

LAW SOCIETY SUBMISSION



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

Legal Services Regulatory Authority

29 September 2021

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 (“the 2015 Act”) 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 The Society provided its first submission under section 6 of the 2015 Act to the Authority on 27 July 2018. This submission contained 106 recommendations for amendments to the Solicitors Acts 1954. To date, the Society notes that many of these recommendations have not translated into legislative amendments and accordingly a number of those recommendations are repeated in this submission.
- 1.3 The core functions of the 2015 Act were commenced on 7 October 2019 and the Authority has been receiving complaints against legal practitioners since that date. This has provided both the Authority and the Society with practical experience of the operation of the 2015 Act.
- 1.4 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. For the purposes of this submission, the following terms will be used to define the relevant Acts being referred to:
- 2.1.1 Solicitors Act 1954 ("the 1954 Act")
 - 2.1.2 Solicitors (Amendment) Act 1960 ("the 1960 Act")
 - 2.1.3 Solicitors (Amendment) Act 1994 ("the 1994 Act")
 - 2.1.4 Solicitors (Amendment) Act 2002 ("the 2002 Act").
- 2.2 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.
- 2.3 The submission considers matters that are 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 in relation to processes including data sharing, practising certificate matters and clarity of the Authority's and the Society's respective roles across a range of statutes.
- 2.4 The Authority began many of its core functions on 7 October 2019 and this has provided both the Authority and the Society with practical experience of the 2015 Act in operation.
- 2.5 A variety of issues are taken into account in this submission a number of which appeared in the Society's previous submission to the Authority dated 27 July 2018. The Society has categorised the matters arising in this submission under the headings "*Data sharing*", "*Amendments to legislation*", "*Practising Certificates and other matters relating to practice*" and "*Complaints, Disciplinary and Court matters*".
- 2.6 The Authority will be aware from the Society's previous submission on this matter and from practical experience in dealing with the provisions of the 2015 Act, that data sharing between the Society and the Authority is a matter that needs to be urgently addressed so that both bodies may fulfil their statutory obligations.
- 2.7 This will require sharing data *inter alia* to prevent contraventions of the 2015 Act, permitting the Society to share data from the Roll of Solicitors to enable the Authority to properly exercise its functions under Part 6 of the 2015 Act and to permit the Authority to provide the Society with complaints information to assess financial risk and exercise its functions in relation to practising certificates.

- 2.8 Other data sharing provisions suggested should assist in the operation of the new business structures under Part 8 of the 2015 Act and in particular to permit the Society to advise the Authority where a person who applies to be a partner in a multi-disciplinary practice is an unqualified person. The Society would also like to be in a position to provide the Authority with necessary information in relation to professional indemnity insurance where required.
- 2.9 The Society considers that there needs to be a number of legislative amendments made to the Solicitors Acts 1954-2015. In particular, the Society notes that section 216 of the 2015 Act requires amendment to permit the service of notices electronically in ease of the Authority, legal practitioners and clients alike. The Society also suggests limiting the use of the title "*solicitor*" to solicitors who are entitled to practise as well as amending the definition of "*solicitor*" to clarify the distinction between a "*solicitor*" and a "*practising solicitor*."
- 2.10 The Society notes that the 2015 Act does not fully account for lawyers from other EU Member States who seek to exercise their rights to provide legal services in Ireland under EU Directive 98/5/EC ("the Lawyers' Establishment Directive"). The Society makes a number of recommendations including a review of the legislation to ensure that lawyers from other EU Member States who exercise their right to register and provide legal services in this jurisdiction are regulated in a similar manner to other legal practitioners.
- 2.11 It is recommended that there is a substitution of the definition of misconduct under section 184 of the 2015 Act rather than an insertion as this would work to widen those acts or omissions that may constitute misconduct and should prevent ambiguity. It is also suggested that section 29 of the 1954 Act is amended to permit an apprentice solicitor to undertake their indentures in either a legal partnership or a multi-disciplinary practice, once these structures have commenced.
- 2.12 A number of recommendations are made in relation to a new file C created under section 190 of the 2015 Act which is designed to maintain a record of all decisions or orders made by the High Court and the Legal Practitioners Disciplinary Tribunal under the 2015 Act.
- 2.13 The Society suggests that section 135 of the 2015 Act is amended to encompass a further circumstance under which a barrister's name may be removed from the Roll of Practising Barristers which is currently not provided for. The Society also recommends that it be provided with the express power to make regulations for both the commencement and cessation of solicitors' firms.
- 2.14 The Society also considers that amendments should be introduced to permit the Society to recoup costs for practice closures from solicitors or their estates where it is appropriate to do so. A number of minor technical amendments to the 2015 Act are also suggested.

- 2.15 Consideration is given to the Society being made the appropriate body for solicitors to make an application for the backdating of practising certificates rather than the Authority as set out under section 180 of the 2015 Act. The Society also suggests widening its powers to impose conditions on practising certificates to include breaches of any regulations made under the Solicitors Acts 1954-2015 and the power to impose practising certificate conditions for multiple years in appropriate cases.
- 2.16 In circumstances where the Society has concern having regard to the physical or mental health of a practising solicitor, the Society recommends it be provided with the power to direct that solicitor to be examined by a registered medical practitioner nominated by the Society in the event a High Court application is required seeking to appoint another solicitor to manage the firm.
- 2.17 The Society suggests an amendment is made to section 56(2) of the 1994 Act to provide a requirement for solicitors in the new business models under Part 8 of the 2015 Act to hold a valid practising certificate from the Society. It is further proposed that solicitors in the full-time service of the State and solicitors who provide conveyancing services to their non-solicitor employer are no longer exempted from the requirement to apply for or hold a practising certificate, notwithstanding those applicants would continue to be exempt from paying fees.
- 2.18 The Society makes a number of recommendations in relation to the imposition of conditions on a solicitor's practising certificate and circumstances under which the Society may make a direction to restrict or refuse to issue a practising certificate. It is also suggested that the Society be granted the power to make an application for the suspension of a practising certificate in circumstances where a solicitor has been convicted of an indictable offence and / or sentenced to a term of imprisonment.
- 2.19 Consideration is given to statutory requirements for principals in solicitor firms to be responsible for the accuracy of details provided to the Society as well as ensuring all solicitors in a firm hold a valid practising certificate. It is recommended that firms which do not have a principal in place should be prohibited from providing legal services and that a statutory definition of 'principal' is put in place.
- 2.20 The Society reviews a number of matters in relation to movement between the professions including applications for voluntary removal from the Roll of Solicitors. It is suggested that the prohibition on the advertising of legal services is extended beyond its current definition to prevent unqualified persons from advertising these services. It is also recommended that the provisions of section 62 of the 1954 Act are amended to permit solicitors to share fees with barristers in legal partnerships, once commenced.
- 2.21 The Society has identified a number of matters relating to complaints, disciplinary and Court matters which would assist in the Authority, the Society and the Legal Practitioners Disciplinary Tribunal to exercise their respective functions as intended by the 2015 Act. These include matters relating to the reports of inspectors appointed by the Authority and the referral of complaints made to the Authority by the Registrar of Solicitors ("the registrar").

- 2.22 The Society also recognises the need for harmony to be found between the findings made by the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal to ensure that the entire disciplinary history of a solicitor is available to both bodies. Similar observations are made in respect of any High Court applications which arise from findings made by the Solicitors Disciplinary Tribunal or the Legal Practitioners Disciplinary Tribunal.
- 2.23 The Society notes that it retains the power to investigate allegations of misconduct made against an apprentice solicitor. Accordingly, it is recommended that the Authority refers any complaints received concerning alleged misconduct in relation to an apprentice solicitor on to the Society. The Society also suggests that section 79 of the 2015 Act is amended to clarify that determinations by the Legal Practitioners Disciplinary Tribunal may be made either on the basis of affidavits and other documentation or by way of oral evidence.
- 2.24 The Society suggests that section 87 of the 2015 Act requires amendment to permit the Society as a party who may make an appeal to the Court of Appeal from an order of the High Court. It is also noted that section 90 of the 2015 Act should make reference to the Society as a party who may bring an enforcement application in respect of orders made by the Legal Practitioners Disciplinary Tribunal.
- 2.25 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.
- 2.26 The recommendations of the Society are as follows:

Recommendation 1 – 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 2 – 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 3 – 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 4 – Sharing information from the Roll of Solicitors

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

Recommendation 5 – Provision of complaints information to assess financial risks

It is the recommendation of the Society that the Society is provided with a copy of the response (if any) of a solicitor to a complaint made against him or her, and a copy of the letter notifying the parties of the determination of a complaint, to include details of any sanction imposed.

It is the further 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 6 – 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 7 – 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 8 – 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 9 – 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 10 – 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 11 – 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 12 – 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 13 – Service of notices

It is the recommendation of the Society that section 216 of the 2015 Act is amended to allow the service of notices under the 2015 Act by email or other electronic means.

Recommendation 14 – Registered European Lawyers

It is recommended that a broad review of the relevant legislative provisions be conducted to ensure that RELs can be effectively regulated as legal practitioners in Ireland.

It is recommended that definition of legal practitioner be expanded to include “RELs” meaning “a lawyer registered with a competent authority in Ireland pursuant to the Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003”.

It is recommended that subsection (b) of the definition of “qualified barrister” be repealed.

It is recommended that the definition of misconduct in section 50 of the 2015 Act be amended by adding the words “or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment Regulations 2003” after the word “solicitor” in section 50(1)(e), (f) and (h). A similar amendment in relation to barrister RELs should be made after the word “barrister” in section 50(1)(g).

Section 51(5) of the 2015 Act should be amended by inserting the words “or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003” after the word “solicitor” in this sub-section.

Recommendation 15 – 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 16 – 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 17 – 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 18 – 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 19 – 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 20 – 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 21 – 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 22 – 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 23 – 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 24 – 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 25 – 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 26 – 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 27 – Repeal of the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870

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

Recommendation 28 – 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 29 – 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.

Recommendation 30 – Minor amendments to the 2015 Act	
1	It is suggested that section 19(3) of the 2015 Act should correctly refer to the “Competition and Consumer Protection Commission”
2	It is suggested that section 43(3) of the 2015 Act should correctly refer to section 50(1) of the Act rather than section 42(1) as this is the correct section that deals with misconduct
3	It is suggested that section 52(3) of the 2015 Act should be amended to replace the reference <i>‘to the Society’</i> with the correct reference <i>‘to the Authority’</i> .
4	It is suggested that sections 80(3) and (4) are amended to include the word <i>‘the’</i> before the word <i>‘opinion’</i> .
5	It is suggested 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, rather than 81(9).
6	It is suggested 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.
7	It is suggested that the heading of section 103 of the 2015 Act is amended to change the words <i>“limited partnerships”</i> to <i>“legal partnerships”</i> .
8	It is suggested that the heading of section 104 of the 2015 Act be amended to

	change the words from “ <i>Notification of Authority</i> ” to “ <i>Notification to Authority</i> ”.
9	It is suggested that the heading of section 106 of the 2015 Act be amended to change the words from “ <i>Notification of Authority</i> ” to “ <i>Notification to Authority</i> ”.
10	It is suggested that an amendment to section 114(4)(a)(iii) is made to replace the word ‘ <i>finding</i> ’ with the word ‘ <i>belief</i> ’.
11	It is suggested that section 115 of the Act is amended to replace any reference to the word ‘ <i>notice</i> ’ with the word ‘ <i>direction</i> ’ for clarity and to prevent ambiguity.
12	It is suggested that section 136(c) of the 2015 Act is amended to remove the word ‘ <i>not</i> ’ for the purposes of clarifying persons who are considered unqualified to provide legal services as a practising barrister.
13	It is suggested that section 140(2)(e) of the 2015 Act is amended to insert the word ‘ <i>a</i> ’ before the word ‘ <i>determination</i> ’.
14	It is suggested 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, rather than section 158(1).
15	It is suggested 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 31 – 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 32 – 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 33 – 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 34 – 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 35 – 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 36 – 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 37 - 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 38 – 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 39 – 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 40 – 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 adjudication by a Legal Costs Adjudicator) 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 41 – 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 42 – 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 suspended from practice 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 43 – 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 44 – 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 45 – 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 46 – 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 47 – 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 firm must have a 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 48 – 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 49 – 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 50 – 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 51 – 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 52 – 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 53 – 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 54 – 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 55 – 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 with a solicitor, to allow the correct functioning of legal partnerships as intended under the 2015 Act.

Recommendation 56 – 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 57 – 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 58 – 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 59 – Clarification for section 68 of the 2015 Act

It is the recommendation of the Society that section 68 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 60 – Financial sanctions by Divisional Committee not to cause undue hardship on legal practitioners

It is the recommendation of the Society that section 71(9) of the 2015 Act 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 61 – 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 62 – 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 63 – 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 64 – 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 65 – 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 66 – 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 67 – 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 68 – 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 69 – 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 70 – 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 71 – 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 72 – 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 73 – 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 74 – 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 75 – Right of the Society to appeal to the Court of Appeal

It is the recommendation of the Society that section 87 of the 2015 Act 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 76 – 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 77 – 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 78 – 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 79 – 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.

3. Data sharing

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

- 3.1 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.
- 3.2 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 has no legal method to transmit this information to the Authority.
- 3.3 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 1 – 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 of the 2015 Act – Information obtained by an inspector appointed by the Authority

- 3.4 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.
- 3.5 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 2 – 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 58 of the 2015 Act – Admissibility of complaints

- 3.6 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.
- 3.7 In order for this section to be effective, the Authority needs 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 3 – 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.

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

- 3.8 Since 7 October 2019, the Authority exercises powers relating to complaints and disciplinary matters over all legal practitioners. However, the Authority does not have access to the Roll of Solicitors as the Society continues to maintain the Roll of Solicitors and register of practising solicitors.
- 3.9 Accordingly, the Authority does 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.

- 3.10 When dealing with complaints from members of the public, the Authority may require information from the Roll of Solicitors in order to process such complaints. At a minimum the Authority needs 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.
- 3.11 However, in more serious matters which are considered to be of sufficient grounds to warrant an application to the Legal Practitioners Disciplinary Tribunal, the Authority requires further data from the Roll of Solicitors in order to process any such application.
- 3.12 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.
- 3.13 Since 7 October 2019, the Society has received requests from the Authority for the contact details of solicitors who are no longer in practice. The Society has had to refuse such requests as there is currently no lawful method to provide the Authority with this data.
- 3.14 As such, it is the recommendation of the Society that data sharing provisions are put in place to allow the Society to share necessary data from the Roll of Solicitors with the Authority to assist the Authority to process complaints and to prosecute allegations of misconduct against solicitors in the Legal Practitioners Disciplinary Tribunal.

Recommendation 4 – Sharing information from the Roll of Solicitors

It is the recommendation of the Society that data sharing provisions are put in place to permit the Society to share necessary data from the Roll of Solicitors with the Authority to assist 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

- 3.15 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 needs 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.

- 3.16 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.
- 3.17 Since the commencement of the Authority's complaints functions on 7 October 2019, the Society is provided with a copy of the original complaint from the Authority. The Society does not receive access to the response of the solicitor to the complaint or any comments made by the complainant on the solicitor's response. The Society is notified when a complaint is closed but it is not advised of the reasons that the closure of that complaint.
- 3.18 The Society recognises that a substantial number of complaints received by the Authority will not relate to concerns about client moneys. However, in circumstances where the complaint may raise concerns about the safety of client moneys it is submitted that the Society should be provided with the response(s) of the solicitor, any comments made by the complainant on the solicitor's response and, where appropriate, the reason for the closure of a complaint for the purposes of assessing whether there may be a risk to client moneys in solicitors' firms.
- 3.19 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 and the Compensation Fund.

Recommendation 5 – Provision of complaints information to assess financial risks

It is the recommendation of the Society that the Society is provided with a copy of the response (if any) of a solicitor to a complaint made against him or her, and a copy of the letter notifying the parties of the determination of a complaint, to include details of any sanction imposed.

It is the further 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.

Section 59 of the 2015 Act - Request by the Authority for the Society to carry out an investigation

- 3.20 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.
- 3.21 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.
- 3.22 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. The Society has received a small number of requests from the Authority's Complaints Committee under section 59(2) and it is already apparent that the current provisions are insufficient as the requesting party appears to be constrained from providing adequate information to contextualise the request for investigation, such as copies of its correspondence with the parties and an account of the investigative powers it has already invoked in the course of its investigation. In the absence of this information, the Society's frame of reference for the commencement of its investigation is incomplete, the potential for an inadvertent breach of fair procedures is increased and the potential efficacy of the provision is undermined.
- 3.23 It is the recommendation of the Society that necessary data sharing provisions are inserted into section 59 of the 2015 Act in order to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Society with such information regarding the conduct of the complaint to date as is necessary to enable it to conduct any requested investigation in as robust, efficient and fair a manner as possible.

Recommendation 6 – 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 181 of the 2015 Act - Data sharing for purposes of refusing to issue a practising certificate or issuing a practising certificate subject to conditions

- 3.24 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.
- 3.25 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.
- 3.26 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.
- 3.27 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 7 – 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:

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

Section 200 of the 2015 Act - Publication of information on complaints

- 3.28 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.
- 3.29 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 8 – 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 107 of the 2015 Act - Partner in a multi-disciplinary practice not to be an unqualified person

- 3.30 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.”

- 3.31 As the Society retains control over the Roll of Solicitors, the Society is 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 9 – 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.

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

- 3.32 The Society notes the Authority intends to commence legal partnerships in of the final quarter of 2021. The Authority has also been receiving applications for authorisation from solicitor firms to operate as limited liability partnerships since November 2019.
- 3.33 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 maintains its own method of identifying limited liability partnerships and presumably will have something similar for identifying both legal partnerships and multi-disciplinary practices for the maintenance of the registers and other regulatory functions.
- 3.34 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 10 – 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.

Ceasing to operate as a limited liability partnership

- 3.35 Section 129(1) 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.
- 3.36 The Society treats limited liability partnerships in the same manner as all other solicitors' firms and they are subject to the same regulatory requirements. Accordingly, the Society requires 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.
- 3.37 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 should be advised when a limited liability partnership intends to cease the provision of legal services.
- 3.38 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.
- 3.39 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.
- 3.40 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.
- 3.41 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 11 – 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.

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

- 3.42 The Society retains competence over the professional indemnity insurance obligations for solicitors under section 26 of the 1994 Act, while the Authority has competence over the professional indemnity insurance obligations of barristers through the Legal Services Regulation Act 2015 (Professional Indemnity Insurance) Regulations 2019 (S.I. 572 of 2019) which are made under section 47 of the 2015 Act.
- 3.43 Currently, only limited liability partnerships under Part 8 of the 2015 Act have been commenced. 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. When processing an application for authorisation to operate a limited liability partnership, the Authority requires evidence of professional indemnity insurance. The Authority will also seek evidence of professional indemnity insurance when processing applications for legal partnerships and multi-disciplinary practices which contain solicitors. 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.
- 3.44 As the Society continues 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 12 – 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.

4. Amendments required to legislation

Section 216 of the 2015 Act – Service of notices

- 4.1 The Society notes that section 216 of the 2015 Act requires that any notice required or authorised to be sent under that Act must be done in writing, addressed to the person concerned by name and either personally served, sent or given to the person by way of ordinary / registered post. There is no provision of the 2015 Act that permits the service of notices by way of email or other electronic means. The Society is aware that this requirement impacts both legal practitioners and the Authority alike.
- 4.2 The Covid-19 pandemic which struck Ireland in March 2020 led to circumstances whereby the Government enacted emergency legislation restricting the movement of individuals and requiring people to work from home with limited exceptions. Although there were exemptions under this emergency legislation which permitted practising solicitors to attend to their professional obligations, many solicitors did operate from home during that time.
- 4.3 During this time, solicitors remained to be under an obligation to provide notices to clients under section 150 and section 151 of the 2015 Act by way of ordinary / registered post. Despite requests by clients for notices to be sent electronically, solicitors remain obliged to comply with the requirements of section 216 of the 2015 Act.
- 4.4 While the pandemic has highlighted and hastened the demand for electronic notices, it is submitted that requiring notices to be provided in hard copy format is an outdated mode of delivery which bears no relationship to modern business practices.
- 4.5 In order to modernise this as well as assisting the Authority, legal practitioners and clients, the Society strongly recommends that section 216 of the 2015 Act is amended to allow the service of notices under the 2015 Act by email or other electronic means.

Recommendation 13 – Service of notices

It is the recommendation of the Society that section 216 of the 2015 Act is amended to allow the service of notices under the 2015 Act by email or other electronic means.

Registered European Lawyers

- 4.6 Directive 98/5/EC (“the Lawyers’ Establishment Directive”) facilitates lawyers whose qualification was obtained in one EU Member State to practise on a permanent basis in another EU Member State. The Directive was transposed into Irish law by the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. 732/2003) (“the Lawyers’ Establishment Regulations”), which have since been amended to expand the applicability of the Regulations in accordance with the enlargement of the EU.
- 4.7 The Directive and associated Regulations facilitate qualified lawyers from another EU Member State integrating into the legal profession in Ireland after a three year period of practice under their home-country professional titles, with a number of prescribed restrictions on practice (set out in Regulation 10 of the Regulations). If they so choose, they may continue to practice under their home-country professional title thereafter, but most registered lawyers (“RELs”) apply to become solicitors or barristers after practising for three years.
- 4.8 Any lawyer who wishes to practice in Ireland under the terms of the Directive must firstly register with a “*competent authority*”. The Lawyers’ Establishment Regulations recognise both the Society and Bar of Ireland as competent authorities in Ireland. Lawyers may register with the Society if they wish to pursue the professional activities of a solicitor in Ireland and with the Bar of Ireland if they wish to pursue the professional activities of a barrister.
- 4.9 Once registered with the Society, an REL is required to apply for a qualifying certificate and secure professional indemnity insurance, where applicable, before they can commence practice. Qualifying certificates are issued on an annual basis and RELs are required to apply for a qualifying certificate in a similar manner to the way in which solicitors apply for practising certificates. An REL who obtains a qualifying certificate from the Society is required to practice in compliance with the Solicitors Acts 1954-2015 and the relevant rules and regulations made thereunder. Regulation 11 of the Lawyers’ Establishment Regulations provides that:
- “The rules of a competent authority governing professional practice, conduct and discipline including any of those rules containing sanctions for breaches thereof, apply and have effect, with the necessary modifications, in relation to registered lawyers in respect of professional activities pursued by them in the State.”*
- 4.10 The capacity of the Society to hold RELs who are registered with it to account for disciplinary breaches are, however, compromised by the inadequate provision for this category of legal practitioner in the 2015 Act.
- 4.11 RELs are not included in the definition of ‘*legal practitioner*’ under the 2015 Act. The only reference to RELs under the 2015 Act is in the definition of ‘*qualified barrister*’ which, in addition to the more conventional definition linked to a being admitted to the degree of Barrister-at-Law by the Honorable Society of King’s Inns or being called to

the Bar, and not subsequently being admitted as a solicitor or struck off, includes being “*a registered lawyer, having the same right of audience as a practicing barrister or a solicitor qualified to practice by virtue of Regulation 10 of the European Communities (Lawyers’ Establishment) Regulations 2003.*”

- 4.12 There are a number of difficulties with this definition. In the first instance, a lawyer who is registered with the Society to pursue the professional activities of a solicitor subject to the relevant prescriptions on practice is not on the basis of any reasonable understanding of the term qualified to practice as a barrister. Secondly, in respect of lawyers registered with the Bar of Ireland, the definition seems to undermine the requirement that an REL practice in a prescribed manner for three years before they are entitled to apply for full recognition to practice as a barrister. Thirdly, the reference to the registered lawyer “*having the same rights of audience as a practicing barrister or a solicitor qualified to practice by virtue of Regulation 10...*” is confusing as having a “*right of audience*” is only one of the professional activities that might be undertaken by a lawyer registered with either competent authority. Finally, the reference to a registered lawyer being “*qualified to practise by virtue of Regulation 10*” is incorrect, as Regulation 10 prescribes the type of professional activities a registered lawyer may undertake, but it is Regulation 6 of the Lawyers’ Establishment Regulations that deals with qualification by means of registration.
- 4.13 For the above reasons, it is submitted that the reference to RELs as a limb of the definition of “*qualified barrister*” should be repealed and the definition of “*legal practitioner*” extended to include lawyers registered to pursue the professional activities of a solicitor with the Society and lawyers registered to pursue the professional activities of a barrister with the Bar of Ireland pursuant to Regulation 6 of the Lawyers’ Establishment Regulations.
- 4.14 The Society is particularly concerned that the failure to adequately account for RELs in the 2015 Act undermines its capacity and that of the regulatory system as a whole to hold an REL to account for acts or omissions that would constitute misconduct were they conducted by a solicitor. There are both substantive and procedural difficulties with a number of provisions of the 2015 Act.
- 4.15 The substantive concern arises from the fact that, unless RELs are included in the definition of “*legal practitioner*”, the definition of “*misconduct*” as set out in section 50 of the 2015 Act does not apply to them. On the assumption that the definition of “*legal practitioner*” is expanded to include RELs, a number of further amendments of section 50 are required. To ensure that RELs that are registered with the Society are held to account for acts or omissions that would constitute misconduct were they conducted by a solicitor, the words “*or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003*” should be included after the word “*solicitor*” in section 50(1)(e), (f) and (h). A similar amendment in relation to barrister RELs should be made after the word “*barrister*” in section 50(1)(g).

- 4.16 When it comes to investigating misconduct, the Society is required by virtue of section 51(5) of the 2015 Act to make a complaint to the Authority when, in the performance by it of its functions, it forms the opinion that an act or omission of a solicitor constitutes misconduct, unless the Society retains seisin of the matter, which it is entitled to do when the act or omission constitutes a breach of the Solicitors Accounts Regulations or is associated with such a breach. No provision is made for the making of a complaint to the Authority in relation to an act or omission of an REL.
- 4.17 It is arguable that on the assumption that both the definition of legal practitioner is expanded to incorporate RELs and the definition of misconduct is expanded to incorporate the acts or omissions of RELS, the Society could make a complaint like any other person alleging misconduct against a legal practitioner pursuant to section 51(2) of the 2015 Act. However, it is submitted that it would be preferable that complaints from the Society should for the most part be made pursuant to section 51(5) of the 2015 Act. It is therefore proposed that the words “*or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003*” should be included after the word “*solicitor*” in this sub-section.

Recommendation 14 – Registered European Lawyers

It is recommended that a broad review of the relevant legislative provisions be conducted to ensure that RELs can be effectively regulated as legal practitioners in Ireland.

It is recommended that the definition of “*legal practitioner*” be expanded to include “*RELs*” meaning “*a lawyer registered with a competent authority in Ireland pursuant to the Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003*”.

It is recommended that subsection (b) of the definition of “*qualified barrister*” be repealed.

It is recommended that the definition of misconduct in section 50 of the 2015 Act be amended by adding the words “*or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003*” after the word “*solicitor*” in section 50(1)(e), (f) and (h). A similar amendment in relation to barrister RELs should be made after the word “*barrister*” in section 50(1)(g).

Section 51(5) of the 2015 Act should be amended by inserting the words “*or a lawyer registered to pursue the professional activities of a solicitor with the Law Society pursuant to Regulation 6 of the European Communities (Lawyers’ Establishment) Regulations 2003*” after the word “*solicitor*” in this sub-section.

Section 3 of the 1954 Act - Limitation of the use of the title “solicitor”

- 4.18 Under section 3 of the 1954 Act, as substituted by section 3(1)(a) of 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”.*
- 4.19 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.”*
- 4.20 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.
- 4.21 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*”.
- 4.22 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.
- 4.23 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.
- 4.24 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.
- 4.25 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 15 – 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 2 of the 2015 Act- Definition of “solicitor”

4.26 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.

4.27 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”.

4.28 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 16 – 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 184 of the 2015 Act - New definition of misconduct

- 4.29 Section 184 of the 2015 Act amends section 3 of the 1960 Act which provides for the insertion of a definition of misconduct which is construed in accordance with the provisions of section 50 of the 2015 Act.
- 4.30 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 definition causes certain definitions of misconduct to be unnecessarily repeated.
- 4.31 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).
- 4.32 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.
- 4.33 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.
- 4.34 Accordingly, it is suggested that section 184 should substitute, rather than insert, the section 50 definition of misconduct.

Recommendation 17 – 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 29 of the 1954 Act - Apprenticeships in new business models

- 4.35 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.
- 4.36 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).
- 4.37 Part 8 of the 2015 Act provides for the provision of legal services by legal practitioners through new practice models.
- 4.38 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.
- 4.39 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.
- 4.40 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.
- 4.41 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 views 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 is permitted to undertake their indentures under a practising solicitor in a limited liability partnership.
- 4.42 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 18 – 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.

Section 82 of the 1954 Act - Inclusion of new File C in regulations

- 4.43 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.
- 4.44 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.
- 4.45 Paragraph 8 of the sixth schedule currently makes reference to applications under section 17 of the 1960 Act for a copy of an entry in File A or File B.
- 4.46 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.
- 4.47 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 19 – 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.

Section 17(3) of the 1960 Act - Insertion of reference to the new File C

- 4.48 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.
- 4.49 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 20 – 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 –”

- 4.50 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.
- 4.51 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 21 – 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) of the 1960 Act - Amendment for the filing of orders in File B

4.52 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.

4.53 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 22 – 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) of the 1960 Act – Findings of misconduct not precipitated by complaints

4.54 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.

4.55 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.

4.56 It is recommended that section 17(3)(c) be amended by deleting the phrase *“in relation to a complaint under that Part.”*

Recommendation 23 – 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.

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

- 4.57 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.
- 4.58 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.
- 4.59 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.
- 4.60 Therefore, an amendment is required to section 2(2) to replace the reference to section 14B with a reference to section 14C.

Recommendation 24 – 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.

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

- 4.61 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.

- 4.62 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.
- 4.63 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.
- 4.64 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.
- 4.65 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.
- 4.66 Accordingly, section 72 of the 1994 Act should be amended to provide the updated collective citation for the Solicitors Acts 1954 to 2015.

Recommendation 25 – 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.

Section 135 of the 2015 Act - Removal of a barrister's name from the Roll of Practising Barristers

- 4.67 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.
- 4.68 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.
- 4.69 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.
- 4.70 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.

- 4.71 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 26 – 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).

Repeal of the Solicitors Remuneration Act 1881 and the Attorneys' and Solicitors' Act 1870

- 4.72 Section 8 of the Solicitors Remuneration Act 1881 and section 4 of the Attorneys' and Solicitors' Act 1870 should be repealed as section 151 of the 2015 Act has now been commenced. 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.
- 4.73 If section 8 and section 4 remain in force it could give rise to an otherwise avoidable complication as it is still 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.
- 4.74 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.
- 4.75 As these provisions are not the basis for any secondary legislation, their repeal should not create any difficulties in this respect.

Recommendation 27 – Repeal of the Solicitors Remuneration Act 1881 and the Attorneys' and Solicitors' Act 1870

It is the recommendation of the Society that that the Solicitors Remuneration Act 1881 and the Attorneys' and Solicitors' Act 1870 be repealed in their entirety.

Commencement in practice and cessation regulations

- 4.76 Under the Solicitors Acts, the Society lacks the power to make regulations for the commencement and cessation of solicitors' practices.
- 4.77 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.
- 4.78 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.
- 4.79 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 28 – 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.

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

- 4.80 Where a solicitor sets up in practice, they take on all the responsibilities that entails, including the sale, transfer or wind-up of their practice on its cessation, and all the costs related to each of those options.
- 4.81 Most solicitors' practices are wound up 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.
- 4.82 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 up of the practice. This will usually be because the solicitor has demonstrated incompetence or

dishonesty. However, the High 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. In such circumstances, it is often the case that no such proposals are provided or the proposals provided by the solicitor are inadequate and the Society is required to take up the files pursuant to the High Court order.

- 4.83 The Society undertakes 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.
- 4.84 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.
- 4.85 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.
- 4.86 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.
- 4.87 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.
- 4.88 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.
- 4.89 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.
- 4.90 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.
- 4.91 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.”

- 4.92 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.
- 4.93 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.
- 4.94 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.
- 4.95 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.
- 4.96 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.

Recommendation 29 – 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.

Further minor amendments to the 2015 Act

4.97 The Society notes that there are a number of other minor amendments that the 2015 Act requires which are set out in the following table:

Recommendation 30 – Minor amendments to the 2015 Act	
1	It is suggested that section 19(3) of the 2015 Act should correctly refer to the “Competition and Consumer Protection Commission”.
2	It is suggested that section 43(3) of the 2015 Act should correctly refer to section 50(1) of the Act rather than section 42(1) as this is the correct section that deals with misconduct.
3	It is suggested that section 52(3) of the 2015 Act should be amended to replace the reference <i>‘to the Society’</i> with the correct reference <i>‘to the Authority’</i> .
4	It is suggested that sections 80(3) and (4) are amended to include the word <i>‘the’</i> before the word <i>‘opinion’</i> .
5	It is suggested 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, rather than 81(9).
6	It is suggested 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.
7	It is suggested that the heading of section 103 of the 2015 Act is amended to change the words <i>“limited partnerships”</i> to <i>“legal partnerships”</i> .
8	It is suggested that the heading of section 104 of the 2015 Act be amended to change the words from <i>“Notification of Authority”</i> to <i>“Notification to Authority”</i> .
9	It is suggested that the heading of section 106 of the 2015 Act be amended to change the words from <i>“Notification of Authority”</i> to <i>“Notification to Authority”</i> .
10	It is suggested that an amendment to section 114(4)(a)(iii) is made to replace the word <i>‘finding’</i> with the word <i>‘belief’</i> .
11	It is suggested that section 115 of the Act is amended to replace any reference to the word <i>‘notice’</i> with the word <i>‘direction’</i> for clarity and to prevent ambiguity.
12	It is suggested that section 136(c) of the 2015 Act is amended to remove the word <i>‘not’</i> for the purposes of clarifying persons who are considered unqualified to provide legal services as a practising barrister.
13	It is suggested that section 140(2)(e) of the 2015 Act is amended to insert the word <i>‘a’</i> before the word <i>‘determination’</i> .
14	It is suggested 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, rather than section 158(1).
15	It is suggested 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.

5. Practising certificates and other matters relating to practice

Section 48 of the 1954 Act - Backdating practising certificates

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 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.

- 5.10 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 31 – 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 of the 1954 Act - Circumstances which the Society may consider when issuing a practising certificate

- 5.11 Section 49(1) of the 1954 Act, as substituted by section 61 of the 1994 Act, as amended by section 2 of 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.
- 5.12 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.
- 5.13 Paragraph (u) allows the Society to restrict or refuse a practising certificate where a solicitor has contravened the Solicitors Acts 1954 to 2015.
- 5.14 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 32 – 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 of the 1954 Act- Power to impose practising certificate conditions for multiple years

- 5.15 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.
- 5.16 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 33 – 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) of the 1954 Act- Limitation period on application to the High Court by a decision of the Society refusing employment of an unqualified person

- 5.17 Section 60 of the 1954 Act, as substituted by section 20 of the 1994 Act, prohibits any person 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.
- 5.18 Under section 60(2) of the 1954 Act, the Society may grant or refuse permission for the employment of such unqualified persons.
- 5.19 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.
- 5.20 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.

Recommendation 34 – 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.

Section 61(2) of the 1954 Act- Direction to be seen by a registered medical practitioner where concerns arise for physical or mental health of a solicitor

- 5.21 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.
- 5.22 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.
- 5.23 The Society similarly has no power to gather medical evidence where there is a concern regarding the physical or mental health of the solicitor.
- 5.24 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.
- 5.25 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.
- 5.26 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 35 – 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 56(2) of the 1994 Act- Practising certificates for solicitors practising in legal partnerships, limited liability partnerships or multi-disciplinary practices

- 5.27 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.
- 5.28 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.
- 5.29 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. To date, only limited liability partnerships have been commenced with the likelihood of legal partnerships commencing in the fourth quarter of 2021.
- 5.30 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 36 – 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) of the 1994 Act- Removal of practising certificate exemption for solicitors in the full-time service of the State and conveyancing-only solicitors

- 5.31 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.
- 5.32 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.
- 5.33 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.

- 5.34 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.
- 5.35 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.
- 5.36 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 37 - 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 of the 1994 Act – Suspension of practising certificates

- 5.37 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.
- 5.38 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.
- 5.39 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.

- 5.40 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).
- 5.41 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.
- 5.42 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.
- 5.43 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.
- 5.44 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.
- 5.45 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 38 – 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 of the 1994 Act - Restriction or suspension of practising certificate where certificate previously issued under section 49

- 5.46 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.
- 5.47 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.
- 5.48 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.
- 5.49 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.
- 5.50 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.
- 5.51 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.
- 5.52 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.
- 5.53 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 39 – 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 181 of the 2015 Act - Failure to pay levies, contributions, awards, fines and costs

- 5.54 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.
- 5.55 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.
- 5.56 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.
- 5.57 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.
- 5.58 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.

- 5.59 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.
- 5.60 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.
- 5.61 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).
- 5.62 Failure to pay levies and contributions imposed by the Authority, and awards, fines and costs (following an adjudication by a Legal Costs Adjudicator) 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 amended).
- 5.63 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.
- 5.64 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 40 – 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 adjudication by a Legal Costs Adjudicator) 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 204 of the 2015 Act - 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

- 5.65 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.
- 5.66 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.
- 5.67 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.
- 5.68 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.
- 5.69 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.
- 5.70 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 41 – 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.

Section 85(7)(d) of the 2015 Act - Notification to be given by the Authority to the Society where a solicitor is suspended from practice

- 5.71 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
- 5.72 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.
- 5.73 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 42 – 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 suspended from practice 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)(f) of the 2015 Act - Notification to be given by the Authority to the Society where a solicitor is struck off the Roll of Solicitors

- 5.74 Section 85(7)(f) of the 2015 Act provides for the power of the High Court to strike a solicitor's name off the Roll of Solicitors.
- 5.75 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)(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.

5.76 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.

5.77 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 43 – 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(7)(e) of the 2015 Act - Application for restoration to the Roll of Solicitors

5.78 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.

5.79 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.

5.80 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.

5.81 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 44 – 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 81 of the 1954 Act - Statutory requirement for principals of solicitors' firms to ensure accuracy of details

- 5.82 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.
- 5.83 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.
- 5.84 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.
- 5.85 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.
- 5.86 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 45 – 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.

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

- 5.87 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.
- 5.88 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.
- 5.89 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 46 – 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.

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

- 5.90 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.
- 5.91 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.
- 5.92 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.
- 5.93 The following wording is proposed in line with wording included in the Solicitors Professional Indemnity Insurance Regulations 2020 (S.I. 429 of 2020) for solicitors for the 2020/2021 indemnity period:

- “(a) Every firm must have a 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 47 – 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 firm must have a 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.”*

5.94 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.

5.95 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 48 – 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.”

Sections 41(c) and 43 of the 1954 Act - Movement between the professions

5.96 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.

- 5.97 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.
- 5.98 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.
- 5.99 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.
- 5.100 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 49 – 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.

- 5.101 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.
- 5.102 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 50 – 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 15 of the 1960 Act - Powers, rights and privileges of the High Court in applications for removal from the Roll of Solicitors

- 5.103 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.
- 5.104 As noted previously, 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.
- 5.105 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 51 – 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 of the 1960 Act - Applications for removal from the Roll of Solicitors

- 5.106 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.

- 5.107 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.
- 5.108 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 52 – 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 5 of the 2002 Act - Advertising of legal services

- 5.109 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.
- 5.110 Schedule 2 of the 2015 Act was commenced on 18 December 2020 and now 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 the Legal Services Regulation Act 2015 (Advertising) Regulations 2020 (S.I. 644 of 2020) made under section 218 of the 2015 Act.
- 5.111 Section 5, read in conjunction with the amendment made by section 207 of the 2015 Act, prohibits a person who is not a solicitor from engaging in the proscribed activity, rather than prohibiting an unqualified person from doing same.
- 5.112 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.
- 5.113 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.

- 5.114 Therefore, section 5 of the 2002 Act allows 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.
- 5.115 The broader definition of an unqualified person would prohibit persons who do not hold a practising certificate from advertising in the proscribed manner.
- 5.116 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.
- 5.117 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 53 – 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 128 of the 2015 Act - Publication of notice of suspension or revocation of an authorisation issued to a limited liability partnership

- 5.118 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.
- 5.119 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.
- 5.120 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.
- 5.121 Section 128(8) should be amended accordingly to reflect this intention.

Recommendation 54 – 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 62 of the 1954 Act - Fee sharing provisions

- 5.122 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.
- 5.123 Under Part 8 of the 2015 Act, solicitors will be permitted to enter into legal partnerships with barristers but under section 62 of the 1954 Act they would not be permitted to share fees with a barrister partner or partners.
- 5.124 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 with solicitors, to ensure that legal partnerships can function as intended under the 2015 Act.

Recommendation 55 – 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 with a solicitor, to allow the correct functioning of legal partnerships as intended under the 2015 Act.

Bring clarity to the issue of legal fees lawfully earned

- 5.125 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.
- 5.126 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.

- 5.127 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.
- 5.128 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 56 – 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.

6. Complaints, Disciplinary and Court matters

Section 43(1) of the 2015 Act - Preparation of a report by an inspector for the purposes of investigating a complaint made to the Authority

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 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 57 – 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 52(2) of the 2015 Act - Referral of complaints against solicitors by the registrar

- 6.6 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.

- 6.7 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.
- 6.8 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.
- 6.9 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 58 – 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 68 of the 2015 Act - Clarification for section 68 of the 2015 Act

- 6.10 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.
- 6.11 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.)
- 6.12 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.
- 6.13 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.
- 6.14 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.

- 6.15 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 59 – Clarification for section 68 of the 2015 Act

It is the recommendation of the Society that section 68 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) of the 2015 Act - Financial sanctions by Divisional Committee not to cause undue hardship to legal practitioners

- 6.16 Section 71 of the 2015 Act provides for the power of the Divisional Committee investigating misconduct complaints against legal practitioners to impose sanctions on legal practitioners.
- 6.17 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.
- 6.18 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.
- 6.19 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 60 – Financial sanctions by Divisional Committee not to cause undue hardship on legal practitioners

It is the recommendation of the Society that section 71(9) of the 2015 Act 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 79(2)(b) - Regulations relating to the Legal Practitioners Disciplinary Tribunal

- 6.20 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.
- 6.21 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.
- 6.22 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 61 – 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 94 of the 2015 Act – Clarification of powers of the Authority

- 6.23 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 in respect of a solicitor, may exercise any power conferred on the Society under the Solicitors Acts 1954 to 2015.
- 6.24 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.

- 6.25 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 62 – 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 7(3) of the 1960 Act - Recommendation of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by Legal Practitioners Disciplinary Tribunal

- 6.26 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.
- 6.27 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 63 – 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) of the 1960 Act - Order of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by Legal Practitioners Disciplinary Tribunal

- 6.28 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.
- 6.29 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 64 – 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 8(1) of the 1960 Act - High Court to take into account findings of misconduct by both Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when censuring a solicitor

- 6.30 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.
- 6.31 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 65 – 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.

- 6.32 Similarly, 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.
- 6.33 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 66 – 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) of the 1960 Act - Submissions made by the Society when bringing the recommendations of the Solicitors Disciplinary Tribunal to the High Court

- 6.34 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.
- 6.35 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 67 – 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 17(1) of the 1960 Act - Filing of High Court and Legal Practitioners Disciplinary Tribunal orders

- 6.36 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.
- 6.37 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.
- 6.38 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...”*

- 6.39 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 68 – 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 19(6) of the 2002 Act – Reference to disciplinary tribunal

- 6.40 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.

- 6.41 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.

- 6.42 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.”*

- 6.43 However, no powers are given to the Legal Practitioners Disciplinary Tribunal under the Solicitors Acts. Those powers are given to the Solicitors Disciplinary Tribunal.

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

Recommendation 69 – Reference 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 of the 2002 Act - Referral to the Society of alleged misconduct by an apprentice solicitor

- 6.45 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.
- 6.46 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.
- 6.47 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.
- 6.48 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.
- 6.49 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 70 – 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.

Section 79(4) of the 2015 Act - Determination of an application to the Legal Practitioners Disciplinary Tribunal on the basis of affidavits and supporting documentation

- 6.50 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.
- 6.51 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 71 – 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 81 of the 2015 Act - Inquiry and determinations by the Legal Practitioners Disciplinary Tribunal

- 6.52 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.
- 6.53 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).
- 6.54 Subsequent provisions, which follow section 81, make reference to determinations made “*pursuant to the holding of an inquiry under section 81*” by the Legal Practitioners Disciplinary Tribunal or “*a determination under section 81.*”
- 6.55 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.

- 6.56 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.
- 6.57 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.
- 6.58 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.
- 6.59 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.
- 6.60 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 72 – 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 of the 2015 Act - Direction by the Legal Practitioners Disciplinary Tribunal to impose specified conditions on a practising certificate

- 6.61 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.
- 6.62 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.
- 6.63 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.
- 6.64 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 73 – 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.”

Use of stenographers by disciplinary tribunals

- 6.65 Any new disciplinary matters against legal practitioners will now be heard by the Legal Practitioners Disciplinary Tribunal. The Solicitors Disciplinary Tribunal will continue to hear matters until that body has been wound up.
- 6.66 The Solicitors Disciplinary Tribunal is required under primary legislation to use stenographers for every case as the Tribunal is compelled by law to produce a transcript of every proceeding.
- 6.67 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.

- 6.68 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 74 – 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.

Section 87 of the 2015 Act - Right of making an appeal to the Court of Appeal by the Society

- 6.69 Section 87 of the 2015 Act 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.
- 6.70 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 75 – Right of the Society to appeal to the Court of Appeal

It is the recommendation of the Society that section 87 of the 2015 Act 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 of the 2015 Act - Right of the Society to make enforcement applications to the High Court

- 6.71 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).”

- 6.72 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.
- 6.73 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).
- 6.74 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 76 – 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 115(1)(a) of the 2015 Act - Absence of statutory power for High Court to grant an order

- 6.75 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 a multi-disciplinary practice or managing legal practitioner pursuant to section 114.
- 6.76 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.
- 6.77 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).
- 6.78 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.
- 6.79 This may be compared with section 128 of the 2015 Act which sets out equivalent provisions in respect of limited liability partnerships.

- 6.80 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.
- 6.81 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 77 – 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) of the 2015 Act - Parties in an appeal

- 6.82 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.
- 6.83 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.
- 6.84 As such, section 115(6) should be amended to reflect the correct parties.

Recommendation 78 – 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.

Evidence of criminal convictions for legal practitioners

- 6.85 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.
- 6.86 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.
- 6.87 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 79 – 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.