

# LAW SOCIETY SUBMISSION

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

Legal Services Regulatory Authority

27 July 2018

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#### ABOUT THE LAW SOCIETY OF IRELAND

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

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

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

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## 1. Introduction

1.1 The purpose of this submission from the Law Society of Ireland (“the Society”) is to respond to the invitation from the Legal Services Regulatory Authority (“the Authority”) for submissions in relation to a public consultation under section 6 of the Legal Services Regulation Act 2015 which states that the Authority shall do as follows:

- (1) (a) not later than 18 months after the establishment day, and not later than the end of each subsequent 3 year period, commence a review of the operation of this Act, and  
  
(b) not later than 12 months after the commencement of a review under *paragraph (a)*, make a report to each House of the Oireachtas of its findings and conclusions, including such recommendations (if any) to the Minister resulting from that review as it considers appropriate.
- (2) Recommendations under *subsection (1)(b)* shall include such recommendations (if any) for amendments to this Act (including amendments to *Part 7*), the Solicitors Acts 1954 to 2015 or any instrument made under those Acts, as the Authority considers appropriate arising from its findings and conclusions.
- (3) In conducting a review under this section, the Authority shall consult with the Competition and Consumer Protection Commission, professional bodies and such other persons as the Authority considers appropriate for such purpose.

1.2 As the Society is the professional body for solicitors in Ireland, the Society's comments in this submission will consider amendments to the Solicitors Acts 1954 to 2015 including Statutory Instruments made under those Acts that the Authority should consider when making its recommendations to the Minister.



## 2. Executive Summary

- 2.1 The following submission sets out the Society's views in relation to suggested amendments to the Legal Services Regulation Act 2015, and the Solicitors Acts 1954 to 2015, including any Statutory Instruments made under those Acts.
- 2.2 The Society's submission is set out considering suggested amendments to each of the Acts in a sequential manner as they were enacted by the Oireachtas in order of the Solicitors Act 1954, the Solicitors (Amendment) Act 1960, the Solicitors (Amendment) Act 1994, the Solicitors (Amendment) Act 2002 and the Legal Services Regulation Act 2015. The Society also sets out some further suggested amendments to the Solicitors Acts 1954 to 2015.
- 2.3 This submission is made with the objective of protecting the public interest in its interaction with legal services, in particular the services provided by solicitors.
- 2.4 The submission considers amendments that will be necessary for both the Authority and the Society in order to effectively manage the operation of the Act. Many of the recommendations are made to ensure a better alignment between the Authority and the Society and to achieve clarity of the Authority's and the Society's respective roles across a range of statutes.
- 2.5 A number of recommendations are made in relation to data sharing as both the Authority and the Society will require certain information from each other in order to fulfil their statutory obligations. The Society recognises that further provisions to enable data sharing between the two bodies may be a requirement in the future.
- 2.6 A variety of general issues are taken into account including limitations on the use of the title 'solicitor', and the movement between the solicitors' and barristers' profession.
- 2.7 A number of recommendations are made in relation to solicitors' practising certificates including the backdating of practising certificates, and the requirement for solicitors practising in the new legal structures established under Part 8 of the 2015 Act to hold a valid practising certificate. The Society also suggests the removal of the practising certificate exemption for solicitors practising in the full-time service of the State.
- 2.8 The Society has recommended extending powers in relation to imposing conditions on a solicitor's practising certificate. The interaction between the Legal Practitioners Disciplinary Tribunal and the Society has also been considered where the Legal Practitioners Disciplinary Tribunal may direct the imposition of a specified condition on a solicitor's practising certificate.

- 2.9 The Society makes recommendations in relation to apprentice solicitors undertaking their indentures in the new business models provided for under Part 8 of the Legal Services Regulation Act 2015 and fee sharing provisions for solicitors who practice in those new business models.
- 2.10 In relation to disciplinary matters, the Society suggests provisions allowing the full previous disciplinary history of a solicitor to be taken into account by both the Legal Practitioners Disciplinary Tribunal and the High Court.
- 2.11 The Society has identified a number of amendments that should assist in the transition period when the Solicitors Disciplinary Tribunal is being wound down and the Legal Practitioners Disciplinary Tribunal commences its functions.
- 2.12 In relation to the new provisions for misconduct under the 2015 Act, the Society has recommended that the new definition should fully replace the current scheme in order to broaden acts and omissions that may amount to misconduct and for the purposes of avoiding repetition.
- 2.13 The Society makes recommendations for placing limitations on its current complaints functions when Part 6 of the 2015 Act is commenced to ensure the changeover period is as seamless as possible.
- 2.14 Consideration has also been given to matters that pertain to the movement from the Office of the Taxing Master to the Office of the Legal Costs Adjudicator.
- 2.15 A number of minor amendments to the 2015 Act are recommended for the purposes of ensuring the legislation is clear and unambiguous.
- 2.16 The Society also suggests updating the Solicitors Acts to remove outdated terminology referring to felonies and misdemeanours.
- 2.17 The Society considers the recommendations provided in this submission should assist in easing the administrative burden for all parties, to ensure the regulation of solicitors is conducted with ease and clarity for the benefit of the public and the profession.
- 2.18 The recommendations of the Society are as follows:

**Recommendation 1 – Limitation on use of title ‘solicitor’**

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

**Recommendation 2 – Apprenticeships in new business models**

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

**Recommendation 3 – Repealing section 41(c) of the 1954 Act**

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

**Recommendation 4 – Repealing section 43 of the 1954 Act**

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

**Recommendation 5 – Backdating practising certificates**

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

**Recommendation 6 – Breaches of regulations as circumstances which the Society may consider when issuing a practising certificate**

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

**Recommendation 7 – Power to impose practising certificate conditions for multiple years**

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

**Recommendation 8 – Limitation period for an application to appeal the refusal of the Society to grant permission for the employment of an unqualified person**

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

**Recommendation 9 – Direction to see a registered medical practitioner where concerns arise for the physical or mental health of a solicitor**

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

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

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

**Recommendation 10 – Fee sharing provisions**

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

**Recommendation 11 – Statutory requirement for principals of solicitors’ firms to ensure accuracy of details**

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

**Recommendation 12 – Inclusion of new File C in regulations under section 66 of the 1994 Act and section 82 of the 1954 Act**

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

**Recommendation 13 – Removal of felony and misdemeanour terminology**

It is the recommendation of the Society that outdated references under section 3 of the 1960 Act (as amended by section 24 of the 1994 Act) to felonies and misdemeanours are amended to reflect the correct terminology.

**Recommendation 14 – Solicitors Disciplinary Tribunal recommendation to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal**

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

**Recommendation 15 – Order of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal**

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

**Recommendation 16 – Reference to both taxation of costs and adjudication of costs in a finding by the Solicitors Disciplinary Tribunal**

It is the recommendation of the Society that an amendment be made to section 7(9)(d) of the 1960 Act (as substituted and amended) following a finding of misconduct made by the Solicitors Disciplinary Tribunal directing the whole or part of the costs of the Society or any other person appearing before them to be paid by the solicitor, to insert a reference to reflect costs being taxed by a Taxing Master of the High Court or adjudicated upon by the Chief Legal Costs Adjudicator.

**Recommendation 17 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when censuring a solicitor**

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

**Recommendation 18 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when making ancillary orders**

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

**Recommendation 19 – Submissions made by the Society to take into account findings of misconduct by the Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal**

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

**Recommendation 20 – Powers, rights and privileges of the High Court in applications for removal from the Roll of Solicitors**

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

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

**Recommendation 21 – Removal from the Roll of Solicitors**

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

**Recommendation 22 – Filing of High Court and Legal Practitioners Disciplinary Tribunal orders**

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

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

**Recommendation 23 – Insertion of reference to the new File C**

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

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

**Recommendation 24 – Amended wording for section 17(3) of the 1960 Act**

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

**Recommendation 25 – Amendment for the filing of orders in File B**

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

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

**Recommendation 26 – Findings of misconduct not precipitated by complaints**

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

**Recommendation 27 – Reference to section 14B of the 1994 Act**

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

**Recommendation 28 – Allowing for either the taxation of costs or adjudication of costs for complaints of an excessive bill of costs**

It is the recommendation of the Society that an amendment be made to section 9(4) of the 1994 Act (as amended) to provide for a bill of costs that has subsequently been taxed or adjudicated upon to facilitate the changeover period from the Office of the Taxing Master to the Office of the Legal Costs Adjudicator.

**Recommendation 29 – Amendment to section 10A of the 1994 Act regarding the obstruction of complaints**

It is the recommendation of the Society that section 10A(1) of the 1994 Act (as inserted by section 13 of the 2002 Act) be amended by inserting a reference to complaints made to the Society before the date on which Part 6 of the 2015 Act comes into operation which could be worded as follows:

*“10A. –(1) Where, in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act, it appears to the Society...”*



**Recommendation 30 – Amendment to section 12 of the 1994 Act in relation to complaints made to the Society alleging misconduct**

It is the recommendation of the Society that an amendment to section 12(b) and (c) of the 1994 Act (as substituted) by referring to complaints made to the Society before the date on which Part 6 of the 2015 Act comes into operation which could be worded as follows:

*“(b) Paragraph (a) (other than subparagraph (i)) of this subsection shall apply in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor...”*

*“(c) Where, in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act...”*

**Recommendation 31 – Provisions relating to the charging of excessive fees**

It is the recommendation of the Society that section 14B of the 1994 Act be repealed at a time when section 184 of the 2015 Act is commenced with the proviso that section 14B may be relied on for the purposes of dealing with an instance of misconduct for the purposes of section 91(3) of the 2015 Act which could be worded as follows:

*“Section 14B shall stand repealed on such day as section 184 of the Legal Services Regulation Act 2015 is commenced, save insofar as it may be relied upon as an instance of misconduct for the purposes of section 91(3) of the Legal Services Regulation Act 2015.”*

**Recommendation 32 – Insertion of a new section 14D into the 1994 Act**

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

**Recommendation 33 – Requirement for solicitors in new business structures to have a practising certificate in force when providing legal services**

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

*“(2) Without prejudice to section 29(5) (as substituted by this Act) of the Principal Act, a solicitor shall be deemed to practise as a solicitor if they engage in the provision of legal services whether as a sole practitioner or as a partner in a*

*solicitor's practice or as an employee of any solicitor or of any other person or body or as a solicitor practising within any of the practice models provided for in Part 8 of the Legal Services Regulation Act 2015, or as a solicitor in the full-time service of the State within the meaning of section 54(3) (as substituted by this Act) of the Principal Act."*

**Recommendation 34 - Removal of practising certificate exemption for solicitors in the full-time service of the State and conveyancing-only solicitors**

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

**Recommendation 35 – Suspension of practising certificates**

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

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

**Recommendation 36 – Restriction or suspension of practising certificate where certificate previously issued under section 49 of the 1954 Act (as substituted and amended)**

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

**Recommendation 37 – Expanding section 72 of the 1994 Act (as amended) to include the updated collective citation of the Solicitors Acts 1954 to 2015**

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

**Recommendation 38 – Extending the prohibition on advertising legal services**

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

**Recommendation 39 – Claims harvesting websites**

It is the recommendation of the Society that section 5 of the 2002 Act (as amended) be amended to provide a stated definition of "specified service" such that a specified service is *"a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service"*.

**Recommendation 40 – References to Disciplinary Tribunal**

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

**Recommendation 41 – Referral to the Society of alleged misconduct by an apprentice solicitor**

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

**Recommendation 42 – Definition of 'solicitor'**

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

**Recommendation 43 – Definition of ‘registered European lawyer’**

It is the recommendation of the Society that a definition of ‘registered European lawyer’ is inserted into section 2 of the 2015 Act as follows:

*“A person who has been admitted as a lawyer in another member state of the European Union and has been entered on the Register of Registered European Lawyers who is entitled to practise law in the State under his or her home legal qualification in respect of whom a registration certificate is in force.”*

**Recommendation 44 – Reference to Competition Authority**

It is the recommendation of the Society that section 19(3) of the 2015 Act is amended to replace the reference to the “Competition Authority” with a reference to the “Competition and Consumer Protection Commission”.

**Recommendation 45 – Data in relation to the transfer of staff**

It is the recommendation of the Society that appropriate data sharing provisions are put in place to allow the Society to share necessary data with the Authority for the purposes of transferring staff members who from the Society to the Authority.

**Recommendation 46 – Data sharing to prevent contravention or likely contravention of the Solicitors Acts 1954 to 2015**

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

**Recommendation 47 – Information obtained by inspectors during an inspection**

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

**Recommendation 48 – Preparation of a report by an inspector on foot of a complaint made to the Authority**

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

**Recommendation 49 – Preparation of a report by an inspector as to whether they have found evidence of misconduct**

It is the recommendation of the Society that section 43(3) of the 2015 Act is amended to refer to section 50(1) of the Act as this is the correct section that deals with misconduct.

**Recommendation 50 – Referral of complaints against solicitors by the registrar**

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

**Recommendation 51 – Replacing reference ‘to the Society’ with reference ‘to the Authority’**

It is recommended that section 52(3) of the 2015 Act be amended to replace the reference ‘to the Society’ with the correct reference ‘to the Authority’.

**Recommendation 52 – Charging fees for processing complaints**

It is the recommendation of the Society that section 56 of the 2015 Act concerning the charging of fees for processing complaints is not commenced as this could cause unnecessary hardship on those with limited means and may prevent clients with legitimate complaints from putting these matters before the Authority.

**Recommendation 53 – Admissibility of complaints to the Authority**

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

**Recommendation 54 – Request by the Authority to the Society to carry out an investigation**

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

**Recommendation 55 – Clarification for section 68 of the 2015 Act**

It is the recommendation of the Society that section 69 of the 2015 Act is amended to make the intentions of that section clear which could be worded as follows:

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

**Recommendation 56 – Financial sanctions by Divisional Committee not to cause undue hardship on legal practitioners**

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

**Recommendation 57 – Chairperson for divisions of the Legal Practitioners Disciplinary Tribunal**

It is the recommendation of the Society that section 75(5) of the 2015 Act is amended to require the chairperson of a division of the Legal Practitioners Disciplinary Tribunal that hears a matter against a solicitor, to be a practising solicitor and the chairperson of a division that hears a matter against a barrister, to be a practising barrister as set out in section 75(1)(b) and (c) of the 2015 Act.

**Recommendation 58 – Regulations relating to the Legal Practitioners Disciplinary Tribunal**

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

**Recommendation 59 – Determination of applications to the Legal Practitioners Disciplinary Tribunal on the basis of affidavits and supporting documentation**

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

**Recommendation 60 – Amendment to section 80 of the 2015 Act**

It is the recommendation of the Society that section 80(3) and (4) are amended to include the word *'the'* before the word *'opinion'*.

**Recommendation 61 – Determinations by the Legal Practitioners Disciplinary Tribunal**

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

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

**Recommendation 62 – Direction to the Society to impose a specified condition on a solicitor’s practising certificate**

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

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

**Recommendation 63 – Minor amendment to section 83(2) of the 2015 Act**

It is the recommendation of the Society that an amendment is made to section 83(2) of the 2015 Act to refer to a determination made by the Legal Practitioners Disciplinary Tribunal under section 81(8) of the Act.

**Recommendation 64 – Notification to be given by the Authority to the Society where a solicitor is suspended from practice**

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

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

**Recommendation 65 – Application for restoration to the Roll of Solicitors**

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

**Recommendation 66 – Notification from the Authority to the Society where a solicitor is struck off the Roll of Solicitors**

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

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

**Recommendation 67 – Amendment to section 85(8) of the 2015 Act**

It is the recommendation of the Society that section 85(8) of the 2015 Act is amended to refer to subsection (7), rather than subsection (6), where subsection (7) provides that the Court may, by order, direct the imposition of a number of sanctions.

**Recommendation 68 – Right of the Society to appeal to the Court of Appeal**

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



**Recommendation 69 – Enforcement applications to the High Court by the Society**

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

**Recommendation 70 – Clarification of powers of the Authority**

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

**Recommendation 71 – Information concerning the number of practising solicitors in a financial year to calculate the levy**

It is the recommendation of the Society that appropriate data sharing provisions are put in place to allow the Society to provide the Authority with information concerning the number of solicitors holding practising certificates in the relevant financial year and information concerning the number of solicitors who practice in the full-time service of the State.

**Recommendation 72 – Minor amendment to heading of section 103 of the 2015 Act**

It is the recommendation of the Society that the heading of section 103 of the 2015 Act be amended to change the words *“limited partnerships”* to *“legal partnerships”*.

**Recommendation 73 – Minor amendment to heading of section 104 of the 2015 Act**

It is the recommendation of the Society that the heading of section 104 of the 2015 Act be amended to change the words from *“Notification of Authority”* to *“Notification to Authority”*.

**Recommendation 74 – Minor amendment to heading of section 106 of the 2015 Act**

It is the recommendation of the Society that the heading of section 106 of the 2015 Act be amended to change the words from *“Notification of Authority”* to *“Notification to Authority”*.

**Recommendation 75 – Society to be provided with power to advise the Authority if a person is an unqualified person**

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

**Recommendation 76 – Notification to multi-disciplinary practice or managing legal practitioner**

It is the recommendation of the Society that an amendment to section 114(4)(a)(iii) is made to replace the word *'finding'* with the word *'belief'*.

**Recommendation 77 – Replacing the word *'notice'* with *'direction'* under section 115 of the 2015 Act**

It is the recommendation of the Society that section 115 of the Act is amended to replace any reference to the word *'notice'* with the word *'direction'* for clarity and to prevent ambiguity.

**Recommendation 78 – Statutory power for the High Court to grant an order under section 115(1)(a) of the 2015 Act**

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

**Recommendation 79 – Section 115(6) of the 2015 Act should refer to the correct parties in an appeal**

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

**Recommendation 80 – Publication of notice of suspension or revocation of an authorisation to provide legal services as a limited liability partnership**

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

**Recommendation 81 – Power of the Authority to remove a barrister’s name from the Roll of Practising Barristers**

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

**Recommendation 82 – Prohibition on an unqualified person providing legal services as a practising barrister**

It is the recommendation of the Society that section 136(c) of the 2015 Act is amended to remove the word *‘not’* for the purposes of clarifying persons who are considered unqualified to provide legal services as a practising barrister.

**Recommendation 83 – Minor amendment to section 140(2)(e) of the 2015 Act**

It is the recommendation of the Society that section 140(2)(e) of the 2015 Act is amended to insert the word *‘a’* before the word *‘determination’*.

**Recommendation 84 – Minor amendment to section 140(7)(a) of the 2015 Act**

It is the recommendation of the Society that section 140(7) of the 2015 Act be amended to correctly refer to a determination made by a Legal Costs Adjudicator under section 157(1) of the Act.

**Recommendation 85 – Authority’s approval over regulations made by the Society**

It is the recommendation of the Society that section 178 of the 2015 Act is not commenced in its current form. It is recommended that the Authority should have approval over all regulations made by the Society with the exception of matters in relation to the education, financial regulation, practising certificate or professional indemnity insurance functions of the Society.

**Recommendation 86 – Data sharing of complaints and failure to comply with a notice issued by the Complaints Committee**

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

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

**Recommendation 87 – Inclusion of failure to pay levies, contributions, awards, fines and costs under section 49 of the 1954 Act (as substituted and amended)**

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

**Recommendation 88 – Substituting the new definition of misconduct under the 2015 Act**

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

**Recommendation 89 – Publication of information on complaints**

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

**Recommendation 90 – Suspension of practising certificate in the event of criminal conviction or imprisonment**

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

**Recommendation 91 – Sharing information from the Roll of Solicitors**

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

**Recommendation 92 – Provision of complaints information to assess financial risks**

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

**Recommendation 93 – Data sharing for identification of legal partnerships, limited liability partnerships and multi-disciplinary practices**

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

**Recommendation 94 – Legal fees lawfully earned**

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

**Recommendation 95 – Repeal of the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870**

It is the recommendation of the Society that on the commencement of section 151 of the 2015 Act that the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870 be repealed in their entirety.

**Recommendation 96 – Evidence of criminal conviction**

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

**Recommendation 97 – Commencement and cessation in practice regulations**

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

**Recommendation 98 – Data sharing for the cessation of limited liability partnerships**

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

**Recommendation 99 – Responsibility of firm principal(s) or partners regarding practising certificates**

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

### **Recommendation 100 – Professional indemnity insurance**

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

### **Recommendation 101 – Prohibition on solicitors' firms providing legal services without a principal in place**

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

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

### **Recommendation 102 – Statutory definition of 'principal' of a solicitors' firm**

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

*"principal" means, with regard to a solicitor firm, :—*

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

*with all principals required to be solicitors qualified to practise*

**Recommendation 103 – Statutory protection of the term ‘lawyer’**

It is the recommendation of the Society that consideration be given to whether the term ‘lawyer’ should be subject to statutory protection in order to prevent persons who are not legal practitioners from misrepresenting themselves to members of the public as a person qualified to provide legal services as a lawyer.

**Recommendation 104 – Use of digital recording in Disciplinary Tribunals**

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

**Recommendation 105 – Liability of solicitors and their estates for Society’s costs of practice closure exercises**

It is the recommendation of the Society that amendments be introduced to allow the Society to recoup the costs of practice closure exercises by the Society from principal(s), partners or from their estate(s) where appropriate. Provisions may also be made to allow a principal of a closed firm to challenge or appeal a decision by the Society to become involved in a file distribution exercise including the right to put forward alternative proposals for the wind-down of the practice subject to the satisfaction of the Society.

**Recommendation 106 – Further data sharing provisions**

It is the recommendation of the Society that consideration is given in the future to further data sharing provisions, which are not dealt with in this submission, between the Authority and the Society to ensure both bodies are facilitated in exercising their respective regulatory functions.



### 3. The Solicitors Act 1954

#### Section 3 - Limitation of the use of the title “solicitor”

3.1 Under section 3 of the Solicitors Act 1954 (“the 1954 Act”), as substituted by section 3(1)(a) of the Solicitors (Amendment) Act 1994 (“the 1994 Act”), a “solicitor” is defined as:

*“..a person who has been admitted as a solicitor and whose name is on the roll; and a reference to a solicitor includes a reference to a firm of solicitors unless the context otherwise requires and includes a former solicitor or a deceased solicitor unless the context otherwise requires”.*

3.2 Section 54 of the 1954 Act, as substituted by section 62 of the 1994 Act, defines a solicitor qualified to practice as a solicitor:

(a) whose name is on the Roll of Solicitors;

(b) who is not suspended from practice;

(c) who is either a solicitor in the full-time service of the State or a solicitor with a practising certificate in force; and

(d) who does not have an undischarged undertaking to the High Court that he or she will not act as a solicitor.

3.3 Section 3 of the 1954 Act defines an unqualified person as a solicitor who is not a solicitor qualified to practise or a person who is not a solicitor.

3.4 Under the Solicitors Acts, there is a prohibition on solicitors who do not hold a practising certificate from holding themselves out as solicitors entitled to practise as such non-practising solicitors are considered to be “unqualified persons”.

3.5 However, it is likely that members of the public would be unaware of the distinction between a solicitor, and a solicitor entitled to practise, and are likely to be of the opinion that any person referring to themselves as a solicitor is entitled to practise as same and provide legal services.

3.6 Misuse of the title ‘solicitor’ can also have ramifications with regard to the Compensation Fund, where non-practising solicitors may have provided services (such as investment services) and claimants may be mistakenly of the view that such services were provided by the solicitor as a solicitor entitled to practise.

3.7 The Society proposes that use of the title ‘solicitor’ be limited to that of a solicitor entitled to practise under primary legislation in order to close this lacuna.

- 3.8 Solicitors on the Roll of Solicitors who do not hold a practising certificate would be entitled to refer to themselves as ‘non-practising solicitors’.

**Recommendation 1 – Limitation on use of title ‘solicitor’**

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

## Section 29 - Apprenticeships in new business models

- 3.9 Section 29 of the 1954 Act, as substituted by section 44 of the 1994 Act, as amended by section 33 of the Civil Law (Miscellaneous Provisions) Act 2008, provides for the Society’s power to designate those solicitors who will be deemed to be ‘practising solicitors’ for the purposes of taking an apprentice under indentures of apprenticeship.
- 3.10 Section 29(5) provides that a ‘practising solicitor’ for these purposes shall be a solicitor engaged full-time in the provision of legal services as –
- a) a sole practitioner,
  - b) a partner in a firm of solicitors,
  - c) a solicitor in the whole-time employment of a body corporate, or
  - d) a solicitor in the full-time service of the State within the meaning of section 54(3) of the 1954 Act (as substituted by section 62 of the 1994 Act).
- 3.11 Part 8 of the Legal Services Regulation Act 2015 Act (“the 2015 Act”) provides for the provision of legal services by legal practitioners through a number of new practice models.
- 3.12 Part 8 will see the commencement of legal partnerships, which may consist of a partnership between barristers and solicitors or a partnership between barristers only, and which may take the form of a limited liability partnership.
- 3.13 Part 8 may also allow for the introduction of multi-disciplinary practices, which would allow partnerships between legal practitioners and other professionals, such as accountants.
- 3.14 At present, the definition of ‘practising solicitor’ in section 29 does not permit solicitors who may, in time, be engaged full-time in the provision of legal services through these new practice models to take apprentices. In particular, solicitors who are partners in legal partnerships or multi-disciplinary practices would be restricted, by reason of the definition of ‘practising solicitor’, from taking apprentices.

- 3.15 For the avoidance of doubt, the Society is cognisant that it does not mention limited liability partnerships for the purposes of this suggested amendment as the Society will view limited liability partnerships in the same manner as solicitors' firms, albeit with the added status of limited liability as authorised by the Authority. Accordingly, an apprentice solicitor will be permitted to undertake their indentures under a practising solicitor in a limited liability partnership.
- 3.16 It is the recommendation of the Society that section 29 of the 1954 Act is expanded to allow an apprentice solicitor to undertake their term of indentures under a practising solicitor in a legal partnership or multi-disciplinary practice.

**Recommendation 2 – Apprenticeships in new business models**

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

**Sections 41(c) and 43 - Movement between the professions**

- 3.17 Section 41(c) of the 1954 Act, as substituted by section 50 of the 1994 Act, provides for an exemption from the requirement to sit and pass the Society's preliminary examination for persons who hold the degree of barrister-at-law from the Honorable Society of King's Inns or other professional qualification prescribed as being equivalent thereto.
- 3.18 Section 217(1) of the 2015 Act allows the Authority to make regulations in relation to exemptions from admission requirements for solicitors seeking to become barristers and barristers seeking to be admitted as solicitors.
- 3.19 Section 217(2) of the 2015 Act allows the Authority to make exemptions for legal practitioners moving between the two professions from a course of training, sitting and passing an examination or serving a period of apprenticeship or pupillage.
- 3.20 The provisions of section 41(c) of the 1954 Act and section 217 of the 2015 Act could give rise to circumstances where two statutory provisions are in place over the same subject matter.
- 3.21 It is recommended that the provisions of section 41(c) of the 1954 Act (as substituted) are repealed at the time the regulations under section 217 of the 2015 Act are commenced in order to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

**Recommendation 3 – Repealing section 41(c) of the 1954 Act**

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

- 3.22 A similar observation may be made under section 43 of the 1954 Act, as substituted by section 51 of the 1994 Act, which allows the Society to provide for exemptions from certain admission requirements for barristers seeking to be admitted as solicitors by way of regulations.
- 3.23 As the Authority is empowered to commence regulations on the transfer between the two professions this provision should be repealed at a time when regulations under section 217 of the 2015 Act are commenced.

**Recommendation 4 – Repealing section 43 of the 1954 Act**

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

**Section 48 - Backdating practising certificates**

- 3.24 The Society retains the power to issue solicitors with annual practising certificates. A solicitor practising from 1 January in any year is obliged to provide the Society with a correctly completed application form and full payment of fees on or before 1 February in that year in order for the practising certificate issued to bear the date 1 January.
- 3.25 A solicitor who makes an application after 1 February in any year will receive a practising certificate bearing the date of receipt of their application, which consists of a properly completed application form and full payment of fees.
- 3.26 If the solicitor has provided legal services prior to the issue date of their practising certificate, they are required to make an application to backdate their practising certificate by way of application to the High Court to the date on which they commenced providing legal services in that year, in accordance with the provisions of section 48(3) of the 1954 Act, as amended by section 55(2)(b) of the 1994 Act.
- 3.27 The Society will consent to a solicitor's application to the High Court to backdate their practising certificate on the condition that the solicitor discharges the Society's costs which currently stand at €350 per backdated practising certificate.

- 3.28 Backdating of practising certificates is mandatory as it is both professional misconduct and a criminal offence for a solicitor to provide legal services without a valid practising certificate in force.
- 3.29 The requirement to backdate practising certificates and the costs of same act as an incentive for solicitors to make their applications to the Society on time. However, it is the view of the Society that this causes an unnecessary burden on the limited resources of the High Court and the Society.
- 3.30 It is noted that section 180 of the 2015 Act amends section 48(3) of the 1954 Act which provides that applications for backdating practising certificates should be made to the Authority rather than to the High Court.
- 3.31 It is the view of the Society that section 180 of the 2015 Act be amended to confer the power to backdate practising certificates to the Society in order to reduce the administrative burden on the Authority and the Society through duplication of work, and due to the fact that regulatory powers relating to practising certificates are remaining with the Society.
- 3.32 This amendment should assist in making the system for backdating applications more streamlined and efficient as only one body would deal with such applications. As the Society will be sharing data with the Authority on practising certificates, any determination by the Society to backdate a practising certificate will be on notice to the Authority.
- 3.33 It is also recommended that the Society be granted the power to charge a fee in excess of €350 per practising certificate backdated in order to act as a deterrent to solicitors filing late applications.

#### **Recommendation 5 – Backdating practising certificates**

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

### **Section 49 - Circumstances which the Society may consider when issuing a practising certificate**

- 3.34 Section 49(1) of the 1954 Act, as substituted by section 61 of the 1994 Act, as amended by section 2 of the Solicitors (Amendment) Act 2002 (“the 2002 Act”), sets out specific circumstances which allow the Society to issue a practising certificate subject to conditions or refuse to issue a practising certificate.

- 3.35 The Society notes that section 181 of the 2015 Act further amends section 49(1), as substituted and amended, by the insertion of paragraphs (r) to (v) which provides for further circumstances under which the Society may consider issuing a practising certificate with or without conditions, or refusing to issue a practising certificate.
- 3.36 Paragraph (u) allows the Society to restrict or refuse a practising certificate where a solicitor has contravened the Solicitors Acts 1954 to 2015.
- 3.37 It is recommended that paragraph (u) should be amended to include any contravention of any regulations made under those Acts.

Similar amendments to section 59 of the 1994 Act, as amended by section 205 of the 2015 Act, which grants the Society the power to impose conditions on a practising certificate already in force, should also be made.

**Recommendation 6 – Breaches of regulations as circumstances which the Society may consider when issuing a practising certificate**

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

## **Section 49 - Power to impose practising certificate conditions for multiple years**

- 3.38 As noted above, section 49 of the 1954 Act (as substituted and amended) allows the Society to refuse to issue a practising certificate or to issue a practising certificate subject to specified conditions.
- 3.39 For the avoidance of any doubt, the Society recommends that appropriate amendments are made to section 49 of the 1954 Act (as substituted and amended) and section 59 of the 1994 Act to ensure that the Society has the power to impose practising certificate conditions for multiple years, rather than just the year in question.

**Recommendation 7 – Power to impose practising certificate conditions for multiple years**

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

### **Section 60(3) - Limitation period on application to the High Court by a decision of the Society refusing employment of an unqualified person**

- 3.40 Section 60 of the 1954 Act, as substituted by section 20 of the 1994 Act, prohibits any persons from employing a solicitor who is an unqualified person in any capacity which involves the provision of legal services where that solicitor has become an unqualified person by reason of suspension from practice, refusal of a practising certificate, suspension of practising certificate, the solicitor giving an undertaking to the High Court not to practice, or the solicitor being struck off the Roll of Solicitors.
- 3.41 Under section 60(2) of the 1954 Act, the Society may grant or refuse permission for the employment of such unqualified persons.
- 3.42 Section 60(3) of the 1954 Act allows for an application to appeal the decision to the High Court if an aggrieved solicitor wishes to challenge the Society's decision. However, it is noted that there is no period of limitation prescribed in this section.
- 3.43 The Society recommends that a limitation period of 21 days be inserted by way of amendment to this section which would put this provision in line with the other provisions for appeal available under the Solicitors Acts.

<p><b>Recommendation 8 – Limitation period for an application to appeal the refusal of the Society to grant permission for the employment of an unqualified person</b></p>
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<p>It is the recommendation of the Society that section 60(3) of the 1954 Act (as substituted) be amended to provide for a period of 21 days within which an aggrieved solicitor may make an application to appeal the refusal of the Society to grant permission for the employment of the solicitor as an unqualified person.</p>
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### **Section 61(2) - Direction to be seen by a registered medical practitioner where concerns arise for physical or mental health of a solicitor**

- 3.44 Section 61(2) of the 1954 Act, as substituted by section 31 of the 1994 Act, allows the Society to make an application to the High Court where a solicitor becomes of unsound mind or incapable of managing their own affairs or the affairs of the practice.
- 3.45 Where there is a concern for the wellbeing of the solicitor or protection of the public, the Society does not currently have any power to direct that the solicitor be seen by a doctor nominated by the Society.

- 3.46 The Society similarly has no power to gather medical evidence where there is a concern regarding the physical or mental health of the solicitor.
- 3.47 It is important for both the public interest and the protection of the solicitor involved, that the Society has the power to intervene in situations where physical or mental illness interferes to a significant degree with the solicitor's ability to function in the best interests of the client.
- 3.48 Section 181(c) of the 2015 Act inserts a new subsection 7 into section 49 of the 1954 Act which provides for further circumstances where the Society may restrict or refuse a practising certificate where the solicitor fails to satisfy the Society that he or she is fit to carry on the practice of a solicitor, having regard to the state of the solicitor's physical or mental health. The Society may direct the solicitor to be examined by a registered medical practitioner nominated by the Society.
- 3.49 A similar facility could be afforded to the Society by inserting a new subsection (6) and (7) into section 61 of the 1954 Act (as amended) in similar terms to section 181(c) of the 2015 Act. Suggested wording could be as follows:

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

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

**Recommendation 9 – Direction to see a registered medical practitioner where concerns arise for the physical or mental health of a solicitor**

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

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

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



## Section 62 - Fee sharing provisions

- 3.50 Under section 62 of the 1954 Act there is a prohibition on solicitors sharing fees with non-solicitors and rewarding non-solicitors for the introduction of business. The objective of the prohibition on the sharing of fee income is to ensure the proper, independent practice of the legal profession, free from undue influence.
- 3.51 Under Part 8 of the 2015 Act, solicitors will be permitted to enter into legal partnerships with barristers and multi-disciplinary practices with persons who are not legal practitioners.
- 3.52 Accordingly, an amendment to section 62 is suggested to permit the sharing of fees between solicitors and unqualified persons who are partners in legal partnerships or multi-disciplinary practices with solicitors, to ensure that legal partnerships and multi-disciplinary practices can function as intended under the 2015 Act.

### **Recommendation 10 – Fee sharing provisions**

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

## Section 81 - Statutory requirement for principals of solicitors' firms to ensure accuracy of details

- 3.53 The Society is required to maintain the Roll of Solicitors under section 9 of the 1954 Act, as substituted by section 65 of the 1994 Act. The Roll of Solicitors is the name given to the register that records, in the case of each person entered on it, that the person has completed the requirements to be admitted as a solicitor in the State, and has successfully applied to be, and has been, admitted to the Roll.
- 3.54 The Society is also required to maintain the register of practising solicitors under section 47 of the 1954 Act, as substituted by section 54 of the 1994 Act, as amended by section 179 of the 2015 Act. The register of practising solicitors only lists those solicitors who have a current practising certificate and are entitled to provide legal services and hold themselves out as a solicitor entitled to practise.
- 3.55 Both the Roll of Solicitors and register of practising solicitors are made available by inspection during office hours without payment by any person who applies to the Society to inspect them.

- 3.56 Under section 81 of the 1954 Act, solicitors are required to inform the Society of any change in their place of business within 14 days after the change is made. However, it is often the case that the Society is not informed until much later that solicitors have changed practice, gone on maternity leave or ceased practice.
- 3.57 It is the recommendation of the Society that an obligation be placed on principals in solicitors' practices to ensure that all firm records including title, contact details, number and names of solicitors in the firm are accurate and up to date. Any changes including solicitors commencing or leaving the practice or any solicitors going on maternity / paternity leave should be provided to the Society within 14 days including the relevant dates. This will ensure the Society reflects accurate records on both the Roll of Solicitors and register of practising solicitors.

**Recommendation 11 – Statutory requirement for principals of solicitors' firms to ensure accuracy of details**

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

## **Section 82 - Inclusion of new File C in regulations**

- 3.58 Section 82 of the 1954 Act provides for the power of the Society to make regulations, with the concurrence of the President of the High Court, prescribing fees which are payable in respect of applications which are listed in the sixth schedule of the 1954 Act. Section 82(2) suggests that the concurrence of the President of the High Court is only required for those applications listed at paragraphs 1 – 6 of the Schedule.
- 3.59 Section 66 of the 1994 Act provides for the power of the Society to make regulations, with the concurrence of the President of the High Court, prescribing amendments to the sixth schedule by way of inclusion of additional applications.
- 3.60 Paragraph 8 of the sixth schedule currently makes reference to applications under section 17 of the Solicitors (Amendment) Act 1960 ("the 1960 Act") for a copy of an entry in File A or File B.
- 3.61 Section 17 of the 1960 Act has been amended by section 190 of the 2015 Act to include a reference to File C, which will contain a record of all decisions or orders made by the High Court under section 84 or 85 of the 2015 Act and any determination made by the Legal Practitioners Disciplinary Tribunal under section 82 of the 2015 Act in relation to a complaint under that Part in respect of a solicitor.

3.62 Accordingly, regulations will need to be made under section 66 of the 1994 Act and section 82 of the 1954 Act to amend the sixth schedule by way of including a reference to an application under section 17 of the 1960 Act for a copy of an entry in File C.

**Recommendation 12 – Inclusion of new File C in regulations under section 66 of the 1994 Act and section 82 of the 1954 Act**

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

## 4. The Solicitors (Amendment) Act 1960

### Section 3 - Removal of outdated felony and misdemeanour terminology

- 4.1 Section 3 of the 1960 Act (as amended by section 24 of the 1994 Act) contains outdated terminology which refers to felonies and misdemeanours. The distinction between felonies and misdemeanours was abolished by section 3 of the Criminal Law Act 1997.
- 4.2 It is the recommendation of the Society that such wording be updated to reflect the correct terminology.

#### **Recommendation 13 – Removal of felony and misdemeanour terminology**

It is the recommendation of the Society that outdated references under section 3 of the 1960 Act (as amended by section 24 of the 1994 Act) to felonies and misdemeanours are amended to reflect the correct terminology.

### Section 7(3) - Recommendation of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by Legal Practitioners Disciplinary Tribunal

- 4.3 Section 7(3)(c)(iv)(II) of the 1960 Act, as substituted by section 17 of the 1994 Act, as amended by section 9(a) of the 2002 Act, empowers the Solicitors Disciplinary Tribunal to make recommendations to the High Court as to the sanction which, in their opinion, should be imposed, having regard to their findings and to any previous findings made by them and not rescinded by the Court and to any other order made by the Court under the Solicitors Acts in respect of a solicitor.
- 4.4 This section should be amended to allow the Solicitors Disciplinary Tribunal to advise the High Court of any order made by the Legal Practitioners Disciplinary Tribunal also. This would ensure that the recommendation of the Solicitors Disciplinary Tribunal takes into account the entire disciplinary history of the solicitor and is not limited to findings of misconduct made only by that body.

**Recommendation 14 – Solicitors Disciplinary Tribunal recommendation to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal**

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

**Section 7(9) - Order of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by Legal Practitioners Disciplinary Tribunal**

- 4.5 Section 7(9)(d) of the 1960 Act, as substituted by section 17 of the 1994 Act, as amended by section 9 of the 2002 Act, provides for the Solicitors Disciplinary Tribunal, when making an order, to take into account any previous findings of misconduct on the part of the solicitor previously made by them and not rescinded by the Court, and of any order made by the Court under the Solicitors Acts in respect of the solicitor.
- 4.6 This section could be similarly amended to provide for the Solicitors Disciplinary Tribunal to have regard to any findings made by the Legal Practitioners Disciplinary Tribunal when making an order. This would ensure the Solicitors Disciplinary Tribunal could take into account the entire disciplinary history of the solicitor and is not limited to findings of misconduct made only by that body.

**Recommendation 15 – Order of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal**

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

## Section 7(9) - Reference to both taxation and adjudication of costs of the Solicitors Disciplinary Tribunal

- 4.7 Section 7(9)(d) of the 1960 Act, as substituted by section 17 of the 1994 Act, as amended by section 9 of the 2002 Act, provides for the Solicitors Disciplinary Tribunal, following a finding of misconduct, to direct that the whole or part of the costs of the Society or any person appearing before them, as taxed by a Taxing Master of the High Court, in default of agreement, be paid by the solicitor.
- 4.8 Notwithstanding section 167 of the 2015 Act which provides that references in any enactment to a Taxing Master of the High Court are to be construed as references to the Chief Legal Costs Adjudicator, it may be prudent to amend section 7(9)(d) to insert a reference to the adjudication of those costs by either the Chief Legal Costs Adjudicator or a Taxing Master of the High Court.
- 4.9 This is because there may be some old complaints being run out by the Solicitors Disciplinary Tribunal after the commencement of section 167 of the 2015 Act. If that is the case, the reference to both the Taxing Master and the Chief Legal Costs Adjudicator will allow for situations where the costs may have been taxed by the Taxing Master rather than the Chief Legal Costs Adjudicator.
- 4.10 As such, section 7(9)(d) of the 1960 Act could be amended to reflect costs being taxed by a Taxing Master of the High Court or adjudicated upon by the Chief Legal Costs Adjudicator.

### **Recommendation 16 – Reference to both taxation of costs and adjudication of costs in a finding by the Solicitors Disciplinary Tribunal**

It is the recommendation of the Society that an amendment be made to section 7(9)(d) of the 1960 Act (as substituted and amended) following a finding of misconduct made by the Solicitors Disciplinary Tribunal directing the whole or part of the costs of the Society or any other person appearing before them to be paid by the solicitor, to insert a reference to reflect costs being taxed by a Taxing Master of the High Court or adjudicated upon by the Chief Legal Costs Adjudicator.

## **Section 8(1) - High Court to take into account findings of misconduct by both Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when censuring a solicitor**

- 4.11 Section 8(1)(a)(i)(V) of the 1960 Act, as substituted by section 18 of the 1994 Act, as amended by section 10(a) of the 2002 Act, provides power to the High Court to censure a solicitor and require payment of a money penalty. When making such an order, the High Court may take into account any previous findings of misconduct made by the Solicitors Disciplinary Tribunal and not rescinded by the Court, and any order made by the Court under the Solicitors Acts in respect of the solicitor.

This section should be amended to allow the High Court to also have regard to any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court to ensure the Court is cognisant of the entire disciplinary history of the solicitor and is not limited to findings of misconduct made only by the Solicitors Disciplinary Tribunal.

### **Recommendation 17 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when censuring a solicitor**

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

## **Section 8(1) - High Court to take into account findings of misconduct by both Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when making ancillary orders**

- 4.12 Section 8(1)(c)(viii) of the 1960 Act, as substituted by section 18 of the 1994 Act, as amended by section 10(b) of the 2002 Act, provides for a number of ancillary orders which may be made by the High Court where a report is brought before it by the Solicitors Disciplinary Tribunal and in so doing it may consider any previous findings of misconduct made by the Solicitors Disciplinary Tribunal and not rescinded by the Court, and of any order made by the Court under the Solicitors Acts in respect of the solicitor.

- 4.13 It is recommended that an amendment is made to allow the High Court to consider both the findings of the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court to ensure the Court may consider the entire disciplinary history of a solicitor and is not limited to the findings of one body.

**Recommendation 18 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when making ancillary orders**

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

**Section 8(1A) - Submissions made by the Society when bringing the recommendations of the Solicitors Disciplinary Tribunal to the High Court**

- 4.14 Section 8(1A)(b) of the 1960 Act, as inserted by section 18 of the 1994 Act, as amended by section 10 of the 2002 Act, as amended by section 37(b) of the 2008 Act, provides for the Society to make submissions to the High Court in relation to the recommendations of the Solicitors Disciplinary Tribunal including any previous findings of misconduct made by the Solicitors Disciplinary Tribunal and not rescinded by the Court, and of any order made by the Court under the Solicitors Acts in respect of the solicitor.
- 4.15 It is recommended that an amendment is made to allow those submissions by the Society to the High Court to include any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court to ensure the Court may consider the entire disciplinary history of a solicitor and is not limited to the findings of one body.

**Recommendation 19 – Submissions made by the Society to take into account findings of misconduct by the Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal**

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



## Section 15 - Powers, rights and privileges of the High Court in applications for removal from the Roll of Solicitors

- 4.16 Section 15 of the 1960 Act, as substituted by section 25 of the 1994 Act, as amended by sections 11, 22(1)(g) and 22(2)(d) of the 2002 Act, provides for powers, rights and privileges of the High Court to be vested in the Solicitors Disciplinary Tribunal for certain matters including where solicitors seek to make an application to have their name removed from the Roll of Solicitors.
- 4.17 As noted above, section 187 of the 2015 Act replaces the Solicitors Disciplinary Tribunal for the Society as the appropriate body to make applications for removal from the Roll of Solicitors.
- 4.18 Accordingly, it is recommended that the reference to “...or the consideration by them of an application under section 9 of this Act...” should be deleted from this section and a new subsection (5) could be inserted to section 15 providing for those powers, rights and privileges of the High Court to be vested in the Society for the purposes of section 9. The new subsection (5) could be worded as follows:  
*“(5) For the avoidance of doubt, references to the Disciplinary Tribunal in this section shall be construed as including references to the Society where the Society considers an application made to it under section 9 of this Act.”*

### **Recommendation 20 – Powers, rights and privileges of the High Court in applications for removal from the Roll of Solicitors**

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

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

## Section 16 - Applications for removal from the Roll of Solicitors

- 4.19 Section 9 of the 1960 Act, as amended by section 187 of the 2015 Act, provides for solicitors who wish to voluntarily have their name removed from the Roll of Solicitors. Section 187 of the 2015 Act amends section 9 by substituting the Society as the appropriate body to make such applications for the Solicitors Disciplinary Tribunal.

- 4.20 Section 9(1) of the 1960 Act provides that all such applications shall be made in accordance with rules made under section 16 of the 1960 Act. However, no amendment has been made to section 16 of the 1960 Act to replace references to the Solicitors Disciplinary Tribunal with references to the Society.
- 4.21 It is recommended that an amendment be made to section 16 of the 1960 Act to replace any such references to the Solicitors Disciplinary Tribunal with references to the Society to give effect to the intentions of section 187 of the 2015 Act.

**Recommendation 21 – Removal from the Roll of Solicitors**

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

**Section 17(1) - Filing of High Court and Legal Practitioners Disciplinary Tribunal orders**

- 4.22 Section 17(1)(c) of the 1960 Act, as inserted by section 190(a)(3) of the 2015 Acts suggests that the Solicitors Disciplinary Tribunal should file a copy of all orders made by the High Court and the Legal Practitioners Disciplinary Tribunal with the registrar.
- 4.23 This should more properly state that the filing of such orders with the registrar should be by the Legal Practitioners Disciplinary Tribunal as it will be the body which will have competence over these orders.
- 4.24 Additionally, it may be said that a requirement that the Legal Practitioners Disciplinary Tribunal file copies with the registrar reflects the intent expressed in section 88 of the 2015 Act, which provides that *“every decision or order made by the High Court under section 84 or 85 and determination made by the Legal Practitioners Disciplinary Tribunal under sections 81 and 82 shall be furnished to the registrar of solicitors in the case of an order relating to a practising solicitor...”*
- 4.25 Rather than commencing section 190(a)(3), a new subsection 1A could be inserted into section 17(1) of the 1960 Act which may provide as follows:
- “1A. – A copy of any decision or order made by the High Court and any determination made by the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 in relation to a complaint under that Part in respect of a solicitor shall be filed by the Legal Practitioners Disciplinary Tribunal with the registrar.”*

**Recommendation 22 – Filing of High Court and Legal Practitioners Disciplinary Tribunal orders**

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

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

**Section 17(3) - Insertion of reference to the new File C**

- 4.26 Currently section 17(3) of the 1960 Act, as amended by section 190 of the 2015 Act, provides for the maintenance, on separate files, of all orders made by the High Court or the Solicitors Disciplinary Tribunal.
- 4.27 In circumstances where section 190(b)(ii) provides for the insertion of the new File C, containing orders made under Part 6 of the 2015 Act, section 17(3) requires an amendment to include reference to the maintenance by the registrar of the new File C.

**Recommendation 23 – Insertion of reference to the new File C**

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

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

- 4.28 In addition, section 17(3) requires an amendment to replace the reference to the Disciplinary Committee with a reference to the Society in circumstances where section 9 applications (for removal from the Roll of Solicitors) are now, as a result of the amendment of that section by section 187 of the 2015 Act, to be made to the Society.

4.29 The following wording for section 17(3) is suggested:

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

**Recommendation 24 – Amended wording for section 17(3) of the 1960 Act**

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

**Section 17(3)(b) - Amendment for the filing of orders in File B**

4.30 Section 17(3)(b) of the 1960 Act makes provision for a File B on which any other order made by the High Court under the 1960 Act and any order made under section 9 of the 1960 Act by the Solicitors Disciplinary Tribunal are to be filed.

4.31 As noted above, section 187 of the 2015 Act has amended section 9 of the 1960 Act which replaces the Solicitors Disciplinary Tribunal with the Society, section 17(3)(b) requires an amendment to reflect this which is suggested as follows:

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

**Recommendation 25 – Amendment for the filing of orders in File B**

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

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

## Section 17(3)(c) – Findings of misconduct not precipitated by complaints

- 4.32 Section 190(b)(ii) of the 2015 Act inserts a new paragraph (c) into section 17(3) of the 1960 Act which makes provision for a File C on which each decision or order made by the High Court under section 84 or 85 of the 2015 Act and any determination made by the Legal Practitioners Disciplinary Tribunal under section 82 of the 2015 Act, in relation to a complaint under that Part in respect of a solicitor, is to be filed.
- 4.33 As the Legal Practitioners Disciplinary Tribunal may make other findings of misconduct against solicitors, which have not been precipitated by complaints, including findings of misconduct, the inclusion of these determinations of the Legal Practitioners Disciplinary Tribunal on File C may provide a more complete record of the disciplinary history of solicitors.
- 4.34 It is recommended that section 17(3)(c) be amended by deleting the phrase *‘in relation to a complaint under that Part’*.

### **Recommendation 26 – Findings of misconduct not precipitated by complaints**

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

## 5. The Solicitors (Amendment) Act 1994

### Section 2(2) – Reference to section 14B of the 1994 Act

- 5.1 Section 2(2) of the 1994 Act, as inserted by section 12 of the 2002 Act and substituted by section 38 of the Civil Law (Miscellaneous Provisions) Act 2008, provides that references in sections 10, 10A, 12 and 22 of the 1994 Act to complaints made to or received by the Society include references to any complaints made to the Society by the registrar under section 14B of the 1994 Act.
- 5.2 However, section 14B of the 1994 Act provides that the issue of a bill of costs by a solicitor that is excessive may constitute misconduct.
- 5.3 It is section 14C of the 1994 Act that provides for the making of a complaint by the registrar to the Society regarding a solicitor who is alleged to have contravened the Solicitors Acts or any regulation made thereunder and any allegations of conduct tending to bring the solicitors' profession into disrepute.
- 5.4 Therefore, an amendment is required to section 2(2), to replace the reference to section 14B with a reference to section 14C.

#### **Recommendation 27 – Reference to section 14B of the 1994 Act**

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

### Section 9(4) - Allowing for either the taxation of costs or adjudication of costs for complaints of an excessive bill of costs

- 5.5 Section 9 of the 1994 Act, as amended by section 195 of the 2015 Act, provides for the investigation of complaints against a solicitor for a bill of costs that is excessive. It is noted that section 195 of the 2015 Act has amended section 9 in order to ensure that there are dual references to the taxation of costs by the Taxing Master and the adjudication of costs by the Chief Legal Costs Adjudicator under Part 10 of the 2015 Act.
- 5.6 However, an amendment is suggested to section 9(4) which currently refers to a bill of costs that *“has subsequently been taxed, then-”*. This should be amended to provide for the alternative adjudication of costs by the Office of the Legal Costs Adjudicator to facilitate the changeover period from the Office of the Taxing Master.

Accordingly, section 9(4) could be amended to refer to a bill of costs that “has subsequently been taxed or adjudicated upon, then-”.

**Recommendation 28 – Allowing for either the taxation of costs or adjudication of costs for complaints of an excessive bill of costs**

It is the recommendation of the Society that an amendment be made to section 9(4) of the 1994 Act (as amended) to provide for a bill of costs that has subsequently been taxed or adjudicated upon to facilitate the changeover period from the Office of the Taxing Master to the Office of the Legal Costs Adjudicator.

## Section 10A - Obstructing the investigation of complaints

5.7 Section 10A of the 1994 Act, as inserted by section 13 of the 2002 Act, provides for the powers which may be exercised by the Society where a solicitor obstructs the investigation of the Society into complaints of alleged misconduct and complaints under sections 8 and 9 of the 1994 Act.

5.8 Section 10A(1) requires an amendment, similar to the amendments made to sections 8, 9 and 10 of the 1994 Act, (effected by sections 194, 195 and 196 of the 2015 Act), in order to reflect the movement of complaints handling to the Authority, by inserting a reference to complaints made to the Society before the date on which Part 6 of the 2015 Act comes into operation. Suggested wording could be as follows:

*“10A. –(1) Where, in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act, it appears to the Society...”*

**Recommendation 29 – Amendment to section 10A of the 1994 Act regarding the obstruction of complaints**

It is the recommendation of the Society that section 10A(1) of the 1994 Act (as inserted by section 13 of the 2002 Act) be amended by inserting a reference to complaints made to the Society before the date on which Part 6 of the 2015 Act comes into operation which could be worded as follows:

*“10A. –(1) Where, in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act, it appears to the Society...”*

## Section 12 - Limitation on complaints made to the Society alleging misconduct

- 5.9 Section 12 of the 1994 Act, as substituted by section 14 of the 2002 Act, provides for the power of the Society to impose costs on a solicitor following the investigation of a complaint made to the Society against a solicitor of inadequate professional services or excessive fees under sections 8 or 9 of the 1994 Act respectively or complaints relating to allegations of misconduct.
- 5.10 Section 12 of the 1994 Act (as substituted) further provides for the power of the Society to make a finding that those complaints are justified but merely warrant the issue of a reprimand to the solicitor rather than an application to the Solicitors Disciplinary Tribunal.
- 5.11 Section 12(a) which pertains to complaints of inadequate professional services and excessive fees, has been limited by operation of sections 194 and 195 of the 2015 Act to those complaints made to the Society before the commencement of Part 6 of the 2015 Act.
- 5.12 Section 12 (b) and (c) (as substituted) which concern allegations of misconduct should be amended in a similar manner to refer to complaints made to the Society prior to the commencement of Part 6 of the 2015 Act.
- 5.13 Suggested wording for these provisions could be as follows:

*“(b) Paragraph (a) (other than subparagraph (i)) of this subsection shall apply in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor...”*

*“(c) Where, in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act...”*

### **Recommendation 30 – Amendment to section 12 of the 1994 Act in relation to complaints made to the Society alleging misconduct**

It is the recommendation of the Society that an amendment to section 12(b) and (c) of the 1994 Act (as substituted) by referring to complaints made to the Society before the date on which Part 6 of the 2015 Act comes into operation which could be worded as follows:

*“(b) Paragraph (a) (other than subparagraph (i)) of this subsection shall apply in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor...”*



*“(c) Where, in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act...”*

## **Section 14B - Excessive fees on a bill of costs**

- 5.14 Section 14B of the 1994 Act, as inserted by section 41 of the Civil Law (Miscellaneous Provisions) Act 2008, provides for misconduct where a solicitor issues a bill of costs that is excessive.
- 5.15 When section 184 of the 2015 Act is commenced, misconduct will then be construed in accordance with section 50 of the 2015 Act. Section 50(l) of the 2015 Act provides for an instance of misconduct as *“the seeking of an amount of costs in respect of the provision of legal services that is grossly excessive”*.
- 5.16 Were section 14B of the 1994 Act to remain on the statute books, it would mean that under the Solicitors Acts, there would be two outstanding instances of misconduct related to the charging of fees that are of varying degrees. On the one hand, the new section 50 definition in the 1960 Act will define misconduct as the charging of grossly excessive fees, while simultaneously on the other hand, section 14B of the 1994 Act will define misconduct as the charging of excessive fees.
- 5.17 However, it would produce greater uniformity to have a single definition of misconduct in relation to bills of costs issued by solicitors contained in section 3 of the 1960 Act and an equal standard in relation to bills of costs that will have to be met by a complainant under Part 6 of the 2015 Act and by the Society under the Solicitors Acts if the bill is to ground an allegation of misconduct.
- 5.18 Further, reference is made to section 91(3) of the 2015 Act in circumstances where this is the transitional provision applicable to solicitors which provides that, where a complaint is made after the commencement of Part 6 of the 2015 Act, but the act or omission to which the complaint relates occurred before the date on which Part 6 was commenced, the Authority shall deal with the complaint in accordance with the old definition of misconduct as provided for under section 3 of the 1960 Act.
- 5.19 Accordingly, it is suggested that section 14B may be repealed by using the following wording:

*“Section 14B shall stand repealed on such day as section 184 of the Legal Services Regulation Act 2015 is commenced, save insofar as it may be relied upon as an instance of misconduct for the purposes of section 91(3) of the Legal Services Regulation Act 2015.”*

- 5.20 As such, referring to the provisions of section 91(3) ensures that the section 14B definition of misconduct may continue to be relied upon by the Authority in running out old misconduct complaints.

**Recommendation 31 – Provisions relating to the charging of excessive fees**

It is the recommendation of the Society that section 14B of the 1994 Act be repealed at a time when section 184 of the 2015 Act is commenced with the proviso that section 14B may be relied on for the purposes of dealing with an instance of misconduct for the purposes of section 91(3) of the 2015 Act which could be worded as follows:

*“Section 14B shall stand repealed on such day as section 184 of the Legal Services Regulation Act 2015 is commenced, save insofar as it may be relied upon as an instance of misconduct for the purposes of section 91(3) of the Legal Services Regulation Act 2015.”*

**Section 14D – Renaming section 14C of 1994 Act inserted by section 199 of 2015 Act**

- 5.21 Section 199 of the 2015 Act inserts a new section 14C into the 1994 Act. However, this section already exists by virtue of an amendment by insertion under section 42 of the Civil Law (Miscellaneous Provisions) Act 2008 which provides for the making of complaints against a solicitor to the Society by the registrar.
- 5.22 It is recommended that an amendment be made to section 199 of the 2015 Act to provide for the insertion of a section 14D into the 1994 Act for the purposes of clarity.

**Recommendation 32 – Insertion of a new section 14D into the 1994 Act**

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

## Section 56(2) - Practising certificates for solicitors practising in legal partnerships, limited liability partnerships or multi-disciplinary practices

- 5.23 Section 56(1) of the 1994 Act provides that no solicitor shall practise as a solicitor unless a practising certificate in respect of him is in force.
- 5.24 Section 56(2) of the 1994 Act provides that a solicitor shall be deemed to practice as a solicitor if they engage in the provision of legal services whether as a sole practitioner or as a partner in a solicitor's practice or as an employee of any solicitor or of any other person or body, or as a solicitor in the full-time service of the State within the meaning of section 54 (3) of the 1954 Act, as substituted.
- 5.25 Part 8 of the 2015 Act provides for new business models through which solicitors may provide legal services including legal partnerships, limited liability partnerships and multi-disciplinary practices.
- 5.26 Accordingly, it is recommended that section 56(2) of the 1994 Act be widened to refer to the new business structures established under the 2015 Act. Suggested wording could read as follows:

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

### **Recommendation 33 – Requirement for solicitors in new business structures to have a practising certificate in force when providing legal services**

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

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

## **Section 56(3) - Removal of practising certificate exemption for solicitors in the full-time service of the State and conveyancing-only solicitors**

- 5.27 Under section 56(3) of the 1994 Act, solicitors in the full-time service of the State (within the meaning of section 54(3) of the Solicitors Act 1954, as substituted) and solicitors who are employed full-time to provide conveyancing services for their non-solicitor employers, are exempted from the requirement to apply for or hold a practising certificate in order to provide legal services.
- 5.28 Section 54(3) of the 1954 Act, as substituted by section 62 of the 1994 Act states that a solicitor shall be regarded as a solicitor in the full-time service of the State if and while the solicitor is required to devote the whole of his or her time to the service of the State as a solicitor, and is remunerated in respect of such service wholly out of moneys provided by the Oireachtas.
- 5.29 This could potentially create an issue where such solicitors are found guilty of misconduct, as there is no possibility to impose conditions on the solicitor's practising certificate or to make an application to the High Court to suspend the solicitor from practice.
- 5.30 It also creates issues with regard to the maintenance of accurate records by the Society as solicitors in the full-time service of the State and conveyancing-only solicitors are not required to confirm where they are employed to the Society and, as such, the Society's record with regard to those solicitors is incomplete.
- 5.31 Lack of a practising certificate also creates issues for solicitors in the full-time service of the State with regard to the swearing of documents. Under the Solicitors Acts, solicitors in the full-time service of the State are considered to be solicitors qualified to practise even though they do not hold a practising certificate. However, under section 72(1) of the 1994 Act only solicitors who hold a practising certificate can swear documents. As such solicitors in the full-time service of the State are ineligible to swear documents as they do not hold a practising certificate.
- 5.32 The Society proposes that the exemption from the requirement to hold a practising certificate for solicitors in the full-time service of the State and conveyancing-only solicitors be removed, that such solicitors be required to apply for a practising certificate on an annual basis in line with other solicitors, but that such solicitors be exempt from paying practising certificate fees.

**Recommendation 34 - Removal of practising certificate exemption for solicitors in the full-time service of the State and conveyancing-only solicitors**

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

**Section 58 – Suspension of practising certificates**

- 5.33 Section 58 of the 1994 Act, as amended by section 204 of the 2015 Act, provides for the circumstances in which the Society may apply to the High Court for an order suspending a solicitor’s practising certificate.
- 5.34 This section has been amended by section 204 of the 2015 Act to provide for further circumstances in which such an application may be made.
- 5.35 The current position is that section 58 only refers to conditions imposed on a practising certificate under section 59 of the 1994 Act. This section requires further amendment, however, to include an expanded reference to conditions specified in a direction relating to a practising certificate under the 2015 Act in circumstances where conditions may be imposed on practising certificates under the provisions of that Act also.
- 5.36 In particular, the Complaints Committee of the Authority has the power, following an investigation under section 70 of the 2015 Act, to impose a specified restriction or condition on a solicitor’s practising certificate pursuant to section 71(6)(a).
- 5.37 The Legal Practitioners Disciplinary Tribunal also has the power to direct the imposition of a specified condition on a solicitor’s practising certificate pursuant to section 82(1)(k) of the 2015 Act.
- 5.38 While the intention behind those provisions may be that the Authority directs the imposition of the condition by the Society, this will require an amendment to ensure reference is made to the 2015 Act.
- 5.39 Additionally, the Society has the power, pursuant to section 14A(3)(b) of the 1994 Act to impose a sanction on a solicitor’s practising certificate following an investigation by it into an allegation of misconduct.
- 5.40 As such, section 58 should be amended to provide a reference to the additional provision in the 1994 Act and to the relevant provisions of the 2015 Act, pursuant to which conditions may be imposed on solicitors’ practising certificates.

5.41 Suggested wording for the amendment could be as follows:

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

**Recommendation 35 – Suspension of practising certificates**

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

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

**Sections 58 and 59 - Restriction or suspension of practising certificate where certificate previously issued under section 49**

5.42 Section 49 of the 1954 Act, as substituted by section 61 of the 1994 Act, as amended by section 2 of the 2002 Act and section 181 of the 2015 Act, sets out the circumstances under which the Society can refuse to issue a practising certificate, or issue a practising certificate subject to specified conditions.

5.43 Section 58 of the 1994 Act, as amended by section 204 of the 2015 Act, allows the Society to make an application to the High Court for the suspension of a solicitor’s practising certificate where a solicitor fails to comply with any provision of the Solicitors Acts or with any regulations made thereunder or with any conditions specified in a direction relating to a practising certificate where the Society is of the opinion that such failure to comply is serious.

5.44 Section 59 of the 1994 Act, as amended by section 205 of the 2015 Act, empowers the Society to impose specified conditions on a practising certificate already in force where one or more of the circumstances listed under section 49 of the 1954 Act (as substituted and amended) apply to the solicitor.

5.45 This can create an issue where the Society is aware of a potential circumstance, but the matter is under investigation, is currently before the Tribunal or the Courts, or the Society has agreed to consider the matter *de novo*, and the Society issues a practising certificate under section 49 of the 1954 Act (as substituted and amended) in the knowledge that conditions can be placed on the solicitor’s practising certificate if necessary at a later date under section 59.

- 5.46 This is done in the interests of fairness to the solicitor, as the Society should not refuse to issue a solicitor with a practising certificate while a matter is under consideration, which would leave the solicitor unable to practise.
- 5.47 The argument has been made, although never accepted by the Society, that if the Society issues a practising certificate under section 49, where the Society is aware that one of the circumstances listed under section 49 applies or could potentially apply, then the Society is estopped from imposing conditions under section 59 at a later date.
- 5.48 The argument has also been made, but never accepted by the Society, that the Society cannot seek to have conditions imposed on a solicitor's practising certificate, or have the solicitor suspended by way of sanction, where the Society has issued a practising certificate under section 49 of the 1954 Act (as substituted and amended) where there is an ongoing disciplinary case or High Court case against the solicitor.
- 5.49 The Society is proposing that amendments be made to ensure that the Society is not estopped from considering the imposition of conditions under section 59 of the 1994 Act (as amended), or seeking sanctions or the imposition of conditions or suspension under section 58 of the 1994 Act (as amended), where the Society has previously issued the solicitor with a practising certificate under section 49 of the 1954 Act (as substituted and amended), even where the Society was aware that one of the listed conditions applied or could potentially apply at the time of issue of the practising certificate.

**Recommendation 36 – Restriction or suspension of practising certificate where certificate previously issued under section 49 of the 1954 Act (as substituted and amended)**

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

## Section 72 - Expanding section 72 of the 1994 Act to provide for the updated collective citation of the Solicitors Acts 1954 to 2015

- 5.50 Section 72(1) of the 1994 Act, as amended by Schedule 4 of the Stamp Duties Consolidation Act 1999, provides that the power vested in a commissioner for oaths shall be vested in every solicitor who holds a practising certificate, subject to any conditions to which that practising certificate may be subject under the Solicitors Acts 1954 – 1994.
- 5.51 This section should be amended to include an expanded reference to the 2015 Act, in circumstances where conditions may be imposed on practising certificates under the provisions of that Act also.
- 5.52 In particular, the Complaints Committee has the power, following an investigation under section 70 of the 2015 Act, to impose a specified restriction or condition on a solicitor’s practising certificate pursuant to section 71(6)(a) of the 2015 Act.
- 5.53 Additionally, the Legal Practitioners Disciplinary Tribunal has the power to similarly direct the imposition of a specified condition on a solicitor’s practising certificate pursuant to section 82(1)(k) of the 2015 Act.
- 5.54 While the intention behind those provisions may be that the Authority or the Legal Practitioners Disciplinary Tribunal directs the imposition of the condition by the Society, this will require an amendment to ensure reference is made to the 2015 Act.
- 5.55 Accordingly, section 72 of the 1994 Act should be amended to provide the updated collective citation for the Solicitors Acts 1954 to 2015.

**Recommendation 37 – Expanding section 72 of the 1994 Act (as amended) to include the updated collective citation of the Solicitors Acts 1954 to 2015**

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



## 6. The Solicitors (Amendment) Act 2002

### Section 5 - Advertising of legal services

- 6.1 Section 5 of the 2002 Act, as amended by section 207 of the 2015 Act, prohibits a person who is not a solicitor from publishing or causing to be published an advertisement to provide a specified service, being a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward and which, if published, would not be in compliance with the rules regulating advertising by solicitors under section 71 of the 1954 Act, as amended.
- 6.2 In circumstances where the relevant parts of section 71, dealing with advertising by solicitors have been repealed, section 207 of the 2015 Act substitutes a new provision which prohibits the publication of the said advertisements by a person who is not a solicitor where the publication would breach regulations made in respect of advertising by legal practitioners under section 218 of the 2015 Act.
- 6.3 Section 5, read in conjunction with the amendment made by section 207 of the 2015 Act, will prohibit a person who is not a solicitor from engaging in the proscribed activity, rather than prohibiting an unqualified person from doing same.
- 6.4 Section 3 of the Solicitors (Amendment) Act 1994 defines a 'solicitor' as a person who has been admitted to the profession and is on the Roll of Solicitors.
- 6.5 Section 54 of the Solicitors Act 1954 defines '*a solicitor qualified to practise*' as a person whose name is on the Roll of Solicitors, who is in possession of a practising certificate which is in force, who does not stand suspended from practice and who has not given an undertaking to the High Court that he will not practice.
- 6.6 Therefore, section 5 of the 2002 Act would allow persons who are on the Roll of Solicitors but do not have a practising certificate, have been suspended from practice or have given an undertaking not to practice to advertise in this way.
- 6.7 The broader definition of an unqualified person would prohibit persons who do not hold a practising certificate from advertising in the proscribed manner.
- 6.8 As the advertising of legal services suggests that a solicitor is in a position to provide those legal services, that can only be true of a solicitor where they are a qualified person.
- 6.9 The Society recommends that section 5(1) and (2) be amended to replace the reference to '*a person who is not a solicitor*' with the broader reference of '*an unqualified person.*'

### **Recommendation 38 – Extending the prohibition on advertising legal services**

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

## **Section 5 - Claims harvesting websites**

- 6.10 As noted above, section 5 of the 2002 Act, as amended by section 207 of the 2015 Act, prohibits a person who is not a solicitor from publishing an advertisement for the provision of a specified service, in circumstances where, if such an advertisement was published by a solicitor, it would not be in compliance with particular provisions of the Acts.
- 6.11 There is a possible issue with regard to claims harvesting sites and the ability of the Society to prosecute the solicitors behind such sites where it is alleged that the website is not for gain and is a philanthropic association.
- 6.12 The issue lies with the interpretation of specified service under section 5(1)(a) of the 2002 Act which states:
- “5(1) Without prejudice to sections 55 and 56 (which prohibit an unqualified person from acting as or pretending to be a solicitor) of the Principal Act, a person who is not a solicitor shall not publish or cause to be published an advertisement- which expressly or impliedly undertakes to provide a specified service, being a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service, and”*
- 6.13 One interpretation is that section 5(1)(a) by extension defines a specified service as a “service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service”. Should this interpretation be accepted, it is anticipated that the position in relation to proving allegations against such claims harvesting websites would be relatively straightforward as all that would need to be shown is that the claims harvesting website advertised to provide a service which is one which in the ordinary course of business would be provided by a solicitor for direct payment of a “fee, gain or reward”.
- 6.14 However, it is possible that a Tribunal or Court could take a narrower interpretation of specified service as “a service of a legal nature that could otherwise be provided by a solicitor”. If this interpretation were accepted, it would be required to be further proven that such claims harvesting websites had advertised to provide a service of a legal nature on their website, that the service of a legal nature would be provided for or in expectation of a “fee, gain or reward” to the claims harvesting site, and the “fee,

*gain or reward*” received by the claims harvesting site was directly related to the service of a legal nature provided.

- 6.15 If the latter interpretation is accepted, then all claims harvesting websites in breach would need to do to avail of this lacuna in the legislation would be to claim that they are a philanthropic association that receives no direct payment for the legal services eventually provided by the solicitor who receives the referral from the claims harvesting website.
- 6.16 The Society proposes that the section be amended to include a stated definition of “specified service” such that a specified service is *“a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service.”*

#### **Recommendation 39 – Claims harvesting websites**

It is the recommendation of the Society that section 5 of the 2002 Act (as amended) be amended to provide a stated definition of “specified service” such that a specified service is *“a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service”*.

### **Section 19(6) – Reference to disciplinary tribunal**

- 6.17 Section 19 of the 2002 Act, as amended by section 208 of the 2015 Act, provides for the power of the Society to make an application to the Solicitors Disciplinary Tribunal for the holding of an inquiry into alleged misconduct by an apprentice solicitor.
- 6.18 Section 208 of the 2015 Act has amended section 19 so that such applications will now be made to the Legal Practitioners Disciplinary Tribunal. It further provides that each reference to the Solicitors Disciplinary Tribunal is to be replaced with a reference to the Legal Practitioners Disciplinary Tribunal.
- 6.19 However, a straight substitution in this way will not make sense in section 19(6). With the amendment effected by section 208, section 19(6) provides that:
- “The Legal Practitioners Disciplinary Tribunal shall have such of the powers given to **them** under the Solicitors Acts 1954 – 2002, as are necessary to enable them to perform the functions conferred on them by this section.”*
- 6.20 However, no powers are given to the Legal Practitioners Disciplinary Tribunal under the Solicitors Acts. Those powers are given to the Solicitors Disciplinary Tribunal.

- 6.21 Therefore, an amendment to section 19(6) is required in order to replace the word *'them'* with *'the Disciplinary Tribunal'*.

**Recommendation 40 – References to Disciplinary Tribunal**

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

**Section 19 - Referral to the Society of alleged misconduct by an apprentice solicitor**

- 6.22 Section 19A(2) of the 2002 Act, as inserted by section 46(1) of the Civil Law (Miscellaneous Provisions) Act 2008, provides for the power of the Society to investigate allegations of misconduct by an apprentice solicitor whether or not the Society has received a complaint in relation to that apprentice.
- 6.23 When Part 6 of the 2015 Act is commenced, the Authority will deal with the majority of complaints against solicitors. However, the Society retains the power to investigate complaints regarding allegations of misconduct against apprentice solicitors as the Authority's remit will only permit the investigation of complaints against qualified solicitors.
- 6.24 When Part 6 is commenced, it may be unclear to a person making a complaint against an apprentice solicitor where they should address that complaint. Rather than being addressed to the Society, complaints may be incorrectly addressed to the Authority.
- 6.25 A section making provision for the referral by the Authority to the Society of any complaints of alleged misconduct received by it against an apprentice solicitor should be inserted into the 2015 Act to ensure that there is a statutory route for the transfer of these complaints to the correct body.
- 6.26 This proposed provision could be drafted in similar, but inverse, terms to section 52 (2) of the 2015 Act, which provides that the Society shall refer to the Authority a complaint that is made to it by a client, or person acting on behalf of such client, of a solicitor.

**Recommendation 41 – Referral to the Society of alleged misconduct by an apprentice solicitor**

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

## 7. The Legal Services Regulation Act 2015

### Section 2 - Definition of 'solicitor'

7.1 Section 2 of the 2015 Act provides for definitions under the Act including the definition of 'practising solicitor' which is defined as "a person who has been admitted as a solicitor, whose name is on the roll of solicitors, who provides legal services and who—

*(a) is, by reason of section 56 of the Solicitors (Amendment) Act 1994, required to hold a practising certificate, or*

*(b) is, by reason of that section, exempted from the requirement to hold a practising certificate."*

However, it is noted that there is no definition of 'solicitor' under section 2 of the 2015 Act.

7.2 The definition of 'solicitor' is set out in section 3 of the 1954 Act, as substituted by section 3(1)(a) of the 1994 Act, which states that a solicitor "*means a person who has been admitted as a solicitor and whose name is on the roll; and a reference to a solicitor includes a reference to a firm of solicitors unless the context otherwise requires and includes a former solicitor or a deceased solicitor unless the context otherwise requires*".

7.3 The definition of 'solicitor' should be inserted into section 2 of the 2015 Act in order to assist the reader of the legislation with an understanding of the distinction between a 'solicitor' and a 'practising solicitor'.

#### **Recommendation 42 – Definition of 'solicitor'**

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

### Section 2 - Definition of registered European lawyer

7.4 Section 2 of the 2015 Act should provide for a definition of a registered European lawyer as this has been omitted from the Act. It is recommended that such a definition is inserted into section 2 of the 2015 Act in the following terms:

*"A person who has been admitted as a lawyer in another member state of the European Union and has been entered on the Register of Registered European*

*Lawyers who is entitled to practise law in the State under his or her home legal qualification in respect of whom a registration certificate is in force.”*

#### **Recommendation 43 – Definition of ‘registered European lawyer’**

It is the recommendation of the Society that a definition of ‘registered European lawyer’ is inserted into section 2 of the 2015 Act as follows:

*“A person who has been admitted as a lawyer in another member state of the European Union and has been entered on the Register of Registered European Lawyers who is entitled to practise law in the State under his or her home legal qualification in respect of whom a registration certificate is in force.”*

### **Section 19(3) – Reference to Competition Authority**

- 7.5 Section 19(3) of the 2015 Act refers to the “Competition Authority”. This section should correctly refer to the “Competition and Consumer Protection Commission”.

#### **Recommendation 44 – Reference to Competition Authority**

It is the recommendation of the Society that section 19(3) of the 2015 Act is amended to replace the reference to the “Competition Authority” with a reference to the “Competition and Consumer Protection Commission”.

### **Section 26 – Transfer of staff**

- 7.6 Section 26 of the 2015 Act provides for circumstances where the Authority may provide the option to appropriately qualified staff of the Society or Bar Council to transfer to the Authority for the purposes of discharging the Authority’s functions under Part 6 of the Act.
- 7.7 Section 26(4) provides that, where persons are transferred from the Society or Bar Council to the Authority, they shall not be employed on any less favourable terms and conditions of service than the terms and conditions of service relating to basic remuneration to which they were subject prior to their commencement in the Authority.

- 7.8 In circumstances where persons from the Society transfer to the Authority, the Society will require data sharing provisions to ensure the Authority is fully briefed of the terms and conditions of service relating to such persons.
- 7.9 It is recommended that appropriate data sharing provisions are put in place to ensure the Society may provide the Authority with the necessary data relating to those staff members who transfer to the Authority.

**Recommendation 45 – Data in relation to the transfer of staff**

It is the recommendation of the Society that appropriate data sharing provisions are put in place to allow the Society to share necessary data with the Authority for the purposes of transferring staff members from the Society to the Authority.

**Section 35 - Order to prohibit contravention of the 2015 Act**

- 7.10 Section 35 of the 2015 Act provides the Authority with the power to make an application to the High Court for an order to prevent a legal practitioner or any other person from contravening or who is likely to contravene any provision of the 2015 Act, the Solicitors Acts 1954 to 2015 or any regulations made under those Acts.
- 7.11 As the Society retains control of the financial regulation of solicitors, circumstances may arise during a financial investigation of a firm whereby the Society becomes aware of a contravention or likely contravention of the Solicitors Acts 1954 to 2015 by a solicitor which would come under the remit of the Authority. As matters currently stand, the Society would have no legal method to transmit this information to the Authority.
- 7.12 Accordingly, it is recommended that the Society is provided with the necessary data sharing provisions in order to supply any such data to the Authority that relates to a contravention or likely contravention of the Solicitors Acts 1954 to 2015 that is obtained during a financial investigation.

**Recommendation 46 – Data sharing to prevent contravention or likely contravention of the Solicitors Acts 1954 to 2015**

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



## Section 38 – Information obtained by an inspector appointed by the Authority

- 7.13 Section 38 of the 2015 Act provides for the power of the Authority to appoint an inspector to carry out an inspection of a legal practitioner. The powers of an inspector are set out under section 39 of the 2015 Act which includes powers to inspect and take copies of books, records, accounts or other documents including banking information as the inspector may require for the purposes of discharging their functions.
- 7.14 The information obtained by an inspector during the course of their inspection may reveal matters that fall outside the remit of the Authority and remain in the competency of the Society including, but not limited to, financial matters. In such circumstances, it is recommended that the Authority is provided with the required power to provide the Society with any relevant data obtained during the course of an inspection that may be necessary for the Society to exercise its financial regulatory functions.

### **Recommendation 47 – Information obtained by inspectors during an inspection**

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

## Section 43(1) - Preparation of a report by an inspector for the purposes of investigating a complaint made to the Authority

- 7.15 Section 43 of the 2015 Act provides for the preparation of a report by an inspector appointed under the Act after they have carried out an inspection. However, section 43(1) only requires an inspector to prepare and furnish a report to the Authority for the purposes of section 38(b) and (c) of the 2015 Act.
- 7.16 In circumstances where an inspector is appointed under section 38(a) of the 2015 Act for the purposes of investigating a complaint made to the Authority, there is no corresponding requirement for the inspector to prepare and furnish a report to the Authority.
- 7.17 Section 44 demonstrates that the ultimate benefit of an inspector's report is that it may be made available, as evidence, to the body that is investigating the matter in any proceedings under the Solicitors Acts 1954 to 2015.

- 7.18 In the absence of a report being prepared by an inspector and being of assistance in the proceedings against the legal practitioner, it is not entirely clear what the end use of the inspection is in these circumstances and how the information uncovered by the inspector in the course of his inspection is to be transmitted to the prosecuting body.
- 7.19 The Society recommends that section 43(1) is amended to require the preparation of a report by an inspector for the purposes of section 44 of the 2015 Act.

**Recommendation 48 – Preparation of a report by an inspector on foot of a complaint made to the Authority**

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

**Section 43(3) - Preparation of a report by an inspector for evidence of misconduct**

- 7.20 Section 43(3) of the 2015 Act provides for the preparation of a report for the purposes of section 51(8) which should include a statement by the inspector as to whether they have found evidence of an act or omission that may constitute misconduct within the meaning of section 42(1) on the part of the legal practitioner.
- 7.21 This should correctly refer to a statement by the inspector as to whether they have found evidence of an act or omission that may constitute misconduct within the meaning of section 50(1) on the part of the legal practitioner as this is the provision of the Act that deals with misconduct.

**Recommendation 49 – Preparation of a report by an inspector as to whether they have found evidence of misconduct**

It is the recommendation of the Society that section 43(3) of the 2015 Act is amended to refer to section 50(1) of the Act as this is the correct section that deals with misconduct.

**Section 52(2) - Referral of complaints against solicitors by the registrar**

- 7.22 Section 14C of the 1994 Act, as inserted by section 42 of the Civil Law (Miscellaneous Provisions) Act 2008, provides for the circumstances where the registrar may make a complaint to the Society in relation to the contravention of the

Solicitors Acts or any regulation thereunder or any conduct by the solicitor tending to bring the solicitors' profession into disrepute.

- 7.23 Section 52(2) of the 2015 Act requires the Society to refer any complaints made by clients of solicitors or persons acting on behalf of such a client to the Authority. These complaints may be in relation to an act or omission to which section 51 relates, for inadequate professional services or excessive fees, or to which section 52 relates for misconduct.
- 7.24 While it is not mentioned in the 2015 Act, it would be in the spirit of the complaints system established under Part 6 to have any complaint by the registrar referred to the Authority.
- 7.25 It is recommended that an amendment to section 52(2) of the 2015 Act to insert a further provision for the referral of complaints to the Authority by the registrar under section 14C of the 1994 Act.

**Recommendation 50 – Referral of complaints against solicitors by the registrar**

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

### Section 52(3) – Reference to Society

- 7.26 Section 52 (1) and (2) of the 2015 Act provides for the referral of complaints received by the Bar Council of Ireland, the Honorable Society of King's Inns and the Society to the Authority.
- 7.27 Section 52(3) has a minor error insofar as it refers to the referral of complaints to the Society. This requires a minor amendment to replace the reference "*to the Society*" with a reference "*to the Authority*".

**Recommendation 51 – Replacing reference '*to the Society*' with reference '*to the Authority*'**

It is recommended that section 52(3) of the 2015 Act be amended to replace the reference '*to the Society*' with the correct reference '*to the Authority*'.

## Section 56 - Charging fees for the processing of complaints under section 56 of the 2015 Act

- 7.28 Section 56 of the Act allows the Authority, with the approval of the Minister for Public Expenditure and Reform, make regulations prescribing a fee payable (if any) in respect of making a complaint under that Part and the regulations may specify the circumstances in which the fee shall be refunded.
- 7.29 It is suggested that this section of the 2015 Act is not commenced as to charge clients of legal practitioners for the making of a complaint could cause unnecessary hardship on those with limited means. It could also prevent clients from making legitimate complaints to the Authority. This could be further exacerbated in circumstances whereby the complaint relates to the charging of excessive fees by a legal practitioner.

### **Recommendation 52 – Charging fees for processing complaints**

It is the recommendation of the Society that section 56 of the 2015 Act concerning the charging of fees for processing complaints is not commenced as this could cause unnecessary hardship on those with limited means and may prevent clients with legitimate complaints from putting these matters before the Authority.

## Section 58 - Admissibility of complaints

- 7.30 Section 58 of the 2015 Act provides for the admissibility of complaints made to the Authority. One of the grounds that the Authority may reject a complaint under section 58(4) is that the same act or omission that was the subject of a complaint made against a solicitor was previously determined by the High Court, the Society or any of its Committees or the Solicitors Disciplinary Tribunal.
- 7.31 In order for this section to be effective, the Authority will have to have a legal basis to request any historic complaints data from both the Society, including its Committees, and the Solicitors Disciplinary Tribunal. Without the appropriate data sharing provisions in place the Authority will not be able to rely on the provisions of section 58(4) of the 2015 Act.

**Recommendation 53 – Admissibility of complaints to the Authority**

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

**Section 59 - Request by the Authority for the Society to carry out an investigation**

- 7.32 Section 59(1) of the 2015 Act provides that the Authority may at any stage in its investigation under Part 6 of a complaint in respect of a solicitor, and for the purposes of its investigation, request the Society to carry out an investigation under the Solicitors Acts 1954 to 2015 into any matter that is relevant to the complaint.
- 7.33 Section 59(2) has a similar provision which allows the Complaints Committee of the Authority or the Legal Practitioners Disciplinary Tribunal to request the Society to carry out an investigation under the Solicitors Acts 1954 to 2015 into any matter that is relevant to the complaint.
- 7.34 While section 59(3)(a) requires the Society to comply with the request under section 59(1) or (2), in order for the Society to do so it will entail data sharing between the Authority and the Society to allow this section to function as the legislators intended.
- 7.35 It is the recommendation of the Society that necessary data sharing provisions are inserted into this section in order to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Society with such necessary information in order to conduct any requested investigation.

**Recommendation 54 – Request by the Authority to the Society to carry out an investigation**

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

## Section 68 - Clarification for section 68 of the 2015 Act

- 7.36 Section 68 of the 2015 Act provides for the referral to the Complaints Committee of complaints made to the Authority under section 51(2) where the client and the legal practitioner do not succeed in resolving a matter in accordance with section 64 of the 2015 Act.
- 7.37 Under section 64, the Authority may invite the client and the legal practitioner to make efforts to resolve a complaint which, if it were substantiated, would constitute misconduct within the meaning of section 50(1)(b) (related to the provision of legal services which were, to a substantial degree, of an inadequate standard.)
- 7.38 Section 68, therefore, clarifies that, where the parties do not succeed in resolving the complaint, it may be referred to the Complaints Committee for investigation by it.
- 7.39 However, the hierarchy of the complaints handling system under Part 6 requires that all misconduct complaints are to be initially referred to the Complaints Committee with the possibility that some may be subsequently referred to the Legal Practitioners Disciplinary Tribunal.
- 7.40 Section 68, however, is not clear in expressing this legislative intention. Its wording suggests that the specific misconduct complaint under section 50(1)(b), which is the subject of an attempt at resolution between the client and the legal practitioner under section 64, is the only type of misconduct complaint to be referred to the Complaints Committee by the Authority.
- 7.41 An alternative wording is recommended which may clarify that all misconduct complaints, including those which have not been successfully resolved pursuant to section 64, are to be referred by the Authority to the Complaints Committee:

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

### **Recommendation 55 – Clarification for section 68 of the 2015 Act**

It is the recommendation of the Society that section 69 of the 2015 Act is amended to make the intentions of that section clear which could be worded as follows:

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

## **Section 71(9) - Financial sanctions by Divisional Committee not to cause undue hardship to legal practitioners**

- 7.42 Section 71 provides for the power of the Divisional Committee investigating misconduct complaints against legal practitioners to impose sanctions on legal practitioners.
- 7.43 Section 71(9) provides that, in issuing a direction specified in section 71(5)(c)(ii) (g), (h) or (i), the Divisional Committee shall have regard to the means of the legal practitioner concerned.
- 7.44 The provisions mentioned relate to sanctions of a financial nature which may be imposed on a legal practitioner and the intention appears to be that such financial sanctions should not operate in an onerous manner having regard to the financial means of the legal practitioner.
- 7.45 A similar provision should also be made in relation to the first sanction which may be imposed under section 71(5)(c)(i), which provides that the legal practitioner waive all or part of the fees payable by the complainant, in circumstances where this sanction also has a financial aspect to it.

### **Recommendation 56 – Financial sanctions by Divisional Committee not to cause undue hardship on legal practitioners**

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

## **Section 75(5) - Chairperson for divisions of the Legal Practitioners Disciplinary Tribunal**

- 7.46 Section 75(5) of the 2015 Act provides that the chairperson of each division of the Legal Practitioners Disciplinary Tribunal shall be a lay member. This provision fails to recognise that hearings in disciplinary matters are akin to proceedings held before a Court. These proceedings are adversarial in nature and respondents are often represented by legal practitioners.
- 7.47 In the Society's experience of prosecuting disciplinary matters, a respondent will often contest both the facts and the nature of the allegations of misconduct put before the Tribunal. Rules of evidence apply in such hearings and legal issues may arise that require careful consideration.

- 7.48 It is likely that, if the chairperson in each division of the Legal Practitioners Disciplinary Tribunal is a lay person, there may be matters that arise that require the evaluation of a legal assessor as the chairperson will not have the relevant expertise and experience in such matters. This will only give rise to further costs in holding hearings.
- 7.49 It is recommended that an amendment be made to section 75(5) of the 2015 Act to require the chairperson of the division of the Legal Practitioners Disciplinary Tribunal that hears a matter against a solicitor, to be a practising solicitor and the chairperson of a division that hears a matter against a barrister, to be a practising barrister as set out in section 75(1)(b) and (c) of the 2015 Act.

**Recommendation 57 – Chairperson for divisions of the Legal Practitioners Disciplinary Tribunal**

It is the recommendation of the Society that section 75(5) of the 2015 Act is amended to require the chairperson of a division of the Legal Practitioners Disciplinary Tribunal that hears a matter against a solicitor, to be a practising solicitor and the chairperson of a division that hears a matter against a barrister, to be a practising barrister as set out in section 75(1)(b) and (c) of the 2015 Act.

**Section 79(2)(b) - Regulations relating to the Legal Practitioners Disciplinary Tribunal**

- 7.50 Section 79(2)(b) of the 2015 Act provides that the Legal Practitioners Disciplinary Tribunal may make regulations providing for the parties, other than the Authority, the complainant and the legal practitioner concerned, who may make submissions to the Legal Practitioners Disciplinary Tribunal.
- 7.51 Reference should also be made to the Society in this subsection insofar as the Society is a party that may automatically, and in the absence of any regulations providing therefor, make submissions to the Legal Practitioners Disciplinary Tribunal.
- 7.52 This is because, pursuant to section 77(b) of the 2015 Act, the Society is permitted to make an application to the Legal Practitioners Disciplinary Tribunal under section (6) or (7)(c) of section 14A of the 1994 Act.



**Recommendation 58 – Regulations relating to the Legal Practitioners Disciplinary Tribunal**

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

**Section 79(4) - Determination of an application to the Legal Practitioners Disciplinary Tribunal on the basis of affidavits and supporting documentation**

- 7.53 Section 79(4) provides that the Legal Practitioners Disciplinary Tribunal may consider and determine an application made to it on the basis of affidavits and supporting documentation where the legal practitioner and the Authority consent.
- 7.54 Reference should also be made to the Society in section 79(4) in circumstances where the Society, as a party to an application to the Legal Practitioners Disciplinary Tribunal, is a party that may also consent, or not, to the determination of an application in this way.

**Recommendation 59 – Determination of applications to the Legal Practitioners Disciplinary Tribunal on the basis of affidavits and supporting documentation**

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

**Section 80 – Minor amendment to section 80 of the 2015 Act**

- 7.55 Section 80 makes provision for the powers of the Legal Practitioners Disciplinary Tribunal in conducting an inquiry pursuant to section 81 of the 2015 Act.
- 7.56 There are two minor linguistic errors in section 80(3) and (4) by virtue of the omission of the word *'the'* before the word *'opinion'*.
- 7.57 These subsections should be amended to include the definite article for clarity.

**Recommendation 60 – Amendment to section 80 of the 2015 Act**

It is the recommendation of the Society that section 80(3) and (4) are amended to include the word *'the'* before the word *'opinion'*.

**Section 81 - Inquiry and determinations by the Legal Practitioners Disciplinary Tribunal**

- 7.58 Section 81 of the 2015 Act provides for the holding of an inquiry by the Legal Practitioners Disciplinary Tribunal, by way of oral hearing, in respect of applications made to it under section 77 of the Act.
- 7.59 Following the inquiry, the Legal Practitioners Disciplinary Tribunal may, pursuant to subsection (8), make a determination as to whether the act or omission constitutes misconduct and, further, make a determination as to whether it should impose a sanction on the legal practitioner pursuant to section 82(1) or whether the issue of a sanction should be referred to the High Court pursuant to section 82(2).
- 7.60 Subsequent provisions, which follow section 81, make reference to 'determinations made pursuant to the holding of an inquiry by the Legal Practitioners Disciplinary Tribunal under section 81' or 'determinations made pursuant to section 81.'
- 7.61 However, section 79(4) allows the Legal Practitioners Disciplinary Tribunal to consider and determine an application on the basis of affidavits and other supporting documentation, where the relevant parties consent.
- 7.62 As such, there are two ways in which the Legal Practitioners Disciplinary Tribunal may reach a determination: it may determine the matter based on written evidence as permitted by section 79(4) but it may also determine the matter based on the holding of an oral inquiry for which provision is made in section 81.
- 7.63 Presumably it is intended to be the case that all references to the determination of applications by the Legal Practitioners Disciplinary Tribunal are meant to include those determinations which are made based on written evidence under section 79(4) and those based on oral evidence under section 81.
- 7.64 However, this is not clear from the drafting which, in fact, suggests that the only determination to which reference is made in later provisions of the Act is the determination made by the Legal Practitioners Disciplinary Tribunal, following an inquiry by way of oral hearing, under section 81.

7.65 For the purposes of removing doubt and to clarify the position, it is suggested that a subsection be inserted into section 79 to clarify the fact that determinations, whether they are made on the basis of written evidence under section 79(4) or oral evidence under section 81, constitute determinations of the Legal Practitioners Disciplinary Tribunal for the purposes of Part 6.

7.66 The following wording is suggested:

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

**Recommendation 61 – Determinations by the Legal Practitioners Disciplinary Tribunal**

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

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

**Section 82 - Direction by the Legal Practitioners Disciplinary Tribunal to impose specified conditions on a practising certificate**

7.67 Section 82 of the 2015 Act provides for the sanctions which may be imposed on a legal practitioner following the holding of an inquiry under section 81.

7.68 Section 82(1)(k) provides that the Legal Practitioners Disciplinary Tribunal may direct that a specified condition be imposed on a practising solicitor’s practising certificate.

7.69 In circumstances where the regulation of practising certificates is an area of competence retained by the Society, section 82(1)(k) might more properly refer to a direction to the Society to impose the specified condition on the solicitor’s practising certificate.

7.70 Accordingly, section 82(1)(k) should be amended to include such a direction to the Society in the following terms:

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

**Recommendation 62 – Direction to the Society to impose a specified condition on a solicitor’s practising certificate**

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

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

**Section 83(2) - Amendment to section 83(2) of the 2015 Act**

7.71 Section 83 of the 2015 Act provides for the persons who may appeal determinations of the Legal Practitioners Disciplinary Tribunal and the matters in respect of which appeals may be brought.

7.72 There is a minor error in section 83(2) insofar as it refers to a determination made by the Legal Practitioners Disciplinary Tribunal pursuant to section 81(9).

7.73 It should, more correctly, refer to section 81(8), which is the provision pursuant to which determinations are made by the Legal Practitioners Disciplinary Tribunal.

**Recommendation 63 – Minor amendment to section 83(2) of the 2015 Act**

It is the recommendation of the Society that an amendment is made to section 83(2) of the 2015 Act to refer to a determination made by the Legal Practitioners Disciplinary Tribunal under section 81(8) of the Act.

## Section 85(7)(d) - Notification to be given by the Authority to the Society where a solicitor is suspended from practice

- 7.74 Section 85(7)(d) of the 2015 Act provides for the power of the High Court to suspend a legal practitioner from practice for a specified period and subject to such terms and conditions as the Court considers appropriate after a finding of misconduct is made by the Legal Practitioners Disciplinary Tribunal
- 7.75 In circumstances where the Society will not be a party to each application before the Legal Practitioners Disciplinary Tribunal which may result in the sanction being imposed under section 85(7)(d), this section should provide for notification from the Authority of such a suspension to be given to the Society to ensure the Society's records are accurately updated.
- 7.76 As such, the wording of section 85(7)(d) might read as follows:

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

### **Recommendation 64 – Notification to be given by the Authority to the Society where a solicitor is suspended from practice**

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

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

## **Section 85(7)(e) - Application for restoration to the Roll of Solicitors**

- 7.77 Section 10 of the 1960 Act, as amended by section 19 of the 1994 Act and section 188 of the 2015 Act, allows a solicitor who has been struck off the Roll of Solicitors to make an application to the High Court for restoration to the Roll.
- 7.78 Where a solicitor is struck off the Roll of Solicitors under section 85(7)(e) of the 2015 Act, no such corresponding provision to section 10 of the 1960 Act is available to a solicitor to make an application to the High Court for restoration to the Roll.
- 7.79 This could create the irregular scenario whereby a solicitor who is struck off the Roll of Solicitors by the High Court through a recommendation by the Solicitors Disciplinary Tribunal would have a right to apply to the High Court for restoration but where a solicitor is struck off the Roll under the 2015 Act would have no such recourse.
- 7.80 It is recommended that appropriate corresponding amendments are made to the 2015 Act to allow for a solicitor who is struck off the Roll of Solicitors to make an application to the High Court for restoration to the Roll.

### **Recommendation 65 – Application for restoration to the Roll of Solicitors**

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

## **Section 85(7)(f) - Notification to be given by the Authority to the Society where a solicitor is struck off the Roll of Solicitors**

- 7.81 Section 85(7)(f) provides for the power of the High Court to strike a solicitor's name off the Roll of Solicitors.
- 7.82 In circumstances where the Society will not be a party to each application before the Legal Practitioners Disciplinary Tribunal which may result in the sanction being imposed under section 85(7)(f), it should provide for notification from the Authority of any such fact to be given to the Society to ensure the Society's records are accurately updated.
- 7.83 Under section 85(7)(e), the Chief Justice and the Honorable Society of King's Inns are to be informed of the imposition of a similar sanction on a barrister.

7.84 As such, the wording of section 85(7)(f) might read as follows:

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

**Recommendation 66 – Notification from the Authority to the Society where a solicitor is struck off the Roll of Solicitors**

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

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

**Section 85(8) - Amendment to section 85(8) of the 2015 Act**

7.85 Section 85(8) of the 2015 Act provides for the power of the High Court, in addition to imposing a sanction on a legal practitioner, to make costs orders and other ancillary orders which the Court thinks fit.

7.86 Section 85(8) refers to the making of an order by the High Court under subsection (6).

7.87 However, if the reference is intended to be to the imposition of a sanction by the High Court, it should refer to subsection (7) in circumstances where subsection (7) provides that the Court may, by order, direct the imposition of a number of sanctions.

**Recommendation 67 – Amendment to section 85(8) of the 2015 Act**

It is the recommendation of the Society that section 85(8) of the 2015 Act is amended to refer to subsection (7), rather than subsection (6), where subsection (7) provides that the Court may, by order, direct the imposition of a number of sanctions.

## Section 87 - Right of making an appeal to the Court of Appeal by the Society

- 7.88 Section 87 provides for a right of appeal by the Authority or the legal practitioner concerned to the Court of Appeal from an order of the High Court.
- 7.89 However, section 87 should also make reference to the Society in circumstances where the Society may equally be a party to applications before the Legal Practitioners Disciplinary Tribunal that result in orders made by the High Court.

### **Recommendation 68 – Right of the Society to appeal to the Court of Appeal**

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

## Section 90 - Right of the Society to make enforcement applications to the High Court

- 7.90 Section 90 of the 2015 Act provides for the power of the Authority to make an enforcement application to the High Court in respect of the following matters listed in subsection (4):
- a) a direction of the Authority under section 60(6) or 61(6);
  - b) a determination of a Review Committee under section 62(5);
  - c) a direction of a Divisional Committee under section 71(1)(a); or
  - d) an order of the Disciplinary Tribunal under section 82(1).
- 7.91 In circumstances where the Society may also bring applications in respect of solicitors before the Legal Practitioners Disciplinary Tribunal, there may be orders made by the Legal Practitioners Disciplinary Tribunal pursuant to section 82(1) in respect of such applications which may not be complied with.
- 7.92 In those circumstances, the Society may wish to seek enforcement of the order of the Legal Practitioners Disciplinary Tribunal in accordance with section 90(4)(d).
- 7.93 It is recommended that the Society be included in section 90 as a party who may bring an enforcement application in respect of orders of the Legal Practitioners Disciplinary Tribunal.



**Recommendation 69 – Enforcement applications to the High Court by the Society**

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

**Section 94 – Clarification of powers of the Authority**

- 7.94 Section 94 of the 2015 Act provides that the Authority, in the performance of its functions under Part 6 in relation to a complaint made about a solicitor, may exercise any power conferred on the Society under the Solicitors Acts 1954 to 2015.
- 7.95 The Society considers the provisions of this section to be wide and could be interpreted in a manner that allows the Authority to override the powers of the Society in a manner that is not intended by the legislators.
- 7.96 The Society suggests that this section is narrowed to give purpose to the clear legislative intention for the Authority to exercise any power of the Society but only in relation to the complaints and disciplinary functions under Part 6 of the 2015 Act.

**Recommendation 70 – Clarification of powers of the Authority**

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

**Section 95 - Levy on the Society to be calculated in proportion to the number of practising solicitors in a financial year**

- 7.97 Section 95(12)(b) of the 2015 Act requires the Authority to make reference to the number of practising solicitors in a given financial year, exempting those in the full-time service of the State, for the purposes of calculating the annual levy to be paid by the Society to the Authority.
- 7.98 It is recommended that appropriate data sharing provisions are put in place to allow the Society to provide the Authority with information concerning the number of solicitors holding practising certificates issued by the Society in the relevant financial

year and information concerning the number of solicitors who practice in the full-time service of the State.

**Recommendation 71 – Information concerning the number of practising solicitors in a financial year to calculate the levy**

It is the recommendation of the Society that appropriate data sharing provisions are put in place to allow the Society to provide the Authority with information concerning the number of solicitors holding practising certificates in the relevant financial year and information concerning the number of solicitors who practice in the full-time service of the State.

**Section 103 - Minor amendment to section 103 of the 2015 Act**

- 7.99 The heading of section 103 of the 2015 Act requires a minor amendment changing the words “*limited partnerships*” to “*legal partnerships*”.

**Recommendation 72 – Minor amendment to heading of section 103 of the 2015 Act**

It is the recommendation of the Society that the heading of section 103 of the 2015 Act be amended to change the words “*limited partnerships*” to “*legal partnerships*”.

**Section 104 - Minor amendment to section 104 of the 2015 Act**

- 7.100 The heading of section 104 of the 2015 Act requires a minor amendment from “*Notification of Authority...*” to “*Notification to Authority*” for clarity.

**Recommendation 73 – Minor amendment to heading of section 104 of the 2015 Act**

It is the recommendation of the Society that the heading of section 104 of the 2015 Act be amended to change the words from “*Notification of Authority*” to “*Notification to Authority*”.

## Section 106 - Minor amendment to section 106 of the 2015 Act

- 7.101 The heading of section 106 of the 2015 Act requires a similar minor amendment from “*Notification of Authority...*” to “*Notification to Authority*”.

### **Recommendation 74 – Minor amendment to heading of section 106 of the 2015 Act**

It is the recommendation of the Society that the heading of section 106 of the 2015 Act be amended to change the words from “*Notification of Authority*” to “*Notification to Authority*”.

## Section 107 - Partner in a multi-disciplinary practice not to be an unqualified person

- 7.102 Section 107(4) of the 2015 Act provides for persons who are not permitted to be partners in a multi-disciplinary practice. Section 107(4)(d) prohibits an unqualified person from being a partner in a multi-disciplinary practice. Section 107(9) defines an unqualified person as follows:

*“In this section, “unqualified person” means a solicitor who is not a solicitor qualified to practise, within the meaning of the Act of 1954, by reason of—*

*(a) his or her name having been struck off the roll of solicitors,*

*(b) his or her suspension from practice,*

*(c) his or her having had the issue to him or her of a practising certificate refused under section 49 of that Act,*

*(d) having his or her practising certificate suspended under section 58 of the Act of 1994, or*

*(e) his or her having given to the High Court an undertaking not to practise as a solicitor.”*

- 7.103 As the Society retains control over the Roll of Solicitors, the Society will be the best placed body to advise the Authority whether a person is an unqualified person for the purposes of the 2015 Act. Accordingly, it is recommended that the Society be provided with necessary provisions to allow it share data with the Authority for the purposes of advising the Authority whether a person is an unqualified person.

**Recommendation 75 – Society to be provided with power to advise the Authority if a person is an unqualified person**

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

**Section 114 - Notification by Authority to multi-disciplinary practice or managing legal practitioner**

- 7.104 Section 114 of the 2015 Act provides for the power of the Authority to issue directions to a multi-disciplinary practice, or its managing legal practitioner, where it is satisfied that there has been non-compliance with a provision of Part 8 of the Act or regulations made thereunder, or where it reasonably believes that there has been a breach of any provision of Part 8 or regulations made thereunder.
- 7.105 Pursuant to the provisions of section 114(4)(a)(iii), the Authority may invite the multi-disciplinary practice or the managing legal practitioner to make observations on the finding and the proposal contained in a notice furnished by the Authority.
- 7.106 However, the use of the word *'finding'* in this context is not appropriate as it may put forward the idea that the matter is pre-determined. It would be preferable if the word *'belief'* was used instead.
- 7.107 This may be compared with section 127(2)(c) of the Act where the word *'belief'* is appropriately used in the same circumstances with regard to limited liability partnerships.

**Recommendation 76 – Notification to multi-disciplinary practice or managing legal practitioner**

It is the recommendation of the Society that an amendment to section 114(4)(a)(iii) is made to replace the word *'finding'* with the word *'belief'*.

## Section 115 - Replacing the word 'notice' with 'direction' under section 115 of the 2015 Act

- 7.108 Section 115 of the 2015 Act provides for the power of the Authority to apply to the High Court for the enforcement of a direction issued by it to a multi-disciplinary practice or a managing legal practitioner under section 114, for an order suspending the provision of legal services by the multi-disciplinary practice and for an order directing the cessation of the provision of legal services by a multi-disciplinary practice.
- 7.109 Section 115(1) provides for the power of the Authority to make an enforcement application to the High Court in respect of directions issued by it under section 114.
- 7.110 However, use is made of the word '*notice*' as well as the word '*direction*'. This has the potential to cause ambiguity in circumstances where a notice is only issued pursuant to section 114(4). However, the word '*direction*' is used in relation to both circumstances provided for in section 114, at section 114(1) and section 114(4)(b).
- 7.111 In circumstances where the intention of the legislature must be that enforcement applications may be brought in respect of both types of direction issued by the Authority under section 114, it would be clearer to replace the word '*notice*' with the word '*direction*'.

### **Recommendation 77 – Replacing the word '*notice*' with '*direction*' under section 115 of the 2015 Act**

It is the recommendation of the Society that section 115 of the Act is amended to replace any reference to the word '*notice*' with the word '*direction*' for clarity and to prevent ambiguity.

## Section 115(1)(a) - Absence of statutory power for High Court to grant an order

- 7.112 Pursuant to section 115(1)(a) of the 2015 Act, the Authority may make an enforcement application to the High Court in respect of a direction issued to an multi-disciplinary practice or managing legal practitioner pursuant to section 114.
- 7.113 Applications may also be brought to the High Court in respect of the matters specified in paragraphs 115(1) (b) and (c), which relate to the suspension of the provision of legal services by a multi-disciplinary practice and the cessation of the provision of legal services by a multi-disciplinary practice, respectively.

- 7.114 While subsections (3) and (4) make provision for the power of the High Court to make the orders sought under paragraphs (b) and (c), no provision exists to provide for the power of the High Court to make the order sought in paragraph (a).
- 7.115 As such, while the Authority can make the application under paragraph (a), there is no corresponding statutory power provided to the High Court to grant, or to decline to grant, the order sought.
- 7.116 This may be compared with section 128 of the 2015 Act which sets out equivalent provisions in respect of limited liability partnerships.
- 7.117 It may be seen that under section 128(1)(a), the Authority may apply to the High Court for an order directing the LLP to comply with a direction issued to it. Section 128(3) then provides that the High Court is empowered to make the order sought or to decline to do so and set aside the direction issued by the Authority.
- 7.118 Accordingly, section 115 should be amended in order to provide a statutory basis for the High Court to grant, or decline to grant, the order sought and set aside the determination of the Authority.

**Recommendation 78 – Statutory power for the High Court to grant an order under section 115(1)(a) of the 2015 Act**

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

### **Section 115(6) - Parties in an appeal**

- 7.119 Section 115(6) of the 2015 Act provides a right of appeal to the Court of Appeal against an order of the High Court made under section 115. This right is said to apply to both the Authority and the legal practitioner.
- 7.120 It would be more appropriate to refer to the Authority and the multi-disciplinary practice and / or the managing legal practitioner, rather than the legal practitioner.
- 7.121 As such, section 115(6) should be amended to reflect the correct parties.

**Recommendation 79 – Section 115(6) of the 2015 Act should refer to the correct parties in an appeal**

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

**Section 128 - Publication of notice of suspension or revocation of an authorisation issued to a limited liability partnership**

- 7.122 Section 128 of the 2015 Act provides for the power of the Authority to apply to the High Court for the enforcement of a direction issued by it to a limited liability partnership under section 127, for an order suspending an authorisation granted to a limited liability partnership and for an order revoking an authorisation issued to a limited liability partnership.
- 7.123 Section 128(8) makes reference to the publication by the Authority of an order made by the High Court under subsections (3) (an order directing the LLP to comply with a direction issued to it) and (4) (an order suspending the authorisation issued to the LLP). It would be unlikely the legislators intended for the Authority to publish every order issued by the High Court requiring a limited liability partnership to comply with a direction.
- 7.124 However, in keeping with the intention expressed by section 115(7) which provides for similar provisions relating to a multi-disciplinary practice, it would appear that the reference should be to subsections (4) and (5) of section 128 as these refer to orders of suspension and revocation of authorisation to operate as a limited liability partnership, respectively.
- 7.125 Section 128(8) should be amended accordingly to reflect this intention.

**Recommendation 80 – Publication of notice of suspension or revocation of an authorisation to provide legal services as a limited liability partnership**

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

## Section 135 - Removal of a barrister's name from the Roll of Practising Barristers

- 7.126 Section 135 of the 2015 Act provides for the circumstances in which the Authority may remove a barrister's name from the Roll of Practising Barristers, whether on the instruction of a High Court order or where a provision of the Act applies which permits the Authority to remove the name from the Roll.
- 7.127 In terms of the circumstances in which the Authority will remove a name from the Roll upon the instruction of the High Court, only a single instance is provided in section 135(1)(a) relating to an order made by the High Court under section 85(7)(e) of the Act.
- 7.128 However, there is a further circumstance, not mentioned in section 135, in which the High Court may direct that a barrister's name be removed from the Roll. This is to be found in section 92(5)(c) of the Act.
- 7.129 Under section 92(5)(c) the High Court may make such an order, upon the application of the Authority to the High Court, in circumstances where the Authority has determined that misconduct on the part of a barrister has occurred and following the receipt of a notification and report by it from the Honorable Society of King's Inns.
- 7.130 As such, section 135(1) should be amended in order to ensure that the Authority has the power to remove the name of a barrister from the Roll where the High Court makes an order under section 92(5)(c).

### **Recommendation 81 – Power of the Authority to remove a barrister's name from the Roll of Practising Barristers**

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

## Section 136 - Prohibition on an unqualified person providing legal services as a practising barrister

- 7.131 Section 136 of the 2015 Act places a prohibition on an unqualified person providing legal services as a practising barrister. Reference is made in section 136(4)(a) to (c) to three persons who may not provide legal services as a practising barrister and these persons are referred to as 'unqualified persons.'



- 7.132 Paragraph (a) provides that a person who is not a qualified barrister is an unqualified person. Paragraph (b) provides that a qualified barrister whose name is not on the Roll of Practising Barristers is an unqualified person. Paragraph (c) provides that a person who is not a practising solicitor is an unqualified person.
- 7.133 The difficulty with paragraph (c) is that its corollary suggests that a person who is a practising solicitor is a qualified person and that that practising solicitor may, therefore, provide legal services as a practising barrister. In other words, the wording of paragraph (c) suggests that the prohibition does not apply to practising solicitors.
- 7.134 It would be strange if anyone other than a qualified barrister who is on the Roll of Practising Barristers was able to provide legal services as a practising barrister.
- 7.135 If section 136 was intended to provide that practising solicitors were prohibited from providing legal services as a practising barrister, this could be achieved by omitting the word 'not' in paragraph (c).

**Recommendation 82 – Prohibition on an unqualified person providing legal services as a practising barrister**

It is the recommendation of the Society that section 136(c) of the 2015 Act is amended to remove the word 'not' for the purposes of clarifying persons who are considered unqualified to provide legal services as a practising barrister.

**Section 140(2)(e) - Minor amendment to section 140(2)(e) of the 2015 Act**

- 7.136 Section 140(2)(e) of the 2015 Act provides for the inclusion on a register of determinations by the Chief Legal Costs Adjudicator of "*the outcome of determination under section 157(1)...*"
- 7.137 For the purposes of clarity, it is recommended that the word "a" is included before "*determination*" in this section.

**Recommendation 83 – Minor amendment to section 140(2)(e) of the 2015 Act**

It is the recommendation of the Society that section 140(2)(e) of the 2015 Act is amended to insert the word 'a' before the word '*determination*'.

## Section 140(7)(a) - Minor amendment to section 140(7)(a) of the 2015 Act

- 7.138 Section 140(7)(a) of the 2015 Act refers to a determination by a Legal Costs Adjudicator made under section 158(1) of the Act. This should more correctly refer to a determination made under section 157(1) of the Act.

### **Recommendation 84 – Minor amendment to section 140(7)(a) of the 2015 Act**

It is the recommendation of the Society that section 140(7) of the 2015 Act be amended to correctly refer to a determination made by a Legal Costs Adjudicator under section 157(1) of the Act.

## Section 178 - Authority's approval of all regulations made by the Society

- 7.139 Section 178 of the 2015 Act amends section 5 of the 1954 Act by providing for the Authority's approval of all regulations made by the Society, without exception.
- 7.140 As the Authority will not have competency over the education, financial regulation, practising certificate or professional indemnity insurance functions of the Society, it is recommended that the provisions of section 178 in its current form are not commenced.
- 7.141 It is recommended that the provisions of this section are narrowed to allow the Authority to have approval over all regulations made by the Society with the exception of regulations in relation to the educational, financial regulation, practising certificate or professional indemnity insurance functions of the Society.

### **Recommendation 85 – Authority's approval over regulations made by the Society**

It is the recommendation of the Society that section 178 of the 2015 Act is not commenced in its current form. It is recommended that the Authority should have approval over all regulations made by the Society with the exception of matters in relation to the education, financial regulation, practising certificate or professional indemnity insurance functions of the Society.

## Section 181 - Data sharing for purposes of refusing to issue a practising certificate or issuing a practising certificate subject to conditions

- 7.142 Section 181 of the 2015 Act amends section 49 of the 1954 Act which expands the criteria which the Society may take into account when considering whether to refuse to issue a practising certificate or to issue a practising certificate subject to conditions.
- 7.143 Included in the criteria that the Society may take into account under that section are whether a solicitor has failed to comply with a notice issued under section 70(6)(c) of the 2015 Act by the Complaints Committee of the Authority as well as the nature and number of complaints made to the Authority in respect of the solicitor in the preceding two years.
- 7.144 Further provisions the Society may consider under this section include where a solicitor has failed to comply with a direction issued under section 71(1)(a) of the 2015 Act, if they have contravened the Solicitors Acts 1954 to 2015 or the 2015 Act or any regulations made under it.
- 7.145 In order for section 181 of the 2015 Act to be effective, the Authority must be in a position to provide the Society with the necessary data to take the above matters into account when considering refusing to issue a practising certificate or issuing a practising certificate subject to conditions.

### **Recommendation 86 – Data sharing of complaints and failure to comply with a notice issued by the Complaints Committee**

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

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

## Section 181 Failure to pay levies, contributions, awards, fines and costs

- 7.146 Section 49 of the Solicitors Act 1954, as substituted by section 61 of the 1994 Act, as amended by section 2 of the 2002 Act and section 181 of the 2015 Act, sets out the circumstances under which the Society may make a decision to issue a practising certificate subject to specified conditions, or refuse to issue a practising certificate.
- 7.147 Under section 12 of the Solicitors (Amendment) Act 1994, as substituted by section 14 of the 2002 Act, following investigation of a complaint under sections 8 or 9 of the Solicitors (Amendment) Act 1994, the Society may require payment from the solicitor by way of contribution towards the costs incurred by the Society.
- 7.148 Under regulation 35(6) of the Solicitors Accounts Regulations 2014, the Society may impose a levy on a solicitor as a contribution towards the cost of investigating the practice.
- 7.149 The Solicitors Disciplinary Tribunal and the High Court have the power under the Solicitors Acts to grant awards, impose fines and award costs to the Society.
- 7.150 Failure by a solicitor to pay legally imposed levies and contributions by regulatory committees, awards and fines by order of the Solicitors Disciplinary Tribunal and the High Court, and costs awarded against the solicitor by the Solicitors Disciplinary Tribunal and the High Court following taxation, are not provided for as circumstances in which the Society can consider refusing or issuing a limited practising certificate.
- 7.151 As a result, the Society has very little recourse against a solicitor who refuses to pay such amounts awarded, without having to apply to the Courts for a judgment against the solicitor. This is very time consuming and places a heavy burden on limited resources.
- 7.152 The Society strongly believes in a “polluter pays” approach to regulation, and is of the view that it is inappropriate to allow a solicitor to continue to practise in breach of committee directions, tribunal and High Court orders. This leaves the largely compliant members of the profession carrying the burden of investigating and prosecuting such solicitors.
- 7.153 Accordingly, it is the proposal of the Society that failure to pay levies and contributions imposed by the Society, and awards, fines and costs (following taxation) imposed by order of the Solicitors Disciplinary Tribunal and High Court, be included in the stated circumstances under section 49 of the 1954 Act (as substituted and amended).
- 7.154 Failure to pay levies and contributions imposed by the Authority, and awards, fines and costs (following taxation) imposed by order of the Legal Practitioners Disciplinary Tribunal should also be included as stated circumstances under section 49 of the 1954 Act (as substituted and amendment)

- 7.155 It should be noted that, inclusion of such failure as a circumstance under section 49 means that the Society will investigate the matter and call the solicitor before a regulatory meeting to make representations. It will then be open to the Society to grant an unrestricted practising certificate, a practising certificate subject to specified conditions, or refuse to issue a practising certificate. The solicitor will continue to have the right to appeal this decision to the High Court.
- 7.156 Section 59 of the 1994 Act, as amended by section 205 of the 2015 Act, allows the Society to issue directions to impose conditions on a practising certificate in force where one or more circumstances listed under section 49 of the 1954 Act (as substituted and amended) apply. As such, section 59 would need to be amended to ensure inclusion of this amendment as one of the relevant circumstances.

**Recommendation 87 – Inclusion of failure to pay levies, contributions, awards, fines and costs under section 49 of the 1954 Act (as substituted and amended)**

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

## Section 184 - New definition of misconduct

- 7.157 Section 184 of the 2015 Act amends section 3 of the 1960 Act which will provide for the insertion of a new definition of misconduct which will be construed in accordance with the provisions of section 50 of the 2015 Act.
- 7.158 Section 50 of the 2015 Act provides for a wide range of acts or omissions by legal practitioners that may be considered as constituting misconduct. However, the insertion of this new definition will cause certain definitions of misconduct to be unnecessarily repeated.
- 7.159 It may be noted that the instances of misconduct listed in section 3 of the 1960 Act also constitute instances of misconduct within the meaning of section 50 of the 2015 Act for example:

) Section 50 (k) of the 2015 Act provides for the commission of a crime or offence outside the State which, if committed within the State would

be an arrestable offence. This is broadly similar to the provisions of section 3(b) of the 1960 Act.

) Section 50(e) of the 2015 Act provides for a breach of the Solicitors Acts 1954 to 2015 or any regulations made under those Acts. This section equates with the provisions of section 3(c) of the 1960 Act (as amended).

) Section 50(h) of the 2015 Act provides for any conduct that would bring the solicitors' profession into disrepute. This is exactly the same provision as section 3(e) of the 1960 Act (as amended).

7.160 As section 50 of the 2015 Act provides for similar and wider definitions of misconduct than section 3 of the 1960 Act it would be clearer to substitute, rather than insert the definition of misconduct under section 184 of the 2015 Act.

7.161 The only impact the substituting of this provision would have would be to broaden, rather than to narrow, the instances of acts or omissions which may constitute misconduct under the Solicitors Acts.

7.162 Accordingly, it is suggested that section 184 should substitute, rather than insert, the section 50 definition of misconduct.

**Recommendation 88 – Substituting the new definition of misconduct under the 2015 Act**

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

## **Section 200 - Publication of information on complaints**

7.163 Section 200 of the 2015 Act amends section 22 of the 1994 Act which requires the Society to publish certain matters in the Gazette and in any other manner as the Society may direct, information on the number of complaints together with a description of the general nature of those complaints and the outcome of the investigation of those complaints by the Solicitors Disciplinary Tribunal or the Legal Practitioners Disciplinary Tribunal.

7.164 In order for the Society to comply with its obligation to publish this information, it will require the periodic sharing of such data relating to complaints and the outcome of those complaints from the Legal Practitioners Disciplinary Tribunal.

**Recommendation 89 – Publication of information on complaints**

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

**Section 204 - Power for the Society to seek the suspension of a practising certificate where a solicitor is convicted of an indictable offence or sentenced to a term of imprisonment**

- 7.165 Currently, the Society does not have the power to seek the suspension of a solicitor's practising certificate in the event that a solicitor is convicted of an indictable offence or is sentenced to a term of imprisonment.
- 7.166 While the Society may take into consideration a term of imprisonment when a solicitor makes an application for a practising certificate under section 49 of the 1954 Act (as amended), there is no mechanism available for the Society to take similar action against a solicitor with a practising certificate in force under section 59 of the 1994 Act. The Society only has the power to impose conditions on a solicitor's practising certificate in these circumstances.
- 7.167 The only other action open to the Society under the Acts is to take disciplinary action against a solicitor. Consequentially, convicted solicitors, or imprisoned solicitors, may still continue to practise while the disciplinary process is undertaken.
- 7.168 The Society notes that section 204 of the 2015 Act amends section 58 of the 1994 Act which expands the circumstances under which the Society may make an application to the High Court to seek the suspension of a solicitor's practising certificate.
- 7.169 One of the circumstances provided for under section 58 of the 1994 Act (as amended by section 204 of the 2015 Act) allows the Society to seek the suspension of a practising certificate where a solicitor has been convicted of an indictable offence and sentenced to a term of imprisonment. This requires a Court to both convict the solicitor of an indictable offence and sentence the solicitor to a term of imprisonment for the Society to be in a position to seek the suspension of the solicitor's practising certificate.

7.170 It is proposed that this section is amended to provide for the Society to be granted the power to seek the suspension of a solicitor's practising certificate in the event that the solicitor is convicted of an indictable offence and / or sentenced to a term of imprisonment.

**Recommendation 90 – Suspension of practising certificate in the event of criminal conviction or imprisonment**

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



## 8. Further suggested amendments

### Sharing information from the Roll of Solicitors for processing complaints and prosecuting disciplinary matters

- 8.1 When Part 6 of the Act is commenced, the Authority will exercise powers relating to complaints and disciplinary matters over all legal practitioners. However, the Authority will not have access to the Roll of Solicitors as the Society continues to maintain the Roll of Solicitors and register of practising solicitors.
- 8.2 Accordingly, the Authority will not have information on the enrolment date of a solicitor, their solicitor number, their practising history, their previous practising roles nor any other data relating to the solicitor in their capacity as a solicitor.
- 8.3 When dealing with complaints from members of the public, the Authority will require information from the Roll of Solicitors in order to process such complaints. At a minimum, the Authority will need to be satisfied that a solicitor who is the subject of a complaint, is on the Roll of Solicitors and had a practising certificate in force at the time of the provision of legal services to the complainant.
- 8.4 However, if the matter is serious and / or is considered to be of sufficient grounds to warrant an application to the Legal Practitioners Disciplinary Tribunal, the Authority will require further data from the Roll of Solicitors in order to process any such application.
- 8.5 Matters pertaining to misconduct are held to the higher standard of proof and accordingly it is necessary that the prosecuting body has accurate and up to date details available to them in order to meet that standard. All applications made to the Solicitors Disciplinary Tribunal will note the solicitor's number, the solicitor's date of admission to the Roll of Solicitors, their practising status and in certain cases details of previous practising roles when a complaint relates to legal services provided in a former role.
- 8.6 As such, it is the recommendation of the Society that data sharing provisions are in place to allow the Society to share necessary data from the Roll of Solicitors with the Authority to allow the Authority to process complaints and to prosecute allegations of misconduct against solicitors in the Legal Practitioners Disciplinary Tribunal.

#### **Recommendation 91 – Sharing information from the Roll of Solicitors**

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

## Provision of complaints data to the Society for risk assessment of firms

- 8.7 Data relating to complaints made against solicitors assist the Society in forming part of the risk profile of any firm for the purposes of conducting the Society's financial investigations. As the Society retains control over the financial investigation of solicitors, the Society will need to be made aware of complaints made to the Authority against solicitors and in particular where any such complaints may reveal a potential risk to client moneys.
- 8.8 Any risk to client moneys will represent a potential threat to the Society's Compensation Fund. The Compensation Fund, which is only paid for by solicitors, is a statutory fund maintained by the Society. The Compensation Fund will compensate clients of solicitors who suffer loss through the dishonesty of a solicitor. The Society uses its financial regulatory powers in order to protect clients' money and the Compensation Fund.
- 8.9 It is recommended that strong data sharing procedures are put in place permitting the Authority to share data relating to complaints made against solicitors to allow the Society to continue to assess the risk profile of solicitors' firms for the purposes of its financial regulation functions and to continue to protect clients' money the Compensation Fund.

### **Recommendation 92 – Provision of complaints information to assess financial risks**

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

## Data sharing in relation to identification of legal partnerships, limited liability partnerships and multi-disciplinary practices

- 8.10 The Society notes the Authority intends to commence legal partnerships in the third quarter of 2018 and limited liability partnerships in the fourth quarter of 2018. The Society is aware that many solicitors' practices intend to make applications to the Authority to operate as limited liability partnerships when this option becomes available.
- 8.11 The Society currently has a unique identifier code for each firm of solicitors which is used for the purposes of regulatory functions including practising certificate

applications, financial investigations and professional indemnity insurance. The Authority will establish its own method of identifying legal partnerships, limited liability partnerships and multi-disciplinary practices for the maintenance of the registers and other regulatory functions.

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

**Recommendation 93 – Data sharing for identification of legal partnerships, limited liability partnerships and multi-disciplinary practices**

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

### **Bring clarity to the issue of legal fees lawfully earned**

- 8.13 The definitions of “criminal conduct” and “proceeds of criminal conduct” under current legislation are potentially broad enough to encompass fees paid by clients to their solicitors, even though the fees have been lawfully earned by those solicitors in representing their clients.
- 8.14 The issue has been dealt with in England and Wales by the concept of “adequate consideration” so that no offence is committed where a solicitor receives fees that are regarded as “adequate consideration” for work done.
- 8.15 This defence ensures the protection of legal fees lawfully earned and this, in turn, ensures that all clients can access legal advice and legal representation. The defence enables solicitors to lawfully provide legal services to individuals and receive payment from funds notwithstanding that, on one view, they may represent the proceeds of criminal conduct.
- 8.16 The Society proposes that a similar defence of “adequate consideration” should be provided for Irish solicitors who receive fees from clients who may have been engaged in criminal conduct.

**Recommendation 94 – Legal fees lawfully earned**

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

**Repeal of the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870**

- 8.17 Section 8 of the Solicitors Remuneration Act 1881 and section 4 of the Attorneys’ and Solicitors’ Act 1870 should be repealed on the commencement of section 151 of the 2015 Act. In addition, the Society considers that the entirety of these statutes should be repealed as the other sections of both the 1881 Act and the 1870 Act are rendered superfluous.
- 8.18 If section 8 and section 4 remain in force it could give rise to an otherwise avoidable complication when section 151 is commenced as it would be still be open to a legal practitioner to enter into an agreement with a client for either contentious or non-contentious business under section 8 and section 4 without having any effect on the obligation to comply with section 151, if applicable, which serves no real beneficial purpose for either the client or the legal practitioner.
- 8.19 The benefit of having one set of legal rules applying to legal costs agreements is in the interests of the consumers of legal services and the legal profession in terms of codifying and thus simplifying the legal costs regime.
- 8.20 As these provisions are not the basis for any secondary legislation, their repeal should not create any difficulties in this respect.

**Recommendation 95 – Repeal of the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870**

It is the recommendation of the Society that on the commencement of section 151 of the 2015 Act that the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870 be repealed in their entirety.

## Evidence of criminal convictions for legal practitioners

- 8.21 The Society has experienced difficulties with the Courts Service when seeking evidence of conviction for solicitors convicted of criminal offences. Where a solicitor has been convicted of a criminal offence, the Society currently has no statutory right to call for written evidence of criminal conviction, including certificate of conviction and Court transcripts, in order to take disciplinary action against that solicitor.
- 8.22 Some Courts have agreed to provide such information given the Society's role as statutory regulator and despite lack of a statutory right to such information. Other Courts have refused to do so due to data protection concerns and claims that information about the criminal conviction of an individual is sensitive information to which even a statutory regulator is not entitled.
- 8.23 It is in the best interests of both the public and the profession that both the Society and the Authority have a statutory right to evidence of criminal convictions in order to take the necessary action against such legal practitioners.

### **Recommendation 96 – Evidence of criminal conviction**

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

## Commencement in practice and cessation regulations

- 8.24 Under the Solicitors Acts, the Society lacks the power to make regulations for the commencement and cessation of solicitors' practices.
- 8.25 The Society does have a power to make general regulations under section 71(1) of the 1954 Act, with regard to professional practice, conduct and discipline. However, this section would only allow for a restricted type of regulation, not the extensive regulation which the area requires.
- 8.26 The Society would be more confident in creating the regulatory structure needed for this area if express power to make such regulations was provided for in primary legislation.

- 8.27 As such, it is recommended that the Society be provided with the express power to make regulations for both the commencement and cessation of solicitors' practices.

**Recommendation 97 – Commencement and cessation in practice regulations**

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

### **Ceasing to operate as a limited liability partnership**

- 8.28 Section 125 of the 2015 Act requires a limited liability partnership to notify the Authority in writing of its intention to cease operation as a limited liability partnership. However, there is no provision requiring the Authority or the solicitor(s) to inform the Society of an intention to cease operation.
- 8.29 The Society will treat limited liability partnerships in the same manner as all other solicitors' firms and they will be subject to the same regulatory requirements. Accordingly, the Society will require notification of an intention to cease operation as a limited liability partnership in the same manner as it requires notification of the cessation of a firm of solicitors.
- 8.30 When the Society is notified of a firm ceasing practice, one of the Society's requirements is that the firm has either made an application for run-off cover or that there is a succeeding practice in place to ensure that any valid professional indemnity insurance claims made against the firm are covered. As the Society continues to regulate the professional indemnity insurance requirements of solicitors, it will need to be advised when a limited liability partnership intends to cease the provision of legal services.
- 8.31 The Society requires ceasing firms to advise it of the practising solicitor(s) who have access to the remaining files of the firm, both open and closed. The purpose of this is so the Society can advise former clients of that firm what practising solicitor has access to their files.
- 8.32 Firms that cease practice are also required to file a closing accountant's report with the Society within two months of cessation ensuring that there is a nil balance on the client account.
- 8.33 If the Society is not made aware of a practice that ceases, it may cause difficulties for clients of that former practice in locating their files or moneys and if they wish to make a professional indemnity insurance claim.

- 8.34 Accordingly, it is recommended that the Authority is provided with data sharing procedures to ensure the Society is advised of any notified cessation of a limited liability partnership.

**Recommendation 98 – Data sharing for the cessation of limited liability partnerships**

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

**Statutory responsibility for principals and partners of solicitors' firms to ensure all solicitors in the firm have a valid practising certificate**

- 8.35 A solicitor is deemed to practise as a solicitor if he or she engages in the provision of legal services as an employee of any solicitor. This means that all persons who are on the Roll of Solicitors who are employed in a solicitor's firm and provide legal services, either reserved or unreserved, are required to hold a practising certificate.
- 8.36 In particular, it is not permissible for a solicitor's firm to classify a solicitor employed by the firm as a 'legal executive', 'paralegal', or any other job title, with a view to avoiding the requirement to hold a practising certificate, if the solicitor is engaged in the provision of legal services. It is both professional misconduct and a criminal offence for a solicitor who does not hold a practising certificate to act as a solicitor.
- 8.37 Under the Solicitors Acts a solicitor without a valid practising certificate is considered to be an "unqualified person". It is prohibited under the Solicitors Acts for a solicitor to allow an unqualified person act as a solicitor.

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

**Recommendation 99 – Responsibility of firm principal(s) or partners regarding practising certificates**

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

## Professional indemnity insurance details for solicitors practising in legal partnerships, limited liability partnerships and multi-disciplinary practices

- 8.38 The Society retains competence over the professional indemnity insurance obligations for solicitors under section 26 of the 1994 Act, while the Authority will have competence over the professional indemnity insurance obligations of barristers when regulations are made by the Authority under section 47 of the 2015 Act.
- 8.39 When the Authority commences the new legal structures under Part 8 of the 2015 Act, one of the conditions for authorisation to operate a legal partnership, a limited liability partnership or a multi-disciplinary practice is that professional indemnity insurance is in place. While it is likely that an application for authorisation to operate one of these new legal structures will require evidence of professional indemnity insurance, if the Authority has any queries on the details of any professional indemnity insurance policy relating to solicitors, it will need to address these queries to the Society.
- 8.40 As the Society will continue to regulate solicitors' professional indemnity insurance requirements, it is recommended that the Society is enabled to share this data with the Authority for solicitors who commence practice in a legal partnership, limited liability partnership or multi-disciplinary practice.

### **Recommendation 100 – Professional indemnity insurance**

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

## Prohibition on solicitors' firms providing legal services without a principal in place

- 8.41 All solicitors' firms are required to have a principal in order to provide legal services. A firm without a principal is considered to be inactive and should not provide legal services of any kind, either reserved or unreserved.
- 8.42 In circumstances where a sole practitioner has become incapacitated, become bankrupt or has abandoned a practice, an application may be made to the Society under section 61(1) of the 1954 Act as substituted by section 31 of the 1994 Act by the solicitor's personal representative to appoint a practice manager on such terms as the Society sees fit.



8.43 The Society recommends that there be a statutory prohibition on firms providing legal services of any kind unless and until there is a principal, or practice manager as appointed by the Society under section 61 of the 1954 Act (as substituted), in place, with a valid practising certificate.

8.44 The following wording is proposed in line with new wording included in the professional indemnity insurance regulations for solicitors for the 2018/2019 indemnity period:

(a) *Every solicitor firm must have a solicitor or registered lawyer principal with a valid practising certificate or qualifying certificate in place in order to carry on a practice.*

(b) *If a principal with a valid practising certificate or qualifying certificate is not in place, the firm must immediately cease practice until such time as a principal with a valid practising certificate or qualifying certificate is appointed.*

**Recommendation 101 – Prohibition on solicitors’ firms providing legal services without a principal in place**

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

(a) *Every solicitor firm must have a solicitor or registered lawyer principal with a valid practising certificate or qualifying certificate in place in order to carry on a practice.*

(b) *If a principal with a valid practising certificate or qualifying certificate is not in place, the firm must immediately cease practice until such time as a principal with a valid practising certificate or qualifying certificate is appointed.*

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

8.46 The following text is proposed:

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

(i) *the sole practitioner of any solicitor firm which carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers; or*

- (ii) *every partner of a firm being a solicitor or registered lawyer and every person held out as a partner of a firm that carries on or carried on business as a partnership.*

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

**Recommendation 102 – Statutory definition of ‘principal’ of a solicitors’ firm**

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

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

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

*with all principals required to be solicitors qualified to practise*

### **Statutory protection for the term ‘lawyer’**

- 8.47 The term “solicitor” is protected under the Solicitors Acts and it is a criminal offence for any person to hold themselves out as a solicitor unless they are on the Roll of Solicitors and have a valid practising certificate in force. A solicitor shall be deemed to practise as a solicitor if the solicitor engages in the provision of legal services. ‘Legal services’ are services of a legal or financial nature provided by a solicitor arising from that solicitor’s practice as a solicitor.
- 8.48 Part 9 of the 2015 Act brings in a statutory protection for the term “barrister” which introduces a prohibition on people calling themselves barristers or pretending to be barristers.
- 8.49 However, it is noted that there is no such statutory prohibition on any person calling themselves a “lawyer”.

- 8.50 It is recommended for the purposes of public protection by preventing misrepresentation by persons who are not qualified as legal practitioners, that the term “lawyer” should be given similar statutory protection. This would prevent any person from misusing a currently unprotected term in order to hold themselves out as someone entitled to provide legal services as a lawyer.

**Recommendation 103 – Statutory protection of the term ‘lawyer’**

It is the recommendation of the Society that consideration be given to whether the term ‘lawyer’ should be subject to statutory protection in order to prevent persons who are not legal practitioners from misrepresenting themselves to members of the public as a person qualified to provide legal services as a lawyer.

### **Use of stenographers by disciplinary tribunals**

- 8.51 When Part 6 of the 2015 Act is commenced, any new disciplinary matters will be heard by the Legal Practitioners Disciplinary Tribunal. The Solicitors Disciplinary Tribunal will continue to hear matters that have been filed with it prior to the commencement of Part 6 of the 2015 Act.
- 8.52 The Solicitors Disciplinary Tribunal is currently required under primary legislation to use stenographers for every case as the Tribunal is compelled by law to produce a transcript of every proceeding.
- 8.53 It is the view of the Society that this requirement is an unnecessary expense, especially given that few transcripts are ever called for or used.
- 8.54 The Society proposes that when the Legal Practitioners Disciplinary Tribunal commences hearing disciplinary matters, that digital recording is used rather than the continued use of stenographers. Transcripts could be produced on request and any party calling for the transcript would be required to pay for it.

**Recommendation 104 – Use of digital recording in Disciplinary Tribunals**

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

## Liability of solicitors and their estates for the costs of the Society's practice closure exercises

- 8.55 Where a solicitor sets up in practice, he or she takes on all the responsibilities that entails, including the sale, transfer or wind-up of his or her practice on its cessation, and all the costs related to each of those options.
- 8.56 Most solicitors' practices are wound down in an orderly manner with no requirement for the Society to intervene. Occasionally, circumstances arise where a distressed closure takes place which requires the Society to make an application to the High Court for the purposes of taking up the client files and client moneys of the practice to distribute to clients or their newly nominated solicitors which is done in the public interest.
- 8.57 Distressed closures may include practices closed by order of the High Court by the suspension or strike-off of the solicitor, caused by abandonment of the practice by the solicitor, due to the death of the principal, and in circumstances where the solicitor is not in a position, or is not permitted, to be involved in the winding down of the practice. This will usually be because the solicitor has demonstrated incompetence or dishonesty. However, the Court order will usually grant the solicitor 14 days to make proposals acceptable to the Society for the sale or transfer of the practice, or for arrangements for another firm to carry out files and client moneys distribution exercises in the practice on their behalf.
- 8.58 The Society undertakes the file distribution and client moneys refund exercises to preserve the reputation of the profession and to ensure that clients are not left unable to access their files or money. In this way, it is hoped that there will be minimal disruption to clients' cases or transactions because of regulatory actions and other disruptions. In addition, the files will be stored safely and confidentially.
- 8.59 The Society does not provide this service for ordinary practice closures, which do not arise as a result of a distressed closure. It is a service of last resort which is funded by the profession.
- 8.60 In relevant cases, the Society makes an application to the President of the High Court for orders permitting the Society to take possession of the files and/or client moneys of a closed practice.
- 8.61 The Society then carries out a file distribution exercise by contacting current clients and asking them to nominate a new solicitor to take the file, or to take up the file themselves, subject to certain formalities. The Society does not, and cannot, carry out any legal work on behalf of clients.
- 8.62 When the Society takes possession of client moneys, it carries out a client moneys refund system. The Society processes applications for refunds from the moneys the Society holds from the particular practice.

- 8.63 It is estimated that the cost of a file distribution exercise for a small sole practitioner practice is at least €60,000. There are also significant costs arising from the client money refund exercises.
- 8.64 The Society has rarely sought to collect costs for practice closures exercises from the relevant solicitors, or from their estates, due to concerns that the Society does not have the necessary statutory basis for pursuing the costs of these exercises.
- 8.65 Under the Solicitors Acts there are no specific statutory powers allowing the Society to charge, or to make an application for a Court order charging the solicitor with the costs of file distribution, client moneys refund exercises and of other headings of expenditure, except in very limited circumstances.
- 8.66 Section 34(3) of the 1994 Act provides as follows:
- “The High Court, on the application of the Society....may order that vouched expenditure incurred by the Society under Section 19....shall be recouped to the Society by the solicitor concerned or his personal representative, and shall be recoverable as a debt owing to the Society.”*
- 8.67 Section 19 of the 1960 Act, as substituted by section 27 of the 1994 Act, as amended by section 22(1)(h) of the 2002 Act, provides that the Society can require delivery of client files on foot of a simple Society notice, rather than a Court order.
- 8.68 Section 19 of the 1960 Act (as substituted and amended) can only be used where specified preconditions are met including a deficit of client moneys being in place, the practice being abandoned and, in both cases, that there are inadequate arrangements in place for the clients to get their files. Therefore, section 19 cannot be used in all cases.
- 8.69 The Society no longer uses section 19 as most third parties insist that the Society has a Court order in place before accepting the Society’s entitlement to take possession of client files, practice materials and client moneys. It is therefore more effective for the Society to rely on Court orders instead of section 19, and the Court order offers protection for the Society’s actions.
- 8.70 The Society proposes that amendments be introduced to allow the Society to recoup the costs of practice closures from the principal(s) or the practice, or from their estate(s) where appropriate.
- 8.71 The Society proposes an amendment of section 19 of the 1960 Act (as substituted and amended) to expand the pre-conditions for the Society serving a notice requiring delivery of files to include an opinion that there has been dishonesty, an opinion that the practice has been abandoned, an opinion that client files or client moneys are at risk, or an opinion that adequate arrangements have not been put in place for making files available to clients. The Society proposes an amendment to section 34(3) of the 1994 Act to allow expenditure incurred by the Society in relation to file distribution,

the costs of exercises to refund client moneys to the clients and the ancillary costs of the Society to be recouped from the principal(s) of the closed practice, or their estate.

- 8.72 Provision would also need to be made to allow for a challenge or appeal by the principal of the closed firm to a decision by the Society to become involved in a file distribution, client moneys refund and other headings of expenditure, including the right to put forward alternative wind-down proposals satisfactory to the Society.

**Recommendation 105 – Liability of solicitors and their estates for Society’s costs of practice closure exercises**

It is the recommendation of the Society that amendments be introduced to allow the Society to recoup the costs of practice closure exercises by the Society from principal(s), partners or from their estate(s) where appropriate. Provisions may also be made to allow a principal of a closed firm to challenge or appeal a decision by the Society to become involved in a file distribution exercise including the right to put forward alternative proposals for the wind-down of the practice subject to the satisfaction of the Society.

**Further data sharing provisions**

- 8.73 The Society notes that in order for the 2015 Act to operate effectively, there will need to be the free flow of data between the Authority and the Society. The Society has provided some examples above of data that will need to be shared between the two bodies.
- 8.74 As further provisions of the 2015 Act are commenced, it is inevitable that further data sharing provisions between the Authority and the Society will need to be considered that are not currently recognisable.
- 8.75 As such, it is the recommendation of the Society that consideration is given in the future to further data sharing provisions, which are not dealt with in this submission, between the Authority and the Society to ensure both bodies are facilitated in exercising their respective regulatory functions.

**Recommendation 106 – Further data sharing provisions**

It is the recommendation of the Society that consideration is given in the future to further data sharing provisions, which are not dealt with in this submission, between the Authority and the Society to ensure both bodies are facilitated in exercising their respective regulatory functions.