

Complaint of Inadequate Services or Excessive Costs:

Under Section 51(1) a complaint of inadequate services or excessive costs may be made by a client of a legal practitioner, or person acting on behalf of such a client; in contrast, a complaint of misconduct can be made by “a person” under Section 51(2). Such a complaint is to be made in writing (Section 51(10)) and may be subject to a fee.

The power to impose such a fee is provided in Section 56 whereby the Authority may, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, make regulations prescribing the fee (if any) payable in respect of making a complaint under this Part and the regulations may specify the circumstances in which the fee shall be refunded. The Authority also has the power under Section 51(8) to investigate an act or omission of a legal practitioner where no complaint has been received by it in relation to that legal practitioner. The Authority may also proceed to deal with a complaint which has been withdrawn “where it considers it to be in the public interest to do so” under Section 54(1).

Section 52(4) also provides that nothing in this section shall be construed as preventing the Bar Council or the Honorable Society of King’s Inns from making a complaint under Section 51 in respect of a legal practitioner.

Preliminary Review/ Admissibility

Under Section 57, where the Authority receives a complaint it shall conduct a preliminary review of the complaint to determine whether or not the complaint is admissible. The barrister is to be notified of the complaint, furnished with a copy and requested to respond to the Authority with their observations on the complaint. Under Section 58(2), the Authority shall determine a complaint to be inadmissible, if in the opinion of the Authority the complaint is (a) frivolous or vexatious, or (b) without substance or foundation. A complaint will also be found to be inadmissible if it is the same or substantially the same as that which was the subject matter of a previous complaint under the 2015 Act or to the Barrister’s Professional Conduct Tribunal or the Honourable Society of King’s Inns.

Section 58(5)(b) also provides that a complaint shall be found to be inadmissible where the act or omission is the same or substantially the same act or omission as that which was the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has been made by the court in those proceedings in favour of the barrister concerned. Such proceedings shall not be regarded as finally determined until any appeal, rehearing or retrial has been determined. If proceedings are ongoing, the Authority may defer consideration until the proceedings have been finally determined.

Complaints which are made more than 3 years after the later of the date on which the legal services concerned were provided or the bill of costs concerned was issued; or the date on which the client first became aware, or ought reasonably to have become aware, that it would be reasonable to consider that paragraph (a) or (b) of section 51(1) applied – are inadmissible under Section 58(7).

Once a decision has been made as to admissibility, the complainant and barrister are informed of this decision and of the reasons for the determination. If the complaint is found to be inadmissibility, the Authority will take no further action in relation to the complaint.

Inadequate Legal Services:

Under Section 49(2)(a)(i), the legal services provided to a person by a legal practitioner shall be considered as being of an inadequate standard where, by act or omission of the legal practitioner, the legal services actually provided by him or her where the legal practitioner is a barrister, were *inadequate in any material respect and were not of the quality that could reasonably be expected of him as a barrister*. This definition reflects that of inadequate professional services in respect of solicitors under section 8, Solicitors (Amendment) Act, 1994 and the procedure incorporated in Section 60 a reflection of the procedure before the Complaints and Client Relations Committee of the Law Society.

Excessive Costs:

Under Section 49(2)(c), a reference to an amount of costs sought by a legal practitioner in respect of the provision of legal services means an amount of costs specified in a bill of costs issued by the legal practitioner concerned. Bill of costs is defined under Part 10 as “bill of costs” (for the purpose of that Part) as meaning a document setting out the amount of legal costs chargeable to a client in respect of legal services provided to him or her. There is an obligation on a barrister to furnish a bill of costs and that obligation is satisfied where they are engaged by a solicitor, when they furnish the bill of costs to the solicitor.

The option exists – for a client that is dissatisfied with his bill of costs – to make an application for an adjudication of the bill of costs under Part 10 by the Legal Costs Adjudicator or to the County Registrar. The Act isn’t very clear on the relationship between complaints of excessive costs and applications for adjudications but we can say the following that the Act envisages the possibility of both a complaint and an application for adjudication. Under Section 53, for the purposes of the limitation period for making an application for an adjudication under Part 10, the time between the making of a complaint under Section 52 and the date on which it is withdrawn or two months after a determination of the complaint is to be disregarded.

If a client has made a complaint about excessive costs subsequently applies for adjudication under Part 10 where the complaint has been resolved under Section 61; then the client shall not be entitled to seek adjudication of the bill of costs unless such adjudication forms part of the resolution. Where a bill of costs which has been the subject of complaint has subsequently been adjudicated, then where the Authority has given a direction it shall cease to have effect; Where the Authority has not given a direction, it shall not proceed to investigate such a complaint. (Section 61(8)) and under Section 61(9), where the Authority has notified a legal practitioner that a complaint in relation to excessive fees is admissible, they shall not issue civil proceedings or if they are already issued, proceed further with civil proceedings in respect of the bill of costs without the written consent of the Authority before it has determined the matter unless a court orders otherwise on application of that legal practitioner. Again, the provision in the 2015 Act reflect those previously set out in

Section 9, Solicitors (Amendment) Act 1994 in respect of the charging of excessive fees by a solicitor.

Relationship between Misconduct and Excessive Fees / Inadequate Legal Services:

The definition of misconduct under Section 50 of the 2015 Act includes under Section 50(1)(b) an act or omission connected with the provision of legal services which were, to a substantial degree, of an inadequate standard and under section 50(1)(l) of an action or omission which consists of seeking an amount of costs in respect of the provision of legal services that is grossly excessive. The question is therefore one of degree as to whether the complaint is one of misconduct rather than one of inadequate services or excessive fees. Section 50(2) provides that in determining whether the act/omission should be considered as constituting misconduct, regard may be had to:

- (a) the amount by which or the extent to which the amount claimed in the bill of costs was found to be excessive,
- (b) whether in the particular circumstances of the legal services performed the amount of the bill of costs appears to be unconscionable, and
- (c) whether or not a Legal Costs Adjudicator has found the costs charged to be grossly excessive.

Facilitation of resolution of complaints:

Sections 60 and 61 deal with the facilitation of the resolution of complaints of inadequate services and excessive fees. Both provide that the client and the legal practitioner concerned will be invited by the Authority to make efforts to resolve the matter the subject of the complaint in an informal manner. Where both agree to do so, the Authority shall facilitate the resolution of the matter by offering its assistance in resolving the matter in an informal manner, or by identifying to the legal practitioner and the client other persons who are willing to assist in resolving the matter in an informal manner. Section 67 of the 2015 Act provides that the Authority shall publish guidelines in relation to the resolution of complaints by informal means. Any costs arising from an attempt to resolve a complaint informally shall be borne equally by the parties to the complaint unless the parties agree otherwise

Once a “reasonable period of time” has been allowed to resolve the complaint in an informal manner and the LRSA considers that a resolution is unlikely to be reached, it may give notice to the parties that it proposes to determine the complaint. The complaint will not be determined for a further 30 day period after notice has been given.

Proceeding to a Determination and Directions

Where the parties don't accept the invitation to informal resolution, where they fail to resolve the matter informally or where the Authority decides to determine the complaint, the parties are then invited to furnish a statement setting out their respective positions in relation to the matter the subject of the complaint (Section 60(5)). There isn't any specific committee established under the Act to deal with admissible and unresolved complaints of excessive costs and/or inadequate legal services. However the Authority may – under Section 13(9) - provide for the performance, under

the general direction of the Authority, of one or more of its functions by a committee. We can therefore expect I think the creation of a committee to carry out this role. Section 16 provides for such establishment of committees; they must have a lay majority but may otherwise consist of such number of members as the Authority may determine. In appointing members the Authority must (a) have regard to the range of qualifications and experience necessary for the proper and effective discharge of the functions of the committee, and (b) have regard to the desirability of there being such balance between men and women on the committee as is appropriate. And the committee membership is not limited to members of the Authority or its staff. The acts of such a committee shall be subject to confirmation by the Authority, unless the Authority otherwise determines

Under Section 60(6)(1) where the Authority, having considered any statement provided to it, considers that the legal services provided by the legal practitioner were of an inadequate standard, and that it is, having regard to all the circumstances concerned, appropriate to do so, it may direct the legal practitioner to do one or more of the following:

- (a) secure the rectification, at his or her own expense or at the expense of his or her firm, of any error, omission or other deficiency arising in connection with the legal services concerned;
- (b) take, at his or her own expense or at the expense of his or her firm (which shall not exceed €3,000), such other action as the Authority may specify;
- (c) transfer any documents relating to the subject matter of the complaint to another legal practitioner nominated by the client, subject to such terms and conditions as the Authority may consider appropriate having regard to the existence of any right to possession or retention of any of the documents concerned vested in the legal practitioner to whom the direction is issued;
- (d) pay to the client a sum not exceeding €3,000 as compensation for any financial or other loss suffered by the client in consequence of the legal services provided by the legal practitioner to the client being of an inadequate standard.

Equally under Section 61(6), where the Authority, having considered any statements, considers that the amount of costs sought by the legal practitioner in respect of legal services provided to the client by the legal practitioner was or is excessive, and that it is, having regard to all the circumstances concerned, appropriate to do so, may direct the legal practitioner to do one or more of the following:

- (a) refund without delay, either wholly or in part as directed, any amount already paid by or on behalf of the client in respect of the practitioner's costs in connection with the bill of costs;
- (b) waive, whether wholly or in part as directed, the right to recover those costs.

Appeal to Review Committee:

Section 60(7) provides that where the client or the legal practitioner is aggrieved by a direction made by the Authority under subsection (6) or its failure to make such a direction, he or she may by notice in writing given not more than 30 days after the Authority has notified the parties to the complaint of its decision under subsection (6), seek a review by a Review Committee established under section 62 of the direction or the failure. A similar provision exists under Section 61(7) in relation to a direction or failure to make a direction under Section 61.

The Review Committee is composed of 3 persons, 2 lay members and a legal practitioner member. In the case where the complaint relates to a barrister, the legal member shall be a barrister. Under Section 61(5), the Review Committee shall consider reviews requested and, having given both the client and the legal practitioner an opportunity to make a statement in writing to it as to why the determination of the Authority was incorrect or unjust, determine the review by—

- (a) confirming the determination of the Authority,
- (b) remitting the complaint to the Authority, with such directions as the Review Committee considers appropriate or necessary, to be dealt with again under section 60 or 61, as the case may be, or
- (c) issuing one or more than one of the directions to the legal practitioner that the Authority is authorised to issue under section 60(6) or section 61(6), as the case may be.

Appeal to the High Court:

The decision of the Review Committee is in turn appealable to the High Court under Section 63 within a period of 21 days of the notification of such determination / direction to him to vary or rescind such determination. Under Section 63(3), an application can be made by the Authority to the High Court to dismiss the application if the application has no merits and has been made solely for the purpose of delay. Where no application is made within the 21 day period, the determination of the Review Committee shall become absolutely binding on the client and legal practitioner immediately upon the expiration of such period. A failure to comply with such a determination is a summary offence carrying a Class B fine, that's a fine not exceeding €4000. There is also a power under Section 90(1) where an application can be made to the High Court by the Authority – where the matter is not otherwise before the High Court - where it is shown that a legal practitioner or any other person has refused, neglected or otherwise failed, without reasonable cause, to comply in whole or in part with a direction, determination or order to which Section 90(4) applies – that includes a direction of the Authority and a determination of the Review Committee. The Court may direct the legal practitioner or other person, as the case may be, to comply in whole or in part as may be appropriate, with the direction, determination or order