied that a solicitor, who is the subject of a complaint, is on the Roll of Solicitors and had a practising certificate in force at the time of the provision of legal services to the complainant.
- 3.11 However, in more serious matters which are considered to be of sufficient grounds to warrant an application to the Legal Practitioners Disciplinary Tribunal, the Authority requires further data from the Roll of Solicitors in order to process any such application.
- 3.12 Matters pertaining to misconduct are held to the higher standard of proof and accordingly it is necessary that the prosecuting body has accurate and up to date details available to them in order to meet that standard. All applications made to the Solicitors Disciplinary Tribunal will note the solicitor's number, the solicitor's date of admission to the Roll of Solicitors, their practising status and in certain cases details of previous practising roles when a complaint relates to legal services provided in a former role.
- 3.13 Since 7 October 2019, the Society has received requests from the Authority for the contact details of solicitors who are no longer in practice. The Society has had to refuse such requests as there is currently no lawful method to provide the Authority with this data.
- 3.14 As such, it is the recommendation of the Society that data sharing provisions are put in place to allow the Society to share necessary data from the Roll of Solicitors with the Authority to assist the Authority to process complaints and to prosecute allegations of misconduct against solicitors in the Legal Practitioners Disciplinary Tribunal.

Recommendation 4 – Sharing information from the Roll of Solicitors

It is the recommendation of the Society that data sharing provisions are put in place to permit the Society to share necessary data from the Roll of Solicitors with the Authority to assist the Authority to process complaints and to prosecute allegations of misconduct against solicitors in the Legal Practitioners Disciplinary Tribunal.

Provision of complaints data to the Society for risk assessment of firms

- 3.15 Data relating to complaints made against solicitors assist the Society in forming part of the risk profile of any firm for the purposes of conducting the Society's financial investigations. As the Society retains control over the financial investigation of solicitors, the Society needs to be made aware of complaints made to the Authority against solicitors and in particular where any such complaints may reveal a potential risk to client moneys.

- 3.16 Any risk to client moneys will represent a potential threat to the Society's Compensation Fund. The Compensation Fund, which is only paid for by solicitors, is a statutory fund maintained by the Society. The Compensation Fund will compensate clients of solicitors who suffer loss through the dishonesty of a solicitor. The Society uses its financial regulatory powers in order to protect clients' money and the Compensation Fund.
- 3.17 Since the commencement of the Authority's complaints functions on 7 October 2019, the Society is provided with a copy of the original complaint from the Authority. The Society does not receive access to the response of the solicitor to the complaint or any comments made by the complainant on the solicitor's response. The Society is notified when a complaint is closed but it is not advised of the reasons that the closure of that complaint.
- 3.18 The Society recognises that a substantial number of complaints received by the Authority will not relate to concerns about client moneys. However, in circumstances where the complaint may raise concerns about the safety of client moneys it is submitted that the Society should be provided with the response(s) of the solicitor, any comments made by the complainant on the solicitor's response and, where appropriate, the reason for the closure of a complaint for the purposes of assessing whether there may be a risk to client moneys in solicitors' firms.
- 3.19 It is recommended that strong data sharing procedures are put in place permitting the Authority to share data relating to complaints made against solicitors to allow the Society to continue to assess the risk profile of solicitors' firms for the purposes of its financial regulation functions and to continue to protect clients' money and the Compensation Fund.

Recommendation 5 – Provision of complaints information to assess financial risks

It is the recommendation of the Society that the Society is provided with a copy of the response (if any) of a solicitor to a complaint made against him or her, and a copy of the letter notifying the parties of the determination of a complaint, to include details of any sanction imposed.

It is the further recommendation of the Society that strong data sharing procedures are put in place permitting the Authority to share data relating to complaints made against solicitors which would allow the Society to continue to assess the risk profile of solicitors' firms for the purposes of its financial regulation functions and to continue to protect clients' money and the Society's Compensation Fund.

Section 59 of the 2015 Act - Request by the Authority for the Society to carry out an investigation

- 3.20 Section 59(1) of the 2015 Act provides that the Authority may at any stage in its investigation under Part 6 of a complaint in respect of a solicitor, and for the purposes of its investigation, request the Society to carry out an investigation under the Solicitors Acts 1954 to 2015 into any matter that is relevant to the complaint.
- 3.21 Section 59(2) has a similar provision which allows the Complaints Committee of the Authority or the Legal Practitioners Disciplinary Tribunal to request the Society to carry out an investigation under the Solicitors Acts 1954 to 2015 into any matter that is relevant to the complaint.
- 3.22 While section 59(3)(a) requires the Society to comply with the request under section 59(1) or (2), in order for the Society to do so it will entail data sharing between the Authority and the Society to allow this section to function as the legislators intended. The Society has received a small number of requests from the Authority's Complaints Committee under section 59(2) and it is already apparent that the current provisions are insufficient as the requesting party appears to be constrained from providing adequate information to contextualise the request for investigation, such as copies of its correspondence with the parties and an account of the investigative powers it has already invoked in the course of its investigation. In the absence of this information, the Society's frame of reference for the commencement of its investigation is incomplete, the potential for an inadvertent breach of fair procedures is increased and the potential efficacy of the provision is undermined.
- 3.23 It is the recommendation of the Society that necessary data sharing provisions are inserted into section 59 of the 2015 Act in order to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Society with such information regarding the conduct of the complaint to date as is necessary to enable it to conduct any requested investigation in as robust, efficient and fair a manner as possible.

Recommendation 6 – Request by the Authority to the Society to carry out an investigation

It is the recommendation of the Society that necessary data sharing provisions are inserted into section 59 of the 2015 Act to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Society with such necessary information in order to conduct any requested investigation.

Section 181 of the 2015 Act - Data sharing for purposes of refusing to issue a practising certificate or issuing a practising certificate subject to conditions

- 3.24 Section 181 of the 2015 Act amends section 49 of the 1954 Act which expands the criteria which the Society may take into account when considering whether to refuse to issue a practising certificate or to issue a practising certificate subject to conditions.
- 3.25 Included in the criteria that the Society may take into account under that section are whether a solicitor has failed to comply with a notice issued under section 70(6)(c) of the 2015 Act by the Complaints Committee of the Authority as well as the nature and number of complaints made to the Authority in respect of the solicitor in the preceding two years.
- 3.26 Further provisions the Society may consider under this section include where a solicitor has failed to comply with a direction issued under section 71(1)(a) of the 2015 Act, if they have contravened the Solicitors Acts 1954 to 2015 or the 2015 Act or any regulations made under it.
- 3.27 In order for section 181 of the 2015 Act to be effective, the Authority must be in a position to provide the Society with the necessary data to take the above matters into account when considering refusing to issue a practising certificate or issuing a practising certificate subject to conditions.

Recommendation 7 – Data sharing of complaints and failure to comply with a notice issued by the Complaints Committee

It is the recommendation of the Society, for the purposes of the Society considering whether to refuse to issue a practising certificate or to issue a practising certificate subject to conditions under section 49 of the 1954 Act (as amended), that the Authority be granted data sharing provisions to provide the Society with information concerning the following:

- f) The failure of a solicitor to comply with a notice issued under section 70(6)(c) of the 2015 Act by the Complaints Committee;
- g) The nature and number of complaints made to the Authority against a solicitor in the preceding two years;
- h) Where a solicitor has failed to comply with a direction issued under section 71(1)(a) of the 2015 Act;
- i) Where a solicitor has contravened the Solicitors Acts 1954 to 2015;
- j) Where a solicitor has contravened the 2015 Act or any regulations made under that Act.

Section 200 of the 2015 Act - Publication of information on complaints

- 3.28 Section 200 of the 2015 Act amends section 22 of the 1994 Act which requires the Society to publish certain matters in the Gazette and in any other manner as the Society may direct, information on the number of complaints together with a description of the general nature of those complaints and the outcome of the investigation of those complaints by the Solicitors Disciplinary Tribunal or the Legal Practitioners Disciplinary Tribunal.
- 3.29 In order for the Society to comply with its obligation to publish this information, it will require the periodic sharing of such data relating to complaints and the outcome of those complaints from the Legal Practitioners Disciplinary Tribunal.

Recommendation 8 – Publication of information on complaints

It is the recommendation of the Society that the Legal Practitioners Disciplinary Tribunal be provided with data sharing provisions to provide the Society with the necessary data for the Society to publish information on the number of complaints together with a description of the general nature of those complaints and the outcome of the investigation of those complaints by the Legal Practitioners Disciplinary Tribunal.

Section 107 of the 2015 Act - Partner in a multi-disciplinary practice not to be an unqualified person

- 3.30 Section 107(4) of the 2015 Act provides for persons who are not permitted to be partners in a multi-disciplinary practice. Section 107(4)(d) prohibits an unqualified person from being a partner in a multi-disciplinary practice. Section 107(9) defines an unqualified person as follows:

“In this section, “unqualified person” means a solicitor who is not a solicitor qualified to practise, within the meaning of the Act of 1954, by reason of—

(a) his or her name having been struck off the roll of solicitors,

(b) his or her suspension from practice,

(c) his or her having had the issue to him or her of a practising certificate refused under section 49 of that Act,

(d) having his or her practising certificate suspended under section 58 of the Act of 1994, or

(e) his or her having given to the High Court an undertaking not to practise as a solicitor.”

- 3.31 As the Society retains control over the Roll of Solicitors, the Society is the best placed body to advise the Authority whether a person is an unqualified person for the purposes of the 2015 Act. Accordingly, it is recommended that the Society be provided with necessary provisions to allow it share data with the Authority for the purposes of advising the Authority whether a person is an unqualified person.

Recommendation 9 – Society to be provided with power to advise the Authority if a person is an unqualified person

It is the recommendation of the Society that the Society be provided with necessary provisions to allow it to share data with the Authority for the purposes of advising the Authority whether a person is an unqualified person for the purposes of 107(4) of the 2015 Act.

Data sharing in relation to identification of legal partnerships, limited liability partnerships and multi-disciplinary practices

- 3.32 The Society notes the Authority intends to commence legal partnerships in of the final quarter of 2021. The Authority has also been receiving applications for authorisation from solicitor firms to operate as limited liability partnerships since November 2019.
- 3.33 The Society currently has a unique identifier code for each firm of solicitors which is used for the purposes of regulatory functions including practising certificate applications, financial investigations and professional indemnity insurance. The Authority maintains its own method of identifying limited liability partnerships and presumably will have something similar for identifying both legal partnerships and multi-disciplinary practices for the maintenance of the registers and other regulatory functions.
- 3.34 For the purposes of good administration, it is recommended that the Authority be permitted to provide the Society with all identifier codes for legal partnerships, limited liability partnerships and multi-disciplinary practices that contain solicitors to ensure the two bodies use similar references when exercising their respective regulatory functions.

Recommendation 10 – Data sharing for identification of legal partnerships, limited liability partnerships and multi-disciplinary practices

It is the recommendation of the Society that the Authority be permitted to provide the Society with all identifier codes for legal partnerships, limited liability partnerships and multi-disciplinary practices that contain solicitors to ensure the two bodies use similar references when exercising their respective regulatory functions.

Ceasing to operate as a limited liability partnership

- 3.35 Section 129(1) of the 2015 Act requires a limited liability partnership to notify the Authority in writing of its intention to cease operation as a limited liability partnership. However, there is no provision requiring the Authority or the solicitor(s) to inform the Society of an intention to cease operation.
- 3.36 The Society treats limited liability partnerships in the same manner as all other solicitors' firms and they are subject to the same regulatory requirements. Accordingly, the Society requires notification of an intention to cease operation as a limited liability partnership in the same manner as it requires notification of the cessation of a firm of solicitors.
- 3.37 When the Society is notified of a firm ceasing practice, one of the Society's requirements is that the firm has either made an application for run-off cover or that there is a succeeding practice in place to ensure that any valid professional indemnity insurance claims made against the firm are covered. As the Society continues to regulate the professional indemnity insurance requirements of solicitors, it should be advised when a limited liability partnership intends to cease the provision of legal services.
- 3.38 The Society requires ceasing firms to advise it of the practising solicitor(s) who have access to the remaining files of the firm, both open and closed. The purpose of this is so the Society can advise former clients of that firm what practising solicitor has access to their files.
- 3.39 Firms that cease practice are also required to file a closing accountant's report with the Society within two months of cessation ensuring that there is a nil balance on the client account.
- 3.40 If the Society is not made aware of a practice that ceases, it may cause difficulties for clients of that former practice in locating their files or moneys and if they wish to make a professional indemnity insurance claim.
- 3.41 Accordingly, it is recommended that the Authority is provided with data sharing procedures to ensure the Society is advised of any notified cessation of a limited liability partnership.

Recommendation 11 – Data sharing for the cessation of limited liability partnerships

It is the recommendation of the Society that the Authority be provided with data sharing procedures to ensure the Society is advised of any notified cessation of a limited liability partnership.

Professional indemnity insurance details for solicitors practising in legal partnerships, limited liability partnerships and multi-disciplinary practices

- 3.42 The Society retains competence over the professional indemnity insurance obligations for solicitors under section 26 of the 1994 Act, while the Authority has competence over the professional indemnity insurance obligations of barristers through the Legal Services Regulation Act 2015 (Professional Indemnity Insurance) Regulations 2019 (S.I. 572 of 2019) which are made under section 47 of the 2015 Act.
- 3.43 Currently, only limited liability partnerships under Part 8 of the 2015 Act have been commenced. One of the conditions for authorisation to operate a legal partnership, a limited liability partnership or a multi-disciplinary practice is that professional indemnity insurance is in place. When processing an application for authorisation to operate a limited liability partnership, the Authority requires evidence of professional indemnity insurance. The Authority will also seek evidence of professional indemnity insurance when processing applications for legal partnerships and multi-disciplinary practices which contain solicitors. If the Authority has any queries on the details of any professional indemnity insurance policy relating to solicitors, it will need to address these queries to the Society.
- 3.44 As the Society continues to regulate solicitors' professional indemnity insurance requirements, it is recommended that the Society is enabled to share this data with the Authority for solicitors who commence practice in a legal partnership, limited liability partnership or multi-disciplinary practice.

Recommendation 12 – Professional indemnity insurance

It is the recommendation of the Society that the Society is enabled to share the professional indemnity insurance details of solicitors with the Authority for solicitors who commence practice in a legal partnership, limited liability partnership or multi-disciplinary practice.

4. Amendments required to legislation

Section 216 of the 2015 Act – Service of notices

- 4.1 The Society notes that section 216 of the 2015 Act requires that any notice required or authorised to be sent under that Act must be done in writing, addressed to the person concerned by name and either personally served, sent or given to the person by way of ordinary / registered post. There is no provision of the 2015 Act that permits the service of notices by way of email or other electronic means. The Society is aware that this requirement impacts both legal practitioners and the Authority alike.
- 4.2 The Covid-19 pandemic which struck Ireland in March 2020 led to circumstances whereby the Government enacted emergency legislation restricting the movement of individuals and requiring people to work from home with limited exceptions. Although there were exemptions under this emergency legislation which permitted practising solicitors to attend to their professional obligations, many solicitors did operate from home during that time.
- 4.3 During this time, solicitors remained to be under an obligation to provide notices to clients under section 150 and section 151 of the 2015 Act by way of ordinary / registered post. Despite requests by clients for notices to be sent electronically, solicitors remain obliged to comply with the requirements of section 216 of the 2015 Act.
- 4.4 While the pandemic has highlighted and hastened the demand for electronic notices, it is submitted that requiring notices to be provided in hard copy format is an outdated mode of delivery which bears no relationship to modern business practices.
- 4.5 In order to modernise this as well as assisting the Authority, legal practitioners and clients, the Society strongly recommends that section 216 of the 2015 Act is amended to allow the service of notices under the 2015 Act by email or other electronic means.

Recommendation 13 – Service of notices

It is the recommendation of the Society that section 216 of the 2015 Act is amended to allow the service of notices under the 2015 Act by email or other electronic means.

Registered European Lawyers

- 4.6 Directive 98/5/EC (“the Lawyers’ Establishment Directive”) facilitates lawyers whose qualification was obtained in one EU Member State to practise on a permanent basis in another EU Member State. The Directive was transposed into Irish law by the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. 732/2003) (“the Lawyers’ Establishment Regulations”), which have since been amended to expand the applicability of the Regulations in accordance with the enlargement of the EU.
- 4.7 The Directive and associated Regulations facilitate qualified lawyers from another EU Member State integrating into the legal profession in Ireland after a three year period of practice under their home-country professional titles, with a number of prescribed restrictions on practice (set out in Regulation 10 of the Regulations). If they so choose, they may continue to practice under their home-country professional title thereafter, but most registered lawyers (“RELs”) apply to become solicitors or barristers after practising for three years.
- 4.8 Any lawyer who wishes to practice in Ireland under the terms of the Directive must firstly register with a “*competent authority*”. The Lawyers’ Establishment Regulations recognise both the Society and Bar of Ireland as competent authorities in Ireland. Lawyers may register with the Society if they wish to pursue the professional activities of a solicitor in Ireland and with the Bar of Ireland if they wish to pursue the professional activities of a barrister.
- 4.9 Once registered with the Society, an REL is required to apply for a qualifying certificate and secure professional indemnity insurance, where applicable, before they can commence practice. Qualifying certificates are issued on an annual basis and RELs are required to apply for a qualifying certificate in a similar manner to the way in which solicitors apply for practising certificates. An REL who obtains a qualifying certificate from the Society is required to practice in compliance with the Solicitors Acts 1954-2015 and the relevant rules and regulations made thereunder. Regulation 11 of the Lawyers’ Establishment Regulations provides that:
- “The rules of a competent authority governing professional practice, conduct and discipline including any of those rules containing sanctions for breaches thereof, apply and have effect, with the necessary modifications, in relation to registered lawyers in respect of professional activities pursued by them in the State.”*
- 4.10 The capacity of the Society to hold RELs who are registered with it to account for disciplinary breaches are, however, compromised by the inadequate provision for this category of legal practitioner in the 2015 Act.
- 4.11 RELs are not included in the definition of ‘*legal practitioner*’ under the 2015 Act. The only reference to RELs under the 2015 Act is in the definition of ‘*qualified barrister*’ which, in addition to the more conventional definition linked to a being admitted to the degree of Barrister-at-Law by the Honorable Society of King’s Inns or being called to

the Bar, and not subsequently being admitted as a solicitor or struck off, includes being *“a registered lawyer, having the same right of audience as a practicing barrister or a solicitor qualified to practice by virtue of Regulation 10 of the European Communities (Lawyers’ Establishment) Regulations 2003.”*

- 4.12 There are a number of difficulties with this definition. In the first instance, a lawyer who is registered with the Society to pursue the professional activities of a solicitor subject to the relevant prescriptions on practice is not on the basis of any reasonable understanding of the term qualified to practice as a barrister. Secondly, in respect of lawyers registered with the Bar of Ireland, the definition seems to undermine the requirement that an REL practice in a prescribed manner for three years before they are entitled to apply for full recognition to practice as a barrister. Thirdly, the reference to the registered lawyer *“having the same rights of audience as a practicing barrister or a solicitor qualified to practice by virtue of Regulation 10...”* is confusing as having a *“right of audience”* is only one of the professional activities that might be undertaken by a lawyer registered with either competent authority. Finally, the reference to a registered lawyer being *“qualified to practise by virtue of Regulation 10”* is incorrect, as Regulation 10 prescribes the type of professional activities a registered lawyer may undertake, but it is Regulation 6 of the Lawyers’ Establishment Regulations that deals with qualification by means of registration.
- 4.13 For the above reasons, it is submitted that the reference to RELs as a limb of the definition of *“qualified barrister”* should be repealed and the definition of *“legal practitioner”* extended to include lawyers registered to pursue the professional activities of a solicitor with the Society and lawyers registered to pursue the professional activities of a barrister with the Bar of Ireland pursuant to Regulation 6 of the Lawyers’ Establishment Regulations.
- 4.14 The Society is particularly concerned that the failure to adequately account for RELs in the 2015 Act undermines its capacity and that of the regulatory system as a whole to hold an REL to account for acts or omissions that would constitute misconduct were they conducted by a solicitor. There are both substantive and procedural difficulties with a number of provisions of the 2015 Act.
- 4.15 The substantive concern arises from the fact that, unless RELs are included in the definition of *“legal practitioner”*, the definition of *“misconduct”* as set out in section 50 of the 2015 Act does not apply to them. On the assumption that the definition of *“legal practitioner”* is expanded to include RELs, a number of further amendments of section 50 are required. To ensure that RELs that are registered with the Society are held to account for acts or omissions that would constitute misconduct were they conducted by a solicitor, the words *“or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003”* should be included after the word *“solicitor”* in section 50(1)(e), (f) and (h). A similar amendment in relation to barrister RELs should be made after the word *“barrister”* in section 50(1)(g).

- 4.16 When it comes to investigating misconduct, the Society is required by virtue of section 51(5) of the 2015 Act to make a complaint to the Authority when, in the performance by it of its functions, it forms the opinion that an act or omission of a solicitor constitutes misconduct, unless the Society retains seisin of the matter, which it is entitled to do when the act or omission constitutes a breach of the Solicitors Accounts Regulations or is associated with such a breach. No provision is made for the making of a complaint to the Authority in relation to an act or omission of an REL.
- 4.17 It is arguable that on the assumption that both the definition of legal practitioner is expanded to incorporate RELs and the definition of misconduct is expanded to incorporate the acts or omissions of RELS, the Society could make a complaint like any other person alleging misconduct against a legal practitioner pursuant to section 51(2) of the 2015 Act. However, it is submitted that it would be preferable that complaints from the Society should for the most part be made pursuant to section 51(5) of the 2015 Act. It is therefore proposed that the words *“or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003”* should be included after the word *“solicitor”* in this sub-section.

Recommendation 14 – Registered European Lawyers

It is recommended that a broad review of the relevant legislative provisions be conducted to ensure that RELs can be effectively regulated as legal practitioners in Ireland.

It is recommended that the definition of *“legal practitioner”* be expanded to include *“RELs”* meaning *“a lawyer registered with a competent authority in Ireland pursuant to the Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003”*.

It is recommended that subsection (b) of the definition of *“qualified barrister”* be repealed.

It is recommended that the definition of misconduct in section 50 of the 2015 Act be amended by adding the words *“or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003”* after the word *“solicitor”* in section 50(1)(e), (f) and (h). A similar amendment in relation to barrister RELs should be made after the word *“barrister”* in section 50(1)(g).

Section 51(5) of the 2015 Act should be amended by inserting the words *“or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003”* after the word *“solicitor”* in this sub-section.

Section 3 of the 1954 Act - Limitation of the use of the title “solicitor”

- 4.18 Under section 3 of the 1954 Act, as substituted by section 3(1)(a) of the 1994 Act, a “solicitor” is defined as:
- “..a person who has been admitted as a solicitor and whose name is on the roll; and a reference to a solicitor includes a reference to a firm of solicitors unless the context otherwise requires and includes a former solicitor or a deceased solicitor unless the context otherwise requires”.*
- 4.19 Section 54 of the 1954 Act, as substituted by section 62 of the 1994 Act, defines a solicitor qualified to practice as a solicitor:
- a. *“whose name is on the Roll of Solicitors;*
 - b. *who is not suspended from practice;*
 - c. *who is either a solicitor in the full-time service of the State or a solicitor with a practising certificate in force; and*
 - d. *who does not have an undischarged undertaking to the High Court that he or she will not act as a solicitor.”*
- 4.20 Section 3 of the 1954 Act defines an unqualified person as a solicitor who is not a solicitor qualified to practise or a person who is not a solicitor.
- 4.21 Under the Solicitors Acts, there is a prohibition on solicitors who do not hold a practising certificate from holding themselves out as solicitors entitled to practise as such non-practising solicitors are considered to be “*unqualified persons*”.
- 4.22 However, it is likely that members of the public would be unaware of the distinction between a solicitor, and a solicitor entitled to practise, and are likely to be of the opinion that any person referring to themselves as a solicitor is entitled to practise as same and provide legal services.
- 4.23 Misuse of the title “solicitor” can also have ramifications with regard to the Compensation Fund, where non-practising solicitors may have provided services (such as investment services) and claimants may be mistakenly of the view that such services were provided by the solicitor as a solicitor entitled to practise.
- 4.24 The Society proposes that use of the title “solicitor” be limited to that of a solicitor entitled to practise under primary legislation in order to close this lacuna.
- 4.25 Solicitors on the Roll of Solicitors who do not hold a practising certificate would be entitled to refer to themselves as “*non-practising solicitors*”.

Recommendation 15 – Limitation on use of title “solicitor”

It is the recommendation of the Society that use of the title “solicitor” be limited under primary legislation to “solicitor entitled to practise” as set out under section 54 of the 1954 Act (as substituted) by way of amendment of the definition of ‘solicitor’ under Section 3 of the 1954 Act (as substituted).

Section 2 of the 2015 Act- Definition of “solicitor”

- 4.26 Section 2 of the 2015 Act provides for definitions under the Act including the definition of “practising solicitor” which is defined as “a person who has been admitted as a solicitor, whose name is on the roll of solicitors, who provides legal services and who—

(a) is, by reason of section 56 of the Solicitors (Amendment) Act 1994, required to hold a practising certificate, or

(b) is, by reason of that section, exempted from the requirement to hold a practising certificate.”

However, it is noted that there is no definition of “solicitor” under section 2 of the 2015 Act.

- 4.27 The definition of “solicitor” is set out in section 3 of the 1954 Act, as substituted by section 3(1)(a) of the 1994 Act, which states that a solicitor “means a person who has been admitted as a solicitor and whose name is on the roll; and a reference to a solicitor includes a reference to a firm of solicitors unless the context otherwise requires and includes a former solicitor or a deceased solicitor unless the context otherwise requires”.

- 4.28 The definition of “solicitor” should be inserted into section 2 of the 2015 Act in order to assist the reader of the legislation with an understanding of the distinction between a “solicitor” and a “practising solicitor.”

Recommendation 16 – Definition of “solicitor”

It is the recommendation of the Society that the definition of a solicitor as set out in section 3 of the 1994 Act is inserted into section 2 of the 2015 Act in order to set out the distinction between a “solicitor” and a “practising solicitor”.

Section 184 of the 2015 Act - New definition of misconduct

- 4.29 Section 184 of the 2015 Act amends section 3 of the 1960 Act which provides for the insertion of a definition of misconduct which is construed in accordance with the provisions of section 50 of the 2015 Act.
- 4.30 Section 50 of the 2015 Act provides for a wide range of acts or omissions by legal practitioners that may be considered as constituting misconduct. However, the insertion of this definition causes certain definitions of misconduct to be unnecessarily repeated.
- 4.31 It may be noted that the instances of misconduct listed in section 3 of the 1960 Act also constitute instances of misconduct within the meaning of section 50 of the 2015 Act for example:
- Section 50 (k) of the 2015 Act provides for the commission of a crime or offence outside the State which, if committed within the State would be an arrestable offence. This is broadly similar to the provisions of section 3(b) of the 1960 Act.
 - Section 50(e) of the 2015 Act provides for a breach of the Solicitors Acts 1954 to 2015 or any regulations made under those Acts. This section equates with the provisions of section 3(c) of the 1960 Act (as amended).
 - Section 50(h) of the 2015 Act provides for any conduct that would bring the solicitors' profession into disrepute. This is exactly the same provision as section 3(e) of the 1960 Act (as amended).
- 4.32 As section 50 of the 2015 Act provides for similar and wider definitions of misconduct than section 3 of the 1960 Act it would be clearer to substitute, rather than insert the definition of misconduct under section 184 of the 2015 Act.
- 4.33 The only impact the substituting of this provision would have would be to broaden, rather than to narrow, the instances of acts or omissions which may constitute misconduct under the Solicitors Acts.
- 4.34 Accordingly, it is suggested that section 184 should substitute, rather than insert, the section 50 definition of misconduct.

Recommendation 17 – Substituting the new definition of misconduct under the 2015 Act

It is the recommendation of the Society that section 184 of the 2015 Act should substitute, rather than insert, the definition of misconduct under section 50 of the 2015 Act to prevent the repetition of offences under the Solicitors Acts 1954 to 2015.

Section 29 of the 1954 Act - Apprenticeships in new business models

- 4.35 Section 29 of the 1954 Act, as substituted by section 44 of the 1994 Act, as amended by section 33 of the Civil Law (Miscellaneous Provisions) Act 2008, provides for the Society's power to designate those solicitors who will be deemed to be 'practising solicitors' for the purposes of taking an apprentice under indentures of apprenticeship.
- 4.36 Section 29(5) provides that a "*practising solicitor*" for these purposes shall be a solicitor engaged full-time in the provision of legal services as –
- a) a sole practitioner,
 - b) a partner in a firm of solicitors,
 - c) a solicitor in the whole-time employment of a body corporate, or
 - d) a solicitor in the full-time service of the State within the meaning of section 54(3) of the 1954 Act (as substituted by section 62 of the 1994 Act).
- 4.37 Part 8 of the 2015 Act provides for the provision of legal services by legal practitioners through new practice models.
- 4.38 Part 8 will see the commencement of legal partnerships, which may consist of a partnership between barristers and solicitors or a partnership between barristers only, and which may take the form of a limited liability partnership.
- 4.39 Part 8 may also allow for the introduction of multi-disciplinary practices, which would allow partnerships between legal practitioners and other professionals, such as accountants.
- 4.40 At present, the definition of "*practising solicitor*" in section 29 does not permit solicitors who may, in time, be engaged full-time in the provision of legal services through these new practice models to take apprentices. In particular, solicitors who are partners in legal partnerships or multi-disciplinary practices would be restricted, by reason of the definition of "*practising solicitor*", from taking apprentices.
- 4.41 For the avoidance of doubt, the Society is cognisant that it does not mention limited liability partnerships for the purposes of this suggested amendment as the Society views limited liability partnerships in the same manner as solicitors' firms, albeit with the added status of limited liability as authorised by the Authority. Accordingly, an apprentice solicitor is permitted to undertake their indentures under a practising solicitor in a limited liability partnership.
- 4.42 It is the recommendation of the Society that section 29 of the 1954 Act is expanded to allow an apprentice solicitor to undertake their term of indentures under a practising solicitor in a legal partnership or multi-disciplinary practice.

Recommendation 18 – Apprenticeships in new business models

It is the recommendation of the Society that section 29 of the 1954 Act (as substituted and amended) be expanded to allow an apprentice solicitor to undertake their indentures under a practising solicitor in a legal partnership or multi-disciplinary practice.

Section 82 of the 1954 Act - Inclusion of new File C in regulations

- 4.43 Section 82 of the 1954 Act provides for the power of the Society to make regulations, with the concurrence of the President of the High Court, prescribing fees which are payable in respect of applications which are listed in the sixth schedule of the 1954 Act. Section 82(2) suggests that the concurrence of the President of the High Court is only required for those applications listed at paragraphs 1 – 6 of the Schedule.
- 4.44 Section 66 of the 1994 Act provides for the power of the Society to make regulations, with the concurrence of the President of the High Court, prescribing amendments to the sixth schedule by way of inclusion of additional applications.
- 4.45 Paragraph 8 of the sixth schedule currently makes reference to applications under section 17 of the 1960 Act for a copy of an entry in File A or File B.
- 4.46 Section 17 of the 1960 Act has been amended by section 190 of the 2015 Act to include a reference to File C, which will contain a record of all decisions or orders made by the High Court under section 84 or 85 of the 2015 Act and any determination made by the Legal Practitioners Disciplinary Tribunal under section 82 of the 2015 Act in relation to a complaint under that Part in respect of a solicitor.
- 4.47 Accordingly, regulations will need to be made under section 66 of the 1994 Act and section 82 of the 1954 Act to amend the sixth schedule by way of including a reference to an application under section 17 of the 1960 Act for a copy of an entry in File C.

Recommendation 19 – Inclusion of new File C in regulations under section 66 of the 1994 Act and section 82 of the 1954 Act

It is the recommendation of the Society that regulations should be made under section 66 of the 1994 Act and section 82 of the 1954 Act in order to reflect the amendment made to section 17 of the 1960 Act, where a new File C will be created. This will ensure that the Sixth Schedule now makes reference to applications, and fees that may be charged in respect of such applications, in respect of File C.

Section 17(3) of the 1960 Act - Insertion of reference to the new File C

- 4.48 Currently section 17(3) of the 1960 Act, as amended by section 190 of the 2015 Act, provides for the maintenance, on separate files, of all orders made by the High Court or the Solicitors Disciplinary Tribunal.
- 4.49 In circumstances where section 190(b)(ii) provides for the insertion of the new File C, containing orders made under Part 6 of the 2015 Act, section 17(3) requires an amendment to include reference to the maintenance by the registrar of the new File C.

Recommendation 20 – Insertion of reference to the new File C

It is the recommendation of the Society that section 17(3) of the Act of 1960 (as amended) is further amended to include reference to the new File C which could be worded as follows:

“The registrar shall maintain separate files on which all orders made under this Act by the High Court or the Society or by the High Court or the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 shall be entered in the following manner –”

- 4.50 In addition, section 17(3) requires an amendment to replace the reference to the Disciplinary Committee with a reference to the Society in circumstances where section 9 applications (for removal from the Roll of Solicitors) are now, as a result of the amendment of that section by section 187 of the 2015 Act, to be made to the Society.
- 4.51 The following wording for section 17(3) is suggested:

“The registrar shall maintain separate files on which all orders made under this Act by the High Court or the Society or by the High Court or the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 shall be entered in the following manner –”

Recommendation 21 – Amended wording for section 17(3) of the 1960 Act

It is the recommendation of the Society that section 17(3) of the 1960 Act (as amended) is further amended to replace any references to the Disciplinary Committee with a reference to the Society for the purposes of applications made for removal from the Roll of Solicitors under section 9 of the 1960 Act.

Section 17(3)(b) of the 1960 Act - Amendment for the filing of orders in File B

- 4.52 Section 17(3)(b) of the 1960 Act makes provision for a File B on which any other order made by the High Court under the 1960 Act and any order made under section 9 of the 1960 Act by the Solicitors Disciplinary Tribunal are to be filed.
- 4.53 As noted above, section 187 of the 2015 Act has amended section 9 of the 1960 Act which replaces the Solicitors Disciplinary Tribunal with the Society, section 17(3)(b) requires an amendment to reflect this which is suggested as follows:

“17(3)(b): on a file to be termed File B, there shall be entered any other order made under this Act by the High Court and any order made under section 9 of this Act by the Society or the High Court.”

Recommendation 22 – Amendment for the filing of orders in File B

It is the recommendation of the Society that section 17(3)(b) of the 1960 Act be amended to replace the references to the Solicitors Disciplinary Tribunal with references to the Society for the purposes of filing orders made under section 9 of the 1960 Act in File B which could be worded as follows:

“17(3)(b): on a file to be termed File B, there shall be entered any other order made under this Act by the High Court and any order made under section 9 of this Act by the Society or the High Court.”

Section 17(3)(c) of the 1960 Act – Findings of misconduct not precipitated by complaints

- 4.54 Section 190(b)(ii) of the 2015 Act inserts a new paragraph (c) into section 17(3) of the 1960 Act which makes provision for a File C on which each decision or order made by the High Court under section 84 or 85 of the 2015 Act and any determination made by the Legal Practitioners Disciplinary Tribunal under section 82 of the 2015 Act, in relation to a complaint under that Part in respect of a solicitor, is to be filed.
- 4.55 As the Legal Practitioners Disciplinary Tribunal may make other findings of misconduct against solicitors, which have not been precipitated by complaints, including findings of misconduct, the inclusion of these determinations of the Legal Practitioners Disciplinary Tribunal on File C may provide a more complete record of the disciplinary history of solicitors.
- 4.56 It is recommended that section 17(3)(c) be amended by deleting the phrase *“in relation to a complaint under that Part.”*

Recommendation 23 – Findings of misconduct not precipitated by complaints

It is the recommendation of the Society that section 17(3)(c) of the 1960 Act, as amended by section 190 of the 2015 Act, be amended to delete the phrase “*in relation to a complaint under that Part*” to allow the new File C to show a complete record of a solicitor’s disciplinary history rather than only findings relating to complaints.

Section 2(2) of the 1994 Act – Reference to section 14B of the 1994 Act

- 4.57 Section 2(2) of the 1994 Act, as inserted by section 12 of the 2002 Act and substituted by section 38 of the Civil Law (Miscellaneous Provisions) Act 2008, provides that references in sections 10, 10A, 12 and 22 of the 1994 Act to complaints made to or received by the Society include references to any complaints made to the Society by the registrar under section 14B of the 1994 Act.
- 4.58 However, section 14B of the 1994 Act provides that the issue of a bill of costs by a solicitor that is excessive may constitute misconduct.
- 4.59 It is section 14C of the 1994 Act that provides for the making of a complaint by the registrar to the Society regarding a solicitor who is alleged to have contravened the Solicitors Acts or any regulation made thereunder and any allegations of conduct tending to bring the solicitors’ profession into disrepute.
- 4.60 Therefore, an amendment is required to section 2(2) to replace the reference to section 14B with a reference to section 14C.

Recommendation 24 – Reference to section 14B of the 1994 Act

It is the recommendation of the Society that section 2(2) of the 1994 Act (as amended and substituted) be amended to refer to any complaints made to the Society by the registrar under section 14C of the 1994 Act.

Expanding section 72 of the 1994 Act to provide for the updated collective citation of the Solicitors Acts 1954 to 2015

- 4.61 Section 72(1) of the 1994 Act, as amended by Schedule 4 of the Stamp Duties Consolidation Act 1999, provides that the power vested in a commissioner for oaths shall be vested in every solicitor who holds a practising certificate, subject to any conditions to which that practising certificate may be subject under the Solicitors Acts 1954 – 1994.

- 4.62 This section should be amended to include an expanded reference to the 2015 Act, in circumstances where conditions may be imposed on practising certificates under the provisions of that Act also.
- 4.63 In particular, the Complaints Committee has the power, following an investigation under section 70 of the 2015 Act, to impose a specified restriction or condition on a solicitor's practising certificate pursuant to section 71(6)(a) of the 2015 Act.
- 4.64 Additionally, the Legal Practitioners Disciplinary Tribunal has the power to similarly direct the imposition of a specified condition on a solicitor's practising certificate pursuant to section 82(1)(k) of the 2015 Act.
- 4.65 While the intention behind those provisions may be that the Authority or the Legal Practitioners Disciplinary Tribunal directs the imposition of the condition by the Society, this will require an amendment to ensure reference is made to the 2015 Act.
- 4.66 Accordingly, section 72 of the 1994 Act should be amended to provide the updated collective citation for the Solicitors Acts 1954 to 2015.

Recommendation 25 – Expanding section 72 of the 1994 Act (as amended) to include the updated collective citation of the Solicitors Acts 1954 to 2015

It is the recommendation of the Society that section 72 of the 1994 Act be amended to update the collective citation for the Solicitors Acts 1954 to 2015 to incorporate any conditions issued on a solicitor's practising certificate under the 2015 Act.

Section 135 of the 2015 Act - Removal of a barrister's name from the Roll of Practising Barristers

- 4.67 Section 135 of the 2015 Act provides for the circumstances in which the Authority may remove a barrister's name from the Roll of Practising Barristers, whether on the instruction of a High Court order or where a provision of the Act applies which permits the Authority to remove the name from the Roll.
- 4.68 In terms of the circumstances in which the Authority will remove a name from the Roll upon the instruction of the High Court, only a single instance is provided in section 135(1)(a) relating to an order made by the High Court under section 85(7)(e) of the Act.
- 4.69 However, there is a further circumstance, not mentioned in section 135, in which the High Court may direct that a barrister's name be removed from the Roll. This is to be found in section 92(5)(c) of the Act.
- 4.70 Under section 92(5)(c) the High Court may make such an order, upon the application of the Authority to the High Court, in circumstances where the Authority has

determined that misconduct on the part of a barrister has occurred and following the receipt of a notification and report by it from the Honorable Society of King's Inns.

- 4.71 As such, section 135(1) should be amended in order to ensure that the Authority has the power to remove the name of a barrister from the Roll where the High Court makes an order under section 92(5)(c).

Recommendation 26 – Power of the Authority to remove a barrister's name from the Roll of Practising Barristers

It is the recommendation of the Society that section 135(1) of the 2015 Act be amended to capture the further circumstance where the High Court may direct the removal of a barrister's name from the Roll of Practising Barristers under section 92(5)(c).

Repeal of the Solicitors Remuneration Act 1881 and the Attorneys' and Solicitors' Act 1870

- 4.72 Section 8 of the Solicitors Remuneration Act 1881 and section 4 of the Attorneys' and Solicitors' Act 1870 should be repealed as section 151 of the 2015 Act has now been commenced. In addition, the Society considers that the entirety of these statutes should be repealed as the other sections of both the 1881 Act and the 1870 Act are rendered superfluous.
- 4.73 If section 8 and section 4 remain in force it could give rise to an otherwise avoidable complication as it is still open to a legal practitioner to enter into an agreement with a client for either contentious or non-contentious business under section 8 and section 4 without having any effect on the obligation to comply with section 151, if applicable, which serves no real beneficial purpose for either the client or the legal practitioner.
- 4.74 The benefit of having one set of legal rules applying to legal costs agreements is in the interests of the consumers of legal services and the legal profession in terms of codifying and thus simplifying the legal costs regime.
- 4.75 As these provisions are not the basis for any secondary legislation, their repeal should not create any difficulties in this respect.

Recommendation 27 – Repeal of the Solicitors Remuneration Act 1881 and the Attorneys' and Solicitors' Act 1870

It is the recommendation of the Society that that the Solicitors Remuneration Act 1881 and the Attorneys' and Solicitors' Act 1870 be repealed in their entirety.

Commencement in practice and cessation regulations

- 4.76 Under the Solicitors Acts, the Society lacks the power to make regulations for the commencement and cessation of solicitors' practices.
- 4.77 The Society does have a power to make general regulations under section 71(1) of the 1954 Act, with regard to professional practice, conduct and discipline. However, this section would only allow for a restricted type of regulation, not the extensive regulation which the area requires.
- 4.78 The Society would be more confident in creating the regulatory structure needed for this area if express power to make such regulations was provided for in primary legislation.
- 4.79 As such, it is recommended that the Society be provided with the express power to make regulations for both the commencement and cessation of solicitors' practices.

Recommendation 28 – Commencement and cessation in practice regulations

It is the recommendation of the Society that the Society be provided with the express power to make regulations for both the commencement and cessation of solicitors' practices which should be provided for in primary legislation.

Liability of solicitors and their estates for the costs of the Society's practice closure exercises

- 4.80 Where a solicitor sets up in practice, they take on all the responsibilities that entails, including the sale, transfer or wind-up of their practice on its cessation, and all the costs related to each of those options.
- 4.81 Most solicitors' practices are wound up in an orderly manner with no requirement for the Society to intervene. Occasionally, circumstances arise where a distressed closure takes place which requires the Society to make an application to the High Court for the purposes of taking up the client files and client moneys of the practice to distribute to clients or their newly nominated solicitors which is done in the public interest.
- 4.82 Distressed closures may include practices closed by order of the High Court by the suspension or strike-off of the solicitor, caused by abandonment of the practice by the solicitor, due to the death of the principal, and in circumstances where the solicitor is not in a position, or is not permitted, to be involved in the winding up of the practice. This will usually be because the solicitor has demonstrated incompetence or

dishonesty. However, the High Court order will usually grant the solicitor 14 days to make proposals acceptable to the Society for the sale or transfer of the practice, or for arrangements for another firm to carry out files and client moneys distribution exercises in the practice on their behalf. In such circumstances, it is often the case that no such proposals are provided or the proposals provided by the solicitor are inadequate and the Society is required to take up the files pursuant to the High Court order.

- 4.83 The Society undertakes file distribution and client moneys refund exercises to preserve the reputation of the profession and to ensure that clients are not left unable to access their files or money. In this way, it is hoped that there will be minimal disruption to clients' cases or transactions because of regulatory actions and other disruptions. In addition, the files will be stored safely and confidentially.
- 4.84 The Society does not provide this service for ordinary practice closures, which do not arise as a result of a distressed closure. It is a service of last resort which is funded by the profession.
- 4.85 In relevant cases, the Society makes an application to the President of the High Court for orders permitting the Society to take possession of the files and/or client moneys of a closed practice.
- 4.86 The Society then carries out a file distribution exercise by contacting current clients and asking them to nominate a new solicitor to take the file, or to take up the file themselves, subject to certain formalities. The Society does not, and cannot, carry out any legal work on behalf of clients.
- 4.87 When the Society takes possession of client moneys, it carries out a client moneys refund system. The Society processes applications for refunds from the moneys the Society holds from the particular practice.
- 4.88 It is estimated that the cost of a file distribution exercise for a small sole practitioner practice is at least €60,000. There are also significant costs arising from the client money refund exercises.
- 4.89 The Society has rarely sought to collect costs for practice closures exercises from the relevant solicitors, or from their estates, due to concerns that the Society does not have the necessary statutory basis for pursuing the costs of these exercises.
- 4.90 Under the Solicitors Acts there are no specific statutory powers allowing the Society to charge, or to make an application for a Court order charging the solicitor with the costs of file distribution, client moneys refund exercises and of other headings of expenditure, except in very limited circumstances.
- 4.91 Section 34(3) of the 1994 Act provides as follows:

"The High Court, on the application of the Society....may order that vouched expenditure incurred by the Society under Section 19....shall be recouped to the

Society by the solicitor concerned or his personal representative, and shall be recoverable as a debt owing to the Society.”

- 4.92 Section 19 of the 1960 Act, as substituted by section 27 of the 1994 Act, as amended by section 22(1)(h) of the 2002 Act, provides that the Society can require delivery of client files on foot of a simple Society notice, rather than a Court order.
- 4.93 Section 19 of the 1960 Act (as substituted and amended) can only be used where specified preconditions are met including a deficit of client moneys being in place, the practice being abandoned and, in both cases, that there are inadequate arrangements in place for the clients to get their files. Therefore, section 19 cannot be used in all cases.
- 4.94 The Society no longer uses section 19 as most third parties insist that the Society has a Court order in place before accepting the Society’s entitlement to take possession of client files, practice materials and client moneys. It is therefore more effective for the Society to rely on Court orders instead of section 19, and the Court order offers protection for the Society’s actions.
- 4.95 The Society proposes that amendments be introduced to allow the Society to recoup the costs of practice closures from the principal(s) or the practice, or from their estate(s) where appropriate.
- 4.96 The Society proposes an amendment of section 19 of the 1960 Act (as substituted and amended) to expand the pre-conditions for the Society serving a notice requiring delivery of files to include an opinion that there has been dishonesty, an opinion that the practice has been abandoned, an opinion that client files or client moneys are at risk, or an opinion that adequate arrangements have not been put in place for making files available to clients. The Society proposes an amendment to section 34(3) of the 1994 Act to allow expenditure incurred by the Society in relation to file distribution, the costs of exercises to refund client moneys to the clients and the ancillary costs of the Society to be recouped from the principal(s) of the closed practice, or their estate.

Recommendation 29 – Liability of solicitors and their estates for Society’s costs of practice closure exercises

It is the recommendation of the Society that amendments be introduced to allow the Society to recoup the costs of practice closure exercises by the Society from principal(s), partners or from their estate(s) where appropriate.

Further minor amendments to the 2015 Act

- 4.97 The Society notes that there are a number of other minor amendments that the 2015 Act requires which are set out in the following table:

	Recommendation 30 – Minor amendments to the 2015 Act
1	It is suggested that section 19(3) of the 2015 Act should correctly refer to the “Competition and Consumer Protection Commission”.
2	It is suggested that section 43(3) of the 2015 Act should correctly refer to section 50(1) of the Act rather than section 42(1) as this is the correct section that deals with misconduct.
3	It is suggested that section 52(3) of the 2015 Act should be amended to replace the reference <i>‘to the Society’</i> with the correct reference <i>‘to the Authority’</i> .
4	It is suggested that sections 80(3) and (4) are amended to include the word <i>‘the’</i> before the word <i>‘opinion’</i> .
5	It is suggested that an amendment is made to section 83(2) of the 2015 Act to refer to a determination made by the Legal Practitioners Disciplinary Tribunal under section 81(8) of the Act, rather than 81(9).
6	It is suggested that section 85(8) of the 2015 Act is amended to refer to subsection (7), rather than subsection (6), where subsection (7) provides that the Court may, by order, direct the imposition of a number of sanctions.
7	It is suggested that the heading of section 103 of the 2015 Act is amended to change the words <i>“limited partnerships”</i> to <i>“legal partnerships”</i> .
8	It is suggested that the heading of section 104 of the 2015 Act be amended to change the words from <i>“Notification of Authority”</i> to <i>“Notification to Authority”</i> .
9	It is suggested that the heading of section 106 of the 2015 Act be amended to change the words from <i>“Notification of Authority”</i> to <i>“Notification to Authority”</i> .
10	It is suggested that an amendment to section 114(4)(a)(iii) is made to replace the word <i>‘finding’</i> with the word <i>‘belief’</i> .
11	It is suggested that section 115 of the Act is amended to replace any reference to the word <i>‘notice’</i> with the word <i>‘direction’</i> for clarity and to prevent ambiguity.
12	It is suggested that section 136(c) of the 2015 Act is amended to remove the word <i>‘not’</i> for the purposes of clarifying persons who are considered unqualified to provide legal services as a practising barrister.
13	It is suggested that section 140(2)(e) of the 2015 Act is amended to insert the word <i>‘a’</i> before the word <i>‘determination’</i> .
14	It is suggested that section 140(7) of the 2015 Act be amended to correctly refer to a determination made by a Legal Costs Adjudicator under section 157(1) of the Act, rather than section 158(1).
15	It is suggested that section 199 of the 2015 Act be amended to provide for the insertion of a section 14D into the 1994 Act, rather than the insertion of section 14C, which already exists.

5. Practising certificates and other matters relating to practice

Section 48 of the 1954 Act - Backdating practising certificates

- 5.1 The Society retains the power to issue solicitors with annual practising certificates. A solicitor practising from 1 January in any year is obliged to provide the Society with a correctly completed application form and full payment of fees on or before 1 February in that year in order for the practising certificate issued to bear the date 1 January.
- 5.2 A solicitor who makes an application after 1 February in any year will receive a practising certificate bearing the date of receipt of their application, which consists of a properly completed application form and full payment of fees.
- 5.3 If the solicitor has provided legal services prior to the issue date of their practising certificate, they are required to make an application to backdate their practising certificate by way of application to the High Court to the date on which they commenced providing legal services in that year, in accordance with the provisions of section 48(3) of the 1954 Act, as amended by section 55(2)(b) of the 1994 Act.
- 5.4 The Society will consent to a solicitor's application to the High Court to backdate their practising certificate on the condition that the solicitor discharges the Society's costs which currently stand at €350 per backdated practising certificate.
- 5.5 Backdating of practising certificates is mandatory as it is both professional misconduct and a criminal offence for a solicitor to provide legal services without a valid practising certificate in force.
- 5.6 The requirement to backdate practising certificates and the costs of same act as an incentive for solicitors to make their applications to the Society on time. However, it is the view of the Society that this causes an unnecessary burden on the limited resources of the High Court and the Society.
- 5.7 It is noted that section 180 of the 2015 Act amends section 48(3) of the 1954 Act which provides that applications for backdating practising certificates should be made to the Authority rather than to the High Court.
- 5.8 It is the view of the Society that section 180 of the 2015 Act be amended to confer the power to backdate practising certificates to the Society in order to reduce the administrative burden on the Authority and the Society through duplication of work, and due to the fact that regulatory powers relating to practising certificates are remaining with the Society.
- 5.9 This amendment should assist in making the system for backdating applications more streamlined and efficient as only one body would deal with such applications. As the Society will be sharing data with the Authority on practising certificates, any

determination by the Society to backdate a practising certificate will be on notice to the Authority.

- 5.10 It is also recommended that the Society be granted the power to charge a fee in excess of €350 per practising certificate backdated in order to act as a deterrent to solicitors filing late applications.

Recommendation 31 – Backdating practising certificates

It is the recommendation of the Society that section 180 of the 2015 Act be amended to confer the power to backdate practising certificates to the Society instead of the Authority, and that the Society be granted the power to charge a fee in excess of €350 per practising certificate backdated.

Section 49 of the 1954 Act - Circumstances which the Society may consider when issuing a practising certificate

- 5.11 Section 49(1) of the 1954 Act, as substituted by section 61 of the 1994 Act, as amended by section 2 of the 2002 Act sets out specific circumstances which allow the Society to issue a practising certificate subject to conditions or refuse to issue a practising certificate.
- 5.12 The Society notes that section 181 of the 2015 Act further amends section 49(1), as substituted and amended, by the insertion of paragraphs (r) to (v) which provides for further circumstances under which the Society may consider issuing a practising certificate with or without conditions, or refusing to issue a practising certificate.
- 5.13 Paragraph (u) allows the Society to restrict or refuse a practising certificate where a solicitor has contravened the Solicitors Acts 1954 to 2015.
- 5.14 It is recommended that paragraph (u) should be amended to include any contravention of any regulations made under those Acts.

Similar amendments to section 59 of the 1994 Act, as amended by section 205 of the 2015 Act, which grants the Society the power to impose conditions on a practising certificate already in force, should also be made.

Recommendation 32 – Breaches of regulations as circumstances which the Society may consider when issuing a practising certificate

It is the recommendation of the Society that section 49(1)(u), as substituted and amended, be further amended to provide for the insertion of circumstances where there is a breach by a solicitor of any regulations made under the Solicitors Acts 1954 to 2015. Similar amendments should be made to section 59 of the 1994 Act (as amended).

Section 49 of the 1954 Act- Power to impose practising certificate conditions for multiple years

- 5.15 As noted above, section 49 of the 1954 Act (as substituted and amended) allows the Society to refuse to issue a practising certificate or to issue a practising certificate subject to specified conditions.
- 5.16 For the avoidance of any doubt, the Society recommends that appropriate amendments are made to section 49 of the 1954 Act (as substituted and amended) and section 59 of the 1994 Act to ensure that the Society has the power to impose practising certificate conditions for multiple years, rather than just the year in question.

Recommendation 33 – Power to impose practising certificate conditions for multiple years

It is the recommendation of the Society that appropriate amendments are made to section 49 of the 1954 Act (as substituted and amended) and section 59 of the 1994 Act to grant the Society the power to impose practising certificate conditions for multiple years, rather than just the year in question.

Section 60(3) of the 1954 Act- Limitation period on application to the High Court by a decision of the Society refusing employment of an unqualified person

- 5.17 Section 60 of the 1954 Act, as substituted by section 20 of the 1994 Act, prohibits any person from employing a solicitor who is an unqualified person in any capacity which involves the provision of legal services where that solicitor has become an unqualified person by reason of suspension from practice, refusal of a practising certificate, suspension of practising certificate, the solicitor giving an undertaking to the High Court not to practice or the solicitor being struck off the Roll of Solicitors.
- 5.18 Under section 60(2) of the 1954 Act, the Society may grant or refuse permission for the employment of such unqualified persons.
- 5.19 Section 60(3) of the 1954 Act allows for an application to appeal the decision to the High Court if an aggrieved solicitor wishes to challenge the Society's decision. However, it is noted that there is no period of limitation prescribed in this section.
- 5.20 The Society recommends that a limitation period of 21 days be inserted by way of amendment to this section which would put this provision in line with the other provisions for appeal available under the Solicitors Acts.

Recommendation 34 – Limitation period for an application to appeal the refusal of the Society to grant permission for the employment of an unqualified person

It is the recommendation of the Society that section 60(3) of the 1954 Act (as substituted) be amended to provide for a period of 21 days within which an aggrieved solicitor may make an application to appeal the refusal of the Society to grant permission for the employment of the solicitor as an unqualified person.

Section 61(2) of the 1954 Act- Direction to be seen by a registered medical practitioner where concerns arise for physical or mental health of a solicitor

- 5.21 Section 61(2) of the 1954 Act, as substituted by section 31 of the 1994 Act, allows the Society to make an application to the High Court where a solicitor becomes of unsound mind or incapable of managing their own affairs or the affairs of the practice.
- 5.22 Where there is a concern for the wellbeing of the solicitor or protection of the public, the Society does not currently have any power to direct that the solicitor be seen by a doctor nominated by the Society.
- 5.23 The Society similarly has no power to gather medical evidence where there is a concern regarding the physical or mental health of the solicitor.
- 5.24 It is important for both the public interest and the protection of the solicitor involved, that the Society has the power to intervene in situations where physical or mental illness interferes to a significant degree with the solicitor's ability to function in the best interests of the client.
- 5.25 Section 181(c) of the 2015 Act inserts a new subsection 7 into section 49 of the 1954 Act which provides for further circumstances where the Society may restrict or refuse a practising certificate where the solicitor fails to satisfy the Society that he or she is fit to carry on the practice of a solicitor, having regard to the state of the solicitor's physical or mental health. The Society may direct the solicitor to be examined by a registered medical practitioner nominated by the Society.
- 5.26 A similar facility could be afforded to the Society by inserting a new subsection (6) and (7) into section 61 of the 1954 Act (as amended) in similar terms to section 181(c) of the 2015 Act. Suggested wording could be as follows:

“(6) The Society, where it has reason to consider that a solicitor may not be fit to carry on the practice of a solicitor having regard to the state of his physical or mental health, may, for the purposes of subsection (2) of this section, direct that the solicitor be examined by a registered medical practitioner nominated by the Society.

(7) In subsection (8), ‘registered medical practitioner’ means a person who is a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007.”

Recommendation 35 – Direction to see a registered medical practitioner where concerns arise for the physical or mental health of a solicitor

It is the recommendation of the Society that section 61 of the 1954 Act (as substituted) be amended to include new subsections (6) and (7) to grant the Society the power to direct a solicitor to be examined by a registered medical practitioner where there are concerns regarding the physical or mental health of that solicitor. Suggested wording could be as follows:

“(6) The Society, where it has reason to consider that a solicitor may not be fit to carry on the practice of a solicitor having regard to the state of his physical or mental health, may, for the purposes of subsection (2) of this section, direct that the solicitor be examined by a registered medical practitioner nominated by the Society.

(7) In subsection (8), ‘registered medical practitioner’ means a person who is a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007.”

Section 56(2) of the 1994 Act- Practising certificates for solicitors practising in legal partnerships, limited liability partnerships or multi-disciplinary practices

- 5.27 Section 56(1) of the 1994 Act provides that no solicitor shall practise as a solicitor unless a practising certificate in respect of him is in force.
- 5.28 Section 56(2) of the 1994 Act provides that a solicitor shall be deemed to practice as a solicitor if they engage in the provision of legal services whether as a sole practitioner or as a partner in a solicitor's practice or as an employee of any solicitor or of any other person or body, or as a solicitor in the full-time service of the State within the meaning of section 54 (3) of the 1954 Act, as substituted.
- 5.29 Part 8 of the 2015 Act provides for new business models through which solicitors may provide legal services including legal partnerships, limited liability partnerships and multi-disciplinary practices. To date, only limited liability partnerships have been commenced with the likelihood of legal partnerships commencing in the fourth quarter of 2021.
- 5.30 Accordingly, it is recommended that section 56(2) of the 1994 Act be widened to refer to the new business structures established under the 2015 Act. Suggested wording could read as follows:

“(2) Without prejudice to section 29(5) (as substituted by this Act) of the Principal Act, a solicitor shall be deemed to practise as a solicitor if they engage in the provision of legal services whether as a sole practitioner or as a partner in a solicitor’s practice or as an employee of any solicitor or of any other person or body or as a solicitor practising within any of the practice models provided for in Part 8 of the Legal Services Regulation Act 2015, or as a solicitor in the full-time service of the State within the meaning of section 54(3) (as substituted by this Act) of the Principal Act.”

Recommendation 36 – Requirement for solicitors in new business structures to have a practising certificate in force when providing legal services

It is the recommendation of the Society that section 56(2) of the 1994 Act is amended to provide for the requirement of solicitors practising in legal partnerships, limited liability partnerships or multi-disciplinary practices to have a valid practising certificate in force when providing legal services which could be worded as follows:

“(2) Without prejudice to section 29(5) (as substituted by this Act) of the Principal Act, a solicitor shall be deemed to practise as a solicitor if they engage in the provision of legal services whether as a sole practitioner or as a partner in a solicitor’s practice or as an employee of any solicitor or of any other person or body or as a solicitor practising within any of the practice models provided for in Part 8 of the Legal Services Regulation Act 2015, or as a solicitor in the full-time service of the State within the meaning of section 54(3) (as substituted by this Act) of the Principal Act.”

Section 56(3) of the 1994 Act- Removal of practising certificate exemption for solicitors in the full-time service of the State and conveyancing-only solicitors

- 5.31 Under section 56(3) of the 1994 Act, solicitors in the full-time service of the State (within the meaning of section 54(3) of the Solicitors Act 1954, as substituted) and solicitors who are employed full-time to provide conveyancing services for their non-solicitor employers, are exempted from the requirement to apply for or hold a practising certificate in order to provide legal services.
- 5.32 Section 54(3) of the 1954 Act, as substituted by section 62 of the 1994 Act states that a solicitor shall be regarded as a solicitor in the full-time service of the State if and while the solicitor is required to devote the whole of his or her time to the service of the State as a solicitor, and is remunerated in respect of such service wholly out of moneys provided by the Oireachtas.
- 5.33 This could potentially create an issue where such solicitors are found guilty of misconduct, as there is no possibility to impose conditions on the solicitor’s practising certificate or to make an application to the High Court to suspend the solicitor from practice.

- 5.34 It also creates issues with regard to the maintenance of accurate records by the Society as solicitors in the full-time service of the State and conveyancing-only solicitors are not required to confirm where they are employed to the Society and, as such, the Society's record with regard to those solicitors is incomplete.
- 5.35 Lack of a practising certificate also creates issues for solicitors in the full-time service of the State with regard to the swearing of documents. Under the Solicitors Acts, solicitors in the full-time service of the State are considered to be solicitors qualified to practise even though they do not hold a practising certificate. However, under section 72(1) of the 1994 Act only solicitors who hold a practising certificate can swear documents. As such solicitors in the full-time service of the State are ineligible to swear documents as they do not hold a practising certificate.
- 5.36 The Society proposes that the exemption from the requirement to hold a practising certificate for solicitors in the full-time service of the State and conveyancing-only solicitors be removed, that such solicitors be required to apply for a practising certificate on an annual basis in line with other solicitors, but that such solicitors be exempt from paying practising certificate fees.

Recommendation 37 - Removal of practising certificate exemption for solicitors in the full-time service of the State and conveyancing-only solicitors

It is the recommendation of the Society that the exemption from the requirement to hold a practising certificate under section 56(3) of the Solicitors (Amendment) Act 1994 for solicitors in the full-time service of the State and solicitors employed full-time to provide conveyancing services to non-solicitors be removed, but that such solicitors be exempt from paying practising certificate fees.

Section 58 of the 1994 Act – Suspension of practising certificates

- 5.37 Section 58 of the 1994 Act, as amended by section 204 of the 2015 Act, provides for the circumstances in which the Society may apply to the High Court for an order suspending a solicitor's practising certificate.
- 5.38 This section has been amended by section 204 of the 2015 Act to provide for further circumstances in which such an application may be made.
- 5.39 The current position is that section 58 only refers to conditions imposed on a practising certificate under section 59 of the 1994 Act. This section requires further amendment, however, to include an expanded reference to conditions specified in a direction relating to a practising certificate under the 2015 Act in circumstances where conditions may be imposed on practising certificates under the provisions of that Act also.

- 5.40 In particular, the Complaints Committee of the Authority has the power, following an investigation under section 70 of the 2015 Act, to impose a specified restriction or condition on a solicitor's practising certificate pursuant to section 71(6)(a).
- 5.41 The Legal Practitioners Disciplinary Tribunal also has the power to direct the imposition of a specified condition on a solicitor's practising certificate pursuant to section 82(1)(k) of the 2015 Act.
- 5.42 While the intention behind those provisions may be that the Authority directs the imposition of the condition by the Society, this will require an amendment to ensure reference is made to the 2015 Act.
- 5.43 Additionally, the Society has the power, pursuant to section 14A(3)(b) of the 1994 Act to impose a sanction on a solicitor's practising certificate following an investigation by it into an allegation of misconduct.
- 5.44 As such, section 58 should be amended to provide a reference to the additional provision in the 1994 Act and to the relevant provisions of the 2015 Act, pursuant to which conditions may be imposed on solicitors' practising certificates.
- 5.45 Suggested wording for the amendment could be as follows:

"...or with any conditions specified in a direction relating to a practising certificate under section 59 or directed pursuant to section 14A(3)(b) of this Act or with any conditions imposed on a practising certificate by virtue of a direction given pursuant to section 71(6)(a) or 82(1)(k) of the Legal Services Regulation Act 2015..."

Recommendation 38 – Suspension of practising certificates

It is the recommendation of the Society that an amendment be made to section 58 of the 1994 Act to provide for further instances where conditions may be imposed on a solicitor's practising certificate by virtue of the provisions of the 2015 Act which could be worded as follows:

"...or with any conditions specified in a direction relating to a practising certificate under section 59 or directed pursuant to section 14A(3)(b) of this Act or with any conditions imposed on a practising certificate by virtue of a direction given pursuant to section 71(6)(a) or 82(1)(k) of the Legal Services Regulation Act 2015..."

Sections 58 and 59 of the 1994 Act - Restriction or suspension of practising certificate where certificate previously issued under section 49

- 5.46 Section 49 of the 1954 Act, as substituted by section 61 of the 1994 Act, as amended by section 2 of the 2002 Act and section 181 of the 2015 Act, sets out the circumstances under which the Society can refuse to issue a practising certificate, or issue a practising certificate subject to specified conditions.
- 5.47 Section 58 of the 1994 Act, as amended by section 204 of the 2015 Act, allows the Society to make an application to the High Court for the suspension of a solicitor's practising certificate where a solicitor fails to comply with any provision of the Solicitors Acts or with any regulations made thereunder or with any conditions specified in a direction relating to a practising certificate where the Society is of the opinion that such failure to comply is serious.
- 5.48 Section 59 of the 1994 Act, as amended by section 205 of the 2015 Act, empowers the Society to impose specified conditions on a practising certificate already in force where one or more of the circumstances listed under section 49 of the 1954 Act (as substituted and amended) apply to the solicitor.
- 5.49 This can create an issue where the Society is aware of a potential circumstance, but the matter is under investigation, is currently before the Tribunal or the Courts, or the Society has agreed to consider the matter *de novo*, and the Society issues a practising certificate under section 49 of the 1954 Act (as substituted and amended) in the knowledge that conditions can be placed on the solicitor's practising certificate if necessary at a later date under section 59.
- 5.50 This is done in the interests of fairness to the solicitor, as the Society should not refuse to issue a solicitor with a practising certificate while a matter is under consideration, which would leave the solicitor unable to practise.
- 5.51 The argument has been made, although never accepted by the Society, that if the Society issues a practising certificate under section 49, where the Society is aware that one of the circumstances listed under section 49 applies or could potentially apply, then the Society is estopped from imposing conditions under section 59 at a later date.
- 5.52 The argument has also been made, but never accepted by the Society, that the Society cannot seek to have conditions imposed on a solicitor's practising certificate, or have the solicitor suspended by way of sanction, where the Society has issued a practising certificate under section 49 of the 1954 Act (as substituted and amended) where there is an ongoing disciplinary case or High Court case against the solicitor.
- 5.53 The Society is proposing that amendments be made to ensure that the Society is not estopped from considering the imposition of conditions under section 59 of the 1994 Act (as amended), or seeking sanctions or the imposition of conditions or suspension under section 58 of the 1994 Act (as amended), where the Society has previously

issued the solicitor with a practising certificate under section 49 of the 1954 Act (as substituted and amended), even where the Society was aware that one of the listed conditions applied or could potentially apply at the time of issue of the practising certificate.

Recommendation 39 – Restriction or suspension of practising certificate where certificate previously issued under section 49 of the 1954 Act (as substituted and amended)

It is the recommendation of the Society that amendments be made to section 59 of the 1994 Act (as amended) to ensure that the Society is not estopped from imposing conditions under section 59 of the 1994 Act (as amended), or seeking the imposition of conditions or suspension under section 58 of the 1994 Act (as amended) before the Disciplinary Tribunal and/or High Court, where the Society has previously issued a practising certificate to that solicitor under section 49 of the 1954 Act (as substituted and amended), even where the Society was aware of circumstances listed under section 49 applying or potentially applying at the time of issue of the practising certificate.

Section 181 of the 2015 Act - Failure to pay levies, contributions, awards, fines and costs

- 5.54 Section 49 of the Solicitors Act 1954, as substituted by section 61 of the 1994 Act, as amended by section 2 of the 2002 Act and section 181 of the 2015 Act, sets out the circumstances under which the Society may make a decision to issue a practising certificate subject to specified conditions, or refuse to issue a practising certificate.
- 5.55 Under section 12 of the Solicitors (Amendment) Act 1994, as substituted by section 14 of the 2002 Act, following investigation of a complaint under sections 8 or 9 of the Solicitors (Amendment) Act 1994, the Society may require payment from the solicitor by way of contribution towards the costs incurred by the Society.
- 5.56 Under regulation 35(6) of the Solicitors Accounts Regulations 2014, the Society may impose a levy on a solicitor as a contribution towards the cost of investigating the practice.
- 5.57 The Solicitors Disciplinary Tribunal and the High Court have the power under the Solicitors Acts to grant awards, impose fines and award costs to the Society.
- 5.58 Failure by a solicitor to pay legally imposed levies and contributions by regulatory committees, awards and fines by order of the Solicitors Disciplinary Tribunal and the High Court, and costs awarded against the solicitor by the Solicitors Disciplinary Tribunal and the High Court following taxation, are not provided for as circumstances in which the Society can consider refusing or issuing a limited practising certificate.

- 5.59 As a result, the Society has very little recourse against a solicitor who refuses to pay such amounts awarded, without having to apply to the Courts for a judgment against the solicitor. This is very time consuming and places a heavy burden on limited resources.
- 5.60 The Society strongly believes in a “*polluter pays*” approach to regulation, and is of the view that it is inappropriate to allow a solicitor to continue to practise in breach of committee directions, tribunal and High Court orders. This leaves the largely compliant members of the profession carrying the burden of investigating and prosecuting such solicitors.
- 5.61 Accordingly, it is the proposal of the Society that failure to pay levies and contributions imposed by the Society, and awards, fines and costs (following taxation) imposed by order of the Solicitors Disciplinary Tribunal and High Court, be included in the stated circumstances under section 49 of the 1954 Act (as substituted and amended).
- 5.62 Failure to pay levies and contributions imposed by the Authority, and awards, fines and costs (following an adjudication by a Legal Costs Adjudicator) imposed by order of the Legal Practitioners Disciplinary Tribunal should also be included as stated circumstances under section 49 of the 1954 Act (as substituted and amended).
- 5.63 It should be noted that, inclusion of such failure as a circumstance under section 49 means that the Society will investigate the matter and call the solicitor before a regulatory meeting to make representations. It will then be open to the Society to grant an unrestricted practising certificate, a practising certificate subject to specified conditions, or refuse to issue a practising certificate. The solicitor will continue to have the right to appeal this decision to the High Court.
- 5.64 Section 59 of the 1994 Act, as amended by section 205 of the 2015 Act, allows the Society to issue directions to impose conditions on a practising certificate in force where one or more circumstances listed under section 49 of the 1954 Act (as substituted and amended) apply. As such, section 59 would need to be amended to ensure inclusion of this amendment as one of the relevant circumstances.

Recommendation 40 – Inclusion of failure to pay levies, contributions, awards, fines and costs under section 49 of the 1954 Act (as substituted and amended)

It is the recommendation of the Society that section 49 of the 1954 Act (as substituted and amended) be further amended to include failure by a solicitor to pay levies and contributions imposed by the Society or the Authority, and awards, fines and costs (following adjudication by a Legal Costs Adjudicator) imposed by order of the Solicitors Disciplinary Tribunal, Legal Practitioners Disciplinary Tribunal and High Court, be included as one of the circumstances under which the Society may make a direction to restrict or refuse a practising certificate. Consequential amendments should also be made to section 59 of the 1994 Act (as amended).

Section 204 of the 2015 Act - Power for the Society to seek the suspension of a practising certificate where a solicitor is convicted of an indictable offence or sentenced to a term of imprisonment

- 5.65 Currently, the Society does not have the power to seek the suspension of a solicitor's practising certificate in the event that a solicitor is convicted of an indictable offence or is sentenced to a term of imprisonment.
- 5.66 While the Society may take into consideration a term of imprisonment when a solicitor makes an application for a practising certificate under section 49 of the 1954 Act (as amended), there is no mechanism available for the Society to take similar action against a solicitor with a practising certificate in force under section 59 of the 1994 Act. The Society only has the power to impose conditions on a solicitor's practising certificate in these circumstances.
- 5.67 The only other action open to the Society under the Acts is to take disciplinary action against a solicitor. Consequentially, convicted solicitors, or imprisoned solicitors, may still continue to practise while the disciplinary process is undertaken.
- 5.68 The Society notes that section 204 of the 2015 Act amends section 58 of the 1994 Act which expands the circumstances under which the Society may make an application to the High Court to seek the suspension of a solicitor's practising certificate.
- 5.69 One of the circumstances provided for under section 58 of the 1994 Act (as amended by section 204 of the 2015 Act) allows the Society to seek the suspension of a practising certificate where a solicitor has been convicted of an indictable offence and sentenced to a term of imprisonment. This requires a Court to both convict the solicitor of an indictable offence and sentence the solicitor to a term of imprisonment for the Society to be in a position to seek the suspension of the solicitor's practising certificate.
- 5.70 It is proposed that this section is amended to provide for the Society to be granted the power to seek the suspension of a solicitor's practising certificate in the event that the solicitor is convicted of an indictable offence and / or sentenced to a term of imprisonment.

Recommendation 41 – Suspension of practising certificate in the event of criminal conviction or imprisonment

It is the recommendation of the Society that the Society be granted the power to apply to the High Court for an order suspending a solicitor's practising certificate in the event of that solicitor being convicted of an indictable offence and / or sentenced to a term of imprisonment.

Section 85(7)(d) of the 2015 Act - Notification to be given by the Authority to the Society where a solicitor is suspended from practice

- 5.71 Section 85(7)(d) of the 2015 Act provides for the power of the High Court to suspend a legal practitioner from practice for a specified period and subject to such terms and conditions as the Court considers appropriate after a finding of misconduct is made by the Legal Practitioners Disciplinary Tribunal
- 5.72 In circumstances where the Society will not be a party to each application before the Legal Practitioners Disciplinary Tribunal which may result in the sanction being imposed under section 85(7)(d), this section should provide for notification from the Authority of such a suspension to be given to the Society to ensure the Society's records are accurately updated.
- 5.73 As such, the wording of section 85(7)(d) might read as follows:

“(d) that the legal practitioner be suspended from practice as a legal practitioner for a specified period and subject to such terms and conditions as the Court considers appropriate, and, where the legal practitioner is a solicitor and the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Recommendation 42 – Notification to be given by the Authority to the Society where a solicitor is suspended from practice

It is the recommendation of the Society that an amendment is made to section 85(7)(d) of the 2015 Act requiring the Authority to notify the Society where a solicitor is suspended from practice through an application made to the High Court by the Authority which could be worded as follows:

“(d) that the legal practitioner be suspended from practice as a legal practitioner for a specified period and subject to such terms and conditions as the Court considers appropriate, and, where the legal practitioner is a solicitor and the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Section 85(7)(f) of the 2015 Act - Notification to be given by the Authority to the Society where a solicitor is struck off the Roll of Solicitors

- 5.74 Section 85(7)(f) of the 2015 Act provides for the power of the High Court to strike a solicitor's name off the Roll of Solicitors.
- 5.75 In circumstances where the Society will not be a party to each application before the Legal Practitioners Disciplinary Tribunal which may result in the sanction being

imposed under section 85(7)(f), it should provide for notification from the Authority of any such fact to be given to the Society to ensure the Society's records are accurately updated.

5.76 Under section 85(7)(e), the Chief Justice and the Honorable Society of King's Inns are to be informed of the imposition of a similar sanction on a barrister.

5.77 As such, the wording of section 85(7)(f) might read as follows:

“(f) where the legal practitioner is a solicitor, that the name of the solicitor be struck off the Roll of Solicitors and, where the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Recommendation 43 – Notification from the Authority to the Society where a solicitor is struck off the Roll of Solicitors

It is the recommendation of the Society that an amendment is made to section 85(7)(f) of the 2015 Act requiring the Authority to notify the Society where a solicitor is struck off the Roll of Solicitors through an application made to the High Court by the Authority which could be worded as follows:

“(f) where the legal practitioner is a solicitor, that the name of the solicitor be struck off the Roll of Solicitors and, where the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Section 85(7)(e) of the 2015 Act - Application for restoration to the Roll of Solicitors

5.78 Section 10 of the 1960 Act, as amended by section 19 of the 1994 Act and section 188 of the 2015 Act, allows a solicitor who has been struck off the Roll of Solicitors to make an application to the High Court for restoration to the Roll.

5.79 Where a solicitor is struck off the Roll of Solicitors under section 85(7)(e) of the 2015 Act, no such corresponding provision to section 10 of the 1960 Act is available to a solicitor to make an application to the High Court for restoration to the Roll.

5.80 This could create the irregular scenario whereby a solicitor who is struck off the Roll of Solicitors by the High Court through a recommendation by the Solicitors Disciplinary Tribunal would have a right to apply to the High Court for restoration but where a solicitor is struck off the Roll under the 2015 Act would have no such recourse.

5.81 It is recommended that appropriate corresponding amendments are made to the 2015 Act to allow for a solicitor who is struck off the Roll of Solicitors to make an application to the High Court for restoration to the Roll.

Recommendation 44 – Application for restoration to the Roll of Solicitors

It is the recommendation of the Society that appropriate provisions be made to the 2015 Act to allow for a solicitor who is struck off the Roll of Solicitors to make an application to the High Court for restoration to the Roll.

Section 81 of the 1954 Act - Statutory requirement for principals of solicitors' firms to ensure accuracy of details

- 5.82 The Society is required to maintain the Roll of Solicitors under section 9 of the 1954 Act, as substituted by section 65 of the 1994 Act. The Roll of Solicitors is the name given to the register that records, in the case of each person entered on it, that the person has completed the requirements to be admitted as a solicitor in the State, and has successfully applied to be, and has been, admitted to the Roll.
- 5.83 The Society is also required to maintain the register of practising solicitors under section 47 of the 1954 Act, as substituted by section 54 of the 1994 Act, as amended by section 179 of the 2015 Act. The register of practising solicitors only lists those solicitors who have a current practising certificate and are entitled to provide legal services and hold themselves out as a solicitor entitled to practise.
- 5.84 Both the Roll of Solicitors and register of practising solicitors are made available by inspection during office hours without payment by any person who applies to the Society to inspect them.
- 5.85 Under section 81 of the 1954 Act, solicitors are required to inform the Society of any change in their place of business within 14 days after the change is made. However, it is often the case that the Society is not informed until much later that solicitors have changed practice, gone on maternity leave or ceased practice.
- 5.86 It is the recommendation of the Society that an obligation be placed on principals in solicitors' practices to ensure that all firm records including title, contact details, number and names of solicitors in the firm are accurate and up to date. Any changes including solicitors commencing or leaving the practice or any solicitors going on maternity / paternity leave should be provided to the Society within 14 days including the relevant dates. This will ensure the Society reflects accurate records on both the Roll of Solicitors and register of practising solicitors.

Recommendation 45 – Statutory requirement for principals of solicitors’ firms to ensure accuracy of details

It is the recommendation of the Society that a statutory obligation be introduced in primary legislation for principals in solicitors’ practices to ensure that all firm records including title, contact details, number and names of solicitors in the firm are accurate and up to date. Any changes, including solicitors commencing or leaving the practice or any solicitors going on maternity / paternity leave, should be provided to the Society within 14 days, including the relevant dates.

Statutory responsibility for principals and partners of solicitors’ firms to ensure all solicitors in the firm have a valid practising certificate

- 5.87 A solicitor is deemed to practise as a solicitor if he or she engages in the provision of legal services as an employee of any solicitor. This means that all persons who are on the Roll of Solicitors who are employed in a solicitor’s firm and provide legal services, either reserved or unreserved, are required to hold a practising certificate.
- 5.88 In particular, it is not permissible for a solicitor’s firm to classify a solicitor employed by the firm as a *“legal executive”*, *“paralegal”*, or any other job title, with a view to avoiding the requirement to hold a practising certificate, if the solicitor is engaged in the provision of legal services. It is both professional misconduct and a criminal offence for a solicitor who does not hold a practising certificate to act as a solicitor.
- 5.89 Under the Solicitors Acts a solicitor without a valid practising certificate is considered to be an *“unqualified person”*. It is prohibited under the Solicitors Acts for a solicitor to allow an unqualified person act as a solicitor.

As such, the Society recommends that a statutory requirement be introduced for principals of solicitor’s firms to ensure that all solicitors in their firm have a valid practising certificate in force before, and throughout, the provision of legal services by those solicitors. It should be professional misconduct to permit an unqualified person to practise as a solicitor in their firm.

Recommendation 46 – Responsibility of firm principal(s) or partners regarding practising certificates

It is the recommendation of the Society that a statutory requirement be introduced for principals of solicitor firms to ensure that all solicitors in their firm have a valid practising certificate in force before, and throughout, provision of legal services by those solicitors. It should be professional misconduct for a principal of a solicitor firm to permit an unqualified person to practise as a solicitor in their firm.

Prohibition on solicitors' firms providing legal services without a principal in place

- 5.90 All solicitors' firms are required to have a principal in order to provide legal services. A firm without a principal is considered to be inactive and should not provide legal services of any kind, either reserved or unreserved.
- 5.91 In circumstances where a sole practitioner has become incapacitated, become bankrupt or has abandoned a practice, an application may be made to the Society under section 61(1) of the 1954 Act as substituted by section 31 of the 1994 Act by the solicitor's personal representative to appoint a practice manager on such terms as the Society sees fit.
- 5.92 The Society recommends that there be a statutory prohibition on firms providing legal services of any kind unless and until there is a principal, or practice manager as appointed by the Society under section 61 of the 1954 Act (as substituted), in place, with a valid practising certificate.
- 5.93 The following wording is proposed in line with wording included in the Solicitors Professional Indemnity Insurance Regulations 2020 (S.I. 429 of 2020) for solicitors for the 2020/2021 indemnity period:
- “(a) Every firm must have a principal with a valid practising certificate or qualifying certificate in place in order to carry on a practice.*
 - (b) If a principal with a valid practising certificate or qualifying certificate is not in place, the firm must immediately cease practice until such time as a principal with a valid practising certificate or qualifying certificate is appointed.”*

Recommendation 47 – Prohibition on solicitors' firms providing legal services without a principal in place

It is the recommendation of the Society that solicitors' firms be prohibited from providing legal services, either reserved or unreserved, unless and until there is a solicitor principal in place or a practice manager appointed. The following wording is proposed:

- “(a) Every firm must have a principal with a valid practising certificate or qualifying certificate in place in order to carry on a practice.*
- (b) If a principal with a valid practising certificate or qualifying certificate is not in place, the firm must immediately cease practice until such time as a principal with a valid practising certificate or qualifying certificate is appointed.”*

5.94 The Society further recommends that a statutory definition of “*principal*” of a solicitors’ firm be put in place to ensure that solicitors’ practices do not provide legal services, either reserved or unreserved, without a principal being in place.

5.95 The following text is proposed:

“principal” means, with regard to a solicitor firm, :—

- (i) the sole practitioner of any solicitor firm which carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers; or*
- (ii) every partner of a firm being a solicitor or registered lawyer and every person held out as a partner of a firm that carries on or carried on business as a partnership.*

with all principals required to be solicitors qualified to practise.”

Recommendation 48 – Statutory definition of ‘principal’ of a solicitors’ firm

It is the recommendation of the Society that a statutory definition of ‘principal’ of a solicitors’ firm be put in place to ensure that solicitors’ practices do not provide legal services, either reserved or unreserved without a principal being in place.

“principal” means, with regard to a solicitor firm, :—

- (iii) the sole practitioner of any solicitor firm which carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers; or*
- (iv) every partner of a firm being a solicitor or registered lawyer and every person held out as a partner of a firm that carries on or carried on business as a partnership*

with all principals required to be solicitors qualified to practise.”

Sections 41(c) and 43 of the 1954 Act - Movement between the professions

5.96 Section 41(c) of the 1954 Act, as substituted by section 50 of the 1994 Act, provides for an exemption from the requirement to sit and pass the Society’s preliminary examination for persons who hold the degree of barrister-at-law from the Honorable Society of King’s Inns or other professional qualification prescribed as being equivalent thereto.

- 5.97 Section 217(1) of the 2015 Act allows the Authority to make regulations in relation to exemptions from admission requirements for solicitors seeking to become barristers and barristers seeking to be admitted as solicitors.
- 5.98 Section 217(2) of the 2015 Act allows the Authority to make exemptions for legal practitioners moving between the two professions from a course of training, sitting and passing an examination or serving a period of apprenticeship or pupillage.
- 5.99 The provisions of section 41(c) of the 1954 Act and section 217 of the 2015 Act could give rise to circumstances where two statutory provisions are in place over the same subject matter.
- 5.100 It is recommended that the provisions of section 41(c) of the 1954 Act (as substituted) are repealed at the time the regulations under section 217 of the 2015 Act are commenced in order to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

Recommendation 49 – Repealing section 41(c) of the 1954 Act

It is the recommendation of the Society that the provisions of section 41(c) of the 1954 Act, as substituted, are repealed at the time the regulations under section 217 of the 2015 Act are commenced to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

- 5.101 A similar observation may be made under section 43 of the 1954 Act, as substituted by section 51 of the 1994 Act, which allows the Society to provide for exemptions from certain admission requirements for barristers seeking to be admitted as solicitors by way of regulations.
- 5.102 As the Authority is empowered to commence regulations on the transfer between the two professions this provision should be repealed at a time when regulations under section 217 of the 2015 Act are commenced.

Recommendation 50 – Repealing section 43 of the 1954 Act

It is the recommendation of the Society that the provisions of section 43 of the 1954 Act, as substituted, are repealed at the time the regulations under section 217 of the 2015 Act are commenced to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

Section 15 of the 1960 Act - Powers, rights and privileges of the High Court in applications for removal from the Roll of Solicitors

- 5.103 Section 15 of the 1960 Act, as substituted by section 25 of the 1994 Act, as amended by sections 11, 22(1)(g) and 22(2)(d) of the 2002 Act, provides for powers, rights and privileges of the High Court to be vested in the Solicitors Disciplinary Tribunal for certain matters including where solicitors seek to make an application to have their name removed from the Roll of Solicitors.
- 5.104 As noted previously, section 187 of the 2015 Act replaces the Solicitors Disciplinary Tribunal for the Society as the appropriate body to make applications for removal from the Roll of Solicitors.
- 5.105 Accordingly, it is recommended that the reference to “...or the consideration by them of an application under section 9 of this Act...” should be deleted from this section and a new subsection (5) could be inserted to section 15 providing for those powers, rights and privileges of the High Court to be vested in the Society for the purposes of section 9. The new subsection (5) could be worded as follows:

“(5) For the avoidance of doubt, references to the Disciplinary Tribunal in this section shall be construed as including references to the Society where the Society considers an application made to it under section 9 of this Act.”

Recommendation 51 – Powers, rights and privileges of the High Court in applications for removal from the Roll of Solicitors

It is the recommendation of the Society that section 15 of the 1960 Act (as substituted and amended) be amended by inserting a new subsection (5) to provide for the powers, rights and privileges of the High Court to be vested in the Society for the purposes of applications for removal from the Roll of Solicitors. The new subsection could be worded as follows:

“(5) For the avoidance of doubt, references to the Disciplinary Tribunal in this section shall be construed as including references to the Society where the Society considers an application made to it under section 9 of this Act.”

Section 16 of the 1960 Act - Applications for removal from the Roll of Solicitors

- 5.106 Section 9 of the 1960 Act, as amended by section 187 of the 2015 Act, provides for solicitors who wish to voluntarily have their name removed from the Roll of Solicitors. Section 187 of the 2015 Act amends section 9 by substituting the Society as the appropriate body to make such applications for the Solicitors Disciplinary Tribunal.

- 5.107 Section 9(1) of the 1960 Act provides that all such applications shall be made in accordance with rules made under section 16 of the 1960 Act. However, no amendment has been made to section 16 of the 1960 Act to replace references to the Solicitors Disciplinary Tribunal with references to the Society.
- 5.108 It is recommended that an amendment be made to section 16 of the 1960 Act to replace any such references to the Solicitors Disciplinary Tribunal with references to the Society to give effect to the intentions of section 187 of the 2015 Act.

Recommendation 52 – Removal from the Roll of Solicitors

It is the recommendation of the Society that an amendment be made to section 16 of the 1960 Act to replace any references to the Solicitors Disciplinary Tribunal with references to the Society to facilitate applications for removal from the Roll of Solicitors.

Section 5 of the 2002 Act - Advertising of legal services

- 5.109 Section 5 of the 2002 Act, as amended by section 207 of the 2015 Act, prohibits a person who is not a solicitor from publishing or causing to be published an advertisement to provide a specified service, being a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward and which, if published, would not be in compliance with the rules regulating advertising by solicitors under section 71 of the 1954 Act, as amended.
- 5.110 Schedule 2 of the 2015 Act was commenced on 18 December 2020 and now section 207 of the 2015 Act substitutes a new provision which prohibits the publication of the said advertisements by a person who is not a solicitor where the publication would breach the Legal Services Regulation Act 2015 (Advertising) Regulations 2020 (S.I. 644 of 2020) made under section 218 of the 2015 Act.
- 5.111 Section 5, read in conjunction with the amendment made by section 207 of the 2015 Act, prohibits a person who is not a solicitor from engaging in the proscribed activity, rather than prohibiting an unqualified person from doing same.
- 5.112 Section 3 of the Solicitors (Amendment) Act 1994 defines a “*solicitor*” as a person who has been admitted to the profession and is on the Roll of Solicitors.
- 5.113 Section 54 of the Solicitors Act 1954 defines “*a solicitor qualified to practise*” as a person whose name is on the Roll of Solicitors, who is in possession of a practising certificate which is in force, who does not stand suspended from practice and who has not given an undertaking to the High Court that he will not practice.

- 5.114 Therefore, section 5 of the 2002 Act allows persons who are on the Roll of Solicitors but do not have a practising certificate, have been suspended from practice or have given an undertaking not to practice to advertise in this way.
- 5.115 The broader definition of an unqualified person would prohibit persons who do not hold a practising certificate from advertising in the proscribed manner.
- 5.116 As the advertising of legal services suggests that a solicitor is in a position to provide those legal services that can only be true of a solicitor where they are a qualified person.
- 5.117 The Society recommends that section 5(1) and (2) be amended to replace the reference to *“a person who is not a solicitor”* with the broader reference of *“an unqualified person.”*

Recommendation 53 – Extending the prohibition on advertising legal services

It is the recommendation of the Society that section 5 of the 2002 Act (as amended) be amended to replace the reference to *“a person who is not a solicitor”* with the broader reference of *“an unqualified person.”*

Section 128 of the 2015 Act - Publication of notice of suspension or revocation of an authorisation issued to a limited liability partnership

- 5.118 Section 128 of the 2015 Act provides for the power of the Authority to apply to the High Court for the enforcement of a direction issued by it to a limited liability partnership under section 127, for an order suspending an authorisation granted to a limited liability partnership and for an order revoking an authorisation issued to a limited liability partnership.
- 5.119 Section 128(8) makes reference to the publication by the Authority of an order made by the High Court under subsections (3) (an order directing the LLP to comply with a direction issued to it) and (4) (an order suspending the authorisation issued to the LLP). It would be unlikely the legislators intended for the Authority to publish every order issued by the High Court requiring a limited liability partnership to comply with a direction.
- 5.120 However, in keeping with the intention expressed by section 115(7) which provides for similar provisions relating to a multi-disciplinary practice, it would appear that the reference should be to subsections (4) and (5) of section 128 as these refer to orders of suspension and revocation of authorisation to operate as a limited liability partnership, respectively.
- 5.121 Section 128(8) should be amended accordingly to reflect this intention.

Recommendation 54 – Publication of notice of suspension or revocation of an authorisation to provide legal services as a limited liability partnership

It is the recommendation of the Society that section 128(8) of the 2015 Act is amended to refer to the publication by the Authority of the suspension of an authorisation under subsection (4) and revocation of an authorisation under subsection (5).

Section 62 of the 1954 Act - Fee sharing provisions

- 5.122 Under section 62 of the 1954 Act there is a prohibition on solicitors sharing fees with non-solicitors and rewarding non-solicitors for the introduction of business. The objective of the prohibition on the sharing of fee income is to ensure the proper, independent practice of the legal profession, free from undue influence.
- 5.123 Under Part 8 of the 2015 Act, solicitors will be permitted to enter into legal partnerships with barristers but under section 62 of the 1954 Act they would not be permitted to share fees with a barrister partner or partners.
- 5.124 Accordingly, an amendment to section 62 is suggested to permit the sharing of fees between solicitors and unqualified persons who are partners in legal partnerships with solicitors, to ensure that legal partnerships can function as intended under the 2015 Act.

Recommendation 55 – Fee sharing provisions

It is the recommendation of the Society that appropriate amendments be made to section 62 of the 1954 Act to provide for the sharing of fees between solicitors and non-solicitors, where non-solicitors are partners in legal partnerships with a solicitor, to allow the correct functioning of legal partnerships as intended under the 2015 Act.

Bring clarity to the issue of legal fees lawfully earned

- 5.125 The definitions of “*criminal conduct*” and “*proceeds of criminal conduct*” under current legislation are potentially broad enough to encompass fees paid by clients to their solicitors, even though the fees have been lawfully earned by those solicitors in representing their clients.
- 5.126 The issue has been dealt with in England and Wales by the concept of “*adequate consideration*” so that no offence is committed where a solicitor receives fees that are regarded as “*adequate consideration*” for work done.

- 5.127 This defence ensures the protection of legal fees lawfully earned and this, in turn, ensures that all clients can access legal advice and legal representation. The defence enables solicitors to lawfully provide legal services to individuals and receive payment from funds notwithstanding that, on one view, they may represent the proceeds of criminal conduct.
- 5.128 The Society proposes that a similar defence of “*adequate consideration*” should be provided for Irish solicitors who receive fees from clients who may have been engaged in criminal conduct.

Recommendation 56 – Legal fees lawfully earned

It is the recommendation of the Society that a statutory defence of “*adequate consideration*” should be provided in respect of legal fees lawfully earned by solicitors in representing clients.

6. Complaints, Disciplinary and Court matters

Section 43(1) of the 2015 Act - Preparation of a report by an inspector for the purposes of investigating a complaint made to the Authority

- 6.1 Section 43 of the 2015 Act provides for the preparation of a report by an inspector appointed under the Act after they have carried out an inspection. However, section 43(1) only requires an inspector to prepare and furnish a report to the Authority for the purposes of section 38(b) and (c) of the 2015 Act.
- 6.2 In circumstances where an inspector is appointed under section 38(a) of the 2015 Act for the purposes of investigating a complaint made to the Authority, there is no corresponding requirement for the inspector to prepare and furnish a report to the Authority.
- 6.3 Section 44 demonstrates that the ultimate benefit of an inspector's report is that it may be made available, as evidence, to the body that is investigating the matter in any proceedings under the Solicitors Acts 1954 to 2015.
- 6.4 In the absence of a report being prepared by an inspector and being of assistance in the proceedings against the legal practitioner, it is not entirely clear what the end use of the inspection is in these circumstances and how the information uncovered by the inspector in the course of his inspection is to be transmitted to the prosecuting body.
- 6.5 The Society recommends that section 43(1) is amended to require the preparation of a report by an inspector for the purposes of section 44 of the 2015 Act.

Recommendation 57 – Preparation of a report by an inspector on foot of a complaint made to the Authority

It is the recommendation of the Society that section 43(1) of the 2015 Act is amended to insert the requirement for the preparation of a report by an inspector for the purposes of section 44.

Section 52(2) of the 2015 Act - Referral of complaints against solicitors by the registrar

- 6.6 Section 14C of the 1994 Act, as inserted by section 42 of the Civil Law (Miscellaneous Provisions) Act 2008, provides for the circumstances where the registrar may make a complaint to the Society in relation to the contravention of the Solicitors Acts or any regulation thereunder or any conduct by the solicitor tending to bring the solicitors' profession into disrepute.

- 6.7 Section 52(2) of the 2015 Act requires the Society to refer any complaints made by clients of solicitors or persons acting on behalf of such a client to the Authority. These complaints may be in relation to an act or omission to which section 51 relates, for inadequate professional services or excessive fees, or to which section 52 relates for misconduct.
- 6.8 While it is not mentioned in the 2015 Act, it would be in the spirit of the complaints system established under Part 6 to have any complaint by the registrar referred to the Authority.
- 6.9 It is recommended that an amendment to section 52(2) of the 2015 Act to insert a further provision for the referral of complaints to the Authority by the registrar under section 14C of the 1994 Act.

Recommendation 58 – Referral of complaints against solicitors by the registrar

It is the recommendation of the Society that section 52(2) of the 2015 Act is amended to insert a further provision for the referral of complaints to the Authority by the registrar under section 14C of the 1994 Act.

Section 68 of the 2015 Act - Clarification for section 68 of the 2015 Act

- 6.10 Section 68 of the 2015 Act provides for the referral to the Complaints Committee of complaints made to the Authority under section 51(2) where the client and the legal practitioner do not succeed in resolving a matter in accordance with section 64 of the 2015 Act.
- 6.11 Under section 64, the Authority may invite the client and the legal practitioner to make efforts to resolve a complaint which, if it were substantiated, would constitute misconduct within the meaning of section 50(1)(b) (related to the provision of legal services which were, to a substantial degree, of an inadequate standard.)
- 6.12 Section 68, therefore, clarifies that, where the parties do not succeed in resolving the complaint, it may be referred to the Complaints Committee for investigation by it.
- 6.13 However, the hierarchy of the complaints handling system under Part 6 requires that all misconduct complaints are to be initially referred to the Complaints Committee with the possibility that some may be subsequently referred to the Legal Practitioners Disciplinary Tribunal.
- 6.14 Section 68, however, is not clear in expressing this legislative intention. Its wording suggests that the specific misconduct complaint under section 50(1)(b), which is the subject of an attempt at resolution between the client and the legal practitioner under section 64, is the only type of misconduct complaint to be referred to the Complaints Committee by the Authority.

- 6.15 An alternative wording is recommended which may clarify that all misconduct complaints, including those which have not been successfully resolved pursuant to section 64, are to be referred by the Authority to the Complaints Committee:

“The Authority shall refer a complaint under section 51(2) to the Complaints Committee and, where applicable, a complaint under section 51(2) where the client and the legal practitioner concerned do not succeed in resolving the matter in accordance with section 64 of this Act.”

Recommendation 59 – Clarification for section 68 of the 2015 Act

It is the recommendation of the Society that section 68 of the 2015 Act is amended to make the intentions of that section clear which could be worded as follows:

“The Authority shall refer a complaint under section 51(2) to the Complaints Committee and, where applicable, a complaint under section 51(2) where the client and the legal practitioner concerned do not succeed in resolving the matter in accordance with section 64 of this Act.”

Section 71(9) of the 2015 Act - Financial sanctions by Divisional Committee not to cause undue hardship to legal practitioners

- 6.16 Section 71 of the 2015 Act provides for the power of the Divisional Committee investigating misconduct complaints against legal practitioners to impose sanctions on legal practitioners.
- 6.17 Section 71(9) provides that, in issuing a direction specified in section 71(5)(c)(ii) (g), (h) or (i), the Divisional Committee shall have regard to the means of the legal practitioner concerned.
- 6.18 The provisions mentioned relate to sanctions of a financial nature which may be imposed on a legal practitioner and the intention appears to be that such financial sanctions should not operate in an onerous manner having regard to the financial means of the legal practitioner.
- 6.19 A similar provision should also be made in relation to the first sanction which may be imposed under section 71(5)(c)(i), which provides that the legal practitioner waive all or part of the fees payable by the complainant, in circumstances where this sanction also has a financial aspect to it.

Recommendation 60 – Financial sanctions by Divisional Committee not to cause undue hardship on legal practitioners

It is the recommendation of the Society that section 71(9) of the 2015 Act is amended to provide for sanctions of a financial nature issued under section 71(5)(c)(i) to have regard to the means of the legal practitioner concerned.

Section 79(2)(b) - Regulations relating to the Legal Practitioners Disciplinary Tribunal

- 6.20 Section 79(2)(b) of the 2015 Act provides that the Legal Practitioners Disciplinary Tribunal may make regulations providing for the parties, other than the Authority, the complainant and the legal practitioner concerned, who may make submissions to the Legal Practitioners Disciplinary Tribunal.
- 6.21 Reference should also be made to the Society in this subsection insofar as the Society is a party that may automatically, and in the absence of any regulations providing therefor, make submissions to the Legal Practitioners Disciplinary Tribunal.
- 6.22 This is because, pursuant to section 77(b) of the 2015 Act, the Society is permitted to make an application to the Legal Practitioners Disciplinary Tribunal under section (6) or (7)(c) of section 14A of the 1994 Act.

Recommendation 61 – Regulations relating to the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment should be made to section 79(2)(b) of the 2015 Act to make reference to the Society as one of the parties who may make submissions to the Legal Practitioners Disciplinary Tribunal.

Section 94 of the 2015 Act – Clarification of powers of the Authority

- 6.23 Section 94 of the 2015 Act provides that the Authority, in the performance of its functions under Part 6 in relation to a complaint made in respect of a solicitor, may exercise any power conferred on the Society under the Solicitors Acts 1954 to 2015.
- 6.24 The Society considers the provisions of this section to be wide and could be interpreted in a manner that allows the Authority to override the powers of the Society in a manner that is not intended by the legislators.

- 6.25 The Society suggests that this section is narrowed to give purpose to the clear legislative intention for the Authority to exercise any power of the Society but only in relation to the complaints and disciplinary functions under Part 6 of the 2015 Act.

Recommendation 62 – Clarification of powers of the Authority

It is the recommendation of the Society that the powers made available to the Authority under section 94 of the 2015 Act are revised to ensure that the Authority may only exercise such powers conferred on the Society under the Solicitors Acts 1954 to 2015 in relation to the complaints and disciplinary functions under Part 6 of the 2015 Act.

Section 7(3) of the 1960 Act - Recommendation of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by Legal Practitioners Disciplinary Tribunal

- 6.26 Section 7(3)(c)(iv)(II) of the 1960 Act, as substituted by section 17 of the 1994 Act, as amended by section 9(a) of the 2002 Act, empowers the Solicitors Disciplinary Tribunal to make recommendations to the High Court as to the sanction which, in their opinion, should be imposed, having regard to their findings and to any previous findings made by them and not rescinded by the Court and to any other order made by the Court under the Solicitors Acts in respect of a solicitor.
- 6.27 This section should be amended to allow the Solicitors Disciplinary Tribunal to advise the High Court of any order made by the Legal Practitioners Disciplinary Tribunal also. This would ensure that the recommendation of the Solicitors Disciplinary Tribunal takes into account the entire disciplinary history of the solicitor and is not limited to findings of misconduct made only by that body.

Recommendation 63 – Solicitors Disciplinary Tribunal recommendation to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 7(3)(c)(iv)(II) of the 1960 Act (as substituted and amended) to allow a recommendation of the Solicitors Disciplinary Tribunal to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal.

Section 7(9) of the 1960 Act - Order of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by Legal Practitioners Disciplinary Tribunal

- 6.28 Section 7(9)(d) of the 1960 Act, as substituted by section 17 of the 1994 Act, as amended by section 9 of the 2002 Act, provides for the Solicitors Disciplinary Tribunal, when making an order, to take into account any previous findings of misconduct on the part of the solicitor previously made by them and not rescinded by the Court, and of any order made by the Court under the Solicitors Acts in respect of the solicitor.
- 6.29 This section could be similarly amended to provide for the Solicitors Disciplinary Tribunal to have regard to any findings made by the Legal Practitioners Disciplinary Tribunal when making an order. This would ensure the Solicitors Disciplinary Tribunal could take into account the entire disciplinary history of the solicitor and is not limited to findings of misconduct made only by that body.

Recommendation 64 – Order of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 7(9)(d) of the 1960 Act (as substituted and amended) to allow the Solicitors Disciplinary Tribunal, when making an order, to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal.

Section 8(1) of the 1960 Act - High Court to take into account findings of misconduct by both Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when censuring a solicitor

- 6.30 Section 8(1)(a)(i)(V) of the 1960 Act, as substituted by section 18 of the 1994 Act, as amended by section 10(a) of the 2002 Act, provides power to the High Court to censure a solicitor and require payment of a money penalty. When making such an order, the High Court may take into account any previous findings of misconduct made by the Solicitors Disciplinary Tribunal and not rescinded by the Court, and any order made by the Court under the Solicitors Acts in respect of the solicitor.
- 6.31 This section should be amended to allow the High Court to also have regard to any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court to ensure the Court is cognisant of the entire disciplinary history of the solicitor and is not limited to findings of misconduct made only by the Solicitors Disciplinary Tribunal.

Recommendation 65 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when censuring a solicitor

It is the recommendation of the Society that section 8(1)(a)(i)(V) of the 1960 Act (as substituted and amended), be further amended to allow the High Court, when making an order under that section, to have regard to findings of misconduct by both the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court and any other order made by the Court under the Solicitors Acts in respect of the solicitor.

- 6.32 Similarly, section 8(1)(c)(viii) of the 1960 Act, as substituted by section 18 of the 1994 Act, as amended by section 10(b) of the 2002 Act, provides for a number of ancillary orders which may be made by the High Court where a report is brought before it by the Solicitors Disciplinary Tribunal and in so doing it may consider any previous findings of misconduct made by the Solicitors Disciplinary Tribunal and not rescinded by the Court, and of any order made by the Court under the Solicitors Acts in respect of the solicitor.
- 6.33 It is recommended that an amendment is made to allow the High Court to consider both the findings of the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court to ensure the Court may consider the entire disciplinary history of a solicitor and is not limited to the findings of one body.

Recommendation 66 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when making ancillary orders

It is the recommendation of the Society that section 8(1)(c)(viii) of the 1960 Act (as substituted and amended) be further amended to allow the High Court, when making an order under that section, to have regard to findings of misconduct by both the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court and any other order made by the Court under the Solicitors Acts in respect of the solicitor.

Section 8(1A) of the 1960 Act - Submissions made by the Society when bringing the recommendations of the Solicitors Disciplinary Tribunal to the High Court

- 6.34 Section 8(1A)(b) of the 1960 Act, as inserted by section 18 of the 1994 Act, as amended by section 10 of the 2002 Act, as amended by section 37(b) of the 2008 Act, provides for the Society to make submissions to the High Court in relation to the recommendations of the Solicitors Disciplinary Tribunal including any previous findings of misconduct made by the Solicitors Disciplinary Tribunal and not rescinded by the Court, and of any order made by the Court under the Solicitors Acts in respect of the solicitor.
- 6.35 It is recommended that an amendment is made to allow those submissions by the Society to the High Court to include any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court to ensure the Court may consider the entire disciplinary history of a solicitor and is not limited to the findings of one body.

Recommendation 67 – Submissions made by the Society to take into account findings of misconduct by the Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 8(1A)(b) of the 1960 Act (as substituted and amended) to provide for submissions made by the Society to the High Court in relation to the recommendations of the Solicitors Disciplinary Tribunal to include any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court.

Section 17(1) of the 1960 Act - Filing of High Court and Legal Practitioners Disciplinary Tribunal orders

- 6.36 Section 17(1)(c) of the 1960 Act, as inserted by section 190(a)(3) of the 2015 Acts suggests that the Solicitors Disciplinary Tribunal should file a copy of all orders made by the High Court and the Legal Practitioners Disciplinary Tribunal with the registrar.
- 6.37 This should more properly state that the filing of such orders with the registrar should be by the Legal Practitioners Disciplinary Tribunal as it will be the body which will have competence over these orders.
- 6.38 Additionally, it may be said that a requirement that the Legal Practitioners Disciplinary Tribunal file copies with the registrar reflects the intent expressed in section 88 of the 2015 Act, which provides that *“every decision or order made by the High Court under section 84 or 85 and determination made by the Legal Practitioners Disciplinary Tribunal under sections 81 and 82 shall be furnished to the registrar of solicitors in the case of an order relating to a practising solicitor...”*

- 6.39 Rather than commencing section 190(a)(3), a new subsection 1A could be inserted into section 17(1) of the 1960 Act which may provide as follows:

“1A. – A copy of any decision or order made by the High Court and any determination made by the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 in relation to a complaint under that Part in respect of a solicitor shall be filed by the Legal Practitioners Disciplinary Tribunal with the registrar.”

Recommendation 68 – Filing of High Court and Legal Practitioners Disciplinary Tribunal orders

It is the recommendation of the Society that section 190(a)(3) of the 2015 Act is not commenced and that a new subsection 1A is inserted into section 17(1) of the 1960 Act which could be worded as follows:

“1A. – A copy of any decision or order made by the High Court and any determination made by the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 in relation to a complaint under that Part in respect of a solicitor shall be filed by the Legal Practitioners Disciplinary Tribunal with the registrar.”

Section 19(6) of the 2002 Act – Reference to disciplinary tribunal

- 6.40 Section 19 of the 2002 Act, as amended by section 208 of the 2015 Act, provides for the power of the Society to make an application to the Solicitors Disciplinary Tribunal for the holding of an inquiry into alleged misconduct by an apprentice solicitor.
- 6.41 Section 208 of the 2015 Act has amended section 19 so that such applications will now be made to the Legal Practitioners Disciplinary Tribunal. It further provides that each reference to the Solicitors Disciplinary Tribunal is to be replaced with a reference to the Legal Practitioners Disciplinary Tribunal.
- 6.42 However, a straight substitution in this way will not make sense in section 19(6). With the amendment effected by section 208, section 19(6) provides that:
- “The Legal Practitioners Disciplinary Tribunal shall have such of the powers given to **them** under the Solicitors Acts 1954 – 2002, as are necessary to enable them to perform the functions conferred on them by this section.”*
- 6.43 However, no powers are given to the Legal Practitioners Disciplinary Tribunal under the Solicitors Acts. Those powers are given to the Solicitors Disciplinary Tribunal.
- 6.44 Therefore, an amendment to section 19(6) is required in order to replace the word “them” with “the Disciplinary Tribunal”.

Recommendation 69 – Reference to Disciplinary Tribunal

It is the recommendation of the Society that section 19(6) of the 2002 Act (as amended) be amended to replace the word “*them*” with “*the Disciplinary Tribunal*” to give full effect to the intentions of section 208 of the 2015 Act.

Section 19 of the 2002 Act - Referral to the Society of alleged misconduct by an apprentice solicitor

- 6.45 Section 19A(2) of the 2002 Act, as inserted by section 46(1) of the Civil Law (Miscellaneous Provisions) Act 2008, provides for the power of the Society to investigate allegations of misconduct by an apprentice solicitor whether or not the Society has received a complaint in relation to that apprentice.
- 6.46 When Part 6 of the 2015 Act is commenced, the Authority will deal with the majority of complaints against solicitors. However, the Society retains the power to investigate complaints regarding allegations of misconduct against apprentice solicitors as the Authority’s remit will only permit the investigation of complaints against qualified solicitors.
- 6.47 When Part 6 is commenced, it may be unclear to a person making a complaint against an apprentice solicitor where they should address that complaint. Rather than being addressed to the Society, complaints may be incorrectly addressed to the Authority.
- 6.48 A section making provision for the referral by the Authority to the Society of any complaints of alleged misconduct received by it against an apprentice solicitor should be inserted into the 2015 Act to ensure that there is a statutory route for the transfer of these complaints to the correct body.
- 6.49 This proposed provision could be drafted in similar, but inverse, terms to section 52 (2) of the 2015 Act, which provides that the Society shall refer to the Authority a complaint that is made to it by a client, or person acting on behalf of such client, of a solicitor.

Recommendation 70 – Referral to the Society of alleged misconduct by an apprentice solicitor

It is the recommendation of the Society that provisions be made for the Authority to refer to the Society any complaints made to it of alleged misconduct by an apprentice solicitor.

Section 79(4) of the 2015 Act - Determination of an application to the Legal Practitioners Disciplinary Tribunal on the basis of affidavits and supporting documentation

- 6.50 Section 79(4) provides that the Legal Practitioners Disciplinary Tribunal may consider and determine an application made to it on the basis of affidavits and supporting documentation where the legal practitioner and the Authority consent.
- 6.51 Reference should also be made to the Society in section 79(4) in circumstances where the Society, as a party to an application to the Legal Practitioners Disciplinary Tribunal, is a party that may also consent, or not, to the determination of an application in this way.

Recommendation 71 – Determination of applications to the Legal Practitioners Disciplinary Tribunal on the basis of affidavits and supporting documentation

It is the recommendation of the Society that an amendment be made to section 79(4) of the 2015 Act to make reference to the Society as a party who may also consent, or not, to an application being determined on the basis of affidavits and supporting documentation.

Section 81 of the 2015 Act - Inquiry and determinations by the Legal Practitioners Disciplinary Tribunal

- 6.52 Section 81 of the 2015 Act provides for the holding of an inquiry by the Legal Practitioners Disciplinary Tribunal, by way of oral hearing, in respect of applications made to it under section 77 of the Act.
- 6.53 Following the inquiry, the Legal Practitioners Disciplinary Tribunal may, pursuant to subsection (8), make a determination as to whether the act or omission constitutes misconduct and, further, make a determination as to whether it should impose a sanction on the legal practitioner pursuant to section 82(1) or whether the issue of a sanction should be referred to the High Court pursuant to section 82(2).
- 6.54 Subsequent provisions, which follow section 81, make reference to determinations made “*pursuant to the holding of an inquiry under section 81*” by the Legal Practitioners Disciplinary Tribunal or “*a determination under section 81.*”
- 6.55 However, section 79(4) allows the Legal Practitioners Disciplinary Tribunal to consider and determine an application on the basis of affidavits and other supporting documentation, where the relevant parties consent.

- 6.56 As such, there are two ways in which the Legal Practitioners Disciplinary Tribunal may reach a determination: it may determine the matter based on written evidence as permitted by section 79(4) but it may also determine the matter based on the holding of an oral inquiry for which provision is made in section 81.
- 6.57 Presumably it is intended to be the case that all references to the determination of applications by the Legal Practitioners Disciplinary Tribunal are meant to include those determinations which are made based on written evidence under section 79(4) and those based on oral evidence under section 81.
- 6.58 However, this is not clear from the drafting which, in fact, suggests that the only determination to which reference is made in later provisions of the Act is the determination made by the Legal Practitioners Disciplinary Tribunal, following an inquiry by way of oral hearing, under section 81.
- 6.59 For the purposes of removing doubt and to clarify the position, it is suggested that a subsection be inserted into section 79 to clarify the fact that determinations, whether they are made on the basis of written evidence under section 79(4) or oral evidence under section 81, constitute determinations of the Legal Practitioners Disciplinary Tribunal for the purposes of Part 6.
- 6.60 The following wording is suggested:

“For the avoidance of doubt, a reference to a determination made by the Disciplinary Tribunal pursuant to section 79(4) of this Act, or to the holding of an inquiry pursuant to section 81 of this Act, shall be construed as a reference to a determination made pursuant to that section, whether that determination has been made by the Disciplinary Tribunal following the holding of an oral inquiry pursuant to section 81 or the consideration of an application pursuant to section 79(4).”

Recommendation 72 – Determinations by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that a clarifying subsection be inserted into section 79 of the 2015 Act to clarify that determinations, whether they are made on the basis of affidavits and other supporting documentation or by way of oral evidence, constitute determinations for the purposes of Part 6 of the Act which could be worded as follows:

“For the avoidance of doubt, a reference to a determination made by the Disciplinary Tribunal pursuant to section 79(4) of this Act, or to the holding of an inquiry pursuant to section 81 of this Act, shall be construed as a reference to a determination made pursuant to that section, whether that determination has been made by the Disciplinary Tribunal following the holding of an oral inquiry pursuant to section 81 or the consideration of an application pursuant to section 79(4).”

Section 82 of the 2015 Act - Direction by the Legal Practitioners Disciplinary Tribunal to impose specified conditions on a practising certificate

- 6.61 Section 82 of the 2015 Act provides for the sanctions which may be imposed on a legal practitioner following the holding of an inquiry under section 81.
- 6.62 Section 82(1)(k) provides that the Legal Practitioners Disciplinary Tribunal may direct that a specified condition be imposed on a practising solicitor's practising certificate.
- 6.63 In circumstances where the regulation of practising certificates is an area of competence retained by the Society, section 82(1)(k) might more properly refer to a direction to the Society to impose the specified condition on the solicitor's practising certificate.
- 6.64 Accordingly, section 82(1)(k) should be amended to include such a direction to the Society in the following terms:

"(k) where the legal practitioner is a solicitor, a direction to the Society that a specified condition be imposed on his or her practising certificate."

Recommendation 73 – Direction to the Society to impose a specified condition on a solicitor's practising certificate

It is the recommendation of the Society that an amendment is made to section 82(1)(k) of the 2015 Act clarifying that a direction by the Legal Practitioners Disciplinary Tribunal to impose a specified condition on a solicitor's practising certificate should be made to the Society which could be worded as follows:

"(k) where the legal practitioner is a solicitor, a direction to the Society that a specified condition be imposed on his or her practising certificate."

Use of stenographers by disciplinary tribunals

- 6.65 Any new disciplinary matters against legal practitioners will now be heard by the Legal Practitioners Disciplinary Tribunal. The Solicitors Disciplinary Tribunal will continue to hear matters until that body has been wound up.
- 6.66 The Solicitors Disciplinary Tribunal is required under primary legislation to use stenographers for every case as the Tribunal is compelled by law to produce a transcript of every proceeding.
- 6.67 It is the view of the Society that this requirement is an unnecessary expense, especially given that few transcripts are ever called for or used.

- 6.68 The Society proposes that when the Legal Practitioners Disciplinary Tribunal commences hearing disciplinary matters, that digital recording is used rather than the continued use of stenographers. Transcripts could be produced on request and any party calling for the transcript would be required to pay for it.

Recommendation 74 – Use of digital recording in Disciplinary Tribunals

It is the recommendation of the Society that the Legal Practitioners Disciplinary Tribunal should use digital recording, transcripts should only be produced on request and the party calling for the transcript should be required to pay for same.

Section 87 of the 2015 Act - Right of making an appeal to the Court of Appeal by the Society

- 6.69 Section 87 of the 2015 Act provides for a right of appeal by the Authority or the legal practitioner concerned to the Court of Appeal from an order of the High Court.
- 6.70 However, section 87 should also make reference to the Society in circumstances where the Society may equally be a party to applications before the Legal Practitioners Disciplinary Tribunal that result in orders made by the High Court.

Recommendation 75 – Right of the Society to appeal to the Court of Appeal

It is the recommendation of the Society that section 87 of the 2015 Act is amended to make reference to the Society in circumstances where the Society may equally be a party to applications before the Legal Practitioners Disciplinary Tribunal that result in orders made by the High Court.

Section 90 of the 2015 Act - Right of the Society to make enforcement applications to the High Court

- 6.71 Section 90 of the 2015 Act provides for the power of the Authority to make an enforcement application to the High Court in respect of the following matters listed in subsection (4):
- a) *“a direction of the Authority under section 60(6) or 61(6);*
 - b) *a determination of a Review Committee under section 62(5);*
 - c) *a direction of a Divisional Committee under section 71(1)(a); or*

d) an order of the Disciplinary Tribunal under section 82(1)."

- 6.72 In circumstances where the Society may also bring applications in respect of solicitors before the Legal Practitioners Disciplinary Tribunal, there may be orders made by the Legal Practitioners Disciplinary Tribunal pursuant to section 82(1) in respect of such applications which may not be complied with.
- 6.73 In those circumstances, the Society may wish to seek enforcement of the order of the Legal Practitioners Disciplinary Tribunal in accordance with section 90(4)(d).
- 6.74 It is recommended that the Society be included in section 90 as a party who may bring an enforcement application in respect of orders of the Legal Practitioners Disciplinary Tribunal.

Recommendation 76 – Enforcement applications to the High Court by the Society

It is the recommendation of the Society that section 90 of the 2015 Act be amended to include the Society as a party who may bring an enforcement application in respect of orders made by the Legal Practitioners Disciplinary Tribunal.

Section 115(1)(a) of the 2015 Act - Absence of statutory power for High Court to grant an order

- 6.75 Pursuant to section 115(1)(a) of the 2015 Act, the Authority may make an enforcement application to the High Court in respect of a direction issued to a multi-disciplinary practice or managing legal practitioner pursuant to section 114.
- 6.76 Applications may also be brought to the High Court in respect of the matters specified in paragraphs 115(1) (b) and (c), which relate to the suspension of the provision of legal services by a multi-disciplinary practice and the cessation of the provision of legal services by a multi-disciplinary practice, respectively.
- 6.77 While subsections (3) and (4) make provision for the power of the High Court to make the orders sought under paragraphs (b) and (c), no provision exists to provide for the power of the High Court to make the order sought in paragraph (a).
- 6.78 As such, while the Authority can make the application under paragraph (a), there is no corresponding statutory power provided to the High Court to grant, or to decline to grant, the order sought.
- 6.79 This may be compared with section 128 of the 2015 Act which sets out equivalent provisions in respect of limited liability partnerships.

- 6.80 It may be seen that under section 128(1)(a), the Authority may apply to the High Court for an order directing the LLP to comply with a direction issued to it. Section 128(3) then provides that the High Court is empowered to make the order sought or to decline to do so and set aside the direction issued by the Authority.
- 6.81 Accordingly, section 115 should be amended in order to provide a statutory basis for the High Court to grant, or decline to grant, the order sought and set aside the determination of the Authority.

Recommendation 77 – Statutory power for the High Court to grant an order under section 115(1)(a) of the 2015 Act

It is the recommendation of the Society that section 115 of the 2015 Act be amended to provide for a statutory power to the High Court to grant, or to decline to grant, an order under section 115(1)(a).

Section 115(6) of the 2015 Act - Parties in an appeal

- 6.82 Section 115(6) of the 2015 Act provides a right of appeal to the Court of Appeal against an order of the High Court made under section 115. This right is said to apply to both the Authority and the legal practitioner.
- 6.83 It would be more appropriate to refer to the Authority and the multi-disciplinary practice and / or the managing legal practitioner, rather than the legal practitioner.
- 6.84 As such, section 115(6) should be amended to reflect the correct parties.

Recommendation 78 – Section 115(6) of the 2015 Act should refer to the correct parties in an appeal

It is the recommendation of the Society that section 115(6) of the 2015 Act should refer to the right of appeal to the Court of Appeal against an order made under section 115 by the Authority, the multi-disciplinary practice and / or the managing legal practitioner.

Evidence of criminal convictions for legal practitioners

- 6.85 The Society has experienced difficulties with the Courts Service when seeking evidence of conviction for solicitors convicted of criminal offences. Where a solicitor has been convicted of a criminal offence, the Society currently has no statutory right to call for written evidence of criminal conviction, including certificate of conviction and Court transcripts, in order to take disciplinary action against that solicitor.
- 6.86 Some Courts have agreed to provide such information given the Society's role as statutory regulator and despite lack of a statutory right to such information. Other Courts have refused to do so due to data protection concerns and claims that information about the criminal conviction of an individual is sensitive information to which even a statutory regulator is not entitled.
- 6.87 It is in the best interests of both the public and the profession that both the Society and the Authority have a statutory right to evidence of criminal convictions in order to take the necessary action against such legal practitioners.

Recommendation 79 – Evidence of criminal conviction

It is the recommendation of the Society that both the Society and the Authority be given the statutory right to call for written evidence of criminal conviction of a solicitor or in the case of the Authority, a legal practitioner.

Appendix Three

Private and confidential

Dr Brian Doherty
Legal Services Regulatory Authority
PO Box 12906
Dublin 7



1 February 2022

Re: Submission from the Law Society of Ireland

Dear Brian,

Further to our communications in this matter, I set out below a submission from the Law Society of Ireland ("the Society") for your consideration.

Introduction

- 1.1 The purpose of this submission from the Society is to advance a proposal for legislative amendment to be considered in the context of the LSRA's general ongoing statutory duty to review and make recommendations in relation to the operation of the Legal Services Regulation Act 2015 ("the 2015 Act") and the Solicitors Acts 1954 to 2015.
- 1.2 Whereas the genesis of this submission is the experience of members of the solicitors' profession as to the operation of a particular element of the 2015 Act, the issues raised are also relevant to the operational challenges being experienced by the LSRA, which in turn inhibit it in the performance of its regulatory functions in accordance with its regulatory objectives..
- 1.3 This submission relates to the legislative provisions regarding the admissibility of complaints to the LSRA. In short, it is the Society's submission that the absence of a forensic filtration process for complaints ab initio, has the operational effect of placing on LSRA complaints executive staff the unnecessary administrative burden of processing and engaging with both the legal practitioner and complainant on complaints that are manifestly frivolous, vexatious, or without substance or foundation. Adherence to the strict legislative requirements regarding the exchange of correspondence before an admissibility decision can be reached, has the consequence of delaying the processing of meritorious complaints. From the perspective of a legal practitioner who is required to respond in writing to a manifestly inadmissible complaint, it is difficult to view this process as serving any public good or regulatory objective. Furthermore, for the reasons as set out hereunder, the legislative provisions as they currently stand facilitate the making of complaints that serve to undermine the administration of justice.

Who can make complaints against legal practitioners?

- 2.1 Section 51 of the 2015 Act provides for the making of complaints in relation to legal practitioners by different categories of person.

- Section 51(1) of the Act provides for the making of complaints in respect of the adequacy of legal services provided and the amount of costs sought by the legal practitioner for the provision of legal services. These types of complaints can only be made by clients of the solicitor or a person acting on behalf of the client.
- Section 51(2) of the Act provides that 'any person' may make a complaint in respect of a legal practitioner 'where the person considers that the act or omission of the person constitutes misconduct'. It is not necessary for the complainant to be a client, nor is it necessary for them to establish any legal relationship or nexus with the legal practitioner. It is also not necessary to link the alleged misconduct with the provision of legal services.
- An officer of the LSRA may make a misconduct complaint pursuant to section 51(4) of the Act
- The Society may make a complaint of misconduct when it forms a specified opinion pursuant to section 51(5) of the Act.

2.2 The Society acknowledges that there are circumstances in which it is appropriate for non-clients to make complaints of misconduct, and not simply officers of the LSRA or the Society as provided for specifically as set out above. The Society also acknowledges by reference to the definition of 'misconduct' in section 50 of the 2015 Act that misconduct on the part of a legal practitioner is not limited to acts or omissions conducted in the course of business as a legal practitioner. However, the very broad category of complainant provided for in section 51(2) of the Act facilitates the making of complaints of a frivolous or vexatious nature against legal practitioners by any person who has no legitimate basis for making the complaint or where there is no nexus between the complainant and the alleged conduct on the part of the legal practitioner. In recognition of this, the Act provides for an admissibility stage in the complaints process where unmeritorious complaints can be weeded out. It is the Society's submission, however, that the legislative provisions underpinning that admissibility stage are inadequate and should be amended to facilitate a more expeditious disposal of inadmissible complaints.

Admissibility Provisions

- 3.1 Sections 57 and 58 of the 2015 Act set out the procedure and criteria to be applied from the receipt of a complaint by the LSRA and the conclusion of the admissibility stage. Upon receipt of a complaint, section 57(2) of the Act requires the LSRA to notify the legal practitioner concerned of the complaint, requesting that they respond with their observations on the complaint within a specified timeframe. The LSRA officer has no discretion to deem a complaint that is manifestly frivolous, vexatious, without merit or substance inadmissible at this stage. The officer is required to send to the legal practitioner all documentation relating to the complaint that is submitted by the complainant and may request further information in respect of the complaint from either party.
- 3.2 In respect of a legitimate complaint, the process as outlined above fully accords with basic fair procedures. It is open and transparent, allowing the legal practitioner to be fully aware of the issues that are being raised and the evidence upon which the complaint against them is grounded.
- 3.3 In respect of a frivolous or vexatious complaint, however, the implication of section 57(2) is that the legal practitioner is being requested, and, in reality, required to respond in writing to a complaint that may serve a private agenda, but does not serve any legitimate private or public interest. Furthermore, it is not uncommon for such complaints to be accompanied by extensive documentation, making what is actually being alleged very difficult to discern. Experience has shown that not only are some

of these complaints ill-founded, but their manner and tone can be highly inflammatory, amounting to personalised attacks on the legal practitioner themselves or on the legal profession in general. On occasion, the complaint is aimed at getting behind solicitor-client confidentiality and is, in effect, an attack on the administration of justice.

- 3.4 Not only does the requirement to respond to these types of complaint place a personal burden on the legal practitioner, it also places an undue burden on the LSRA complaints system, setting in train an exchange of correspondence that can be both difficult and time-consuming to manage to the point at which a formal admissibility determination can be made. The processing of complaints that are manifestly inadmissible ab initio serves no public interest and delays the processing of legitimate complaints.
- 3.5 The Society is taking no issue with the manner in which the LSRA's complaints section executives are performing their statutory functions. The Society also acknowledges that the premise behind the adoption of the relevant statutory provisions was a desire to create a system that is open and transparent. However, for the reasons as outlined above, careful consideration should be given as to whether the operational reality of the provisions achieve this only at the expense of a more compelling public interest in supporting the proper and effective administration of justice as per section 13(4)(b) of the 2015 Act. In fact, each of the six regulatory objectives of the LSRA as set out on section 13(4) of the 2015 Act may be invoked to support the Society's recommendation.

Examples of Inadmissible Complaints

- 4.1 Section 58 of the 2015 Act provides that a complaint shall be deemed inadmissible if, in the opinion of the LSRA, the complaint is frivolous or vexatious; or without substance or foundation. If a complaint has already been the subject of a regulatory determination or the underlying act or omission has been the subject of civil proceedings that have been determined, a complaint is also deemed inadmissible. The Society submits that the admissibility criteria as prescribed in section 58 of the Act are in alignment with the interests of justice and fair procedures. The issue is the point at which the admissibility decision is reached.
- 4.2 An example of the type of complaint to which solicitors have been compelled to respond is a complaint by a non-client who is, or has been, in dispute with one of the solicitor's clients, and makes a complaint to the LSRA about the solicitor's conduct in relation to that dispute. What was manifestly clear from a review of the complaint itself, was that the conduct that was being complained about was the effectiveness of the legal representation provided by the solicitor to their client, which the complainant subjectively believes was a decisive element in the generation of an outcome adverse to their interests. Rather than seeking whatever remedies or other options are available to them in relation to the dispute itself, the complainant made a complaint against the solicitor to the LSRA.
- 4.3 The difficulty that a solicitor has in responding to this type of complaint which, under the current statutory framework they are required to do, is that a full explanation for their conduct would involve a breach of solicitor-client confidentiality. The protection of that relationship is fundamental to the proper and effective administration of justice.

- 4.4 Similarly, some complaints in relation to family law matters have involved breaches of the in camera rule, and the solicitor is left in the invidious position of either having to obtain his or her client's consent to go to court to seek the permission of the court to provide a response to the complaint or to provide a non-substantive response. This type of complaint is similarly an attack on the administration of justice.
- 4.5 The highly personalised nature of certain complaints has, on occasion, involved the complainant abusing the process to issue thinly veiled threats to the legal practitioner. In one instance, the complaint was made by a non-client who had previously issued proceedings against an estate for which the solicitor was acting and contained personal details about the solicitor's whereabouts that were threatening in nature.
- 4.6 It has also been drawn to the attention of the Society that a number of complaints have been made against solicitors by interest groups that are hostile to the involvement of the solicitors' profession in certain types of business. A concerted campaign by an interest group to file multiple complaints against solicitors engaged in the provision of certain types of legal services, may serve to deter the profession from providing such services leaving clients who have an objective need for legal representation, unrepresented. This again is an attack on the administration of justice. In fact, in one such instance that has been drawn to the attention of the Society by a solicitor, the complaint against him related to a case in which he was not even involved and was perceived by him to be a thinly veiled attempt to deter him from taking on certain types of work.

Society's Proposed Statutory Amendment

- 5.1 The Society's proposal is that the LSRA recommends a statutory amendment that facilitates the disposal of manifestly inadmissible complaints ab initio. In that regard, the Society proposes the insertion of following sub-section in section 57 of the 2015 Act.

"(8) The Authority, or any person authorised by the Authority to conduct a preliminary review, shall be entitled to make a determination that a complaint is inadmissible without the need to notify the legal practitioner concerned of the complaint in the event that it determines that the complaint is manifestly inadmissible. Where the Authority or authorised officer makes such a determination, it shall notify the complainant concerned of its determination under this subsection and of the reasons for its determination."

- 5.2 A consequential amendment involves the insertion in section 57(2) of the 2015 Act of the words "..., subject to subsection (8) of this section..." after the words "...under subsection (1), shall...".

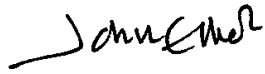
Conclusion

- 6.1 The Society submits that the existing statutory framework compels legal practitioners to respond to complaints that have nothing to do with the protection of clients, the protection of the reputation of the profession or any other discernible public good. These types of complaints are, in effect, collateral attacks on the administration of justice.

- 6.2 The enactment of the proposed statutory amendment as set out above would enable the LSRA to develop its own forensic filtration process for the disposal of complaints that are manifestly inadmissible without requiring the legal practitioner to respond in writing to the complaint. This would serve not only to enhance the administrative efficiency of the LSRA's

complaints system without any loss in the fair procedures afforded to complainants and legal practitioners, but would also serve to inhibit the misuse of the complaints system to facilitate collateral attacks on the administration of justice. It would serve to advance rather than inhibit the LSRA's own regulatory objectives.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Elliot', with a stylized, cursive script.

John Elliot
Registrar of Solicitors
and Director of Regulation



An tÚdarás Rialála
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