

CALL FOR INTEREST

1 INTRODUCTION

- 1.1 The Legal Practitioners Disciplinary Tribunal (“**LPDT**”) was established under Section 74 of the Legal Services Regulation Act 2015 (“**2015 Act**”) to consider complaints of misconduct against legal practitioners (solicitors and barristers). LPDT has up to 33 members, with the majority being non-legal members along with solicitor and barrister members. Applications regarding the alleged misconduct of a legal practitioner can be received by LPDT from the Law Society of Ireland or the Legal Services Regulatory Authority, depending on the matter at issue. The LPDT has the same rights and powers as the High Court regarding the enforcement of the attendance of witnesses and the production and the discovery of documents. Witnesses may be subpoenaed to attend and give evidence on oath or affirmation and be subject to cross-examination. For more details regarding the LPDT and its procedures, please refer to the 2015 Act and the Legal Practitioners Disciplinary Tribunal Regulations 2021 (SI No. 786 of 2021).

2 SCOPE OF APPOINTMENT

- 2.1 LPDT is seeking expressions of interest from applicants (“**Applicants**”) for appointment to a panel of legal assessors (“**Panel**”) for the provision of legal advisory services to LPDT, in accordance with the Specification, Operational Procedures and Principles set out in the Appendix hereto and with the established principles and law relating to the role and function of legal assessors generally, including (in outline):

- (a) advising and assisting LPDT on legal matters which may arise during hearings;
- (b) advising and assisting LPDT during deliberations;
- (c) disclosing any advice given to LPDT members to the parties to an inquiry; and
- (d) assisting LPDT with the preparation of any determinations and any associated documents, if requested to do so.

(“**Services**”).

- 2.2 If successful, Applicants will be invited to enter into the Terms and Conditions of Appointment governing the provision of the Services (“**Terms of Appointment**”). The Terms of Appointment will be for an initial period of one year which may, at LPDT’s sole discretion, be extended for a further period of one year (the “**Term**”).

3 OPERATION OF THE PANEL

- 3.1 LPDT will award work to members of the Panel (“**Panel Members**”) in its absolute discretion. Without prejudice to its general discretion, LPDT may have regard, amongst other things, to any:

- 3.1.1 specialist knowledge/expertise or particular level of experience required or desirable for the particular Services;

- 3.1.2 similarity to previous inquiries in respect of which the Panel Member was engaged;
- 3.1.3 any urgency as regards the Services; and/or
- 3.1.4 actual or potential conflict of interest on the part of a particular Panel Member.

3.2 While there is no limit on the number of Panel Members that may be appointed, LPDT envisages that between 8 and 12 Panel Members will be appointed.

3.3 Applicants should note that continued participation on the Panel and/or the awarding of work to Panel Members may be contingent on satisfactory performance reviews during the Term.

4 RATES

4.1 The chargeable rate will be €2,250 (exclusive of applicable VAT) per full hearing day (this being a hearing day lasting 1 hour or more, and lasting for whatever period after that hour, until the hearing concludes on that day) and €1,125 (exclusive of applicable VAT) for a hearing half day (this being a hearing day lasting less than 1 hour), and shall be inclusive of all costs and expenditure incurred by the Panel Member during the course of the inquiry, including any preparatory work or pre-reading, (as well as, if required, the drafting of a report or recommendation to the High Court following a particular inquiry) ("**Charges**"). It is envisaged that a majority of the inquiry hearings will not exceed one day (and on average will conclude by 1pm). However, inquiries may vary in duration. Panel Members will not be entitled to any additional Charges if a given inquiry hearing day runs past 1pm.

5 CRITERIA FOR APPOINTMENT

5.1 In order to be appointed to the Panel, Applicants must have:

- (a) ten years post-qualification experience as a solicitor or barrister;
- (b) demonstrated experience acting in the role of legal assessor in a professional regulatory context;
- (c) at a minimum, the level of professional indemnity insurance prescribed or required by law or by the professional regulations or code applying to the Applicant.
- (d) proof of tax clearance status as declared by the Irish Revenue Commissioners.

5.2 Applicants should provide an up-to-date CV demonstrating that they satisfy (a) and (b) above. Applicants should also provide a letter of recommendation or reference from a previous body for which he/she acted in the role of legal assessor in a professional regulatory context ("**Referee**"). LPDT reserves the right to contact an Applicant's Referee and to exclude an Applicant from further consideration on the basis of any feedback from such Referee that it considers justifies such exclusion.

5.3 Applicants may, at application stage, provide confirmations that they either have or will have in place at contract stage (c) and (d) above, which confirmation will be subject to verification by LPDT at contract stage.

6 GENERAL

6.1 Applications should be submitted to general-lpdt@lpdt.ie by close of business on 22 September 2023. Applicants should also submit any queries or clarifications to this email address.

- 6.2 Applicants should note that LPDT is subject to the Freedom of Information Act 2014 and the European Communities (Access to Information on the Environment Regulations) 2007 to 2014, and, accordingly, information provided by Applicants or relating to Applicants may potentially be released to the public on foot of a request bringing same within its scope. Applicants are asked to consider if any of the information supplied by them in response to this Call for Interest should not be disclosed because of its sensitivity. If this is the case, Applicants should specify the information that is sensitive and the reasons for its sensitivity. LPDT cannot guarantee that any information provided by Applicants, either in response to this Call for Interest, or in the course of any appointment on foot of it, will not be released pursuant to LPDT's obligations under law, including the Freedom of Information Act 2014. LPDT accepts no liability whatsoever in respect of any information provided which is subsequently released or in respect of any consequential damage suffered as a result of such disclosure.
- 6.3 Applicants are responsible for ensuring that no actual, potential or perceived conflicts of interest (collectively and individually a "conflict of interest") exist. Any conflict of interest must be fully disclosed to LPDT as soon as the conflict of interest becomes apparent to the Applicant. Any Applicant who fails to comply with this obligation may be disqualified from further participation in the appointment process. In the event of any conflict of interest, LPDT shall, at its absolute discretion, decide on the appropriate course of action.
- 6.4 Nothing in this Call for Interest shall be construed as implying any form of warranty, undertaking or other commitment on the part of LPDT to consider any applications, enter into a contract with any Applicants, or in any other respect. LPDT reserves the right, in its sole discretion and without any obligation to provide reasons, to: reject in whole or in part any or all applications received, or any portions thereof, at any time; to request more information in relation to this Call for Interest; to check information provided in relation to this Call for Interest; to cancel this Call for Interest (including without evaluating any applications); to change any aspect of the process; to award a contract to any person outside of this or another formal process; and/or to solicit new or fresh applications under a new or existing process. LPDT is not responsible for any costs and expenses incurred by Applicants (directly or indirectly) in connection with their applications or participation in this or any substituted process.
- 6.5 For the avoidance of doubt, this Call for Interest does not fall within the scope of the European Union (Award of Public Authority Contracts) Regulations 2016.

LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL (“LPDT”)

PANEL OF LEGAL ASSESSORS

SPECIFICATION, OPERATIONAL PROCEDURES AND PRINCIPLES

1. INTRODUCTION

1.1 The purpose of this document is to set out:

- the working procedures for the provision of legal assessor services and attendance by legal assessors to provide legal advice in relation to inquiries conducted by the LPDT; and
- the LPDT’s understanding as to the role and function of legal assessors.

1.2 The LPDT may depart from these procedures where it considers it necessary or appropriate to do so.

2. LEGISLATIVE FRAMEWORK

2.1 Legal Services Regulation Act 2015

Section 81(7) of the Legal Services Regulation Act 2015 (the “**2015 Act**”) provides that:

“[i]f the Tribunal considers that, for the purposes of the inquiry, it requires the advice or assistance of an expert in respect of any matter, it may, subject to such terms and conditions as it may determine, appoint such numbers of persons having expertise in relation to the matter concerned as it considers necessary to provide it with such advice or assistance.”

2.2 LPDT Regulations

2.2.1 Reflecting section 81(7) of the 2015 Act, regulation 22(2)(a) of the Legal Practitioners Disciplinary Tribunal Regulations 2021 (S.I. No. 786/2021) (the “LPDT Regulations**”) refers specifically to the LPDT obtaining “*legal opinions in relation to any matter arising in the course of an inquiry*”.**

2.2.2 Regulation 22(2) of the LPDT Regulations further prescribes that any legal opinion given must be disclosed to the parties and they must be afforded the opportunity to comment before a decision is made by the LPDT:

“... where [the LPDT] obtains any advice or assistance ... it shall disclose such advice or assistance, as the case may be, to the respondent legal practitioner and to the applicant, and afford the parties an opportunity to make ... submissions in response to such opinion ... (including the opportunity to submit opinions ... in response), ... before making a decision on any matter in respect of which the opinion ... has ... been obtained”.

3. NOTIFICATION OF AND ATTENDANCE AT INQUIRIES

3.1 Notice of inquiry and assessor's confirmation

3.1.1 The LPDT will endeavour to notify the assessor of an inquiry for which the assessor's services are required as early as possible (by way of a statement of work) .In general, the LPDT will seek to issue the statement of work at least 6-8 weeks in advance of the inquiry date. Statements of work will normally be issued by email.

3.1.2 As part of the statement of work, the LPDT will, in the normal course provide:

- a) Details of the parties to the disciplinary proceedings;
- b) Time(s), date(s), and location of the relevant hearing;
- c) Time(s) and date(s) of any other proceeding of relevance; and
- d) Information as to whether the hearing is a case management, or other, hearing or an inquiry hearing.

3.1.3 In accepting a statement of work, the assessor will be required to confirm his/her availability for the full duration of the inquiry, and that no conflicts of interest arise. Statements of work should be accepted as early as possible after issue, but in any case within 2 working days of receipt.

3.1.4 The LPDT will endeavour to provide papers to the assessor 2-4 weeks before the relevant hearing date.

3.2 Attendance at inquiries

3.2.1 Assessors will be required to attend for the full duration of the inquiry (including for private deliberations when the LPDT retires).

3.2.2 Inquiries may, on occasion, continue beyond normal working hours or beyond the expected duration, and legal assessors will be required to continue in attendance to provide the required legal advice.

3.2.3 As the LPDT intends that inquiry hearings will, in general, be held in person, legal assessors will be required to be present in person at an inquiry and during the LPDT's private deliberations after they retire.

3.2.4 At the discretion and direction of the LPDT, remote attendance may be permitted for certain case-management, or other, hearings and inquiry hearings.

4. PROCEEDINGS OTHER THAN INQUIRY HEARINGS

In certain cases, the LPDT may require the legal assessor to attend a case-management hearing, or the hearing of any interlocutory application. In such cases, the LPDT will seek to notify the assessor at least 3 weeks in advance of the relevant date.

5. PROCEDURE FOR DISCLOSING LEGAL ADVICE TO PARTIES

- 5.1 The assessor's advice or assistance, or "*opinion*", is not required under section 81(7) of the 2015 Act or under regulation 22(2) of the LPDT Regulations to be in writing. Therefore, the assessor may provide his/her advice or assistance (or "*opinion*") orally or in writing, or both. However, a key principle is that any legal advice provided to the LPDT must also be provided to the parties before it (insofar as they are not necessarily exposed to it by observing the LPDT asking for, and receiving, it in public session).¹
- 5.2 At an oral hearing, the assessor should give his/her advice in the presence of the parties, and each party should be given an opportunity to comment on the assessor's advice. Where the LPDT seeks the advice of the assessor, it should give notice of this to the parties.
- 5.3 In private deliberations of the LPDT, where a matter arises in respect of which the LPDT requires advice or assistance, the assessor should request that the parties reconvene so that his/her opinion can be relayed in open session at a resumed hearing.
- 5.4 If the assessor's advice is otherwise given by way of written or oral opinion that is not immediately available to the parties, such must also be given to the parties so that they might have an opportunity to comment/make submissions, before the LPDT makes any decision on the matter arising, and so that the LPDT might also have those submissions before it, prior to making any decision.

6. WRITTEN DETERMINATION AND REPORT TO THE HIGH COURT

Where requested by the LPDT to provide assistance with the drafting of its written determination and any report or recommendation to the High Court under regulation 15(5) of the LPDT Regulations, the assessor should provide such assistance in a timely fashion, having regard to the applicable timeframes in respect of those documents under the LPDT Regulations.

7. GUIDANCE ON THE ROLE AND DUTIES OF THE LEGAL ASSESSOR

7.1 The role of the legal assessor

- 7.1.1 The proper and effective provision of legal advice by legal assessors to the LPDT is of utmost importance to ensure that:
- the LPDT conducts its hearings in a fair manner;
 - the parties appearing before the LPDT, and the members of the LPDT themselves, have the benefit of the assessor's legal advice as to relevant matters of law, applicable evidential principles or procedure; and
 - the decisions of the LPDT are legally tenable and reached in a lawful and fair manner, thus assisting in the making of effective and appropriate determinations as to misconduct by legal practitioners, which in turns assists in protecting and promoting

¹ Relevant case law on this point includes *State (Polymark Ireland Ltd) v The Labour Court* and *Prendiville v Medical Council*.

the integrity of, and confidence in, the professions and the public in its dealing with members of the professions.

- 7.1.2 A key principle is that the assessor must not involve him/herself in the substantive matter and in decision-making thereon (including by way of offering opinions or views in that regard, save for legal views of relevance [for example, that the conduct at issue could never amount to misconduct, as a matter of law, or that there was no evidence before the LPDT to support the allegations of misconduct made]).
- 7.1.3 Legal assessors must be fully independent of all the parties before the LPDT and may not appear in any proceedings before the Tribunal.
- 7.1.4 Legal assessors must deal impartially and independently with all issues arising. They must advise on the correct legal position as they understand it, without being influenced by how they might perceive the LPDT may wish to be advised in particular circumstances.
- 7.1.5 The LPDT may decide to depart from the assessor's advice. However, the LPDT must give "*clear and cogent reasons for doing so*".²

7.2 Main duties of the legal assessor

- 7.2.1 In general, the legal assessor will advise the LPDT on questions of law, of mixed fact and law, and on the procedure and powers of the LPDT. This could include preliminary or overarching issues that arise, as well as matters like the admissibility of evidence; the standard and burden of proof to be applied; and the rights and obligations of the parties before the LPDT.
- 7.2.2 The assessor may also proactively intercede to inform the LPDT if he/she feels it is necessary to point out a matter of substantive or procedural law that is important during the course of an inquiry; to point out any irregularity in the conduct of proceedings which comes to his/her attention; or to advise the LPDT if there is a possibility of a mistake of law being made. While it is not strictly necessary to do so, the assessor should usually ask the chair of the LPDT division for permission to so intercede before interceding.
- 7.2.3 The assessor may be requested to assist the LPDT with drafting its written determination and any report or recommendation to the High Court under regulation 15(5) of the LPDT Regulations. There is a well-established requirement for adequate and appropriate reasons to be given for the decision reached, and the reasons given need to be sufficiently informative and able to stand up to scrutiny. The legal assessor may be called on to advise on the structure and presentation of the reasons, but of course not to contribute reasons themselves.
- 7.2.4 The legal assessor should ensure that he or she is fully prepared, both in terms of the individual facts of the disciplinary proceedings at hand and the allegations of misconduct concerned, and in terms of the key current case law and provisions of legislation of relevance to proceedings before the LPDT, including the 2015 Act, the LPDT Regulations, , the Solicitors (Amendment) Act 1994, and any other primary or secondary legislation of relevance (including, for example, the Solicitors Accounts Regulations made from time to time by the Law Society of Ireland under the Solicitors Acts).

² *McManus v The Fitness to Practice Committee of the Medical Council. I*

7.2.5 The assessor will also be expected to attend any meetings or training seminars organised by the LPDT.

7.3 Matters that may arise for legal advice

7.3.1 The legal assessor will advise on issues that arise before or at any hearing (including at, or in relation to, a call-over, case-management hearing, or an interlocutory application), including, but not confined to:

- Applications for adjournments or the postponement of taking steps, or further steps, in the proceedings;
- Other interlocutory applications, such as for discovery of documents;
- Applications for hearings to be held (wholly or partly) otherwise than in public, in the interests of justice;
- Conflicts of interest/recusal;
- The applicable burden and standard of proof;
- Admissibility of evidence (e.g. on grounds of relevance or hearsay);
- The extent or weight of, or discrepancies/inconsistencies in, any evidence;
- Guidance as to the process and/or procedure to be followed at each stage in the proceedings;
- Questioning witnesses (for example, if the legal assessor is aware of an issue which the LPDT will need to have an answer to in order to decide the allegation in question and which has not been brought out by the parties);
- Service of documents;
- Advising on scenarios where the health of the practitioner affects their ability to participate in the inquiry process; and
- Guidance regarding sanction (relevant/aggravating/mitigating factors, and so on.)

7.3.2 At the conclusion of the hearing and before a decision is reached, the legal assessor will advise on issues including:

- On the definitions of the relevant standards and concepts, such as misconduct;
- On the applicable burden and standard of proof;
- On the process that is to be followed in making decisions as to findings, grounds proven and the process to be followed in imposing or recommending a sanction; and
- Contextualising and summarising the nature of the application, including the allegations of misconduct made, the grounds upon which they are based, the evidence given, and the key legal issues.

7.3.3 The legal assessor might also give advice to the LPDT, before they retire, at any decision-making stage, on the issue(s) to be determined, the relevant legal principles and authorities, the evidence adduced (where applicable) and on how they should approach their decision-making task (but without getting involved in the substantive decision-making task itself).