

Information session: complaints handling



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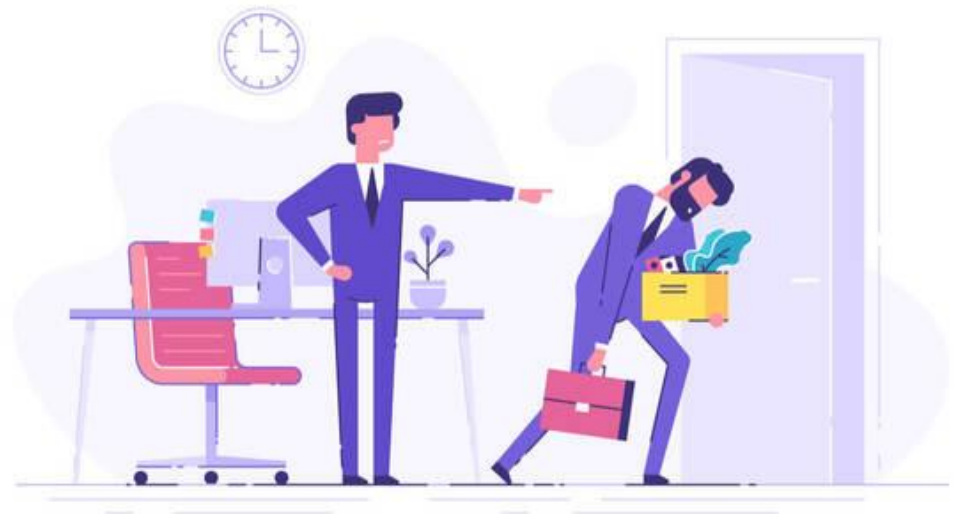


1. What types of complaints can be investigated by the Authority
2. Admissibility stage
3. Investigation process generally
4. What is the Complaints Committee, what does it do
5. What is the Review Committee, what does it do
6. What you need to do – how to approach an investigation
7. What supports are available

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What types of complaints can be investigated:

1. Inadequate professional services
2. Overcharging
3. Misconduct



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Admissibility stage:

- Complaints can be resolved at a very early stage by a solicitor this way and the Authority encourages this
- Admissible means that having sought the views of the legal practitioner and conducted the preliminary review of all the information available, the Authority is satisfied that there are matters which require resolution and/or investigation
- It also means that the complaint is not considered frivolous / vexatious or and has been made within the required time limits
- The decision regarding admissibility rests with the Authority



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Investigation process generally:

- The informal resolution process (for IPS and overcharging complaints)
- Poor communication lies at the heart of the most challenging complaints. Stay engaged at every stage of the process
- Complaints of misconduct alone are formally investigated by a Complaints Committee
- If the informal resolution process has reached its conclusion without success, the Authority will notify the parties that it intends to make a determination on the matter, with a 30 day period given. It is at this point that the parties are also invited to make final submissions
- If you are dissatisfied with a determination made by the Authority, you can request that it is referred to the Review Committee. This must be done in writing within **30 days**



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Complaints Committee

- The Complaints Committee considers and investigates complaints of alleged misconduct about legal practitioners
- It is independent in its decision-making
- Misconduct complaints are not considered suitable for informal resolution
- Has a range of sanctions available including: direct solicitor to complete work, reduce or waive fees, pay compensation of no more than €5000
- Request the Society to investigate a complaint under s59(1)
- You can appeal a determination / direction to the High Court within **21 days**

Review Committee

This committee can either:

- Confirm the Authority's case officer determination
- Send the complaint back to the Authority to be dealt with again
- Issue one or more direction(s) to the solicitor



Appeals to the High Court can be made within **21 days** directing the Review Committee to rescind or vary the determination

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What to do

1. Engage as early and comprehensively as possible
2. Read and digest the information in any letter or correspondence
3. Review the disciplinary or complaints policy related to claims being made
4. Check all the details of any complaint being made
5. Think back to the event and research any relevant files
6. Prepare a response
7. Respond to any letter in a considered fashion
8. Attend any disciplinary meeting with counsel or support person, avoid attending on your own & avoid giving last minute instructions to counsel
9. Seek to resolve the complaint if possible

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Supports

Legal Services Regulatory Authority

- All complaints handling materials:

www.lsr.ie/make-a-complaint/how-we-handle-complaints/

- Complaints information guide:

www.lsr.ie/wp-content/uploads/2022/10/Information-Guide-for-Public-June-2022.pdf

The Law Society

- Guidance and Ethics Committee: Solicitors Guide to Professional Conduct + panel of solicitor members assisting solicitors on any matter of conduct. 016724800
- Various Solicitors Bar Associations, including the DSBA 'consult a colleague' tool; 01 284 8484
- Solicitors Benevolent Fund - 01 283 9528
- Panel to assist solicitors in regulatory difficulty:

www.lawsociety.ie/globalassets/documents/complaints/list-panel-members.pdf

- The Society's Psychological Services
- Legal Mind – confidential service

Follow-up questions



The Review Committee only considers decisions made by the LSRA executive team, and not determinations made by the Complaints Committee. Decisions / determinations of the Complaints Committee must be appealed in the High Court, within 21 days.

The Review Committee does not facilitate the parties attendance. A review is paper-based only, with each party invited to make written statements.

The burden of proof when considering complaints is the criminal standard. In adversarial court proceedings, the burden is on the plaintiff/prosecution to prove their case. The standard of proof is either criminal or civil depending on the nature of the case. In complaints there is no plaintiff/prosecution or defendant, the committee is itself investigating a complaint. The committee is adjudicating only. There is no burden on anyone, but in making its decisions, the committee must be satisfied to the civil standard of proof. In the LPDT, the Authority is clearly the prosecution, so the burden is on it, which is to the criminal standard.

When applying for PII, solicitors are required to declare on the Common Proposal Form if they have been the subject of an investigation that resulted in adverse findings by the Law Society, the Authority, Solicitors Disciplinary Tribunal or Legal Practitioners Disciplinary Tribunal. While solicitors are not required to declare all complaints, it is recommended that they do. Underwriters appreciate data and a solicitor who regularly provides as much data as possible is considered a lower risk. Information and commentary on the complaint should be included to explain if it is reasonable or spurious, what caused the complaint and what procedures and processes have been put in place to prevent further complaints from occurring.

If a complaint is not upheld (for whatever reason) a solicitor cannot initiate defamation proceedings against the complainant. Section 89 of the Legal Services Regulation Act 2015 confirms that complaints are 'absolutely privileged'.

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