



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

9 September 2015

NIAR 394-15

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Regulation of complaints about solicitors

What does this paper do?

This paper sets out the regulatory framework for solicitors in Northern Ireland, Scotland and the Republic of Ireland. It also provides data on the number of complaints received about solicitors by the relevant regulatory bodies in those jurisdictions.

The final section sets out complaints procedures about barristers and Advocates (in Scotland).

Summary

Northern Ireland

There were 214 “categorised complaints” about solicitors in Northern Ireland in 2014. There are approximately 2,600 solicitors in Northern Ireland. The Law Society is responsible for the regulation of solicitors while at the same time being the representative body for the profession.

The Lay Observer is responsible for overseeing the complaints handling system administered by the Law Society. He investigates complaints from clients that solicitors and

the Law Society cannot resolve to the satisfaction of the client.

Scotland

Regulation of the legal profession has undergone significant change in Scotland in recent years and is on the verge of undergoing fundamental change in the Republic of Ireland in the near future. The concept of self-regulation has been replaced in Scotland with an independent complaints system with the Republic of Ireland planning similar changes as part of wide-ranging changes to the way legal services are delivered and regulated.

The Scottish Legal Complaints Commission (SLCC) was established in 2008 and replaced the system of self-regulation. It is the gateway for all legal complaints in Scotland.

Under the previous regime in Scotland, the Law Society was both the representative and regulatory body for solicitors. If a client was unhappy with the service provided by their solicitor, they complained to the Law Society if it could not be resolved in the first instance with their solicitor. The Scottish Legal Services Ombudsman oversaw the complaints handling system administered by the Law Society, but the professional bodies were under no obligation to accept any recommendations of the Ombudsman.

There were 1,024 complaints received by the SLCC in the latest reporting year. This figure is comparable with the numbers received in each reporting year since its establishment. There are approximately 10,000 solicitors in Scotland.

Republic of Ireland

In the Republic of Ireland, the Legal Services Regulation Bill 2011 is currently in the Seanad after completing its passage through the Dail. This Bill, if passed, will bring about fundamental changes to the delivery of legal services in the Republic of Ireland, including a move away from self-regulation to independent regulation of complaints about solicitors.

Currently, the Law Society regulates the solicitors' profession.

There were 1,916 complaints received by the Law Society of Ireland in reporting year 2013-14. This is broadly comparable with previous years, although it does represent an overall decline when compared to previous years.

1 Introduction

This briefing paper was commissioned by the Committee for Finance and Personnel to inform its consideration of the Legal Complaints and Regulation Bill. It addresses the following issues:

- A comparison of the system of self-regulation of complaints against legal professionals in Northern Ireland, the Republic of Ireland and Scotland in terms

of how the complaints handling processes work and the number of complaints recorded

- If ‘complaints’ are defined in the Republic of Ireland and Scotland under existing or proposed new arrangements

This paper should be read in conjunction with the following papers:

- NIAR 376-14: *Internal Complaints and Disciplinary Processes*
- NIAR 375-14: *Legal Complaints and Regulation: Follow-up issues*
- NIAR 101-14: *Comparative Research on Legal Complaints and Regulation*

These papers contain detailed information on the complaints processes in other parts of the UK and the Republic of Ireland. This paper has sought to avoid duplication with information already provided, but draws on these papers where necessary.

2 Statistics relating to solicitor complaints in Northern Ireland, Scotland and the Republic of Ireland

This section presents statistics relating to complaints about solicitors in Northern Ireland, Scotland and the Republic of Ireland.

Northern Ireland

Table 1: Number of complaints against solicitors in Northern Ireland¹

Year	2014	2013	2012	2011	2010
Number of categorised complaints	214	217	183	201	218
Number of complainants	76	103	90	122	110

According to the 2013-14 Annual Report of the Lay Observer: “When the Law Society receives a complaint, in most cases that complaint can be analysed under several different categories of types of complaints²”.

There are approximately 2,600 solicitors in Northern Ireland³.

¹ Information taken from the reports of the Lay Observer for Northern Ireland: <http://www.layobserverni.com/index/annual-reports.htm>

² 2013-14 Annual Report of the Lay Observer

³ <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=9887&evelD=6469>

Table 2: Information relating to complaints examined by the Law Society for the 12 months ending September 2014

Nature of complaints	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
1. Undue delay or action	9			2	11	1	1	1		2	9	1	2					3			5	47
2. Failure to keep client properly informed	10			2	8	3	1			1	5		1					2			5	38
3. Delay/failure to respond to reasonable enquiries	4		1	2	8		1				4							1			5	26
4. Withholding/loss of documents	6		1		5		1											1			3	20
5. Disclosing confidential information	2									1			1									3
6. Acting in a conflict of interest situation	1										1										1	3
7. Acting contrary to client's instructions	1			2	3					2	4	1	2							1	2	17
8. Breach of undertakings	1																					1
9. Failure to provide bills of costs/cash/statements; incurring expense without client's authority	1		1		4			1													4	13
10. Failure to deal with legal aid issues properly	1																					1
11. Failure to provide proper client care information or not complying with agreed client care arrangements				1				1													2	4
12. Failure to provide proper costs information including Legal Aid Rules at the outset of the transaction or not adhering to arrangements made	3			1				1		1	2		1									11
13. Failure to properly consider client's complaints under solicitor's own in-house complaints procedure	4		1	3	4	1		1		1	6							1			1	23
14. Other factors	1			2	2		1														1	7
15. All factors (1 to 14)	44	-	4	15	45	5	7	5	-	9	33	2	7	-	-	-	-	8	1	-	29	214

Circumstances of complaints – key to the code letters in use (horizontal headings) since November 2008

A. Accidents	B. Bankruptcy and Insolvency Debt
C. Commercial Work	D. Contract Disputes
E. Conveyancing	F. Criminal Injuries and Criminal Damage Compensation
G. Criminal Law	H. Employment Law, Equality/Discrimination Issues
I. Enforcement of Judgments	J. Family Law – Children
K. Family Law – General	L. Immigration and Asylum
M. Land and Property Disputes	N. Libel and Slander
O. Licensing	P. Mental Health
Q. Planning	R. Medical Negligence
S. Professional Negligence	T. Trusts, Tax and Financial Planning
U. Wills, Probate and Intestacy	V All other circumstances (total A-U) ⁴

Comment on the number of complaints

The Lay Observer noted the following in relation to the number of complaints:

...it is most important to note that in the solicitors' profession in Northern Ireland – unlike elsewhere in the legal professions in United Kingdom, and as well as in relation to many other fields of professional activity – the incidence of complaints remains very low. This should be seen in the light of the enormous volume of transactions that solicitors undertake for clients every year in the Province.

No-one knows how many this must be, but given that there are over 500 firms of solicitors with almost 2,500 solicitors practising, there must be many hundreds of thousands of transactions, and tens of thousands of clients. It is noteworthy that only 76 clients (representing 214 complaint categories) found it necessary to take their complaints to the second tier of the Complaints Handling Process. Also, only 65 solicitor firms received complaints out of the 500 plus firms registered. These figures are very much lower than popular opinion particularly amongst politicians, public and press seem to perceive⁵.

⁴ Information taken from the report of the Lay Observer.

⁵ http://www.layobserverni.com/lay_observer_report_2014.pdf

Scotland

The Scottish Legal Complaints Commission (SLCC) is responsible for dealing with complaints against solicitors. Prior to the establishment of the SLCC, the Scottish Legal Services (SLSO) had this responsibility.

The Annual Reports of the SLSO and subsequently the SLCC record the number of complaints against solicitors. The tables below sets out this data:

Table 3: Complaints received under new regime (SLCC) from 1 October 2008⁶

Reporting year	Number complaints received by SLCC
2013-14	1,024
2012-13	1,123
2011-12	1,264
2010-11	1,090
2009-10	1,452 ⁷
2008-09	1,217 ⁸

Table 4: Complaints received under previous regime (pre-SLCC) prior to 1 October 2008

Reporting year	Number of queries treated as admissible complaints and accepted by the Law Society	Other queries received by the Law Society which it did not consider required formal investigation
2007-08	2,649	-
2006-07	3,623	-
2005-06	4,849 ⁹	-
2004-05	2,948	786
2003-04	2,036 ¹⁰	923
2002-03	1,606	874
2001-02	1,262	1,109
2000-01	1,094	1,175

There are approximately 11,000 practising solicitors in Scotland¹¹.

⁶ These figures include the small number of complaints in relation to Advocates.

⁷ 928 complaints were referred to the Law Society because they were about matters from before 1 October 2008.

⁸ 1,014 were referred to the Law Society of Scotland because they were about matters from before 1 October 2008.

⁹ The Law Society had implemented a number of changes – revised complaints handling policy, new rules about the way solicitors responded to complaints, engagement letters that solicitors had to provide to clients – that may help to explain this nearly 30% increase in the number of complaints. See the Ombudsman’s report for further information: <http://www.siso.org.uk/pdf/AnnualReport2005.pdf>

¹⁰ The Ombudsman had asked the Law Society for clearer and more specific information about “miscellaneous” letters because she suspected that many of the writers intended them to be complaints.

¹¹ <http://www.lawscot.org.uk/news/2014/11/number-of-scottish-solicitors-reaches-all-time-high/>

Republic of Ireland

There are 10,241 solicitors in the Republic of Ireland¹².

Table 5: Total number of complaints against solicitors – Republic of Ireland¹³

Year	2013-14	2012-13	2011-12	2010-11	2009-10
Admissible complaints	1,526	2,116	2,453	2,622	2,117
Inadmissible complaints	390	361	360	360	387
Total	1,916	2,477	2,813	2,982	2,504

3 Complaint handling – Northern Ireland

The complaints handling process - solicitors

The Solicitors (Northern Ireland) Order 1976 (as amended) is the “statutory framework enabling the Law Society to act as the regulatory authority in relation to the qualification, education, professional practice, conduct and discipline of solicitors in order to maintain the independence, ethical standards, professional competence and quality of services offered to the public”¹⁴.

The Law Society of Northern Ireland (LSNI) has a five-stage complaints process which is set out on the Society’s website and accompanying information leaflet. The process details what is expected of the complainant and the solicitor in question and describes the action that the Society will take. At the conclusion of an investigation the Society may:

- Find that the solicitor has been guilty of inadequate service or professional misconduct.
- If the solicitor has given inadequate professional service, the Society can also exercise its statutory powers (as set out in the 1976 Order) to impose certain sanctions which include:
 - Determining the costs to which the solicitor is entitled be limited to a specific amount, having regard to the standard of the service provided.
 - Directing the solicitor to take such steps for the completion of the matter within such reasonable time as the Society may specify.
 - Directing the solicitor to secure rectification of any error or omission or other deficiency.

¹² <http://www.independent.ie/irish-news/news/51pc-of-all-solicitors-now-are-women-30743783.html>

¹³ Information taken from Law Society reports.

¹⁴ <http://www.lawsoc-ni.org/role-of-the-law-society/regulation/>

- Directing the solicitor to take any other action which the Society thinks is necessary in your (the complainant's) interests at the solicitor's expense.
- In more serious cases of professional misconduct, the Society can prosecute the solicitor before the Solicitors' Disciplinary Tribunal.
- It may conclude that the solicitor's actions have been in order and your complaint is not upheld.

Solicitors' Disciplinary Tribunal

The Solicitors' Disciplinary Tribunal was established under the Solicitors (Northern Ireland) Order 1976 as amended by the Solicitors (Amendment) (Northern Ireland) Order 1989. The Tribunal is appointed by the Lord Chief Justice following consultation with the Council of the Law Society and consists of practising solicitors of not less than 10 years' standing (solicitor members); and persons who are neither solicitors nor members of the Bar of Northern Ireland (lay members)¹⁵.

According to the website of the Law Society:

In the more serious cases of professional misconduct, including breaches of the regulatory requirements prescribed by LSNI, and of inadequate professional services to clients, LSNI itself does not adjudicate but refers the matter to the Solicitors Disciplinary Tribunal. This body again established by statute, is independent of LSNI. It is comprised from a panel of senior solicitors and lay persons appointed by the Lord Chief Justice. Where the question of referral on to the Tribunal arises out of a client complaint, both the individual client and the independent Lay Observer have a free-standing right to complain direct to the Tribunal¹⁶.

The 1976 Order sets out the membership and functions of the Tribunal¹⁷:

- (1) The Lord Chief Justice, after consultation with the Council, shall appoint a tribunal, to be known as the Solicitors Disciplinary Tribunal and consisting of—
 - (a) practising solicitors of not less than 10 years' standing (solicitor members); and
 - (b) persons who are neither solicitors nor members of the Bar of Northern Ireland (lay members).
- (2) The members of the Tribunal shall elect one of the solicitor members to be the president of the Tribunal.
- (3) The Department of Finance and Personnel shall pay to lay members such remuneration and other allowances (if any) as that Department may determine.
- (4) The Lord Chief Justice, after consultation with the Council, may remove a member of, and may fill a vacancy in, the Tribunal.

¹⁵ <http://www.legislation.gov.uk/nisi/1989/1343/article/18>

¹⁶ <http://www.lawsoc-ni.org/about-us/regulatory-framework/>

¹⁷ <http://www.lawsoc-ni.org/download/fs/doc/Solicitors%20Order%201976%20consolidated%20until%20March%202011/pdf/>

- (5) The Tribunal may, subject to paragraph (6), act notwithstanding one or more than one vacancy in their membership and any application or complaint made to, or other matter dealt with by or before, the Tribunal may be dealt with or disposed of notwithstanding any change in the membership of the Tribunal.
- (6) For the purpose of hearing and determining applications and complaints the Tribunal shall be properly constituted if—
- (a) at least 3 members are present; and
 - (b) at least 1 lay member is present; and
 - (c) the number of solicitor members present exceeds the number of lay members present; and
 - (d) the president or another solicitor member presides.
- (7) Subject to the provisions of this Order and of any rules made under paragraph (8), the Tribunal may regulate their procedure in such manner as they may think fit.
- (8) The Tribunal may, with the concurrence of the Lord Chief Justice, make rules regulating applications and complaints to the Tribunal and the hearing, conduct and determination of such applications and complaints and of inquiries held by the Tribunal.
- (9) Without prejudice to the powers of the Tribunal under Article 51(1)(j) and (k), rules under paragraph (8) may make provision for the payment by any party to an application or complaint made to the Tribunal of the costs, or a contribution towards the costs, incurred by any other party or by the Tribunal in connection with that application or complaint.
- (10) The Tribunal may appoint a secretary, who shall be a member of the Society but shall not be a member of the Tribunal.
- (11) Except as provided by paragraph (3), the Society shall defray the costs incurred by the Tribunal, which shall include the amount of any remuneration which the Society may agree to pay to the person appointed as secretary.

The Lay Observer for Northern Ireland oversees the Law Society's complaints handling system. He investigates complaints from clients that solicitors and the representative and regulatory body – the Law Society – cannot resolve to the satisfaction of clients. The Lay Observer is the final stage in the complaints process¹⁸.

4 Background to the regulatory framework in Scotland

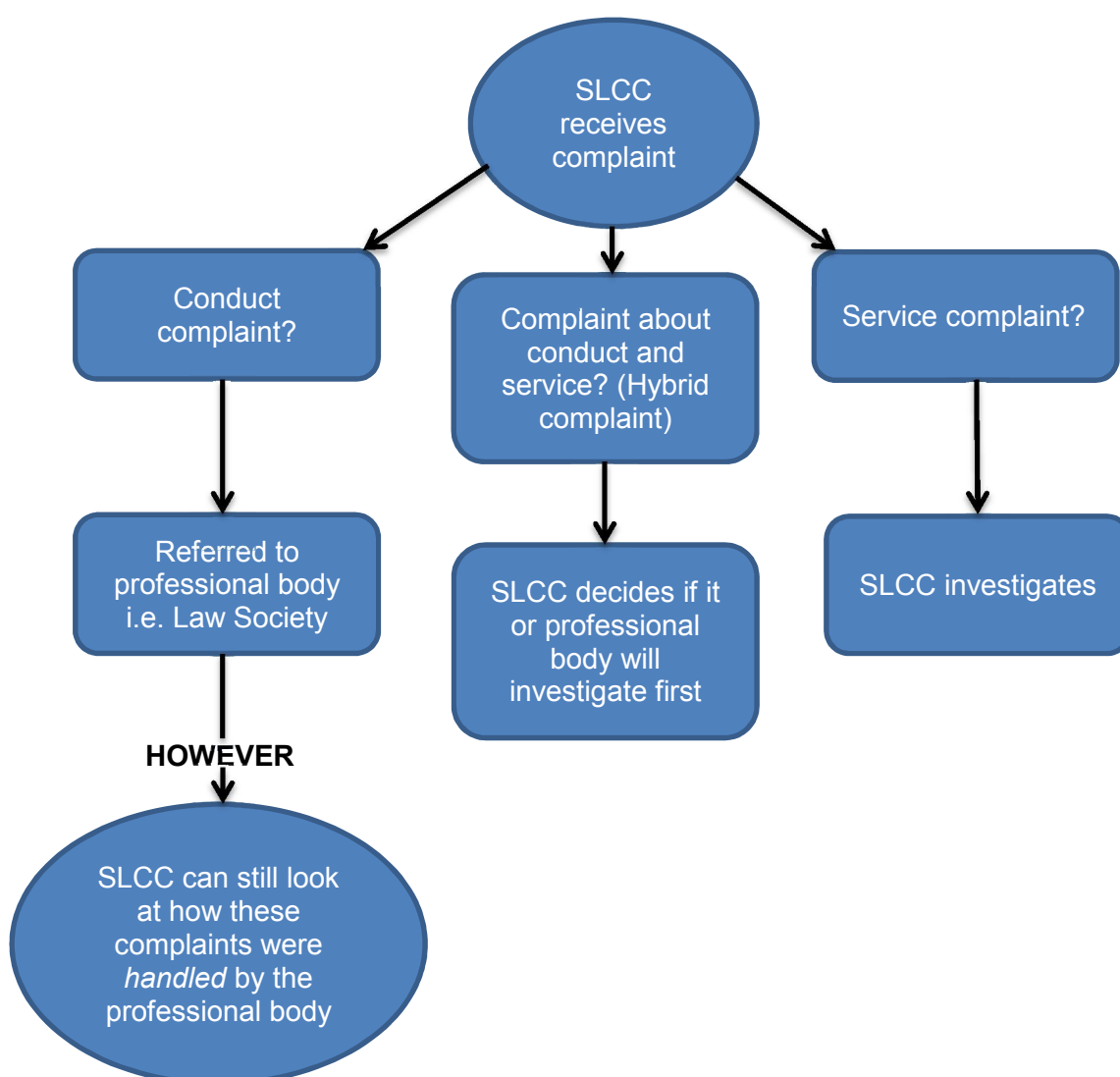
In December 2005 the Scottish Government announced the creation of an independent body (the Scottish Legal Complaints Commission) with the remit of increasing public confidence in the justice system. The plans for the new body were developed following a consultation exercise and in February 2006 the Legal Profession and Legal Aid (Scotland) Bill was introduced to the Scottish Parliament, with Royal Assent in December 2006.

¹⁸ http://www.layobserverni.com/lay_observer_report_2014.pdf

The SLCC was established by the Scottish Government but is funded through legal professionals in the form of a levy as a condition of their practising certificate¹⁹. It acts as a gateway and a point of contact for all complaints against legal practitioners in Scotland, including complaints about the services or conduct of a legal practitioner, where it has not been possible for the practitioner or practitioner's firm to resolve the complaint.

A service complaint, a conduct complaint, or both?

Although the SLCC acts as the gateway for all complaints relating to legal practitioners in Scotland, it can only investigate complaints relating to the *service* provided by a legal professional. Complaints about *conduct* are referred to the relevant professional body.



¹⁹ Funding regulatory bodies through a levy paid by those professionals is also found, for example, in the healthcare sector, although it is not without its critics. See for example: <http://www.theddu.com/press-centre/press-releases/dental-professionals-should-not-fund-psa>

Law Society's process for investigating a conduct complaint referred by the SLCC²⁰

The Law Society is unable to act until a conduct matter has been referred from the SLCC.

1. Initial assessment stage: complaint allocated to a complaints investigator. May be necessary at this stage to ask for clarification on some issues, or request additional information. The solicitor is informed of the issues under investigation and is given the opportunity and time to respond.

2. Investigation stage: Investigator carries out investigation by gathering evidence from the complainant, solicitor and any other relevant sources.

3. Report stage: At the conclusion of the investigation, a report is prepared. The report includes recommendations based on the evidence found during the investigation. Both parties have an opportunity to comment at this stage. Any comments are included in a supplementary report and are submitted with the main report to the Law Society's Professional Conduct Committee.

4. Decision stage: The committee considers the report and decides what action to take. It may reach different conclusions from the recommendations made in the report. The committee is comprised of an equal number of solicitors and non-solicitors. After the committee has made a decision, the complainant and solicitor are informed in writing.

The 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 (this is the more serious category)

In cases of unsatisfactory professional conduct, the Law Society can censure, impose a fine, order that compensation be paid or order a solicitor to undergo training.

For cases of professional misconduct, the Society can prosecute a solicitor before the Scottish Solicitors' Discipline Tribunal. The Tribunal can take no action, censure, impose a fine, order a compensation payment, restrict or suspend a practising certificate or strike a solicitor from the roll of solicitors.

How were legal complaints handled before the SLCC?

The Scottish Legal Services Ombudsman (SLSO) was responsible for the handling of legal complaints prior to the establishment of the SLCC. However, in line with the role of an Ombudsman, the SLSO could only look at *how* complaints were handled by service providers, not at the complaints themselves.

²⁰ Information in this section taken from the Law Society's leaflet: *Conduct complaints against Scottish solicitors*

The Law Society had the function of dealing with complaints about the conduct of solicitors or the service provided by solicitors through its Clients Relations Office:

Complainants are encouraged to resolve their complaint direct with their solicitor or law firm, but where this has not been possible the Society will pass the complaint to a case manager who will undertake the investigation. Depending on the complexity of the complaint, the investigative process may involve correspondence with the complainant and the solicitor. At the end of the process the case manager will report to one of the Society's Client Relations Committees which will then decide whether to uphold the complaint. The membership of the Society's Client Relations Committee is 50% solicitor and 50% non-solicitor.

Should a complaint include possible professional misconduct, it will be considered by the Society's Professional Conduct Committee (also composed in equal proportions of solicitors and non-solicitors) who can then decide whether to prosecute the complaint before the Scottish Solicitors' Discipline Tribunal. The Tribunal is an independent body which generally sits with three solicitor members and two non-solicitor members. It has the power to censure, fine, restrict, suspend or strike a solicitor off the Roll of Solicitors.²¹

Scottish Legal Services Ombudsman

Under the old regime, the SLSO had responsibility for looking at the way the Law Society or Faculty of Advocates (representative body for Advocates (barristers) in Scotland) handled complaints. The Ombudsman's job was to decide if the professional body had given each complaint proper attention, if it has taken appropriate action on the basis of a fair and thorough examination of all the evidence, and if it acted reasonably, impartially and effectively²².

5 Republic of Ireland

Perceived problems with the present regulatory framework for the legal profession in Ireland

Recently published work on the regulation of the legal profession in Ireland suggests that:

The issue of who should regulate the lawyers has been the subject of much debate within the legal profession, in wider society, and also amongst politicians and economists. Much of this debate has focused on the issue of whether the legal profession should be its own primary regulator – whether it should be self-regulating – or whether a co-regulatory model should be deployed, whereby outside agencies,

²¹ <http://www.gov.scot/Publications/2005/05/09103027/30335>

²² Information summarised from 2004-05 Annual Report of the Ombudsman

often associated with the executive, legislative or judicial branches of the state should perform a regulatory function²³.

The research goes on to argue that:

The present regulatory framework lacks a discernible, explicit rationale, beyond the questionable fulfilment of self-serving, self-regulatory ambitions, and the legal profession has shown itself to be admirable in the command of its brief as far as justifying self-regulation is concerned. Its main argument for justification of the status quo to be that self-regulation was in the public interest, not just in the interest of the profession...Self-regulation is no substitute for clearly articulated regulatory objectives such as those which are found in the UK Legal Services Act 2007, which begin with the protection of the public interest, and conclude with the promotion and maintenance of professional principles²⁴.

The current position

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. 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. This 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 Complaints and Client Relations section and may consider it appropriate to try to resolve the complaint between the complainant and the solicitor²⁵.

Definition of a complaint

The Law Society of Ireland has published practice notes on internal complaints procedures which includes a statement which may be useful for firms who wish to have an internal complaints procedure. The statement defines a complaint as any expression of dissatisfaction that cannot be resolved by the solicitor or fee-earner handling their case or transaction²⁶.

The Complaint and Client Relations Committee Guidelines indicate that where a resolution cannot be achieved, the 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:

²³ Maeve Hosier, *The Regulation of the Legal Profession in Ireland*, p.122, Quid Pro Books, 2015

²⁴ As above p.164

²⁵ http://www.niassembly.gov.uk/globalassets/Documents/RaISe/Publications/2014/finance_personnel/10114.pdf

- 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 €3,000 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 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 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.

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:

The majority of complaints that come before the tribunal are at the instance of the Law Society of Ireland, but it is open to members of the public to make a direct

application to the tribunal, with or without any previous reference to the Law Society. The procedure is an adversarial one and, consequently, it is a matter for an applicant to prosecute a case and for a respondent to respond²⁷.

Independent Adjudicator

The Independent Adjudicator of the Law Society of Ireland is responsible for ensuring that (a) the Law Society handles its complaints in an efficient and effective manner (b) reviewing the Law Society handling of complaints on its compensation fund and (c) recommending any changes in the Law Society's complaints and claims procedures which are necessary to maintain the highest standards²⁸.

Changing the landscape of legal services provision - The Legal Services Regulation Bill

The Legal Services Regulation Bill (LSRB) was introduced by the Minister for Justice, Defence and Equality in 2011:

The LSRB 2011 will introduce the most fundamental reform of the legal profession since the foundation of the state. With the establishment of the Legal Services Regulation Authority (LSRA), it will replace the traditional self-regulatory system with an independent system of regulation, a reform which will benefit the profession and the consumer of legal services alike. The establishment of the Legal Practitioners' Disciplinary Tribunal (LPDT), which is also to be welcomed will provide a forum for the independent investigation of clients' complaints...²⁹

The issue of reform of legal services in the Republic of Ireland had been an ongoing issue many years prior to the introduction of the Bill:

The succession of Reports relating to various aspects of change in these areas have included those published by the Restrictive Practices Commission (1982); the Fair Trade Commission (1990); the Legal Costs Working Group (2005); the Legal Costs Implementation Advisory Group (2006); the Competition Authority (2006); the Law Reform Commission (2010); the National Competitiveness Council (2010, 2011, 2012); the Dail Committee of Public Accounts (2011) and the National Consumer Agency (2012)...³⁰

In March 2012 the Committee for Justice, Defence and Equality heard the views of stakeholders on the provisions of the Bill. The following is a summary of the key points

²⁷ http://www.distrib.ie/wp-content/uploads/Solicitors_Disciplinary_Tribunal_CMS13.pdf

²⁸ <http://assist.assemblyni.gov.uk/services/rsrchlib/products/researchpubs/dept/fp/2014/oconnell10014.pdf>

²⁹ Maeve Hosier, *The Regulation of the Legal Profession in Ireland*, p207, Quid Pro Books, 2015

³⁰ Regulatory Impact Analysis, *The Legal Services Regulation Bill 2011*

from stakeholders relating to the proposals regarding regulation of solicitors and barristers³¹:

View of the Law Society of Ireland

There has been a fundamental change of position by the Law Society of Ireland. On 20 January this year (2012) the council of the Law Society decided that it would be in the best interests of the public and the profession to end the so-called self-regulation whereby...client complaints about solicitors were made to the Law Society...To address a public perception that the Law Society...should not adjudicate on client complaints against its members, we decided that all client complaints alleging inadequate professional services or misconduct should in future be handled by an independent body, subject to significant changes in the Bill to ensure that the independent body adheres to fair procedures and subject to an effort to ensure that the vast majority of complaints are resolved by agreement, as is the case at the moment.

The Minister has responded by giving several assurances that he has no wish to interfere with the independence of the legal profession and that amendments will be tabled to ensure these concerns are addressed.

View of the Bar Council

We have concerns about the type and cost of the regulation provided for in the Bill. The Legal Services Regulatory Authority lacks independence from the Government, given the extent of ministerial involvement in the exercise of the powers and functions of the authority.

We believe that the type of regulation proposed in the Bill is not efficient, effective or in the public interest because it is likely to increase the cost of the provision of legal services.

View of The Competition Authority

We feel there is a conflict of interest between a body being responsible for representing a profession and it being responsible for regulating a profession. When that happens, it tends to lead to suppression of the interests of consumers and regulation in the interests of the profession itself. The separation of representative and regulatory functions, as proposed in the Bill, is a very normal method of regulation in a democratic society.

Some improvements could be made that would preserve the independence of the regulator from the Minister.

Mandate (Trade Union)

³¹ This information was provided by the Clerk to the Committee on Joint Committee on Justice, Defence and Equality in the Oireachtas. To date, these submissions have not been made available by that Committee but they were made available to assist the Committee for Finance and Personnel in its deliberations.

(Greater accountability of the complaints process) could be achieved by the committee acquiring or agreeing with the Law Society powers to appoint independent investigators to examine the Law Society's practice and procedures as well as its performance. It is worth noting that at no point in the preparation of the Bill did anyone from the Department visit and examine how the regulation department actually works. That is extraordinary. The Law Society's regulation department costs approximately €11.5m per year to operate. It is a highly developed complex system refined continually in many years, yet we are to believe that it can be more successfully replaced at the stroke of a pen.

The then Justice Minister, Alan Shatter, moved to allay concerns that the Government could have too much control over the new Legal Services Regulation Authority in a speech to the Law Society in May 2013:

I will, for example, be removing the need for ministerial approval for any Codes of Practice which the Legal Services Regulatory Authority proposes to apply to the legal profession and in other instances where, having reflected on the contents of the Bill, I see no benefit or public interest in maintaining a requirement for ministerial consent. I will also be bringing forward amendments to enhance and copper-fasten the independence of appointment of members of the Legal Services Regulatory Authority by means of nominating bodies. The Law Society and Bar Council are, of course, already named nominating bodies for the appointment of solicitors and barristers to the new Authority which will also include lay members. In a similar vein, I will be enhancing the modalities of appointment of members to the Complaints Committee and of the Legal Practitioners' Disciplinary Tribunal. I also intend to bring forward an amendment to stagger the appointment of members of the Authority to ensure its continuity and minimise the scope for external interference by a wholesale reconfiguration. Taken together, these amendments will put to rest previously voiced concerns about the independence of the new regulatory regime and its immunity to any meddling by Government³².

Current status of the Bill

There has been frustration at the slow progress of the Bill, with the European Commission in June 2014 urging implementation of the proposed legislation. The Bill eventually completed its passage through the Dail in April 2015 and is now before the Seanad.

The Bill as amended in the Dáil comprises 13 parts and 158 Sections. Below is an overview of the current Bill³³:

³² <http://www.justice.ie/en/JELR/Pages/SP13000187>

³³ http://www.merrionstreet.ie/en/News-Room/Speeches/Seanad_Second_Stage_Speech_-_Legal_Services_Regulation_Bill.html

- It provides for a new, independent, Legal Services Regulatory Authority with responsibility for oversight of solicitors and barristers. The Law Society has until now discharged the function of statutory regulator for solicitors, but there has been no statutory equivalent for barristers. There will be 11 members of the new Legal Services Regulatory Authority; 6 of whom will be lay persons and 5 of whom will be nominees of the legal professional bodies. The Authority will have a lay Chairperson. The members of the Authority will be nominated by independent nominating bodies reflecting the Authority's remit. Members will be appointed after a resolution approving such appointment has been passed by both Houses.
- Provision is made to ensure gender balance in nominations for the Regulatory Authority and its appointment will be staggered to ensure continuity. Additional safeguards now apply to the possible removal of a member of the Authority including a requirement for a resolution before both Houses with the added safeguard of the High Court. The ban on public comment by the chief executive officer of the Authority on policy has also been removed. These numerous safeguards are underpinned by the affirmation under the terms of the Bill in section 12(3) that the new Legal Services Regulatory Authority "shall be independent in the performance of its functions". It should also be noted that there will no longer be any ministerial role in relation to the processing or approval of professional Codes of Practice.
- Secondly the Bill provides for an independent complaints system to deal with public complaints including those relating to professional misconduct. There will also be an independent Legal Practitioners' Disciplinary Tribunal to deal with both legal professions thereby replacing the two separately operated Tribunals that exist at the moment. The public will now make their complaints directly to the new Authority and not through the professional bodies. In addition to formal misconduct procedures, additional provision has now been made for the informal resolution of more minor and consumer type complaints such as those about inadequate services.
- Thirdly the Bill provides for a new and enhanced legal costs regime that will bring greater transparency to legal costs and will apply to barristers as well as to solicitors. The Bill sets out, for the first time in legislation, a set of Legal Costs Principles (Schedule 1). The Bill also provides that a new Office of the Legal Costs Adjudicator will replace the existing Taxing-Master to deal with disputes about legal costs, will prepare Guidelines and maintain a public Register of Determinations. A range of technical enhancements have been made to the legal costs provisions of the Bill taking account of expert views received.
- Fourthly the Bill provides for a framework for Alternative Business Models. The Bill facilitates new forms of legal services provision such as Legal Partnerships and Multi-Disciplinary Practices, that take account of the emergent new

business models in other common law jurisdictions and the huge advances made in business technology. It does not seek to impose the new models on legal practitioners, but rather the intention is that the new models will operate successfully alongside the existing modes of business used by legal practitioners, including small solicitors' firms and, for barristers, the Law Library.

Definition of complaints

Section 53 of the Bill states the following in relation to complaints:

Authority to offer assistance in resolving matter in dispute where it appears that conduct could constitute misconduct

53. (1) Where the member of the staff of the Authority who conducted a review of a complaint under section 52 is of the opinion that—

(a) the main substance of the complaint is that the standard of the legal services provided by the legal practitioner concerned to the complainant, has fallen short, to a substantial degree, of the standard reasonably expected of a legal practitioner in the provision of those services and that the act or omission of the legal practitioner, if the complaint were substantiated, is such that the act or omission concerned could constitute misconduct within the meaning of section 47(1)(b)³⁴,

(b) the act or omission on the part of the legal practitioner which is the subject of the complaint does not relate to fraud or dishonesty,

(c) the matter the subject of the complaint is capable of being substantially resolved by the legal practitioner concerned in a prompt manner in accordance with guidelines published by the Authority pursuant to section 57, the Authority may invite the complainant and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint.

6 Barristers

Given the smaller number of practitioners in this area, the numbers of complaints are quite low. Below is an overview of the number of complaints received by the relevant regulatory bodies about barristers in each of the jurisdictions looked at for this paper.

Northern Ireland

Recently published research states that:

Presently, there are approximately 580 practising barristers in Northern Ireland...Like its Irish counterpart, the General Council of the Bar of Northern Ireland (The Bar Council) is a non-statutory, private body which is responsible along with the Benchers of the Inn of Court of Northern Ireland (The Inn), for the maintenance of standards, honour and independence of the Bar, and also for the promotion, presentation and improvement of the provision of services by barristers. The Bar Council also has a

³⁴ 47 (1)(b) states the act or omission is connected with the provision of legal services, where the legal practitioner has fallen short, to a substantial degree, of the standards reasonably expected of a legal practitioner.

representative role on behalf of the Bar. Its regulatory functions include overseeing matters relating to professional etiquette, the organisation and working conditions of the Bar and remuneration of barristers.

The Benchers are a group of members of the Inn of Court of Northern Ireland which includes members of the Supreme Court Judiciary, the Attorney General, the Solicitor General and other senior members of the Bar, and they play a similar role in the regulation of the legal profession in both Northern Ireland and (the Republic) of Ireland...The Benchers have the power to either suspend or disbar a barrister from practice upon a recommendation from the Disciplinary Committee or the Disciplinary Appeals Committee of the Inn. Hearings of the Disciplinary Committee are in public and where there are findings of serious misconduct, these are published on a notice board in the Bar Library, and also in the Great Hall of the Royal Courts of Justice. There is no independent oversight of the regulation of the Bar in Northern Ireland, and the Lay Observer plays no role in relation to the regulation of the Bar³⁵.

In a briefing paper prepared in response to the Draft Legal Complaints and Regulation Bill 2013, the Bar Council outlined its regulatory role:

The Bar Council discharges its regulatory functions, through a separate and constitutionally recognised committee. The Professional Conduct Committee consists of twelve independent practicing barristers and two lay members, supported by a secretary solely responsible for regulatory matters. The Committee meets every month to review fresh and ongoing complaints in line with the Bar Code of Conduct.

Complaints can be made in a variety of ways and information is made available on our website to assist members of the public. Complaints can be submitted by a member of the public, a public representative, individual barristers or judicial officers. Under the Code of Conduct, the Professional Conduct Committee has the power to initiate an investigation on the basis of any matter of concern which has come to their attention.

Complaints are delegated to a specific member of the Committee for investigation. Each complaint is investigated thoroughly which can include witness statements, interviews, official court reports and judicial input. In light of the evidence presented, the Committee makes a determination as to whether there are charges to answer. The determination is communicated to both the complainant and the barrister under investigation.

If charges are recommended, a summary panel is convened which deals with the more straightforward matters involving less serious breaches of the Code of Conduct. For more serious breaches of the Code of Conduct, a Disciplinary Committee is constituted. The Disciplinary Committee is chaired by a High Court Judge or a Lord Justice of Appeal. It comprises members of the profession representing different

³⁵ Maeve Hosier, *The Regulation of the Legal Profession in Ireland*, pp169-170, Quid Pro Books, 2015

levels of seniority and experience at the Bar and two lay representatives. The involvement of individuals holding high judicial office in the disciplinary process ensures objectivity and impartiality. There is an appeal from the Disciplinary Committee to the Disciplinary Appeals Committee. The Disciplinary Appeals Committee comprises three Benchers of the Inn of Court of Northern Ireland and one lay member. The Lord Chief Justice nominates the Chairman, a Judge of no less standing than a Lord Justice of Appeal. In addition, there is a High Court judge representing the Benchers and a senior member of the profession. All disciplinary hearings are in public. In the case of a finding of a breach of the Code of Conduct, the finding is published on a notice board in the Bar Library and in the Great Hall of the Royal Courts of Justice³⁶.

Appearing before the Committee for Finance and Personnel in January 2014, the chairman of the professional conduct committee (PCC) at the Bar Council stated that: “we have had no more than 40 fresh complaints coming in to the PCC in the past two years. Most of the complaints are dealt with at PCC level, which comprises me, 11 other members of the Bar and two laypersons. There are 700 members of the Bar, and, of those 700, we get very few complaints. Most complaints are not of a serious nature”³⁷.

Scotland

The SLCC is the gateway for complaints about Advocates (barristers) as well as solicitors. In reporting year 2013-14 the SLCC received 19 complaints about Advocates; in 2012-13 the number was 15.

As with complaints about solicitors, complaints received by the SLCC about the conduct of Advocates will be passed to the relevant professional body, in this case the Faculty of Advocates. The following is a summary of how the Faculty deals with conduct complaints:

Preliminary consideration

- The purpose of this part of the procedure is to clarify the issues and to ascertain whether there is a dispute on the facts. This procedure will normally begin within fourteen days of receipt of the complaint
- The Counsel concerned will be asked to respond to the complaint within fourteen days. Thereafter the complainer will be contacted, usually with a request for further information.
- Depending on the complexity of the complaint, the process of clarification may involve correspondence with the complainer, Counsel and possibly others over a period of time in order to clarify the issues. Once the issues are clear the complaint will be listed for consideration by a Complaints Committee.

Procedure for investigation and determination

- The complaint will come before a Complaints Committee consisting of four persons. Two are Advocates drawn from the Dean; the Vice-Dean and a panel of eight other senior members of Faculty; and the other two members are drawn from the panel of lay persons. The aim is that this meeting will take place within six weeks of

³⁶ <http://www.niassembly.gov.uk/globalassets/Documents/Finance/legislation/legal-complaints-and-regulation-bill/written-submissions/CFP-Draft-Legal-Complaints-and-Regulation-Bill-2013-280114.pdf>

³⁷ <http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2013-2014/january-2014/draft-legal-complaints-and-regulation-bill-bar-council/>

completion of the previous stage.

- The identities of the complaints committee members will not routinely be intimated.
- The Complaints Committee may seek further information, they may proceed to determine the complaint themselves, or they may decide to remit the complaint to the Disciplinary Tribunal.
- If the complaint is upheld by the Complaints Committee, they may impose a range of penalties up to and including a fine.
- The Complaints Committee also have the option to decide that no further action is appropriate or to dismiss the complaint
- If the Complaints Committee decide that they need further information in order to be able to come to a view on the complaint, they may seek such information themselves or they may appoint the complaint to be considered by an Investigating Committee, consisting of one QC and two Junior Advocates, to ingather evidence and report.
- The Investigating Committee will normally proceed by means of interviews, and may call for documents to be produced. When the Investigating Committee's report is produced, the complainer and counsel have an opportunity to see it and make comment on it before it is put before the Complaints Committee. The Complaints Committee may then proceed to determine the complaint if they are content to do so, or they may remit the complaint to the Disciplinary Tribunal.
- The Complaints Committee may remit a complaint for determination and/or disposal to the Faculty's Disciplinary Tribunal, at any time. This Tribunal is chaired by someone of the status of a retired Judge. It includes two practising advocates and three lay persons. The procedure before the Tribunal is more formal, and may involve the leading of evidence. The aim is to complete this stage within four months of the remit to the Tribunal.
- The range of penalties open to the Tribunal where a complaint has been upheld is greater than that available to the Complaints Committee, and extends to suspension or expulsion of the Counsel concerned from membership of the Faculty.

Miscellaneous

- It should be understood that the determination of a complaint does not affect the validity of prior Court decisions (such as convictions or sentences) or contracts, and is not a substitute for legal action where damages for alleged negligence are claimed.
- Proceedings before a Disciplinary Tribunal will normally be held in public unless the Tribunal considers that this would be contrary to the interests of justice.
- The upholding of a complaint of professional misconduct will normally be published. Otherwise generally the investigation and disposal of complaints will be handled on a confidential basis.
- At the conclusion of proceedings, both the complainer and Counsel will be advised in writing of the determination of the Complaint.
- The Faculty's Disciplinary Rules and Guide to Conduct provide further information on these matters and specifically in relation to appeals.
- If a complainer is dissatisfied with the way the Faculty of Advocates has handled a complaint, he or she may (within six months of the date of the decision) refer the matter to (the Scottish Legal Complaints Commission).

Republic 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.

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.

The Barristers' Conduct Tribunal Annual Report for 2013 provides some information relating to complaints in the year. There were 120 enquiries from members of the

public resulting in 65 complaint forms being sent out. Of those, 50 became new complaints to be investigated by the Tribunal. This is in line with the general upward trend of previous years. There was a significant increase of complaints in 2012 due to one off factors, including multiple complaints concerning alleged non-compliance with CPD regulations. Fifteen cases were carried over from 2012³⁸.

³⁸ Information taken from NIAR 376-14