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Internal Complaints and Disciplinary Processes

Overview

What is this paper about?

This paper provides a comparison of arrangements in other jurisdictions for dealing with internal conduct and disciplinary issues within the legal professions, including the level of oversight and independence which applies. It looks at such processes in England and Wales, Scotland and the Republic of Ireland.

What are the key points?

England and Wales

In England and Wales complaints about the *conduct* of barristers are handled by the Bar Standards Board (BSB). Complaints about *services* provided by barristers are dealt with by the Legal Ombudsman. The Legal Services Board oversees the work of these and eight other 'approved regulators' of the legal professions.

As part of its remit the BSB sets standards of conduct for barristers, who must abide by the BSB Handbook. The Board will consider taking action where there is evidence that the Handbook has been breached. In addition, the BSB has produced separate guidance on

reporting serious misconduct of others, including victimisation and harassment.

What is the level of independence within the complaints process? For example, is there any lay involvement?

Complaints are dealt with internally by the BSB, but if it decides that the complaint warrants disciplinary action, then it will refer it to an independent disciplinary tribunal. This is organised independently of the BSB and its membership includes laypersons. Appeals against decisions taken by the panel can be made to the High Court (Administrative Court)¹.

Just under 5% of around 400 complaints made to the BSB in the reporting year 2013-14 came from other barristers. The BSB has an independent observer to ensure that the enforcement system is operating in line with stated aims and objectives.

How well does the BSB work?

The Legal Services Board criticised some aspects of the BSB's operations in a report published in May 2013². It found that the BSB had failed to reach satisfactory standards in every area in which it operates, which raised questions about the credibility of the complaints system. Some unresolved cases went back more than a decade.

The Solicitors Regulation Authority regulates the professional conduct of solicitors in England and Wales. Complaints can be made a member of the public or by another solicitor. The SRA has a Code of Conduct for solicitors and its whistleblowing policy sets out the steps it will take when it receives information about alleged wrongdoing.

Scotland

The Scottish Legal Complaints Commission (SLCC) acts as a gateway for all complaints about legal professionals in Scotland. If the complaint is about the conduct of a legal professional, then the SLCC will forward it to the relevant body. The SLCC has the power to audit the handling of a conduct complaint by the relevant professional organisation and can recommend changes.

What is the level of independence within the complaints process? For example, is there any lay involvement?

Following investigation, a report is submitted to the Law Society's Professional Conduct Committee, which is made up of both solicitors and non-solicitors. If the Law Society finds that there has been a case of professional misconduct, it can prosecute the case before the Scottish Solicitors' Discipline Tribunal. This is an independent tribunal - the Tribunal normally

¹ It should be noted that the appeals process is completely independent of the BSB and all decisions in relation to it are taken by the High Court in respect of appeals made on or after 7 January 2014. Any appeals in respect of decisions made before 7 January 2014, and where the appellant serves notice on the Clerk to the Visitors before 18 April 2014, will continue to be made to the Visitors to the Inns of Court (the Visitors)

² Legal Services Board: Developing Regulatory Standards, an assessment of the Bar Standards Board, May 2013: http://www.legalservicesboard.org.uk/projects/pdf/bsb_regulatory_standards_final.pdf

sits with 2 solicitor members and 2 lay members.

In Scotland, advocates have a role comparable to barristers. Where a conduct complaint has been made, the SLCC will refer it to the Faculty of Advocates. It may be that the complaint can be dealt with informally (if it has been raised informally with the Dean), but the process for dealing with formal complaints is set out in the Disciplinary Rules.

Following clarification of the issues involved, the complaint will be referred to a Complaints Committee which consists of both legal professionals and lay people. The Committee may seek to resolve the complaint or refer it to a Disciplinary Tribunal, which would be chaired by a person with the status of a retired judge and includes lay membership. However, the Tribunal is not independent of the Faculty.

There is no right of appeal against a decision of the Tribunal. However, the SLCC can audit the handling of complaints and can ask the Faculty of Advocates to reopen the case. Both parties have the right to apply for judicial review if they are unhappy with the decision.

Republic of Ireland

The arrangements for making a complaint against solicitors is the same regardless of whether the complaint is made by a member of the public or by another solicitor. A complaint should initially be taken up with the solicitor themselves, but if it cannot be resolved then it could warrant formal intervention by the Law Society's Complaints and Client Relations Committee. This comprises both lawyers and laypersons. If the complaint is upheld then sanctions may be imposed, up to and including suspension of the solicitor's practising certificate.

Complaints of misconduct by a barrister against another barrister are considered by the Bar Council Professional Practices Committee (a sub-committee of the Bar Council), whereas complaints by members of the public are considered by the Barristers' Professional Conduct Tribunal. Disputes between barristers should not be made public.

The Professional Practices Committee investigates complaints by a barrister against another barrister. If the complaint cannot be resolved to the satisfaction of all parties, it could be referred to the Barristers' Professional Conduct Tribunal. The Tribunal will decide if the complaint can be dealt with on the papers or if it needs to proceed to a full hearing. If the complaint is upheld, the barrister is liable to disciplinary procedures. The Tribunal will decide on the penalty and it is up to the Bar Council to enforce it. If the Tribunal takes a serious view of the complaint, it can recommend disbarment. However, the Tribunal can only recommend disbarment, only the Kings Inns have the power to disbar a barrister. The barrister can appeal to the Appeals Board. Disbarment is rare; there has only been one in recent years.

The Legal Services Regulation Bill which introduces a framework for dealing with professional misconduct complaints does not address the issue of internal complaints.

1 Introduction

This briefing paper has been produced following a request from the Committee for Finance and Personnel. It provides a comparison of arrangements in other jurisdictions for dealing with internal conduct and disciplinary issues within the legal professions, including the level of oversight and independence which applies.

2 England and Wales

In England and Wales the handling of complaints about *services* provided by barristers are handled by the Legal Ombudsman. Complaints about the *conduct* of barristers are handled by the Bar Standards Board. The Bar Standards Board is overseen by the Legal Services Board, which oversees 10 separate bodies – these are the approved regulators of the legal professions in England and Wales.

Bar Standards Board

The Bar Standards Board regulates barristers called to the Bar in England and Wales. Among other things, the Board has a remit for “Setting standards of conduct for barristers” and “Maintaining the service provided by barristers to assure quality”.

Barristers in England and Wales must abide by a Handbook³ published by the Board and the Board will consider taking action where there is evidence that Handbook has been breached.

The BSB has produced separate guidance highlighting the need to report serious misconduct of others:

Rule C66 (of the Handbook) states that, subject to your duty to keep the affairs of each client confidential and subject also to Rules C67 and C68, you must report to the Bar Standards Board if you have reasonable grounds to believe that there has been serious misconduct by a barrister or registered European lawyer.⁴

Examples of misconduct include:

- Dishonesty
- Assault or harassment
- Seeking to gain access without consent to instructions or other confidential information relating to the opposing party’s case

³ Bar Standards Board Handbook: <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>

⁴ Reporting serious misconduct of others: https://www.barstandardsboard.org.uk/media/1594778/bsb_guidance_on_reporting_serious_misconduct_of_others_-_external.pdf

- Seeking to gain access without consent to confidential information relating to another member of chambers, member of staff or pupil
- Encouraging a witness to give evidence which is untruthful or misleading
- Knowingly or recklessly misleading, or attempting to mislead, the court or an opponent
- Being drunk or under the influence of drugs in court
- Failure by a barrister to report promptly to the Bar Standards Board pursuant to rule C66 (duty to report serious misconduct by others)
- A breach by a barrister of rule C70 below (refers to allowing BSB access to a practice for inspection purposes)
- Professional conduct that poses a serious risk to the public

The guidance states that if there is any doubt as to whether particular behaviour amounts to serious misconduct, complainants are advised to discuss it with the Bar Council's Ethical Enquiries Helpline.

Harassment and victimisation

With regards to harassment and victimisation, the guidance states:

The Bar functions on a system based on trust and confidence between colleagues, and individual barristers depend to a large extent on the reputation they hold amongst their colleagues. In this context it is understandable that some barristers may be concerned about the personal impact of reporting serious misconduct. This is especially the case where the nature of the misconduct itself relates to harassment or victimisation.⁵

Complaints are handled by the BSB's Complaints Committee. Detailed information and guidance has been produced on the role of this Committee in the complaints process. However, the BSB has produced a summary of its four-step process for dealing with complaints:

Step 1

We will carefully assess your complaint to decide whether, the barrister may have failed to comply with the requirements of the Handbook, and whether there are good reasons to take action. We may be unable to pursue complaints which are not supported by some firm evidence. We will tell you the result of this initial assessment, and whether or not we intend to carry out a formal investigation or take some other course of action, as soon as possible.

- If we decide that we should carry out a formal investigation, your complaint will go to Step 2.

- If we decide that an investigation is not appropriate, we will give you the reasons for this decision. If we decide to take

⁵ Reporting serious misconduct of others:
https://www.barstandardsboard.org.uk/media/1594778/bsb_guidance_on_reporting_serious_misconduct_of_others_-_external.pdf

some other course of action we will also tell you.

In some cases we may decide that your complaint should be referred to the barrister's chambers to be investigated under their own complaints procedures. If we do refer your complaint to a chambers, we will let you know. You can contact us again if you are not happy with the outcome of any investigation carried out by the chambers.

Step 2

We will give you a summary of the matters we will be investigating. We will give you the opportunity to comment on our summary.

Step 3

We will carry out a formal investigation of your complaint. We will write to the barrister, and any other people who can provide information on your complaint, asking for their comments and any relevant documents they can provide. We will keep you informed of progress. We will send you the response from the barrister and others if we think that you could provide more information.

Step 4

Once we have all the information we need, we will assess whether there is sufficient evidence that the barrister has failed to comply with the Handbook.

If there is enough evidence, we will decide the appropriate action to take. This could include the imposition of an administrative sanction in the form of a written warning or a fine of up to £1,000, or, for more serious matters, disciplinary action. If we decide that disciplinary action is appropriate, we will refer your complaint, or parts of it, to an independent disciplinary tribunal. The tribunal will make the final decision on whether the barrister has failed to comply with the Handbook and, if so, what action should be taken. We will tell you the tribunal's decision.

If there is not enough evidence, we will not take any action. We will tell you this and give you our reasons for that decision.

As outlined in Step 4 above, the BSB may in certain cases refer a complaint to an independent disciplinary tribunal. These are arranged by an independent organisation called the Bar Tribunals and Adjudication Service (BTAS). It appoints the members of disciplinary tribunals and arranges the hearings:

Tribunal panels are made up of barristers, people who are not from the legal profession (lay people), and sometimes judges. All panels will include at least one lay person.⁶

There are two types of Disciplinary Tribunal: three-person panels and five-person panels. We will decide which type of panel is most suitable to hear a case, depending on the seriousness of the potential breach of the BSB Handbook. Both types of panel follow the same process, but the sentencing powers are slightly different.

Complaints about solicitors

The Solicitors Regulation Authority regulates the professional conduct of solicitors in England and Wales. The SRA maintains a Code of Conduct⁷ that sets out the

⁶ Bar Standards Board, Disciplinary tribunals and findings: <https://www.barstandardsboard.org.uk/complaints-and-professional-conduct/disciplinary-tribunals-and-findings/> m

⁷ SRA Code of Conduct: <http://www.sra.org.uk/solicitors/handbook/code/content.page>

standards of behaviour expected from solicitors. If a solicitor falls short of these standards, they may be investigated by the SRA. A complaint can be made by a member of the public or by another solicitor. Chapter 2 of the Code deals with equality and diversity and sets a number of outcomes that solicitors must achieve. These include:

- you do not discriminate unlawfully, or victimise or harass anyone, in the course of your professional dealings;
- you provide services to clients in a way that respects diversity;
- you make reasonable adjustments to ensure that disabled clients, employees or managers are not placed at a substantial disadvantage compared to those who are not disabled, and you do not pass on the costs of these adjustments to these disabled clients, employees or managers;
- your approach to recruitment and employment encourages equality of opportunity and respect for diversity;
- complaints of discrimination are dealt with promptly, fairly, openly, and effectively.⁸

The SRA has produced guidance on whistleblowing:⁹

Background

1. The Solicitors Regulation Authority (SRA) regulates law firms and individuals who provide legal services.

2. This statement sets out our approach to receiving information from the public, from lawyers and from other people working in the legal sector, which relates to serious misconduct or risk to the public.

3. If you are concerned about the conduct of someone who you work with or another person, it can place you in a difficult position. However, many serious risks to the public do not come to light unless someone decides to report them, or they may come to light only when a great deal of damage or loss has already been caused. We strongly encourage responsible and lawful reports to us of information about serious misconduct and serious risks at the earliest possible stage. Your prompt report could be vital in protecting consumers and other members of the public from reckless or dishonest behaviour.

How we will deal with your report

4. We will deal with your report sensitively and if information is provided to us on a confidential basis we will take appropriate steps to protect your identity. Information is, however, often provided to us openly. Please do inform us when making your report if you wish your report to remain confidential because otherwise we may assume that we can disclose it as part of our regulatory action in the matter.

5. In some cases, we will need to discuss with you whether you are prepared to be identified at some stage. For example, depending upon the facts of the case, we may have difficulty in taking enforcement or disciplinary action without formally and openly relying upon evidence from you.

6. Individuals and firms who we regulate are required to report such matters to us in any event. However, if you are also regulated by us and are concerned about whether you yourself may be investigated for your own part in any

⁸ As above

⁹ SRA Whistleblowing policy: <http://www.sra.org.uk/solicitors/enforcement/solicitor-report/whistleblowing-to-the-sra.page>

wrongdoing, reporting the issues and co-operating with us could constitute significant mitigation. This is particularly so where issues are reported to us at an early stage. Late reports could, however, also constitute mitigation. We would rather solicitors and others working in the legal sector provided information late than not at all. Although we cannot guarantee that we will not take any action against you, bringing the information to us is likely to help your position considerably.

Reporting sensitive information to the SRA

8. Not all information or documentation which lawyers or others involved in the legal sector encounter can immediately be provided to us. In some circumstances part of the information which you wish share with us may be sensitive. For example, information given to you in a court or tribunal case is sometimes barred from being used (including being disclosed) for anything other than your case. A lot of information in court cases can be disclosed to us but the risks arising from incorrect disclosure are so serious that it is important to be very careful.

9. In particular, if your concerns arise from or are related to any case involving a child, you should speak to your legal advisers and to us before disclosing any information at all. We would also need to work very carefully with you to ensure that in any steps we take the rights of the child and other people involved in the case are properly protected.

10. If you have any concerns about the nature of the information in question then it is much safer for you to speak to us or a legal adviser before you send it. We cannot give you legal advice but we can try to help you understand where you stand.

3 Scotland

The Scottish Legal Complaints Commission

The Legal Aid and Legal Profession (Scotland) Act 2007 provides that anyone can bring a conduct complaint and that certain persons or bodies can bring a services complaint.¹⁰ A service complaint is about the quality of work carried out during the transaction. A conduct complaint is about the practitioner's behaviour, their fitness to carry out work and how they have behaved in carrying out the transaction or outside of business. The Scottish Legal Complaints Commission (SLCC) has the power to investigate the handling of a conduct complaint by the relevant professional organisation and has a role in influencing conduct processes, including the powers to audit and recommend changes. However, the SLCC cannot investigate a complaint about the conduct of the professional, this has to be referred to the relevant professional body. The SLCC can produce a report containing certain recommendations relating to the way a complaint was dealt with. The professional organisation then has three months to notify the SLCC, the practitioner and the complainant what action it has taken to comply with the recommendations. If no action has been taken, it must specify why not, and can actually be required to take action by the SLCC.¹¹

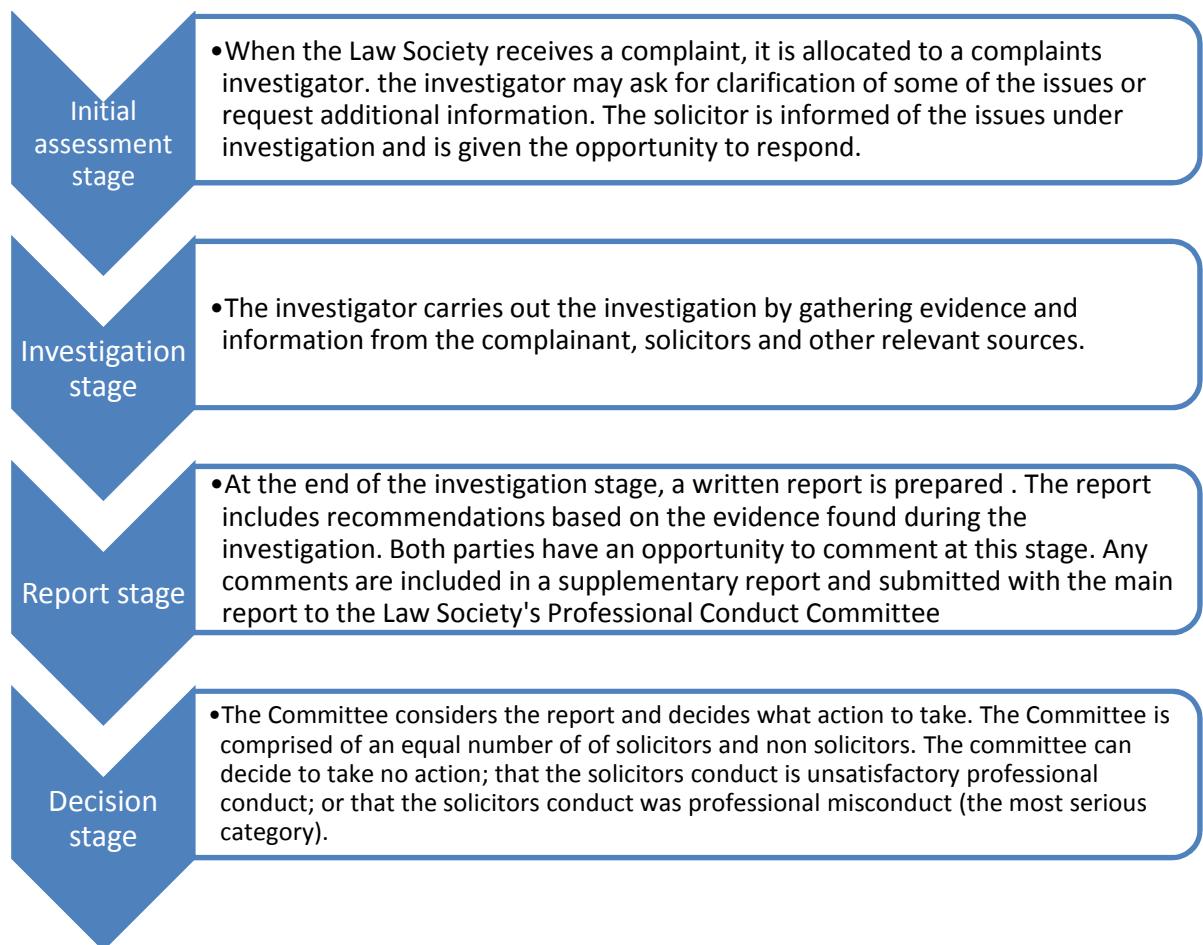
The Law Society of Scotland

¹⁰ Section 2 of the Legal Aid and Legal Profession (Scotland) Act 2007

¹¹ <http://scottishlegalcomplaints.com/about-slcc/what-we-do.aspx>

The process for handling conduct complaints against a solicitor is the same irrespective of whether the complaint is made by a member of the public or another solicitor. Complaints are made in the first instance to the Scottish Legal Complaints Commission (SLCC). The Law Society is not permitted to receive complaints directly. It is for the SLCC to decide if any issues of a solicitors' service or conduct are to be investigated. The SLCC will investigate issues of service and if conduct issues are identified, the SLCC will refer those elements to the Law Society. If the complaint includes both service and conduct issues (a 'hybrid' complaint), the Law Society will complete the conduct investigation once the service investigation has been concluded. The Society is unable to act until a conduct matter has been referred from the SLCC. Oversight of the Society's process is by the SLCC. Once the Society has received a complaint, the complaint is allocated to a Complaints Investigator who will be in touch with the Solicitor and the Complainant once they have assimilated the information in the complaint, which they aim to complete within 3 or 4 weeks.¹²

There are a number of stages in the complaints process: the initial assessment stage; the investigation stage; the report stage and the decision stage. See the following diagram for information on the complaints process:¹³



¹² Information obtained from a representative of the Law Society of Scotland via email 14/08/14

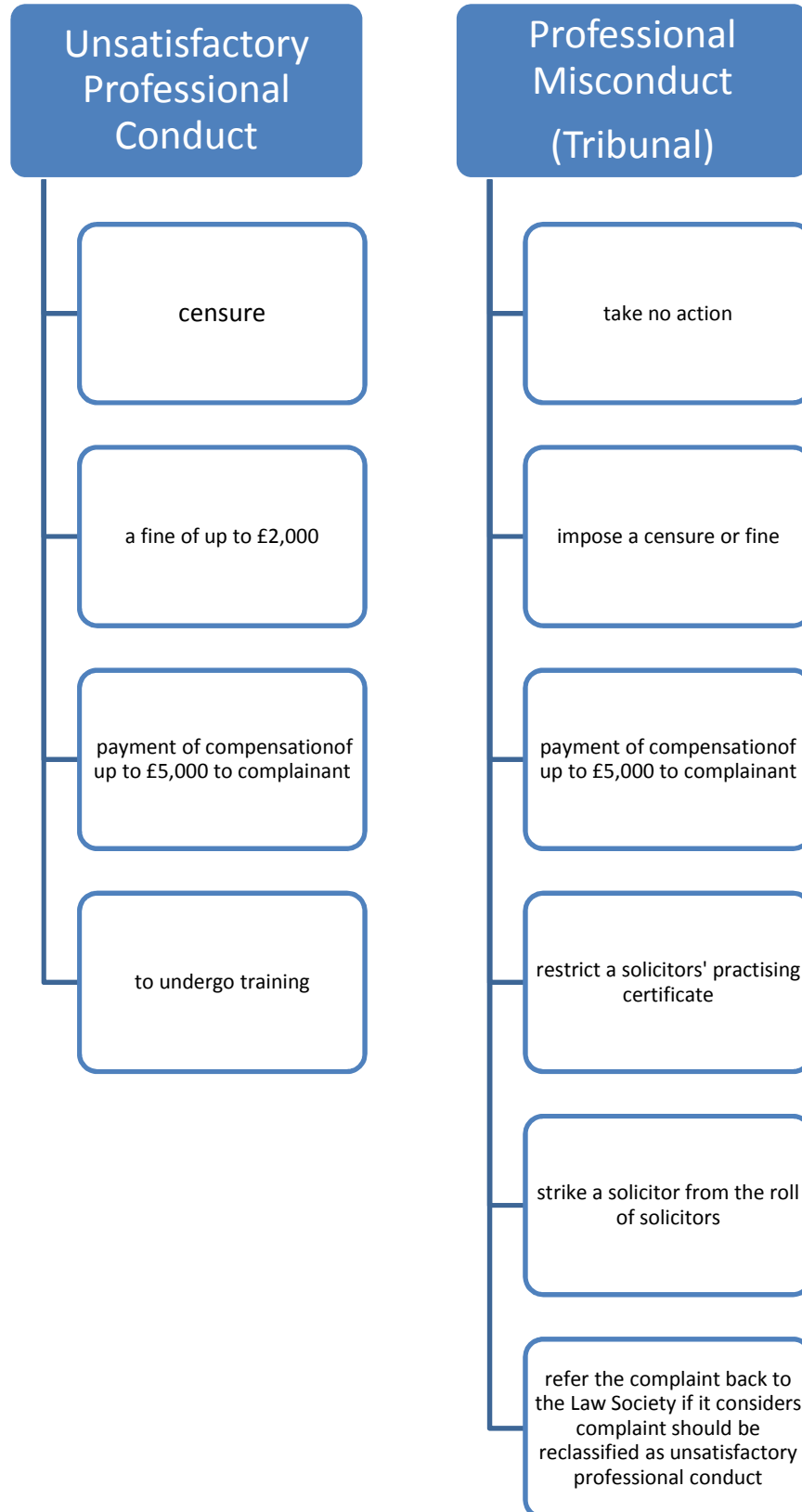
¹³ Information obtained from a Law Society leaflet on conduct complaints against solicitors, available at <http://www.lawsco.org.uk/media/230095/conduct%20complaints%20against%20scottish%20solicitors.pdf>

After the investigation stage and report stage, the Law Society's Professional Conduct Committee can decide:

- to take no action;
- that the solicitor's conduct is unsatisfactory professional conduct;
- that the solicitor's conduct may amount to professional misconduct which is the more serious category.

The Law Society deals with cases of unsatisfactory professional conduct and can impose one or a number of sanctions including censure, a fine, compensation to the complainant or to undertake training. The Law Society has the power to prosecute cases of professional misconduct before the Scottish Solicitors' Discipline Tribunal. This is an independent tribunal, which can impose one or more of a number of sanctions including striking a solicitor from the roll of solicitors. See the following diagram for further details.¹⁴

¹⁴ Information obtained from a Law Society leaflet on conduct complaints against solicitors, available at <http://www.lawscot.org.uk/media/230095/conduct%20complaints%20against%20scottish%20solicitors.pdf>



Both the complainant and the solicitor have the right of appeal to the Scottish Solicitors' Discipline Tribunal against a decision concerning unsatisfactory professional conduct by the Law Society. The Complainant may ask the SLCC to review the Law Society's handling of a complaint. The SLCC can recommend that all or part of the complaint is reinvestigated or reconsidered; that further information is given; and order the Law Society to pay compensation.¹⁵

The Faculty of Advocates

In Scotland, advocates have a comparable role to barristers.¹⁶ The Faculty of Advocates is an independent body of lawyers who have been admitted to practise as advocates before the courts in Scotland.¹⁷ It is unusual for an Advocate to make a complaint about another Advocate as complaints tend to come from other persons. All formal complaints are dealt with by the Scottish Legal Complaints Commission (SLCC). The SLCC will undertake preliminary steps and will refer the complaint to the Faculty of Advocates if the complaint is a conduct complaint. If an issue is raised informally with the Dean, this can be dealt with informally, however there is no set process for this.

The process for dealing with formal complaints is set out in the Disciplinary Rules.¹⁸ All complaints against counsel must be in writing and signed by the Complainant. When a letter of complaint is received, it will be acknowledged and copied to counsel in order that a response can be submitted. At any stage in the process, the Dean may refer to the Complaints Committee for determination and disposal. Unless there are exceptional circumstances, complaints received outside the period of one year from the relevant events giving rise to the complaint will not be considered. A Complainant is presumed to have waived any right to confidentiality in respect of the Member complained against and the member is entitled to rely upon and disclose all information and any documents required to answer the complaint.¹⁹

The process will normally begin within 14 days of receipt of the complaint. The Counsel will be asked to respond to the Complainant letter within 14 days. The Complainant may be contacted with a request for further information. Depending on the complexity of the complaint, the process of clarification may involve correspondence with the complainant, Counsel and possibly others. Once the issues are clear, the complaint will be listed for a Complaints Committee. The Committee consists of four persons: two Advocates are drawn from the Dean, the Vice Dean and a panel of eight other senior members of the Faculty and the other two members are lay persons. The aim is that the meeting will take place within six weeks of the previous stage. The Complaints

¹⁵ Information obtained from a Law Society leaflet on conduct complaints against solicitors, available at <http://www.lawscot.org.uk/media/230095/conduct%20complaints%20against%20scottish%20solicitors.pdf>

¹⁶ <https://www.lawcareers.net/Information/TrainingInScotland>

¹⁷ <http://www.advocates.org.uk/>

¹⁸ Faculty of Advocates Disciplinary Rules 2008, pg 4 <http://www.advocates.org.uk/downloads/disciplinaryrules2008.pdf>

¹⁹ Faculty of Advocates Disciplinary Rules 2008, pg 4 <http://www.advocates.org.uk/downloads/disciplinaryrules2008.pdf>

Committee may decide to seek further information, determine the complaint themselves or remit the complaint to the Disciplinary Tribunal. If the complaint is upheld by the Committee, they may impose a range of penalties, up to and including a fine.²⁰

The Complaints Committee may decide they need further information in order to make a determination on the complaint. They may seek the information themselves or appoint an Investigating Committee. The Investigating Committee consists of one QC and two Junior Advocates and conducts its work via interviews and may call for documents to be produced. The Investigating Committee will produce a report which both parties can see and comment on before it is submitted to the Complaints Committee. The Complaints Committee may then make a determination or remit the complaint to the Disciplinary Tribunal. The Complaints Committee may remit a complaint to the Disciplinary Tribunal at any stage. The Tribunal is chaired by a person who has the status of a retired judge and includes two practising advocates and three lay persons. The procedure of the Tribunal is more formal and the range of penalties open to the Tribunal where a complaint has been upheld is greater than that available to the Complaints Committee.²¹

There is no right of appeal against a decision of the Tribunal. However, the SLCC can audit the handling of complaints and can ask the Faculty of Advocates to reopen the case. Both parties have the right to apply for judicial review if they are unhappy with the decision²².

4 Republic of Ireland

Law Society of Ireland

The arrangements for making a complaint against solicitors is the same regardless of whether the complaint is made by a member of the public or by another solicitor.²³ To make a complaint, an individual has to in the first instance write a letter to the solicitor and allow the solicitor a reasonable period of time to reply. If the complaint cannot be resolved by the investigating solicitor or resolution is not an appropriate option, then a decision will be made as to whether the complaint warrants formal intervention by the Law Society, which would involve a referral to the Complaints and Client Relations Committee which is comprised of solicitors and lay persons. This Committee will consider the documents and correspondence compiled by the Complaint and Client Relations section and may consider it appropriate to try to resolve the complaint between the complainant and the solicitor.²⁴ The Complaint and Client Relations Committee Guidelines indicate that where a resolution cannot be achieved, the

²⁰ <http://www.advocates.org.uk/complaintsprocedures.html>

²¹ <http://www.advocates.org.uk/complaintsprocedures.html>

²² Information obtained from telephone conversation with the Faculty of Advocates.

²³ Information confirmed via a telephone call on 12/08/14 by a representative of the Law Society of Ireland

²⁴ <https://www.lawsociety.ie/Public/Complaints-against-solicitors/Society-Procedures/>

Committee may decide to reject or uphold the complaint and if upheld, may impose a sanction. Sanctions vary, according to the type of complaint and may include:²⁵

- A determination as to whether a solicitor is entitled to costs for the provision of legal services;
- A direction to the solicitor to refund or waive some or all of the solicitor's costs;
- A direction to the Solicitor to transfer any documents relating to the subject matter of the complaint to another solicitor nominated by the complainant;
- A direction to the solicitor to secure rectification of any error, omission, or other deficiency arising in connection with the provision of legal services;
- A direction to the solicitor to take other such action as the Committee may specify in order to remedy or mitigate the complaint;
- A direction to the solicitor to pay a sum not exceeding €3000 as compensation for financial or other loss;
- A direction to a solicitor to comply with an undertaking given by the solicitor to another solicitor or another person or body;
- A direction to the solicitor to amend or withdraw an advertisement;
- A formal reprimand in writing to the solicitor;
- A direction to the solicitor to make a contribution towards costs incurred by the Society.

Alternatively, where deemed appropriate, the Committee may decide to:

- make an application for an inquiry to the Solicitors Disciplinary Tribunal in respect of the complaint made against the solicitor;
- To direct the Registrar of Solicitors to refuse an application by the solicitor concerned for a practising certificate or to issue a practising certificate subject to conditions;
- That an application be made by the Society to the President of the High Court to suspend the practising certificate of the solicitor concerned.

Solicitors can appeal to the High Court in respect of decisions or determinations made by the Committee. Clients unhappy with the manner in which the complaint has been dealt with by the Law Society may refer the matter to the Independent Adjudicator.²⁶

²⁵ Complaint and Client Relations Committee Guidelines, available at <https://www.lawsociety.ie/Public/Complaints-against-solicitors/Society-Procedures/>

²⁶ Complaint and Client Relations Committee Guidelines, available at <https://www.lawsociety.ie/Public/Complaints-against-solicitors/Society-Procedures/>

The Solicitors Disciplinary Tribunal is an independent statutory tribunal appointed by the President of the High Court to consider complaints of misconduct against solicitors. The Tribunal consists of 20 solicitor members and 10 lay members. It sits in divisions of three comprising two solicitor members and one lay member.

Where the Tribunal decides that a complaint discloses a ‘prima facie’ (i.e. apparent) case of misconduct by a solicitor, there will be an inquiry, with oral evidence, conducted by the Tribunal in public. The procedures of the Tribunal are regulated by the Solicitors Acts, 1954 to 2008 and by the Solicitors Disciplinary Tribunal Rules, 2003.

An application to the Tribunal concerning a solicitor may ultimately result in a solicitor being sanctioned by the Tribunal or by the President of the High Court, up to and including the sanction of being suspended from practice for a period or having his/her name struck off the Roll of Solicitors²⁷.

Bar Council of Ireland

Complaints of misconduct by a barrister against another barrister are considered by the Bar Council Professional Practices Committee, however misconduct complaints against a barrister by a member of the public, solicitors or other clients are considered by the Barristers’ Professional Conduct Tribunal.²⁸ The Bar Council Professional Practices Committee is a sub-committee of the Bar Council, whereas the Barristers’ Professional Conduct Tribunal is not a sub-committee. It is independent of the Bar Council and has a lay majority.²⁹ The Bar Council Code of Conduct makes provision for complaints between barristers. Matters of dispute between barristers should not be made public and should be brought without delay before the Bar Council or the committee of the Bar Council dealing with complaints.³⁰

According to the Bar Council Disciplinary Code, when a complaint is made against a barrister by another barrister, the Professional Practices Committee shall investigate the matter and take all steps as it thinks fit with a view to resolving the complaint to the satisfaction of all the parties. The views of the Committee on the investigation are not binding on either party and if unacceptable, recourse may be had to any other procedure provided for in the Disciplinary Code.³¹ The complaint may be referred to the Barristers’ Professional Conduct Tribunal. If an official complaint is received, it is sent to the respondent who has 14 working days in which to make a response. The

²⁷ Solicitors Disciplinary Tribunal: <http://www.distrib.ie/>

²⁸ http://www.lawlibrary.ie/viewdoc.asp?fn=%2Fdocuments%2Fbarristers_profession%2Fconduct.asp

²⁹ Information obtained by a representative of the Barristers’ Professional Conduct Committee

³⁰ Code of Conduct for the Bar Council of Ireland, adopted by a General Meeting of the Bar of Ireland on Wednesday 23 July 2014, pg 20, available at

http://www.lawlibrary.ie/viewdoc.asp?fn=%2Fdocuments%2Fbarristers_profession%2Fconduct.asp

³¹ Bar Council Disciplinary Code for the Bar of Ireland, adopted by a General Meeting of the Bar of Ireland on Monday 5 July 2010

response will be put before a full meeting of the Tribunal. If required, the Tribunal may request further information. The Tribunal may then decide whether a complaint can be dealt with on the papers or whether a full hearing is needed, for example if facts are disputed. For a hearing, the Tribunal breaks down into a panel of 3 members with a lay majority. The Tribunal will make its decision. If a complaint is dismissed, the parties are informed. The decision can be appealed to the Appeals Board which is comprised of 5 members, 3 lay members and 2 lawyers. If the Tribunal's decision is a finding against the barrister, the barrister is open to disciplinary procedures. Both parties can make submissions on penalties. The Tribunal will fix the penalty and it sent to the Bar Council for enforcement. If the Tribunal takes a serious view of the complaint, it can recommend disbarment. However the Tribunal can only recommend disbarment, only the Kings Inns have the power to disbar a barrister. The barrister can appeal to the Appeals Board. Disbarment is rare, there has only been one in recent years.³²

Legal Services Regulation Bill 2011

The Legal Services Regulation Bill 2011 is currently passing through the Oireachtas provides for an independent dispute system to determine allegations of professional misconduct. The Bill provides for the establishment of a new independent Legal Services Regulatory Authority which have responsibility for independent oversight of both branches of the legal professions and the maintenance of standards and improvement of standards in the legal profession, an independent complaints structure to deal with complaints about professional misconduct and an independent Legal Complaints Disciplinary Tribunal. Both barristers and solicitors are brought together under the legislation³³. It does not appear to address the issue of legal complaints within the legal professions.

³² Information obtained via a telephone call with a representative of the Barristers' Professional Conduct Tribunal, 12/08/13

³³ For further information on the Bill see, previous paper on Comparative Research Complaints and Legal Regulation, available at <http://www.niassembly.gov.uk/Assembly-Business/Committees/Finance-and-Personnel/Research-Papers-2014/>