

16 AUGUST 2019
GALWAY BAR ASSOCIATION

LINDA KIRWAN

GUIDANCE & ETHICS COMMITTEE

- Guidance for individual members by way of the telephone Helpline, and response to written queries.
- Monitoring and developing policy on matters of conduct and practice, not within the remit of other Committees.
- Responsibility for the Law Society publication "A Guide to Good Professional Conduct for Solicitors" (3rd edition).
- Exercise of a "Good Offices" role, including offering a mediation service to solicitors in difficulty with other solicitors in a personal context, not related to client matters.
- The development of projects to assist with Practice Management
- The promotion of ethical practice

Legal Services Regulation Act 2015

- The Legal Services Regulatory Authority
- Function is to
 - regulate the provision of legal services by legal practitioners and
 - ensure the maintenance and improvement of standards in the provision of such services in the State.

Legal Services Regulation Act 2015

- Commencement of part 6 – 7 Oct 2019
- Complaints handling
- Legal Practitioners Disciplinary Tribunal
- Commencement of Part 10 - Costs adjudicator and Section 150
- LLP's, Legal Partnerships

Complaint handling

- From 7 October 2019, all complaints against legal practitioners will be made to the Authority
- Establishment of Legal Practitioners Disciplinary Tribunal
- The Law Society/Bar Council will finish off any complaints received up to that date
- Law Society will continue to be responsible for financial regulation and the Compensation fund, practising certificates, practice closures

Preliminary review

- Society to be notified of every complaint received
- Preliminary review of admissibility mandatory in every case, before admissibility is decided
- Mandatory notification to practitioner and request for response

Inadmissible complaints

[s.58]

- Frivolous, vexatious, without foundation or substance
- Complaints previously dealt with by the High Court, the Society, the Tribunal
- Similar to issues decided by a court in practitioner's favour
- Out of time

Time limits

- No statutory time limit for conduct complaints
- Time limits for complaints about fees and services are reduced to 3 years (from 5) from date of bill or date services were provided, or
- Date client first became aware or ought reasonably to have become aware that "it would be reasonable to consider" that the services were inadequate or bill was excessive [S58(7)]

- No statutory provision to enable an appeal against a determination that a complaint is inadmissible

Requirement to resolve fees and service complaints

- Statutory obligation to invite the parties to resolve
- No statement made in the course of attempting to resolve a complaint may be used in any disciplinary, civil or criminal proceedings
- Agreement to try and resolve not to be taken as admission of allegation

Power of authority to issue directions in consumer complaints

- If attempts to resolve do not succeed, the parties will be invited to furnish a statement setting out their positions
- The authority can issue a direction if it considers that the services were inadequate or the costs were excessive [Ss 60 & 61]
- No meeting, no hearing,

Review Committee [S 62]

- Appeal by solicitor/complainant to Review Committee
- Request for review to be made within 30 days
- 3 members, 2 lay, 1 legal practitioner
- Provides for written submissions only
- Appeal from decision of Review Committee by either party to High Court within 21 days

Offence under S 63 (4)

- A legal practitioner who does not comply with a decision of the review committee "*shall be guilty of an offence and be liable on summary conviction thereof to a class B fine*" [s 63(4)]
- Similar provision in Solicitors Act has never been utilised

Conduct complaints

- Defined in section 50
- Inadequate services "to a substantial degree"
- "grossly excessive" fees
- Complaints arising from Acts or Omissions occurring otherwise than in connection with the provision of legal services

Complaints Committee [S 69]

- Not more than 27 members, at least 8 solicitors and 4 barristers, divisions of not less than 3 and not more than 5
- Lay majority and lay chairs of each division
- Complaints alleging misconduct "shall" be referred to the Complaints Committee
- The Act does not provide for any investigation by the Authority – "*the Committee shall consider and investigate*"

Complaints Committee

- The solicitor will be invited to respond
- "Consent order", or
- Further investigation
- Verifying affidavits
- Attendance of solicitor/complainant
- Require the provision of information

Complaints Committee

- Reject the complaint
- Refer to Disciplinary
- Issue a direction [S 71(1)(a)]
- By consent, impose a specified restriction on solicitor's practising certificate [S 71 (1)(b)]

Appeals [S 72]

- Solicitor can appeal direction within 21 days to the High Court
- Authority can appeal within 21 days direction or failure to refer to Disciplinary Tribunal
- No provision for appeal by complainant

Publication

- Publication of determinations of Disciplinary Tribunal is mandatory
- Where the Complaints Committee has made a determination under S.71(1) it has discretion to publish the name of the legal practitioner”[S 73]

Independent Adjudicator

- Function of Adjudicator in relation to review of complaints will cease
- Role of the Office of the Ombudsman
