



RESOLVING COMPLAINTS

The role of the Law Society of Ireland
and what a solicitor can do to help

The Law Society of Ireland has a statutory duty to investigate complaints about solicitors made by members of the public and other solicitors.

This leaflet explains the procedures that are followed by the Society when it receives a complaint, and also explains what you should do if you are the subject of a complaint.

You can contact the Complaints and Client Relations Section with any queries on the information in this leaflet.

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INTRODUCTION

The Law Society of Ireland has a statutory duty to investigate complaints about solicitors made by members of the public and other solicitors. The Society takes this duty very seriously and tries to resolve complaints about solicitors as speedily as possible, believing that it is important to do so in order to maintain the reputation of the vast majority of members of the profession who maintain high standards of efficiency and courtesy and conduct their practices with the utmost integrity.

This leaflet explains the procedures that are followed by the Society when it receives a complaint, and also explains what you should do if you are the subject of a complaint, both in your own interest, in the interest of the client, insofar as there is justification for the complaint, and in the interest of the profession as a whole. A satisfactory complaints procedure is essential for maintaining confidence in the solicitors' profession.

HOW THE COMPLAINTS SYSTEM WORKS

Under the provisions of the *Solicitors Acts, 1954 to 2002*, the Society may deal with complaints alleging misconduct, inadequate professional services and complaints of excessive fees. Complaints about services and fees must be made within 5 years [S 8(7) & S 9(6), *Solicitors Amendment Act 1994*].

Virtually all of these complaints are dealt with by the solicitors in the Society's Complaints and Client Relations Section, usually through an exchange of correspondence. It is by means of this correspondence that most complaints are concluded. The balance may be referred to the Complaints and Client Relations Committee, and of these a small number will be the subject of an application to the Disciplinary Tribunal.

If a client is dissatisfied with the outcome of his complaint to the Society, he may approach the Independent Adjudicator of the Law Society, or, in a case of alleged misconduct, apply to the Disciplinary Tribunal.

THE INDEPENDENT ADJUDICATOR OF THE LAW SOCIETY

A complainant who is dissatisfied with the outcome of his complaint to the Society can refer the matter to the Independent Adjudicator of the Law Society. The adjudicator calls for the Society's file and, based on his/her inspection of the file, decides whether the Society has dealt fairly and impartially with the complaint. Further information on the role of the adjudicator is available on request from the Society.

THE COMPLAINTS PROCEDURE

On receipt of a complaint, the Complaints and Client Relations Section copies the letter of complaint to the solicitor involved and asks for his/her views. Where appropriate, this correspondence is copied to the managing partner of the solicitor's firm. If you receive a letter from the Complaints and Client Relations Section informing you that you are the subject of a complaint, and asking for your comments, it is in your own interest to respond promptly to the Society's correspondence, as in all likelihood the matter can be resolved to the satisfaction of all concerned at this point. You should be as frank as possible with the Society, and co-operate with the Society's staff to have the matter resolved. If you believe the complaint is totally unfounded, you are fully justified in setting out the reasons why you believe your client has no cause for complaint. Whatever the circumstances, reply as quickly as possible, bearing in mind that delays in responding to the Society's enquiries can exacerbate the position and make it more difficult to effect a resolution.

When preparing a response, please remember that the Society will forward a copy to the complainant. In this regard, it is important to note that the Society claims privilege on correspondence relating to complaints. This is to protect both the complainant and the solicitor, so that both parties can communicate freely with the society.

The Complaints and Client Relations Committee has made it clear that it will not tolerate any failure by a solicitor to respond to the Society's correspondence. If a solicitor ignores the Society's enquiries, the committee may refer the solicitor to the Disciplinary Tribunal, notwithstanding the fact that it ultimately transpires that the complaint has no substance.

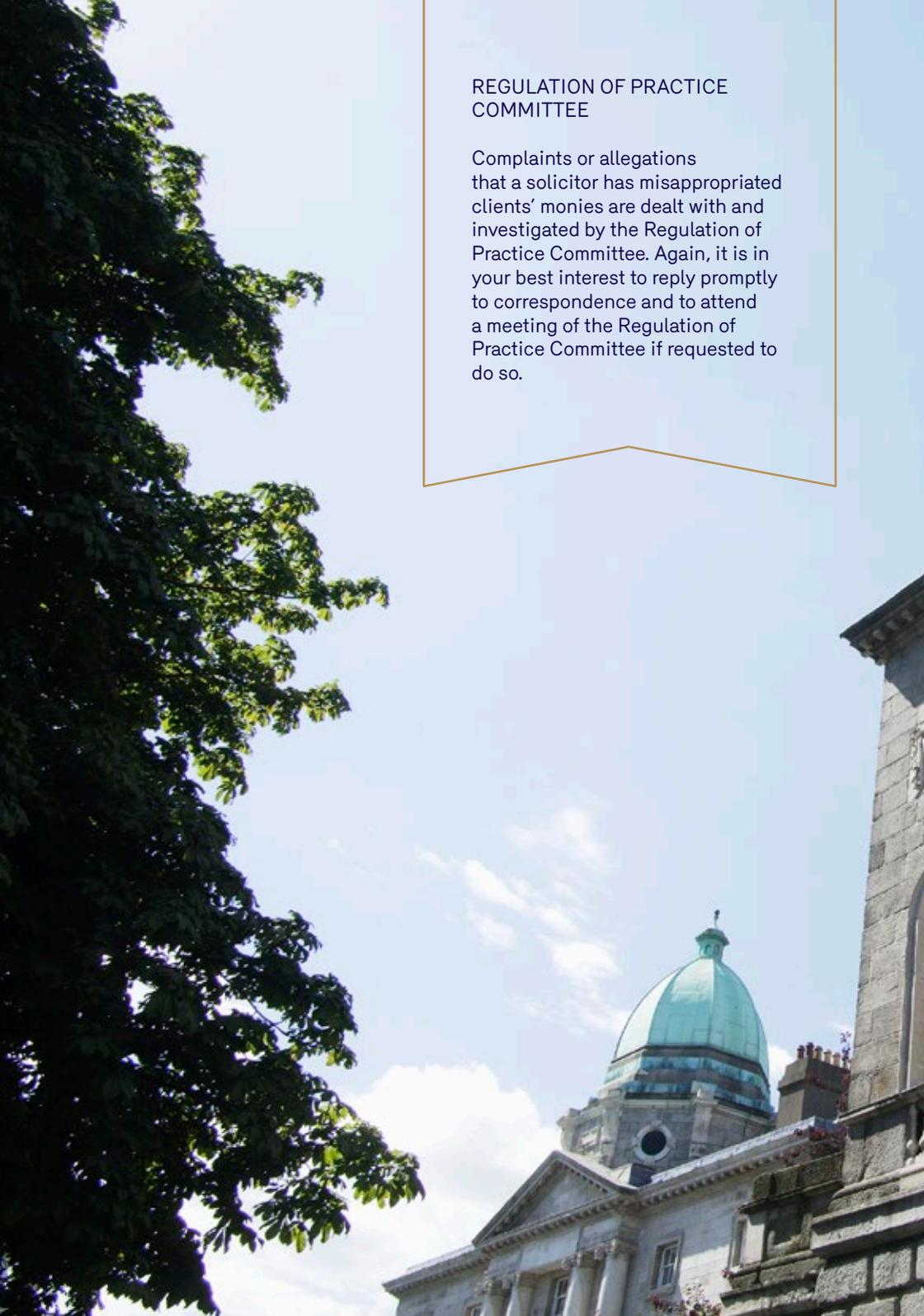
If you have any difficulty about responding to a particular complaint, consult a colleague. If you have particularly heavy commitments which make it impossible to reply to the Society within the time requested, telephone the Complaints and Client Relations Section and advise them of your difficulty.

If the Society's correspondence is totally ignored, the following can occur:

- The service of a statutory notice under section 10 of the *Solicitors (Amendment) Act, 1994* requiring the production of your file.
- A direct application to the President of the High Court under section 13 of the *Solicitors (Amendment) Act, 2002*.
- A direction to make a contribution towards the costs incurred by the Society as a result of failure to respond to the Society's correspondence.
- A referral to the Disciplinary Tribunal, which could result in a finding of professional misconduct.
- The attendance at your office of an authorised person under S.14 of the *Solicitors (Amendment) Act 1994*

REGULATION OF PRACTICE COMMITTEE

Complaints or allegations that a solicitor has misappropriated clients' monies are dealt with and investigated by the Regulation of Practice Committee. Again, it is in your best interest to reply promptly to correspondence and to attend a meeting of the Regulation of Practice Committee if requested to do so.



THE COMPLAINTS AND CLIENT RELATIONS COMMITTEE

The Complaints and Client Relations Committee is one of the standing committees of the Law Society Council. The Committee sits in three separate divisions at approximately 2 week intervals and is composed of solicitors and lay members. By statute, there must be a majority of lay members. The lay members have the right to make a report each year, commenting on the manner in which the Law Society has dealt with complaints, which is publicised and forwarded to the Minister for Justice, Equality and Law Reform.

The Complaints and Client Relations Section may refer a complaint to the Complaints and Client Relations Committee for a variety of reasons, including:

- It is seeking the directions of the committee.
- A solicitor does not respond to correspondence from the society.
- The solicitor or the complainant is dissatisfied with the initial decision of the Complaints and Client Relations Section.

The Complaints and Client Relations Committee operates in an informal manner, and generally solicitors are not legally represented. However, any solicitor who wishes may be represented either by a colleague or by counsel. Guidelines which explain the function and powers of the Committee are available on our website or on request from the Complaints Section.

THE SOLICITORS DISCIPLINARY TRIBUNAL

The Disciplinary Tribunal is an independent statutory tribunal appointed by the President of the High Court to investigate allegations of misconduct against solicitors. An application to the tribunal may result in a solicitor being sanctioned, struck off or suspended from practice.

The tribunal consists of 20 solicitors and 10 lay members. The Complaints and Client Relations Committee may decide to refer a matter to the tribunal following the investigations of the Complaints and Client Relations Section. However, a complainant may by-pass the Society and apply directly to the Disciplinary Tribunal.

If a complaint has already been made to the Society and the complaint has been rejected, the complainant is still entitled to apply to the tribunal.

Further details about the Disciplinary Tribunal and its procedures are available from: Clerk of the Disciplinary Tribunal, The Friary, Bow St, Dublin 7.
T +353 1 8690766, E general@distrib.ie, W www.distrib.ie

THE POWERS OF THE COMPLAINTS AND CLIENT RELATIONS COMMITTEE

The powers of the committee depend on the type of complaint that is being considered. If the complaint is an allegation of misconduct, the committee can either reject the complaint, take steps to resolve the complaint, issue a reprimand, or, if it is of the view that there is a prima facie case of misconduct, refer the matter to the Disciplinary Tribunal.

If the complaint alleges excessive fees or inadequate professional services, the committee can either reject the complaint, attempt to resolve it, or, direct any one or more of the following as appropriate:

- That you refund, or waive, some or all of your fees.
- That you take such action as the Society may specify, at your own expense.
- That you transfer the files relating to the complaint to another solicitor.
- That you make a contribution not exceeding €3,000 towards the cost of investigating the complaint.
- That you pay compensation not exceeding €3,000.

You are entitled to appeal these decisions to the High Court within 21 days of notification of the decision, after which time they become binding.

If you have been notified by the Society that a client has made a complaint alleging that excessive fees have been charged, Section 9 (5) of the Solicitors (Amendment) Act, 1994 provides that you may not issue civil proceedings for the recovery of your fees, or if already issued, proceed further with these proceedings unless you have the written consent of the Society or, on application to the court, on notice to the Society, a court otherwise orders.

MULTIPLE COMPLAINTS

Since the enactment of the Solicitor’s Amendment Act, 2002, the Complaints and Client Relations Committee is entitled to consider “the number and nature” of complaints made against a solicitor within the preceding two years, and if it considers it necessary to protect the interests of a solicitor’s clients, may direct the Registrar of Solicitors to refuse a Practising Certificate or to issue a Practising Certificate with conditions.

RESOLUTION CONFLICT

The focus of the Society's complaints handling procedures is to try to resolve complaints. Dissatisfied clients tend to be more vociferous than satisfied clients and this can lead to much damaging publicity both for your own practice and for the profession as a whole. Furthermore, clients who complain to the Society are often seeking to have their affairs dealt with and resolved. They are not always concerned with the disciplinary aspect of the matter. The longer a complaint is left unresolved, the more likely it will be that the complainant's attitude will harden. Thus, early resolution is in everybody's interest: the client's, the solicitor's and the profession as a whole.

The Society is concerned to ACT FAIRLY IN EQUAL MEASURE to the complainant and the solicitor. The Society recognises that a complaint may be unfounded and the solicitor is not at fault. HOWEVER, UNLESS YOU REPLY IN DETAIL TO THE SOCIETY, SETTING OUT THE FACTS, THE SOCIETY CANNOT ADEQUATELY EXPLAIN THE SITUATION TO YOUR CLIENT.

Some complaints are well founded. It is important to deal effectively with these so that public confidence in the standing and integrity of the profession is maintained.

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WHAT YOU CAN DO TO AVOID COMPLAINTS

In order to minimise the likelihood of becoming the subject of a complaint in the future, the Society would encourage you to:

- 1 At the outset, provide your clients with details of your charges and the estimated length of time the work will take.
 - 2 Explain matters fully to your client, including the steps you will take when dealing with your client's affairs. Make sure that the client understands your explanation.
 - 3 Make sure you obtain clear instructions and authority from your client at all stages, particularly where you are giving undertakings on behalf of your client. Confirm your instructions in writing as soon as is practical.
 - 4 If the circumstances of the transaction change and it is likely to take longer or be more expensive than indicated at the outset, let the client know this as soon as possible.
 - 5 Indicate the likely outcome of transactions or cases, if predictable.
- DUTY TO RESOLVE**
The Society has a statutory duty to resolve complaints alleging inadequate services and excessive fees. If you are responding to complaints of this nature, please include any proposals which may assist in resolving the complaint.
- 6 Communicate regularly with your client about the progress of the work being done.
 - 7 Where it is important to notify, confirm or clarify details to the client, do so in writing.
 - 8 Deal with telephone calls and reply to correspondence as promptly as possible.
 - 9 Clients should be informed as a matter of course if their file is transferred to another solicitor in the firm.

LAW SOCIETY SERVICES

The Society offers a range of services and facilities to assist you in the efficient running of your practice, for example, its Continuing Legal Education courses. The Guidance and Ethics Committee also deals with disputes which arise between solicitors. Full details are available on request to the Society or consult the Society's website www.lawsociety.ie

- 10 If your client expresses dissatisfaction with your services, try to resolve the matter as promptly as possible. If you feel you cannot satisfy the client, consider carefully whether it is in your interest or in the interest of the client to continue the solicitor/client relationship. If the client has lost confidence in you, particularly if the matter you are handling on behalf of the client is one which is likely to turn out adversely for the client, it is often in everyone's interest to discuss openly with the client his dissatisfaction and your belief that he would be better off consulting another solicitor in whom he would have confidence.
- 11 Always issue your client with a detailed bill. Be sure to issue an itemised bill promptly if requested by a client.
- 12 Ensure that any undertakings you give are clear and unambiguous, and satisfy yourself that you will be able to comply with the undertaking. Do not give any professional undertaking unless it is absolutely necessary for the conduct of the business on behalf of the client. Make sure that the Society's recommendations are fully complied with in relation to any undertaking that you have to give. Before you give the undertaking you should receive a written irrevocable retainer from the client in the matter and written instructions to give the undertaking.
- 13 Satisfy yourself that strict compliance with the undertaking is completely within your own control and make sure that, if the undertaking is conditional on some other event, the undertaking is clear and concise as to when and how your professional liability can arise. Maintain a central register of undertakings.
- 14 Always ensure that it is clear whether your undertaking is to rank in priority to your own fees in respect of the item in question or fees due generally.
- 15 If you expect difficulty with a client, or foresee a problem emerging, contact the Guidance and Ethics Committee of the Society as soon as possible before a problem occurs.

16 If your client has indicated that he wishes to dispense with your services, advise him in writing to consult another solicitor without delay, seek instructions as to whether or not you are to continue with the work and point out any problems which might arise if the work is not continued by you (such as time limits expiring). Deliver immediately an itemised bill and try to ensure that no misunderstanding arises as to your rights concerning a solicitor's lien and payment of costs and outlay. If you are requested to tax your costs, do so without delay. Try to facilitate the hand-over of the business (without prejudicing your own entitlement to fees).

17 Keep written attendances.

18 Monitor staff and office administration and procedures regularly.

Published by the

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