



DÁIL ÉIREANN

AN BILLE UM RIALÁIL SEIRBHÍSÍ DLÍ, 2011 LEGAL SERVICES REGULATION BILL 2011

LEASUITHE COISTE COMMITTEE AMENDMENTS

[This amendment list contains amendments to Parts 3 to 6 of the Bill (sections 33 to 70).]

DÁIL ÉIREANN

AN BILLE UM RIALÁIL SEIRBHÍSÍ DLÍ, 2011 —ROGHCHOISTE

LEGAL SERVICES REGULATION BILL 2011 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 33

76. In page 36, before section 33, to insert the following new section:

“PART 3

HOLDING OF CLIENTS’ MONEYS BY LEGAL PRACTITIONERS

Legal practitioners
authorised to hold
moneys of clients.

33.—(1) Subject to *subsection (2)*, a legal practitioner shall not hold moneys of clients unless that legal practitioner is a solicitor.

(2) Notwithstanding *subsection (1)* the Minister may by regulations prescribe a class or classes of solicitors who may not hold the moneys of clients, or who may hold such moneys subject to such conditions as may be provided for in such regulations.

(3) *Subsection (1)* shall not be construed as permitting a solicitor to hold the moneys of clients where a condition or restriction is placed on a solicitor’s practising certificate pursuant to the Solicitors Acts 1954 to 2013 or this Act.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 33 of the Bill.*]

77. In page 36, lines 19 and 20, to delete “relevant legal practitioner” and substitute “solicitor”.

—Pádraig Mac Lochlainn.

78. In page 36, lines 19 and 20, to delete “legal practitioner” and substitute “solicitor”.

—Niall Collins.

79. In page 36, line 22, to delete “relevant legal practitioner” and substitute “Solicitor”.

—Pádraig Mac Lochlainn.

80. In page 36, line 22, to delete “legal practitioner” where it firstly occurs and substitute “solicitor”.

—Niall Collins.

SECTION 34

81. In page 36, line 24, to delete “legal practitioner” and substitute “solicitor”.

[No. 58 of 2011]

[14 January, 2014]

[SECTION 34]

—Niall Collins.

- 82.** In page 36, line 24, to delete “legal practitioner” and substitute “solicitor (the relevant legal practitioners)”.

—Pádraig Mac Lochlainn.

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 35

- 83.** In page 36, lines 27 to 33, to delete all words from and including “A Legal” on line 27 down to and including “the” on line 33 and substitute the following:

“The”.

—Niall Collins, Pádraig Mac Lochlainn.

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 36

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 37

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 38

- 84.** In page 40, lines 24 to 34, to delete subsections (6) and (7).

—Niall Collins, Pádraig Mac Lochlainn.

- 85.** In page 40, lines 49 to 51 and in page 41, lines 1 to 4, to delete subsection (10).

—Niall Collins, Pádraig Mac Lochlainn.

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 39

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 40

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 41]

SECTION 41

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 42

86. In page 42, subsection (1), lines 44 and 45, to delete all words from and including “shall” in line 44 down to and including “Minister,” in line 45 and substitute “may make regulations”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 43

87. In page 43, subsection (1), line 45, to delete “, with the consent of the Minister,”.

—An tAire Dlí agus Cirt agus Comhionannais.

88. In page 44, subsection (3), line 6, to delete “Minister” and substitute “Authority”.

—Niall Collins.

SECTION 44

89. In page 45, subsection (1)(b), line 21, to delete “partner, employee or former partner or employee” and substitute the following:

“partner, employee, former partner or former employee”.

—An tAire Dlí agus Cirt agus Comhionannais.

90. In page 45, subsection (1)(ii), lines 29 and 30, to delete all words from and including “the” in line 29 down to and including “servant” in line 30 and substitute the following:

“the partner, employee, former partner or former employee”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 45

91. In page 45, after line 48, but in Part 4, to insert the following new section:

“PART 5*

INFORMAL RESOLUTION OF COMPLAINTS RELATING TO INADEQUATE LEGAL SERVICES AND CHARGING OF EXCESSIVE FEES

Construction (*Part 5*).

45.—(1) For the purposes of this Part a legal practitioner shall be considered as having provided inadequate legal services where by act or omission the legal services actually provided by the legal practitioner were not of a standard that it is reasonable to expect of a legal practitioner, having regard to whether the legal practitioner concerned is a solicitor or a barrister.

(2) For the purposes of this Part a reference to an amount of costs sought by a legal practitioner in respect of legal services means an amount of costs specified in a bill of costs issued by the legal practitioner concerned.”.

[SECTION 45]

—An tAire Dlí agus Cirt agus Comhionannais.

[*The proposed new Part comprehends the inclusion of amendments 92 to 98.]

92. In page 45, after line 48, but in Part 4, to insert the following new section:

“Admissibility of complaints.

46.—(1) A complaint shall not be considered by the Authority under this Part if in the opinion of the Authority—

- (a) it is frivolous or vexatious, or
- (b) it is without substance or foundation.

(2) The Authority shall not consider a complaint in respect of a legal practitioner under this Part where it is satisfied that the act or omission to which the complaint relates is the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that legal practitioner which was previously determined under this Act.

(3) The Authority shall not consider a complaint in respect of a solicitor where it is satisfied that the act or omission to which the complaint relates is—

- (a) the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that solicitor which was previously determined under the Solicitors Acts 1954 to 2013—
 - (i) by the High Court,
 - (ii) by the Solicitors Disciplinary Tribunal,
 - (iii) by the Solicitors Disciplinary Committee, or
 - (iv) by the Law Society,or
- (b) 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 solicitor concerned.

(4) The Authority shall not consider a complaint in respect of a barrister where it is satisfied that the act or omission to which the complaint relates is—

- (a) the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that barrister which was previously determined by the Barristers’ Professional Conduct Tribunal, or
- (b) 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.

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(5) (a) Where the Authority is satisfied that the act or omission to which a complaint relates is the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has not been made by the court in those proceedings, the Authority may defer consideration of the complaint until the proceedings have been finally determined.

(b) Where the Authority is satisfied that the act or omission to which a complaint relates has been investigated by a court in civil proceedings or criminal proceedings and that a final determination of the issues which are, in substance, the issues involved in the complaint has been made by the court in those proceedings in favour of the legal practitioner concerned, the Authority may decide to take no action or no further action in relation to the complaint.

(c) Proceedings shall not be regarded as finally determined for the purposes of *paragraph (a) or (b)* until any appeal, rehearing or retrial in relation to those proceedings has been determined.

(6) Where the Authority determines under this section that it will not consider a complaint, the Authority shall, where appropriate—

(a) notify the complainant in writing of its determination,

(b) state the reason(s) for the determination,

(c) notify the legal practitioner, if appropriate,

(d) take no further action in relation to the complaint,

(e) refer the person to a more appropriate body.”

—An tAire Dlí agus Cirt agus Comhionannais.

93. In page 45, after line 48, but in Part 4, to insert the following new section:

“Complaints under this Part.

47.—A client of a legal practitioner may make a complaint to the Authority where the client considers that—

(a) the legal services provided to him or her are or were of an inadequate standard, or

(b) the bill of costs issued by the legal practitioner was excessive.”

—An tAire Dlí agus Cirt agus Comhionannais.

94. In page 45, after line 48, but in Part 4, to insert the following new section:

“Preliminary review of complaints.

48.—(1) Where the Authority receives a complaint under this Part it shall conduct a preliminary review of the complaint to determine—

(a) whether or not the complaint is admissible, and

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- (b) whether or not the complaint is an appropriate complaint to be dealt with under this Part or whether the act or omission concerned should be considered under *Part 5*, having regard to the extent that the standard of the legal services provided to the client fell short of the standard reasonably expected of a legal practitioner in the provision of those services.

(2) Where the Authority, having carried out the preliminary review referred to in *subsection (1)*, considers that the complaint appears to be admissible and that it is appropriate to be dealt with under this Part it shall notify the legal practitioner concerned setting out an outline of the complaint and requesting the legal practitioner to respond to the Authority within such reasonable period as is specified in the notification.

(3) Where the Authority receives a response to the notification given under *subsection (2)* it shall consider the response and having considered the response shall—

- (a) admit the complaint and enter into further consideration of the complaint in accordance with this Part,
- (b) determine that the complaint appears to be unfounded, or
- (c) request further information regarding the matter from the complainant or the legal practitioner,

and where the Authority admits the complaint under *paragraph (a)* or determines pursuant to *paragraph (b)* that the complaint is unfounded, it shall notify the complainant and the legal practitioner.

(4) Where, having carried out the preliminary review referred to in *subsection (1)* and having considered any responses received under *subsection (3)* the Authority is of the opinion that the complaint if it were substantiated could constitute misconduct and should be dealt with under *Part 5* it shall proceed to deal with the matter as if the complaint had been made under *Part 5* and notify the complainant to that effect.”

—An tAire Dlí agus Cirt agus Comhionannais.

95. In page 45, after line 48, but in Part 4, to insert the following new section:

“Authority to facilitate resolution of complaints made under this Part relating to inadequate services.

49.—(1) Where the Authority admits the complaint pursuant to *section 48** and the main substance of the complaint is that the standard of the legal services provided by the legal practitioner concerned to the client has fallen short of the standard reasonably expected of a legal practitioner in the provision of those services, but the Authority is of the opinion that the matter the subject of the complaint is capable of being resolved, the Authority may invite the client and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint.

(2) Where the client and the legal practitioner agree to make efforts to resolve the matter the subject of the complaint the Authority shall facilitate the resolution of the matters the subject of the complaint—

- (a) by offering its assistance in resolving the matter, or

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- (b) by identifying other persons to the legal practitioner and the client who are willing to assist in resolving the matter,

in an informal manner, (which may include the referral of the dispute to mediation or other appropriate form of dispute resolution).

(3) Having facilitated the resolution of the complaint pursuant to *subsection (2)* and having allowed the client and the legal practitioner a reasonable period to resolve the matter the subject of the complaint, the Authority, where it considers that an agreement or resolution between the parties in relation to the complaint is unlikely to be reached, may give notice in writing to the client and the legal practitioner (and where appropriate any other person involved in attempting to resolve the dispute) that it proposes to conclude the dispute resolution process in accordance with this section.

(4) The Authority shall not conclude the dispute resolution process under this section earlier than 30 days after the giving of notice under *subsection (3)*.

(5) Where the Authority exercises its power to conclude the dispute resolution process under this section it shall thereafter invite the client and the legal practitioner to furnish to it, within such reasonable period as is specified by the Authority, a statement setting out their respective positions in relation to the matter the subject of the complaint.

(6) The Authority shall consider any statement furnished to it pursuant to *subsection (5)* and, where it considers that the legal services provided by the legal practitioner have fallen short of the standard reasonably expected of a legal practitioner in the provision of those services, and that it is, having regard to all the circumstances concerned, appropriate to do so, the Authority 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, 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 having fallen short of the standard reasonably expected of a legal practitioner in the provision of those services.

(7) 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 the person aggrieved may seek a review by a committee established for the purpose of

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considering reviews of decisions of the Authority under this section 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)*.

(8) Any payment made by a legal practitioner pursuant to a direction referred to in *subsection (6)(d)* shall be without prejudice to any legal right of the client.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to a section proposed to be inserted by amendment 94.]

96. In page 45, after line 48, but in Part 4, to insert the following new section:

“Review
Committee.

50.—(1) The Authority shall establish a committee to consider reviews requested by complainants or legal practitioners in relation to determinations of the Authority under *section 49**.

(2) The committee shall be composed of 3 persons, 2 of whom shall be lay persons and one of whom shall be a legal practitioner.

(3) The member of the review committee who is a legal practitioner shall—

(a) in a case where the complaint relates to a solicitor, be a solicitor, and

(b) in a case where the complaint relates to a barrister, be a barrister.

(4) A person shall be eligible to serve as a member of a review committee established under this section if he or she is eligible to serve as a member of the Complaints Committee established under *Part 5*.

(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 decision of the Authority was incorrect or unjust, determine the review by—

(a) confirming the decision of the Authority,

(b) finding that the complaint is not well founded, or

(c) issuing one or more than one of the directions to the legal practitioner which the Authority is authorised to issue under *section 49(6)**.

(6) Any payment made by a legal practitioner pursuant to a direction referred to in *subsection (5)* shall be without prejudice to any legal right of the client.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to a section proposed to be inserted by amendment 95.]

97. In page 45, after line 48, but in Part 4, to insert the following new section:

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“Authority to facilitate resolution of complaints made under this Part relating to excessive costs.

51.—(1) Where the Authority admits a complaint pursuant to *section 48** and the main substance of the complaint is that the amount (or any part of the amount) of costs claimed by a legal practitioner in a bill of costs is excessive in a material respect and the Authority is of the opinion that the matter the subject of the complaint is capable of being resolved, the Authority may invite the complainant and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint.

(2) Where the complainant and the legal practitioner agree to make efforts to resolve the matter the subject of the complaint the Authority shall facilitate the resolution of the matters the subject of the complaint—

(a) by offering its assistance in resolving the matter; or

(b) by identifying other persons to the legal practitioner and the client who are willing to assist in resolving the matter,

in an informal manner (which may include the referral of the dispute to mediation or other appropriate form of dispute resolution).

(3) In reckoning any period of time for the purposes of any limitation period in relation to the making of an application for adjudication of a bill of costs under *Part 9* which bill of costs is or has been the subject of a complaint under this Part, the period beginning on the making of a complaint to the Authority and ending 2 months after the complaint is determined under this Part shall be disregarded.

(4) Where pursuant to this section a dispute regarding a bill of costs between the client and the legal practitioner is resolved the client shall not thereafter be entitled to seek adjudication of the bill of costs under *Part 9* unless such adjudication forms part of the resolution.

(5) Having facilitated the resolution of the complaint pursuant to *subsection (2)* and having allowed the client and the legal practitioner a reasonable period to resolve the matter the subject of the complaint, the Authority, where it considers that an agreement or resolution between the parties in relation to the complaint is unlikely to be reached, may give notice in writing to the client and the legal practitioner (and where appropriate any other person involved in attempting to resolve the dispute) that it proposes to conclude the dispute resolution process.

(6) The Authority shall not conclude the dispute resolution process under this section earlier than 30 days after the giving of notice under *subsection (5)*.

(7) Where the Authority concludes the dispute resolution process under *subsection (5)* the complaint shall be deemed to be determined.

(8) Where a complaint under this section is deemed pursuant to *subsection (7)* to be determined such determination shall be without prejudice to any legal right of the client.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to a section proposed to be inserted by amendment 94.]

98. In page 46, before section 45, but in Chapter 1, to insert the following new section:

“CHAPTER 1

Preliminary

Misconduct by legal practitioners. 45.—(1) An act or omission of a legal practitioner may be considered as constituting misconduct where—

- (a) the act or omission involves fraud or dishonesty,
- (b) the act or omission is connected with the provision of legal services, where the legal practitioner has fallen short, to a substantial degree, of the standards reasonably expected of a legal practitioner,
- (c) the act or omission, where occurring otherwise than in connection with the practice of law, would justify a finding that the legal practitioner concerned is not a fit and proper person to engage in legal practice,
- (d) the act or omission consists of an offence under this Act,
- (e) the act or omission, in the case of a solicitor, consists of an offence under the Solicitors Acts 1954 to 2013,
- (f) the act or omission, in the case of a legal practitioner who is a barrister, is likely to bring the barristers' profession into disrepute,
- (g) the act or omission, in the case of a solicitor, constitutes a material breach of the Solicitors' Accounts Regulations,
- (h) the act or omission, in the case of a legal practitioner who is a solicitor, is likely to bring the solicitors' profession into disrepute,
- (i) the act or omission in the case of a legal practitioner who is a managing legal practitioner of a multi-disciplinary practice (within the meaning of those terms under *Part 7*) consists of a failure by him or her to comply with his or her obligations under this Act as a managing legal practitioner,
- (j) the act or omission consists of the commission of an arrestable offence,
- (k) the act or omission consists of the commission of a crime or offence outside the State which, if committed within the State, would be an arrestable offence,
- (l) the act consists of issuing a bill of costs which is grossly excessive,
- (m) the act consists of a contravention of *section 118(1)*.

(2) In determining whether the act or omission referred to in *paragraph (l)* of *subsection (1)* should be considered as constituting misconduct, the Authority, the Divisional Committee, the Disciplinary Tribunal or, as the case may be, the High Court, may have regard 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

[SECTION 45]

(c) whether or not a Legal Costs Adjudicator has found the costs charged to be grossly excessive.

(3) In this section “arrestable offence” has the same meaning as it has in the Criminal Law Act 1997.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 45 of the Bill.]

99. In page 46, before section 45, but in Chapter 1, to insert the following new section:

“45.—(1) Subject to *subsection (8)*, a person who has made a complaint of misconduct in relation to a barrister to the Bar Council under the rules or codes of conduct as approved in accordance with the this Act may, within the period specified in *subsection (6)*, complain to the Authority concerning the handling of the complaint by the Barristers’ Professional Conduct Tribunal or, in the case of an appeal against a decision of the Tribunal in respect of the complaint, of the said appeal by the Professional Conduct Appeals Board.

(2) Subject to *subsection (8)*, a person who has—

(a) made a complaint to the Law Society under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or 9 of the Solicitors (Amendment) Act 1994 in relation to a solicitor, or

(b) made a complaint of misconduct in relation to a solicitor,

may within the period specified in *subsection (6)*, complain to the Authority about the handling of the complaint by the Law Society.

(3) A person who is dissatisfied with a decision of the Law Society relating to—

(a) the refusal to make a grant to that person,

(b) the amount of a grant made to that person, or

(c) the method of payment of a grant made to that person,

may, within the period specified in *subsection (6)*, complain to the Authority concerning that decision.

(4) Subject to *subsection (5)*, a complaint to the Authority shall be in writing in such form as may be approved by the Authority.

(5) The Authority may receive a complaint made orally if it considers it appropriate to do so, but any such complaint shall be recorded in writing by the Authority as soon as practicable after its receipt.

(6) For the purposes of this section, the period within which a complaint shall be made to the Authority is—

(a) in the case of—

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- (i) a complaint under *subsection (1)*, the period of 6 months beginning on the date of the determination by the Barristers' Professional Conduct Tribunal of the related complaint or, in the case of an appeal against a decision of the Tribunal in respect of the related complaint, the period of six months beginning on the date of the determination of that appeal by the Professional Conduct Appeals Board, or
- (ii) a complaint under *subsection (2)*, the period of 6 months beginning on the date of the determination by the Law Society of the related complaint,

or

- (b) in case of a complaint under *subsection (3)*, the period of 6 months beginning on the date of the determination by the Law Society of the application for the grant to which the complaint relates,

but the Authority may accept a complaint made after the expiry of the period referred to in *paragraph (a)* or *(b)*, as the case may be, if it appears to the Authority that special circumstances exist that make it proper to do so and, where he or she does so, the complaint is deemed to have been made to the Authority within the period referred to in that paragraph.

(7) A person may make a complaint even if—

(a) in the case of—

- (i) a complaint under *subsection (1)*, the related complaint was determined by the Barristers' Professional Conduct Tribunal or, in the case of an appeal against a decision of the Tribunal in respect of the related complaint, the appeal was determined by the Professional Conduct Appeals Board, before the commencement of this section, or
- (ii) a complaint under *subsection (2)*, the related complaint was determined by the Law Society before the commencement of this section,

or

- (b) in the case of a complaint under *subsection (3)*, the application for the grant to which the complaint relates was determined by the Law Society before the commencement of this section,

provided that the determination concerned was made not more than 6 months before that commencement.

(8) Subject to the provisions of this Part, a person shall not make a complaint under *subsection (1)* or *(2)* if—

- (a) the related complaint has been or is in the course of being determined by a court,
- (b) the related complaint has yet to be investigated or determined, by the Barristers' Professional Conduct Tribunal or the Law Society,
- (c) the related complaint has been or is the subject of an application for an inquiry by the Solicitors Disciplinary Tribunal,

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- (d) the related complaint concerns the alleged charging of excessive fees by a solicitor and the bill of costs in issue has been taxed or submitted to a Taxing Master of the High Court or to the Chief Legal Costs Adjudicator or to a Legal Costs Adjudicator appointed pursuant to *Part 9* of this Act for taxation on a solicitor and own client basis,
- (e) in the case of an appeal against a decision of the Barristers' Professional Conduct Tribunal in respect of the related complaint, the appeal has yet to be determined by the Professional Conduct Appeals Board,
- (f) the related complaint was made in relation to a barrister by another barrister or a judge of a court established in the State, or
- (g) the person was not entitled to make the related complaint.

(9) A person shall not make a complaint under *subsection (3)* if—

- (a) the application for the grant to which the complaint relates is in the course of being determined by the Law Society, or
- (b) the person was not entitled to make an application to the Law Society for a grant.

(10) A complaint to the Authority may be made by any person on behalf of another person.

(11) As soon as practicable after receiving a complaint under this section, the Authority shall provide the professional body concerned with a copy of the complaint.”

—Finian McGrath.

[*Acceptance of this amendment involves the deletion of section 45 of the Bill.*]

100. In page 46, subsection (1), between lines 25 and 26, to insert the following:

“(g) the act or omission, in the case of a legal practitioner who is a legal executive, is likely to bring the legal executives’ profession into disrepute.”

—Niall Collins.

SECTION 46

101. In page 46, before section 46, to insert the following new section:

“Complaints in respect of legal practitioners.

46.—(1) Subject to the provisions of this Part, on or after the coming into operation of this Part, where a person wishes to make a complaint that a legal practitioner has, by act or omission, been guilty of misconduct, the complaint shall be made to the Authority.

(2) *Subsection (1)* shall not act to prevent the Authority or a person who is aggrieved by the act or omission of a legal practitioner seeking assistance from a person with a view to resolving the matter to which a complaint relates.

[SECTION 46]

(3) In reckoning any period of time for the purposes of any limitation period in relation to the making of an application for adjudication of a bill of costs under *Part 9* which bill of costs is or has been the subject of a complaint under this Part, the period beginning on the making of a complaint to the Authority and ending 2 months after the complaint is determined under this Part shall be disregarded.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 46 of the Bill.*]

102. In page 46, before section 46, to insert the following new section:

“46.—(1) Subject to *subsection (4)*, the Authority shall investigate a complaint made to the Authority in accordance with this Act.

(2) Notwithstanding *subsection (1) to (3)*, and *paragraphs (b) and (e) of subsection (8) of section 45**, the Authority may investigate a complaint that—

- (a) the Barristers’ Professional Conduct Tribunal has failed to commence within a reasonable time an investigation of the related complaint under the applicable rules or code of conduct,
- (b) the Barristers’ Professional Conduct Tribunal has failed to complete within a reasonable time an investigation of the related complaint under the applicable rules or code of conduct,
- (c) the Barristers’ Professional Conduct Tribunal has not adequately investigated the related complaint under the applicable rules or code of conduct,
- (d) in the case of an appeal against a decision of the Barristers’ Professional Conduct Tribunal in respect of a related complaint, the Professional Conduct Appeals Board—
 - (i) has failed to commence within a reasonable time the hearing of the appeal, or
 - (ii) has failed to complete within a reasonable time the hearing of the appeal,
- (e) the Law Society has failed to commence within a reasonable time an investigation of the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or section 9 of the Solicitors (Amendment) Act 1994,
- (f) the Law Society has failed to commence within a reasonable time an investigation of the related complaint of misconduct,
- (g) the Law Society has failed to complete within a reasonable time an investigation of the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or section 9 of the Solicitors (Amendment) Act 1994,
- (h) the Law Society has failed to complete within a reasonable time an investigation of the related complaint of misconduct,

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(i) the Law Society has not adequately investigated the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or section 9 of the Solicitors (Amendment) Act 1994, or

(j) the Law Society has not adequately investigated the related complaint of misconduct.

(3) The Authority may investigate a complaint even though the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.

(4) The Authority may decide not to investigate a complaint, or to discontinue an investigation of a complaint, if it is satisfied that—

(a) the complaint is frivolous or vexatious,

(b) the person making the complaint, or on whose behalf the complaint is made, has an insufficient interest in the matter, or

(c) the person making the complaint, or on whose behalf the complaint is made, has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if he or she has not been refused redress.

(5) On deciding under *subsection (4)* not to investigate a complaint or to discontinue an investigation of a complaint, the Authority shall notify in writing the following persons of the decision and the reason for the decision:

(a) the complainant;

(b) the professional body concerned;

(c) in the case of a complaint under *subsection (1)* or *(2)* of *section 25*, the barrister or solicitor in relation to whom the related complaint was made.

(6) The Authority may also notify in writing such other person as he or she considers appropriate of his or her decision under *subsection (4)* and the reason for it.”.

—Finian McGrath.

[*Acceptance of this amendment involves the deletion of section 46 of the Bill.*]

[**This is a reference to a section proposed to be inserted by amendment 99.*]

SECTION 47

103. In page 46, before section 47, to insert the following new section:

“Regulations regarding complaints.

47.—(1) The Authority may make regulations regarding—

(a) the making of complaints to the Authority under this Act, and

(b) the procedures to be followed by the Authority and the Complaints Committee in investigating complaints under this Act.

[SECTION 47]

(2) Without prejudice to the generality of *subsection (1)* regulations made under this section may provide in particular for the extension or abridgement by the Authority or the Complaints Committee of any period specified in the regulations for the doing of any thing, where the Authority or the Complaints Committee are satisfied that it is appropriate to do so and granting the extension or abridgement would not cause an injustice to the other parties to the complaint.

(3) The Authority shall, in making regulations under this section, have as an objective that the manner in which complaints may be made, and the procedures to be followed by the complainant, the legal practitioner concerned and the Authority are as informal as is consistent with the principles of fair procedures and that undue expense is not incurred by the complainant or the legal practitioner concerned in relation to the complaint.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 47 of the Bill.*]

104. In page 46, before section 47, to insert the following new section:

“47.—(1) The Authority shall, with the consent of the Minister for Public Expenditure and Reform and in accordance with the provisions of this Act, establish procedures for the receipt and investigation of complaints.

(2) The Authority shall publish those procedures, in such manner as it considers appropriate, to members of the public and members of the professions of barrister and solicitor.”.

—Finian McGrath.

[*Acceptance of this amendment involves the deletion of section 47 of the Bill.*]

SECTION 48

105. In page 47, before section 48, to insert the following new section:

“Fees in respect of complaints.

48.—The Authority may, 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 made under this Act and the regulations may specify the circumstances in which the fee shall be refunded.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 48 of the Bill.*]

106. In page 47, before section 48, to insert the following new section:

“48.—(1) For the purpose of investigating a complaint, the Authority may—

(a) require any person who, in the Authority’s opinion, is in possession of information, or has a document or thing in the person’s possession or control, that is relevant to the investigation to provide the Authority with that information, document or thing, and

(b) where appropriate, require the person to attend before the Authority for that purpose,

[SECTION 48]

and the person shall comply with such a requirement.

(2) The Authority may not require a barrister or solicitor to provide any information, document or thing that is held in the possession or control of the barrister or solicitor on behalf of a client, unless that client has, in writing, authorised its release.

(3) A person to whom a requirement is addressed under *subsection (1)* is entitled to the same immunities and privileges as if the person were a witness before the High Court.

(4) A person to whom a requirement is addressed under *subsection (1)* may, within a period of 21 days after being notified of the requirement, apply to the High Court for an order to revoke or vary the requirement.

(5) On an application under *subsection (4)*, the High Court may revoke or vary the requirement in respect of which the application is made if satisfied that the information, document or thing is not reasonably required for the purpose of the investigation or determination of the complaint and may make such further or other order as it sees fit in relation to the application.

(6) If it appears to the Authority that a person has failed to comply with a requirement made under *subsection (1)*, the High Court may, on application in that behalf made by the Authority, make an order requiring that person to comply with that requirement.”.

—Finian McGrath.

[Acceptance of this amendment involves the deletion of section 48 of the Bill.]

SECTION 49

107. In page 48, before section 49, to insert the following new section:

“Admissibility of complaints.

49.—(1) A complaint shall not be considered by the Authority if in the opinion of the Authority—

- (a) it is frivolous or vexatious, or
- (b) it is without substance or foundation.

(2) The Authority shall not consider a complaint in respect of a legal practitioner under this Part where it is satisfied that the act or omission to which the complaint relates is the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that legal practitioner which was previously determined under this Act.

(3) The Authority shall not consider a complaint in respect of a solicitor where it is satisfied that the act or omission to which the complaint relates is—

- (a) the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that solicitor which was previously determined under the Solicitors Acts 1954 to 2013—
 - (i) by the High Court,

[SECTION 49]

- (ii) by the Solicitors Disciplinary Tribunal,
- (iii) by the Solicitors Disciplinary Committee, or
- (iv) by the Law Society,

or

- (b) 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 solicitor concerned.

(4) The Authority shall not consider a complaint in respect of a barrister where it is satisfied that the act or omission to which the complaint relates is—

- (a) the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that barrister which was previously determined by the Barristers' Professional Conduct Tribunal, or
 - (b) 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.
- (5) (a) Where the Authority is satisfied that the act or omission to which a complaint relates is the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has not been made by the court in those proceedings, the Authority may defer consideration of the complaint until the proceedings have been finally determined.
- (b) Where the Authority is satisfied that the act or omission to which a complaint relates has been investigated by a court in civil proceedings or criminal proceedings and that a final determination of the issues which are, in substance, the issues involved in the complaint has been made by the court in those proceedings in favour of the legal practitioner concerned, the Authority may decide to take no action or no further action in relation to the complaint.
- (c) Proceedings shall not be regarded as finally determined for the purposes of *paragraph (a) or (b)* until any appeal, rehearing or retrial in relation to those proceedings has been determined.

(6) Where the Authority determines under this section that it will not consider a complaint, the Authority shall, where appropriate—

- (a) notify the complainant in writing of its determination,
- (b) state the reason(s) for the determination,
- (c) notify the legal practitioner, if appropriate,
- (d) take no further action in relation to the complaint,
- (e) refer the person to a more appropriate body.

[SECTION 49]

(7) On determining under this section that it will consider a complaint, the Authority shall, subject to the resolution and complaints provisions, proceed to investigate the complaint.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 49 of the Bill.]

108. In page 48, before section 49, to insert the following new section:

“49.—(1) On completing an investigation of a complaint under *section 46**, the Authority may, by a statement in writing—

- (a) if satisfied that the Barristers’ Professional Conduct Tribunal—
 - (i) has failed to commence within a reasonable time an investigation of the related complaint under the applicable rules or code of conduct,
 - (ii) has failed to complete within a reasonable time an investigation of the related complaint under the applicable rules or code of conduct,
 - (iii) has not adequately investigated the related complaint,direct the Tribunal to—
 - (I) in a case to which *subparagraph (i)* applies, commence, under the applicable rules or code of conduct, an investigation of the related complaint,
 - (II) in a case to which *subparagraph (ii)* applies, complete, within a reasonable time from the date of the direction, an investigation of the related complaint under the applicable rules or code of conduct,
 - (III) in a case to which *subparagraph (iii)* applies, re-investigate, in accordance with the applicable rules or code of conduct, the related complaint,
 - (b) in the case of an appeal against a decision of the Barristers’ Professional Conduct Tribunal in respect of a relevant complaint, if satisfied that the Professional Conduct Appeals Board—
 - (i) has failed to commence within a reasonable time the hearing of the appeal, or
 - (ii) has failed to complete within a reasonable time the hearing of the appeal,direct the Board to—
 - (I) in a case to which *subparagraph (i)* applies, commence, under the applicable rules or code of conduct, the hearing of the appeal,
 - (II) in a case to which *subparagraph (ii)* applies, complete, within a reasonable time from the date of the direction, the hearing of the appeal,
- or

[SECTION 49]

- (c) recommend to the Bar Council that it take any other action that the Authority may specify in relation to the barrister concerned under the applicable rules or code of conduct.

(2) On completing an investigation of a complaint under *section 46(2)**, the Authority may, by a statement in writing—

- (a) if satisfied that the Law Society—
 - (i) has failed to commence within a reasonable time an investigation of the related complaint under section 8 (as amended by section 39 of the Civil Law(Miscellaneous Provisions) Act 2008 or section 9 of the Solicitors (Amendment) Act 1994,
 - (ii) has failed to commence within a reasonable time an investigation of the related complaint of misconduct,
 - (iii) has failed to complete within a reasonable time an investigation of the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or section 9 of the Solicitors (Amendment) Act 1994,
 - (iv) has failed to complete within a reasonable time an investigation of the related complaint of misconduct,
 - (v) has not adequately investigated the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or section 9 of the Solicitors (Amendment) Act 1994,
 - (vi) has not adequately investigated the related complaint of misconduct,direct the Law Society to—
 - (I) in a case to which *subparagraph (i)* or *(ii)* applies, commence an investigation of the related complaint,
 - (II) in a case to which *subparagraph (iii)* or *(iv)* applies, complete, within reasonable time from being given the direction, an investigation of the related complaint,
 - (III) in a case to which *subparagraph (v)* or *(vi)* applies, re-investigate the related complaint,or
 - (b) direct the Law Society to make an application to the Solicitors Disciplinary Tribunal for an inquiry into the conduct of the solicitor concerned on the ground of alleged misconduct under section 7 (inserted by section 17 of the Solicitors (Amendment) Act 1994) of the Solicitors (Amendment) Act 1960, or
 - (c) recommend to the Law Society that it take any other action that the Authority may specify, in relation to the solicitor concerned pursuant to the Law Society's powers under the Solicitors Acts 1954 to 2008.

[SECTION 49]

(3) On completing an investigation of a complaint under *section 46(3)** concerning a decision of the Law Society, the Authority may, by a statement in writing—

- (a) if the decision by the Law Society relates to a refusal to make a grant out of the Compensation Fund, recommend to the Law Society that it exercise such discretion as it has under section 21 (inserted by section 29 of the Solicitors (Amendment) Act 1994) of the Solicitors (Amendment) Act 1960 to make a grant to the complainant,
- (b) if the decision by the Law Society relates to the amount of a grant made to the complainant recommend to the Law Society that, subject to the said *section 21*, the amount of the grant be increased, or
- (c) if the decision by the Law Society relates to the method of payment of a grant made to the complainant, make such recommendation to the Law Society as the Authority considers appropriate.

(4) The Law Society shall have all such powers as are necessary to implement a recommendation under *subsection (3)* of this section.

(5) The Authority may request the professional body concerned to make observations or specify measures to be taken, within a period specified by the Authority, in relation to any direction given or recommendation made under this section.

(6) Where it appears to the Authority that measures taken or proposed to be taken in relation to a direction given or a recommendation made under this section are not satisfactory, the Authority may cause a special report on the case to be included in a report to the Oireachtas as provided for under *section 17(3)* of this Act.”.

—Finian McGrath.

[*Acceptance of this amendment involves the deletion of section 49 of the Bill.*]

[**This is a reference to the section proposed to be inserted by amendment 102.*]

SECTION 50

109. In page 48, before section 50, to insert the following new section:

“Preliminary review of complaints.

50.—(1) Where the Authority receives a complaint it shall conduct a preliminary review of the complaint to determine—

- (a) whether or not the complaint is admissible, and
- (b) whether the complaint is an appropriate complaint to be dealt with under *section 51**, or *Chapter 2***.

(2) The review referred to in *subsection (1)* shall be conducted by a member of the staff of the Authority authorised in writing to conduct such reviews (the reviewer).

(3) In conducting the review under this section, the Authority may notify the legal practitioner concerned of the making of the complaint and invite the legal practitioner to respond to the Authority in relation to the complaint.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 50]

[Acceptance of this amendment involves the deletion of section 50 of the Bill.]

[*This is a reference to the section proposed to be inserted by amendment 111.]

**This is a reference to the Chapter proposed to be inserted by amendment 117.]

110. In page 48, lines 34 to 43, to delete subsection (1) and substitute the following:

“50.—(1) Where the Authority investigates a complaint, it shall send a written statement of the results of the investigation, any direction given or recommendation made under *section 49**, and any observations made and measures specified to be taken under that section, to—

- (a) the complainant,
- (b) the professional body concerned, and
- (c) in the case of a complaint under *subsection (1) or (2) of section 45***, the barrister or solicitor in relation to whom the related complaint was made.”.

—Finian McGrath.

[*This is a reference to section proposed to be inserted by amendment 108.]

**This is a reference to section proposed to be inserted by amendment 99.]

SECTION 51

111. In page 49, before section 51, to insert the following new section:

“Authority to offer assistance in resolving matter in dispute where it appears that conduct could constitute misconduct.

51.—(1) Where the member of the staff of the Authority who conducted a review of a complaint under *section 50** is of the opinion that—

- (a) the main substance of the complaint is that the standard of the legal services provided by the legal practitioner concerned to the complainant, has fallen short, to a substantial degree, of the standard reasonably expected of a legal practitioner in the provision of those services and that the act or omission of the legal practitioner, if the complaint were substantiated, is such that the act or omission concerned could constitute misconduct within the meaning of *section 45(1)(b)***,
- (b) the act or omission on the part of the legal practitioner which is the subject of the complaint does not relate to fraud or dishonesty,
- (c) the matter the subject of the complaint is capable of being substantially resolved by the legal practitioner concerned in a prompt manner in accordance with guidelines published by the Authority pursuant to *section 55****,

the Authority may invite the complainant and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint.

[SECTION 51]

(2) The agreement by the complainant and the legal practitioner to make efforts to resolve the matter the subject of the complaint shall not prevent the Authority continuing with its consideration or investigation of the complaint.

(3) Notwithstanding *subsection (2)*, where the Complaints Committee, the Disciplinary Tribunal or the High Court is satisfied that an act or omission of a legal practitioner the subject of a complaint has been resolved or that proper effort was made by the legal practitioner concerned to resolve the matter in accordance with this section, the Complaints Committee, Disciplinary Committee or the High Court, as the case may be, shall, in determining the appropriate sanction (if any) that should be imposed upon the legal practitioner, give due regard to the efforts to resolve the matter made by the legal practitioner concerned.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 51 of the Bill.*]

[**This is a reference to the section proposed to be inserted by amendment 109.*]

[***This is a reference to the section proposed to be inserted by amendment 98.*]

[****This is a reference to the section proposed to be inserted by amendment 116.*]

112. In page 51, between lines 10 and 11, to insert the following subsection:

“(10) If the Barristers’ Professional Conduct Tribunal does not comply with a direction given to it under *section 49(1)(a)**, the Professional Conduct Appeals Board does not comply with a direction given to it under *section 49(1)(b)**, or the Law Society does not comply with a direction given to it under *paragraph (a) or (b) of section 49(2)**, by the Authority, the High Court may, on application in that behalf by the Authority—

- (a) order the Tribunal, the Board or the Law Society, as the case may be, to comply with the direction, and
- (b) make such further or other order, if any, as it considers necessary and just to enable the direction to have full effect.”.

—Finian McGrath.

[**This is a reference to the section proposed to be inserted by amendment 108.*]

SECTION 52

113. In page 51, before section 52, but in Chapter 1, to insert the following new section:

“Resolution of complaint by mediation or informal means—additional provisions.

52.—(1) No answer or statement made, in the course of attempting to resolve a complaint in the manner specified in *section 51**, by—

- (a) the complainant, or
- (b) the legal practitioner who is the subject of the complaint,

may be used in any disciplinary, civil or criminal proceedings or communicated to any person other than the persons participating in the attempt to resolve the complaint.

[SECTION 52]

(2) Any costs arising from an attempt to resolve a complaint in the manner specified in *section 51** shall be borne equally by the parties to the complaint unless the parties agree otherwise.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 111.]

114. In page 51, before section 52, but in Chapter 1, to insert the following new section:

“Agreement by legal practitioner to participate in resolution of matter under *section 51** not to be treated as admission of liability. 53.—An agreement by a legal practitioner who is the subject of a complaint to attempt to resolve the complaint in the manner referred to in *section 51** shall not be taken as an admission of any allegation of misconduct insofar as such misconduct consists of an act or omission on the part of the legal practitioner that in the provision of legal services the legal practitioner has fallen short of a substantial degree of the standards reasonably expected of a legal practitioner.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 111.]

115. In page 51, before section 52, but in Chapter 1, to insert the following new section:

“Complaints relating to fraud or dishonesty. 54.—Where the complaint relates to a solicitor and the Authority considers that the complaint or a part of the complaint would constitute fraud or dishonesty on the part of the solicitor, if substantiated, the Authority may—

- (a) proceed to carry out an investigation under *Part 5**,
- (b) refer the matter to the Complaints Committee, or
- (c) request the Law Society to carry out an investigation under the Solicitors Acts 1954 to 2013.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the Part proposed to be inserted by amendment 91.]

116. In page 51, before section 52, but in Chapter 1, to insert the following new section:

“Guidelines for resolution of complaints by mediation or informal means. 55.—The Authority shall prepare and publish guidelines in relation to the resolution of complaints by mediation or informal means and those guidelines may —

- (a) set out the process whereby a determination can be made in respect of whether a complaint can be resolved by mediation or informal means,
- (b) provide for the recording of the manner in which a complaint was resolved and of the terms of any agreement between the complainant and the legal practitioner the subject of the complaint,

[SECTION 52]

- (c) outline the steps to be taken (including notice to the complainant, the legal practitioner concerned and the Complaints Committee) if the complaint cannot, in the opinion of the person attempting to do so, be resolved by mediation or informal means, and
- (d) contain any other matters that the Authority considers necessary or appropriate for facilitating the resolution of the complaint by mediation or informal means.”.

—An tAire Dlí agus Cirt agus Comhionannais.

117. In page 51, before section 52, to insert the following new section:

“CHAPTER 2

Consideration of complaints by Complaints Committee

Establishment and membership of Complaints Committee.

56.—(1) The Authority shall establish a committee, to be known as the Complaints Committee, for the purpose of considering and investigating complaints referred to it by the Authority under this Act.

(2) The term of office of the Complaints Committee shall be determined by the Authority.

(3) The Complaints Committee shall be appointed by the Authority and shall consist of not more than 27 members of whom—

- (a) the majority shall be lay persons,
- (b) not less than 8 shall be persons nominated by the Law Society, each of whom has practised as a solicitor for more than 10 years, and
- (c) not less than 4 shall be persons nominated by the Bar Council, each of whom has practised in the State as a barrister for more than 10 years.

(4) In appointing lay persons to be members of the Complaints Committee the Authority shall ensure that those members are persons who—

- (a) are independent of professional bodies as respects legal practitioners, and
- (b) have expertise in or knowledge of—
 - (i) the provision of legal services,
 - (ii) the maintenance of standards in a profession (including those regulated by a statutory body),
 - (iii) the investigation and consideration of complaints relating to services, or
 - (iv) the interests of consumers of legal services.

(5) The Complaints Committee shall act in divisions of not less than 3 members and not more than 5 members (in this Act referred to as a “Divisional Committee”).

(6) A Divisional Committee shall consist of an uneven number of members.

[SECTION 52]

(7) Each Divisional Committee shall have a majority of lay members.

(8) The chairperson of each Divisional Committee shall be one of the lay members of that Divisional Committee.

(9) The chief executive shall make arrangements for the provision of such administrative and secretarial support to each Divisional Committee as he or she considers necessary.

(10) Subject to *subsections (6) and (7)*, where a complaint relates to a solicitor—

(a) in a case where the Divisional Committee is comprised of 3 members, one of the members of the Divisional Committee shall be a solicitor,

(b) in a case where the Divisional Committee is comprised of 5 members, 2 of the members of the Divisional Committee shall be a solicitor.

(11) Subject to *subsections (6) and (7)*, where a complaint relates to a barrister—

(a) in a case where the Divisional Committee is comprised of 3 members, one of the members of the Divisional Committee shall be a barrister,

(b) in a case where the Divisional Committee is comprised of 5 members, 2 of the members of the Divisional Committee shall be a barrister.”

—An tAire Dlí agus Cirt agus Comhionannais.

118. In page 51, before section 52, to insert the following new section:

“Investigation of complaints.

57.—(1) A Divisional Committee shall consider and investigate complaints made under this Part referred to it by the Authority.

(2) When referring a complaint to a Divisional Committee the Authority shall prepare a summary of the complaint which document shall be furnished to the Divisional Committee with the complaint.

(3) Unless the legal practitioner to whom the complaint relates has already been furnished with a copy of the complaint, the Divisional Committee shall furnish a copy of the complaint to the legal practitioner concerned, requesting the legal practitioner to furnish his or her response to the complaint within such reasonable period as is specified by the Divisional Committee.

(4) Where the Divisional Committee receives an explanation from the legal practitioner concerned which indicates that the act or omission did not constitute misconduct it shall furnish a copy of the explanation to the complainant inviting him or her to furnish observations to the Divisional Committee in relation to the explanation of the legal practitioner within such a period as may be specified by the Divisional Committee.

(5) Where—

(a) the response of the legal practitioner does not satisfy the Divisional Committee that the act or omission did not constitute misconduct, or

(b) the legal practitioner does not furnish a response within the period specified in the notice,

[SECTION 52]

the Divisional Committee shall, subject to the provisions of this Chapter, take such steps as it considers appropriate to investigate the complaint.

(6) For the purposes of investigating a complaint in accordance with *subsection (1)* the Divisional Committee—

- (a) shall have due regard to information furnished to it by the Authority,
 - (b) may, by notice in writing to the complainant, do one or more of the following:
 - (i) require the complainant to verify, by affidavit or otherwise, anything contained in the complaint;
 - (ii) request the complainant to supply to the Committee, within a reasonable period specified in the notice—
 - (I) such information relating to the complaint as is specified in the notice, or
 - (II) such documents relating to the complaint as it may require,
 - (iii) require that information requested under *subparagraph (ii)* be verified by affidavit or otherwise,
- and
- (c) may by notice in writing to the legal practitioner the subject of the complaint require him or her to supply the Committee, within a reasonable period specified in the notice, with—
 - (i) such information relating to the complaint as is specified in the notice, or
 - (ii) such documents relating to the complaint as it may require.

(7) The complainant concerned shall comply with a notice issued to him or her by the Divisional Committee under *subsection (6)(b)*.

(8) The legal practitioner concerned shall comply with a notice issued to him or her by the Divisional Committee under *subsection (6)(c)*.

(9) The Divisional Committee may, having had due regard to—

- (a) information furnished to it by the Authority,
- (b) any information or documents provided to it by the complainant or the legal practitioner concerned under this section,
- (c) any explanation furnished to the Divisional Committee by the legal practitioner concerned pursuant to this section, and
- (d) any observations furnished by the complainant under *subsection (3)*,

require the complainant and the legal practitioner to appear before the committee for the purposes of the investigation of the complaint.

[SECTION 52]

(10) The complainant and the legal practitioner may be represented by a person of their choice for the purposes of their appearance before the Divisional Committee and the costs of such representation, if any, shall be borne by the person who requested such representation.

(11) Where a complaint is withdrawn when it is being investigated by the Divisional Committee, the committee may—

- (a) decide that no further action be taken in relation to the matter the subject of the complaint, or
- (b) proceed as if the complaint had not been withdrawn.

(12) Where the Divisional Committee determines that the act or omission does not constitute misconduct it shall so advise the complainant and the legal practitioner in writing, giving reasons for the determination.

(13) The Divisional Committee shall make reasonable efforts to ensure that—

- (a) the complainant is kept informed of all decisions made by the committee in relation to the complaint concerned,
- (b) the committee acts expeditiously, and
- (c) complaints are processed in a timely manner.”.

—An tAire Dlí agus Cirt agus Comhionannais.

119. In page 51, before section 52, to insert the following new section:

“Power of
Divisional
Committee to
specify measures.

58.—(1) Where the Divisional Committee determines that the act or omission the subject of the complaint constitutes misconduct and that such conduct is of a kind that it does not warrant the making of an application in respect of the matter to the Legal Practitioners Disciplinary Tribunal for the holding of an inquiry under *section 60*, it may—

- (a) issue a direction to the legal practitioner concerned to take such measures as are specified in the determination of the Divisional Committee being measures specified in *paragraphs (a) to (i) of subsection (5)*, or
- (b) where the legal practitioner concerned so consents in writing take one of the measures specified in the determination of the Divisional Committee being a measure specified in *paragraph (a) or (b) of subsection (6)*.

(2) Where the Divisional Committee issues one or more than one direction in accordance with *subsection (1)(a)* and the legal practitioner complies with each such direction the complaint shall be considered as determined.

(3) Where the Divisional Committee (with the consent of the legal practitioner concerned) takes one of the measures specified in *subsection (1)(b)* the complaint shall be considered as determined.

(4) The Divisional Committee shall not make a determination under *subsection (1)* unless the committee considers it to be a reasonable and appropriate manner of determining the complaint.

(5) The measures referred to in *subsection (1)(a)* are the following:

[SECTION 52]

- (a) a direction to the legal practitioner to perform or complete the legal service the subject of the complaint or a direction to the legal practitioner to arrange for the performance or completion of the legal service the subject of the complaint by a legal practitioner nominated by the complainant at the expense of the legal practitioner the subject of the complaint;
 - (b) a direction to the legal practitioner that he or she participate in one or more modules of a professional competence scheme and that he or she furnish evidence to the Authority of such participation within a specified period;
 - (c) a direction to the legal practitioner—
 - (i) that he or she waive all or a part of any fees otherwise payable by the complainant to the legal practitioner concerned, or
 - (ii) that he or she refund to the client some or all of any fees paid to the legal practitioner concerned in respect of the legal services the subject of the complaint;
 - (d) a direction that the legal practitioner take such other action in the interest of the client as the Committee may specify;
 - (e) a direction to the legal practitioner to comply with (in whole or in part) an undertaking given by the legal practitioner to another legal practitioner or to another person or body;
 - (f) a direction to the legal practitioner to withdraw or amend an advertisement;
 - (g) a direction to the legal practitioner to pay a sum not exceeding €5,000 as compensation for any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided or purported to have been provided by the legal practitioner, provided that any such payment made in compliance with the direction shall be without prejudice to any legal right of the client;
 - (h) a direction to the legal practitioner to pay to the Authority a sum not exceeding €5,000 by way of contribution towards the costs incurred by the Authority in investigating the complaint;
 - (i) where the Divisional Committee has determined that the legal practitioner has in the course of the investigation refused, neglected or otherwise failed, without reasonable cause, to respond appropriately in a timely manner, or at all, to a written request from the Divisional Committee and that the Authority has incurred additional costs in relation to the investigation of the complaint in consequence of that refusal, neglect or failure, a direction to the legal practitioner to pay to the Authority a sum not exceeding €2,500 by way of contribution towards those additional costs incurred by the Authority in investigating the complaint.
- (6) The measures referred to in *subsection (1)(b)* are the following:
- (a) the issue of a caution, admonishment or reprimand to the legal practitioner in respect of the act or omission the subject of the complaint;

[SECTION 52]

- (b) the issue of a notice—
- (i) in the case of a legal practitioner who is a solicitor, to the Law Society informing the Law Society of the determination of misconduct by the Divisional Committee and directing the Law Society to impose a specified restriction or condition on the practising certificate of the legal practitioner concerned, or
 - (ii) in the case of a legal practitioner who is a barrister, to the chief executive of the Authority of the determination of misconduct by the Divisional Committee and directing the chief executive to impose a specified restriction or condition on the legal practitioner concerned in respect of his or her practice as a barrister.
- (7) (a) Subject to *subsection (8)* where the Divisional Committee considers that the act or omission the subject of the complaint constitutes misconduct of a kind that is more appropriate for consideration by the Legal Practitioners Disciplinary Tribunal than under this section, it may make an application in respect of the matter to it for the holding of an inquiry under *section 60*.
- (b) In determining whether it would be more appropriate for the complaint to be considered by the Legal Practitioners Disciplinary Tribunal the Complaints Committee shall have regard to the extent of the misconduct which was disclosed in the course of the investigation of the complaint by the Complaints Committee.
- (8) (a) Where the Divisional Committee considers that one of the measures specified in *subsection (6)* is the appropriate measure to be taken as respects the complaint it shall notify the legal practitioner concerned to that effect and specify the precise measure (including in the case of a restriction or condition to be placed on the practising certificates of the legal practitioner, the precise restriction or condition) it proposes to take.
- (b) The notification referred to in *paragraph (a)* shall indicate that unless the legal practitioner concerned furnishes to the Divisional Committee his or her consent in writing to the imposition of the specified measures within 21 days of the issue of the notification, the Divisional Committee will apply to the Legal Practitioners Disciplinary Tribunal for the holding of an inquiry into the complaint by the Tribunal under this Part.
- (c) Where the Divisional Committee issues a notification pursuant to *paragraph (b)* and does not receive the written consent of the legal practitioner concerned within 21 days to the imposition of the specified measures, it shall apply to the Legal Practitioners Disciplinary Tribunal for the holding of an inquiry by it into the complaint in so far as the Committee has not found that the complaints are unfounded or that the act or omission concerned does not constitute misconduct.”.

—An tAire Dlí agus Cirt agus Comhionannais.

120. In page 51, before section 52, to insert the following new section:

“Publication of reports by Authority relating to its functions under this Part.

59.—(1) The Authority shall publish, in such manner as the Authority considers appropriate, a report on the performance of its functions under this Part.

[SECTION 52]

(2) A report referred to in *subsection (1)* shall include information in respect of the relevant reporting period of—

- (a) the number and type of complaints received by the Authority under this Part during the relevant reporting period,
- (b) the general nature and outcome of those complaints,
- (c) the number of complaints referred to the Complaints Committee in the relevant reporting period,
- (d) the outcome of those complaints which were considered by the Complaints Committee during the relevant reporting period including—
 - (i) the determination made by the Complaints Committee,
 - (ii) the nature of any misconduct found,
 - (iii) the measures taken by the Complaints Committee, and
 - (iv) where the Authority considers it appropriate, the name of the legal practitioner concerned.

(3) A report published under *subsection (1)* shall be published by the Authority at intervals no greater than 6 months.”.

—An tAire Dlí agus Cirt agus Comhionannais.

121. In page 51, before section 52, but in Chapter 2, to insert the following new section:

“52.—(1) When investigating a complaint, the Authority may, of its own initiative or at the request of the complainant or the professional body concerned, refer for the determination of the High Court any question of law arising in relation to the investigation of the complainant.

(2) The High Court may hear and determine any question of law referred to it under this section.

(3) If a question of law has been referred to the High Court under this section, the Authority shall not—

- (a) make a finding to which the question of law is relevant while the reference is pending, or
- (b) proceed in a manner, or make a decision, that is inconsistent with the determination of the High Court on that question of law.

(4) There shall stand established a body to be known as the Legal Practitioners Disciplinary Tribunal to consider applications brought before it by the Authority under *section 54* as to whether a specified act or omission by a legal practitioner constitutes misconduct and to perform the other functions assigned to it by this Act.”.

—Finian McGrath, Pádraig Mac Lochlainn.

[Acceptance of this amendment involves the deletion of section 52 of the Bill.]

[SECTION 52]

SECTION 53

122. In page 51, subsection (1), line 19, to delete “Government” and substitute “President of the High Court”.

—An tAire Dlí agus Cirt agus Comhionannais.

123. In page 51, lines 28 to 43, to delete subsections (2) to (4) and substitute the following:

“(2) One of the persons appointed under *subsection (1)* shall be appointed as chairperson of the Disciplinary Tribunal.

(3) The Minister shall ensure that those lay persons nominated to be members of the Disciplinary Tribunal are persons who are independent of the Government and the professional bodies and have knowledge and expertise of—

- (a) the provision of legal services,
- (b) the maintenance of standards in a profession (including those regulated by a statutory body),
- (c) the investigation and consideration of complaints relating to services,
- (d) commercial matters, or
- (e) the interests of consumers of legal services.

(4) The Disciplinary Tribunal shall act in divisions consisting of—

- (a) an uneven number of members,
- (b) a majority of lay members, and
- (c) not less than 3 members and not more than 5 members.

(5) The chairperson of each division of the Disciplinary Tribunal shall be one of the lay members.”.

—An tAire Dlí agus Cirt agus Comhionannais.

124. In page 52, subsection (5), line 1, to delete “Subject to *subsections (3) and (4)* where” and substitute “Where”.

—An tAire Dlí agus Cirt agus Comhionannais.

125. In page 52, subsection (6), line 4, to delete “Subject to *subsections (3) and (4)* where” and substitute “Where”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 54

126. In page 52, before section 54, to insert the following new section:

“Chairperson of
Disciplinary
Tribunal.

54.—(1) The person appointed as chairperson of the Disciplinary Tribunal shall—

- (a) where the person is a legal practitioner, have practised as a barrister or solicitor for not less than 10 years,

[SECTION 54]

(b) where the person is not a legal practitioner, have knowledge and expertise of—

- (i) the provision of legal services,
- (ii) the maintenance of standards in a profession (including those regulated by a statutory body),
- (iii) the investigation and consideration of complaints relating to services, or
- (iv) the interests of consumers of legal services.

(2) The term of office of the chairperson shall be 5 years, and the chairperson may be appointed for a second term not exceeding 5 years.

(3) The chairperson shall be required to retire on attaining the age of 70 years.

(4) The chairperson shall be appointed by the President of the High Court from the persons nominated by the Minister for membership of the Tribunal.”

—An tAire Dlí agus Cirt agus Comhionannais.

127. In page 52, before section 54, to insert the following new section:

“Application to
Disciplinary
Tribunal.

55.—An application for the holding of an inquiry by the Disciplinary Tribunal under this Part shall be made by the Authority.”

—An tAire Dlí agus Cirt agus Comhionannais.

[Acceptance of this amendment involves the deletion of section 54 of the Bill.]

SECTION 57

128. In page 54, subsection (7)(b), line 9, to delete “legally”.

—An tAire Dlí agus Cirt agus Comhionannais.

129. In page 54, subsection (7)(b), line 12, to delete “legally”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 58

130. In page 54, lines 41 to 47 and in page 55, lines 1 to 6, to delete subsections (2) to (5) and substitute the following:

“(2) An inquiry under this section shall be conducted by way of oral hearing and subject to *subsection (3)* shall be heard in public.

(3) Where the Disciplinary Tribunal are satisfied that it is necessary to do so in the interests of justice, it may direct that the hearing of the inquiry or any part thereof be held otherwise than in public.”

—An tAire Dlí agus Cirt agus Comhionannais.

131. In page 55, subsection (8), line 12, to delete “complainant” and substitute “Authority”.

—An tAire Dlí agus Cirt agus Comhionannais.

132. In page 55, between lines 14 and 15, to insert the following subsection:

[SECTION 58]

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

—An tAire Dlí agus Cirt agus Comhionannais.

133. In page 55, between lines 20 and 21, to insert the following subsection:

“(10) A determination referred to in *subsection (9)* shall—

- (a) be in writing,
- (b) specify the reasons for the determination,
- (c) specify the sanction to be imposed (if any) pursuant to *section 59* or *60*, and
- (d) be notified to the legal practitioner, the complainant, and the Authority.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 59

134. In page 56, paragraph (g), line 3, to delete “client” and substitute “complainant”.

—An tAire Dlí agus Cirt agus Comhionannais.

135. In page 56, paragraph (h), line 12, to delete “and” and substitute the following:

“(i) a direction that the legal practitioner pay a sum, not exceeding €15,000, as restitution or part restitution to any aggrieved party, without prejudice to any legal right of such party; and”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 63

136. In page 59, subsection (3)(b), between lines 8 and 9, to insert the following:

“(viii) in the case of a legal executive that the name of the legal executive be struck off the roll of legal executives.”.

—Niall Collins.

SECTION 66

137. In page 59, subsection (2), between lines 30 and 31, to insert the following:

“(d) striking the name of a legal practitioner who is a legal executive off the roll of practising legal executives,”.

—Niall Collins.

SECTION 69

138. In page 60, before section 69, but in Part 6, to insert the following new section:

“PART 6*

IMPOSITION OF LEVY ON PROFESSIONAL BODIES AND CERTAIN BARRISTERS TO COVER EXPENSES OF
AUTHORITY AND DISCIPLINARY TRIBUNAL

Levy to be paid by
Law Society, Bar
Council and certain
barristers.

69.—(1) Subject to *section 71***, the following shall, in accordance with this Part, pay to the Authority in each financial year a levy in the amount determined in accordance with this section:

- (a) the Law Society;
- (b) the Bar Council;
- (c) each barrister who is not a member of the Law Library.

(2) At the end of each financial year, the Authority shall, with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of this section—

- (a) the operating costs and administrative expenses that are properly incurred in that financial year by the Authority in the performance of its functions under this Act (in this section referred to as “approved expenses of the Authority”), and
- (b) the operating costs and administrative expenses incurred in that financial year by the Disciplinary Tribunal in the performance of its functions under this Act (in this section referred to as “expenses of the Disciplinary Tribunal”).

(3) The approved expenses of the Authority include—

- (a) the remuneration (including allowances for expenses) of the members of the Authority,
- (b) the remuneration (including allowances for expenses and superannuation benefits) of inspectors and members of the staff of the Authority,
- (c) any superannuation contributions paid in respect of the members of the staff of the Authority out of moneys provided by the Oireachtas,
- (d) fees due to consultants and advisers appointed under *section 13*,
- (e) the cost of office premises, and
- (f) any costs or expenses, not referred to in *paragraphs (a) to (e)*, incurred by the Authority in the performance of its functions under *Part 5****.

(4) The Authority shall determine—

- (a) the proportion of the approved expenses of the Authority that was incurred by the Authority in the performance of its functions—
 - (i) under *Part 5****, and
 - (ii) under this Act, other than *Part 5****,
- and

[SECTION 69]

(b) in relation to the approved expenses of the Authority referred to in *paragraph (a)(i)*, the proportion of those expenses that was incurred by the Authority in the consideration and investigation of—

(i) complaints in respect of solicitors,

(ii) complaints in respect of barristers who are members of the Law Library, and

(iii) complaints in respect of barristers who are not members of the Law Library.

(5) The Authority, in consultation with the Disciplinary Tribunal, shall determine, in relation to the expenses of the Disciplinary Tribunal, the proportion of those expenses that was incurred by the Tribunal in the consideration of applications brought before it that concerned—

(a) complaints in respect of solicitors,

(b) complaints in respect of barristers who are members of the Law Library, and

(c) complaints in respect of barristers who are not members of the Law Library.

(6) The amount of the levy payable in each financial year shall be the sum of—

(a) the approved expenses of the Authority, and

(b) the expenses of the Disciplinary Tribunal,

in respect of the preceding financial year.

(7) The liability for payment of the amount referred to in *subsection (6)* shall be apportioned as follows:

(a) in the case of the proportion of the approved expenses of the Authority referred to in *subsection (4)(a)(i)*—

(i) 10 per cent of that amount shall be apportioned *pro rata* between the Bar Council and the barristers who are not members of the Law Library, according to the number of barristers whose names are on the roll of practising barristers who are members of the Law Library and the number of barristers whose names are on that roll who are not such members, respectively,

(ii) 10 per cent of that amount shall be apportioned to the Law Society, and

(iii) the remaining 80 per cent of that amount shall be apportioned *pro rata* among the Law Society, the Bar Council and the barristers who are not members of the Law Library, respectively, according to the proportion, calculated under *subsection (4)(b)*, of those expenses that was incurred by the Authority in the consideration and investigation of—

(I) complaints in respect of solicitors,

[SECTION 69]

- (II) complaints in respect of barristers who are members of the Law Library, and
 - (III) complaints in respect of barristers who are not members of the Law Library;
- (b) the proportion of approved expenses referred to in *subsection (4)(a)(ii)* shall be apportioned *pro rata* among the Law Society, the Bar Council and the barristers who are not members of the Law Library, respectively, according to the number of solicitors on the roll of solicitors, the number of barristers on the roll of practising barristers who are members of the Law Library and the number of barristers on that roll who are not such members;
- (c) in the case of the expenses of the Disciplinary Tribunal—
- (i) 10 per cent of that amount shall be apportioned *pro rata* between the Bar Council and the barristers who are not members of the Law Library, according to the number of barristers whose names are on the roll of practising barristers who are members of the Law Library and the number of barristers whose names are on that roll who are not such members, respectively,
 - (ii) 10 per cent of that amount shall be apportioned to the Law Society, and
 - (iii) the remaining 80 per cent of that amount shall be apportioned *pro rata* among the Law Society, the Bar Council and the barristers who are not members of the Law Library, respectively, according to the proportion, calculated under *subsection (5)*, of those expenses that was incurred in the consideration of applications brought before the Tribunal that concerned—
 - (I) complaints in respect of solicitors,
 - (II) complaints in respect of barristers who are members of the Law Library, and
 - (III) complaints in respect of barristers who are not members of the Law Library.
- (8) The Authority shall—
- (a) calculate, in accordance with *subsection (7)*, the proportion of the amount referred to in *subsection (6)* that is payable by—
 - (i) the Law Society,
 - (ii) the Bar Council, and
 - (iii) the barristers who are not members of the Law Library,and
 - (b) apportion the amount calculated under *paragraph (a)(iii)* equally among all barristers who are not members of the Law Library.

[SECTION 69]

(9) As soon as practicable after the beginning of each financial year, the Authority shall provide a notice (in this Act referred to as a “levy assessment notice”) to each of the bodies or persons referred to in *subsection (1)*.

(10) A levy assessment notice shall specify—

- (a) the approved expenses of the Authority in respect of the preceding financial year,
- (b) the proportion of the approved expenses referred to in *subparagraphs (i) and (ii) of subsection (4)(a)*,
- (c) the proportion, calculated under *subsection (4)(b)*, of the expenses referred to in *subsection (4)(a)(i)* that was incurred in the consideration and investigation of—
 - (i) complaints in respect of solicitors,
 - (ii) complaints in respect of barristers who are members of the Law Library, and
 - (iii) complaints in respect of barristers who are not members of the Law Library,
- (d) the expenses of the Disciplinary Tribunal in respect of the preceding financial year,
- (e) the proportion, calculated under *subsection (5)*, of the expenses of the Disciplinary Tribunal that was incurred in the consideration of applications brought before it concerning—
 - (i) complaints in respect of solicitors,
 - (ii) complaints in respect of barristers who are members of the Law Library, and
 - (iii) complaints in respect of barristers who are not members of the Law Library,
- (f) the amount of levy payable by the professional body or person concerned, calculated in accordance with *subsection (7)* and, where applicable, *subsection (8)(b)*,
- (g) the date by which the levy becomes payable, and
- (h) the rate of interest payable if all or part of the amount specified under *paragraph (f)* is not paid by the date referred to in *paragraph (g)*.

(11) The levy received under *subsection (1)* shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.

(12) For the purposes of this section—

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- (a) a reference to the number of barristers whose names are on the roll of practising barristers shall be construed as a reference to the number of barristers whose names are on that roll during the financial year to which the expenses concerned relate, less the number of such barristers to whom *section 71*** applies, and
- (b) a reference to the number of solicitors on the roll of solicitors is a reference to the number of solicitors on that roll in the financial year to which the expenses concerned relate, less the number of such solicitors to whom *section 71*** applies.

(13) In this Part—

“barrister who is not a member of the Law Library” means a barrister whose name, in the financial year to which the expenses concerned relate, is on the roll of practising barristers, where the entry concerned specifies that he or she is not a member of the Law Library, and “barrister who is a member of the Law Library” shall be construed accordingly;

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 69 of the Bill.*]

[**The proposed new Part comprehends the inclusion of amendments 150 to 152.*]

[***This is a reference to the section proposed to be inserted by amendment 151.*]

[****This is a reference to the Part proposed to be inserted by amendment 98.*]

139. In page 60, before section 69, but in Part 6, to insert the following new section:

“69.—(1) The Bar Council and the Law Society shall pay to the Authority, in each financial year beginning on 1 January, a levy in the amount determined in accordance with this section and with regulations made by the Authority in accordance with this Act as representing the expenses incurred in the regulation of legal practitioners in the State.

(2) The Authority shall, in the public interest, take all reasonable steps to minimise the costs incurred by it in the exercise of its regulatory powers and functions under this Act. The Authority shall be required to consult on a regular basis with the Minister for Public Expenditure and Reform to achieve that objective.

(3) The Authority may, having consulted with the Bar Council and the Law Society, and with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of this section the amount of the operating costs and administrative expenses of the Authority that are properly incurred by it under this Act in a financial year (in this section referred to as “approved expenses”).

(4) The Authority shall endeavour to agree the approved expenses for the relevant financial year with the Bar Council and the Law Society.

(5) Approved expenses may include—

[SECTION 69]

- (a) the remuneration (including allowances for expenses, benefits in kind and superannuation benefits) of the Authority and its staff as provided for under this Act,
- (b) any superannuation contributions paid in respect of the Authority or members of the Authority's staff out of monies provided by the Oireachtas,
- (c) fees due to advisers and consultants engaged by the Authority under this Act, and
- (d) the cost of office premises.

(6) Approved expenses shall not include (for example: costs of establishing the Authority and the preparation of policy documents for the Government which, the Bar Council agrees with the Law Society, should be paid for by the State and not by the professions).

(7) The amount of the levy payable in each financial year shall be the amount expended by the Authority in the preceding financial year in respect of approved expenses, and the liability for payment of that amount shall be as follows:

- (a) 10 per cent of that amount shall be paid by the Bar Council;
- (b) 10 per cent of that amount shall be paid by the Law Society; and
- (c) the remaining 80 per cent of that amount shall be paid *pro rata* by the Bar Council and the Law Society according to the time spent by the Authority dealing with the oversight regulation of, and complaints made in relation to, barristers in the preceding financial year and the time spent dealing with oversight regulation of and complaints made in relation to solicitors in the preceding financial year.

(8) As soon as practicable after the beginning of each financial year, subject to compliance with the requirements of the preceding subsections of this section, the Authority shall provide the Bar Council and the Law Society with a notice (in this Act referred to as a "levy assessment notice") specifying—

- (a) the amount of money expended by the Authority in the preceding financial year in respect of approved expenses,
- (b) subject to the Schedule of this Act, the number (determined in accordance with regulations (if any) made under the Schedule) of complaints made in relation to barristers in the preceding financial year and the number of complaints made in relation to solicitors in the preceding financial year the time spent dealing with such complaints as against barristers and solicitors, respectively, and the time spent dealing with the oversight regulation of solicitors and barristers provided for under this Act,
- (c) the amount of levy payable by the professional body concerned, and
- (d) the date, determined in accordance with regulations made under this Act, on which the levy becomes payable.

[SECTION 69]

(9) If all or part of the amount specified in a levy assessment notice is not paid on or before the date specified in that notice, interest on the unpaid amount accrues, from that date to the date of payment, calculated at the rate provided for in regulations under this Act.

(10) Subject to *subsection (8)*, the Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the professional body concerned, any amount due and owing by it in respect of the levy imposed by this section.

(11) For the purposes of *subsection (7)*, where the professional body concerned is the Bar Council, proceedings may be brought against the Chairman of the Bar Council, in a representative capacity, on behalf of the Bar Council, and if in those proceedings the Authority obtains a judgment, order or decree for any amount due and owing by the Bar Council, any assets held by or on behalf of or for the benefit of the Bar Council may be used or otherwise applied towards satisfying all or any of the claims under the judgment, order or decree, as the case may be.

(12) In this section, “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

(13) The Authority may, in accordance with the provisions of this Act, make regulations to provide for all or any of the matters relating or the levy under this section.”.

—Finian McGrath.

[*Acceptance of this amendment involves the deletion of section 69 of the Bill.*]

140. In page 60, before section 69, but in Part 6, to insert the following new section:

“69.—(1) The Bar Council and the Law Society shall pay to the Authority, in each financial year beginning on 1 January, a levy in the amount determined in accordance with this section and with regulations made by the Authority in accordance with this Act as representing the expenses incurred in the regulation of legal practitioners in the State.

(2) The Authority shall, in the public interest, take all reasonable steps to minimise the costs incurred by it in the exercise of its regulatory powers and functions under this Act. The Authority shall be required to consult on a regular basis with the Minister for Public Expenditure and Reform to achieve that objective.

(3) The Authority may, having consulted with the Bar Council and the Law Society, and with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of this section the amount of the operating costs and administrative expenses of the Authority that are properly incurred by it under this Act in a financial year (in this section referred to as “approved expenses”).

(4) The Authority shall endeavour to agree the approved expenses for the relevant financial year with the Bar Council and the Law Society.

(5) Approved expenses may include—

(a) the remuneration (including allowances for expenses, benefits in kind and superannuation benefits) of the Authority and its staff as provided for under this Act;

[SECTION 69]

- (b) any superannuation contributions paid in respect of the Authority or members of the Authority's staff out of monies provided by the Oireachtas;
- (c) fees due to advisers and consultants engaged by the Authority under this Act, and
- (d) the cost of office premises.

(6) Approved expenses shall not include (for example: costs of establishing the Authority and the preparation of policy documents for the Government which, the Bar Council agrees with the Law Society, should be paid for by the State and not by the professions).

(7) The amount of the levy payable in each financial year shall be the amount expended by the Authority in the preceding financial year in respect of approved expenses, and the liability for payment of that amount shall be as follows:

- (a) 10 per cent of that amount shall be paid by the Bar Council;
- (b) 10 per cent of that amount shall be paid by the Law Society; and
- (c) the remaining 80 per cent of that amount shall be paid *pro rata* by the Bar Council and the Law Society according to the time spent by the Authority dealing with the oversight regulation of, and complaints made in relation to, barristers in the preceding financial year and the time spent dealing with oversight regulation of and complaints made in relation to solicitors in the preceding financial year.

(8) As soon as practicable after the beginning of each financial year, subject to compliance with the requirements of the preceding subsections of this section, the Authority shall provide the Bar Council and the Law Society with a notice (in this Act referred to as a "levy assessment notice") specifying—

- (a) the amount of money expended by the Authority in the preceding financial year in respect of approved expenses,
- (b) subject to the Schedule of this Act, the number (determined in accordance with regulations (if any) made under the Schedule) of complaints made in relation to barristers in the preceding financial year and the number and complexity of complaints and their financial implications made in relation to solicitors in the preceding financial year the time spent dealing with such complaints as against barristers and solicitors, respectively, and the time spent dealing with the oversight regulation of solicitors and barristers provided for under this Act,
- (c) the amount of levy payable by the professional body concerned, and
- (d) the date, determined in accordance with regulations made under this Act, on which the levy becomes payable.

(9) If all or part of the amount specified in a levy assessment notice is not paid on or before the date specified in that notice, interest on the unpaid amount accrues, from that date to the date of payment, calculated at the rate provided for in regulations under this Act.

[SECTION 69]

(10) Subject to *subsection (8)*, the Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the professional body concerned, any amount due and owing by it in respect of the levy imposed by this section.”.

—Pádraig Mac Lochlainn.

[*Acceptance of this amendment involves the deletion of section 69 of the Bill.*]

141. In page 61, subsection (4)(b), between lines 42 and 43, to insert the following:

“(iii) complaints relating to legal executives.”.

—Niall Collins.

142. In page 62, subsection (5), between lines 4 and 5, to insert the following:

“(c) complaints relating to legal executives.”.

—Niall Collins.

143. In page 62, subsection (7)(a)(iii), between lines 25 and 26, to insert the following:

“(III) complaints relating to legal executives;”.

—Niall Collins.

144. In page 62, subsection (7)(b), line 30, to delete “roll of solicitors” and substitute “register of practising solicitors”.

—Niall Collins.

145. In page 62, subsection (7)(b), line 30, after “solicitors” to insert “register of practising solicitors”.

—Pádraig Mac Lochlainn.

146. In page 63, subsection (7)(c)(iii), between lines 1 and 2, to insert the following:

“(III) complaints relating to legal executives.”.

—Niall Collins.

147. In page 63, subsection (8)(c), between lines 14 and 15, to insert the following:

“(iii) complaints relating to legal executives,”.

—Niall Collins.

148. In page 63, subsection (8)(e), between lines 22 and 23, to insert the following:

“(iii) complaints relating to legal executives,”.

—Niall Collins.

149. In page 63, lines 39 to 47, to delete subsection (11).

—Niall Collins.

SECTION 70

150. In page 64, before section 70, to insert the following new section:

[SECTION 70]

“Failure to pay amount specified in levy assessment notice.

70.—(1) If all or part of the amount specified in a levy assessment notice is not paid on or before the date specified in the notice, interest, at a rate calculated in accordance with regulations under *section 72**, on the unpaid amount accrues from that date to the date of payment.

(2) Where a barrister who is not a member of the Law Library has not, within one month of the date on which the amount becomes payable, paid all of the amount specified in a levy assessment notice as payable by him or her in respect of the levy imposed by this Part, the Authority shall provide that barrister with a further notice, which shall—

- (a) be accompanied by a copy of the levy assessment notice concerned,
- (b) specify the rate of interest payable on the unpaid amount, and
- (c) contain a statement of the effect of *subsection (3)*.

(3) Where, after the expiry of 3 months from the date on which the amount, specified in a levy assessment notice as payable by him or her in respect of the levy imposed under this Part, becomes payable, a barrister who is not a member of the Law Library has not paid all of that amount together with any interest on the unpaid amount that has accrued in accordance with *subsection (1)* on that amount, the Authority shall remove the name of the barrister from the roll of practising barristers.

(4) Subject to *subsection (5)*, the Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the professional body or person concerned, any amount payable by that body or person in respect of the levy imposed by this Part and any interest that has accrued, in accordance with *subsection (1)*, on that amount.

(5) For the purposes of *subsection (4)*, where the professional body concerned is the Bar Council, proceedings may be brought against the Chairman of the Bar Council, in a representative capacity, on behalf of the Bar Council and, if in those proceedings the Authority obtains a judgment, order or decree for any amount payable by the Bar Council, any assets held by or on behalf of or for the benefit of the Bar Council may be used or otherwise applied towards satisfying all or any of the claims under the judgment, order or decree, as the case may be.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 70 of the Bill.*]

[**This is a reference to the section proposed to be inserted amendment 152.*]

SECTION 71

151. In page 64, before section 71, but in Part 6, to insert the following new section:

“Exemption for legal practitioner in full time service of the State.

71.—(1) *Section 69(1)** shall not apply in respect of a legal practitioner who is in the full time service of the State.

(2) No fee shall be payable by a legal practitioner to whom *subsection (1)* applies to the Law Society or Bar Council in respect of an amount of levy payable by that professional body under this Part.”

[SECTION 71]

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 138.]

152. In page 64, before section 71, but in Part 6, to insert the following new section:

“Regulations relating to levy.

72.—(1) The Authority may by regulations provide for all or any of the following matters relating to the levy under *section 69**:

- (a) the date on which payment of the levy becomes payable;
- (b) the keeping by the Authority and the Disciplinary Tribunal of specified records in respect of matters connected with the liability to pay the levy;
- (c) the collection and recovery of the levy;
- (d) subject to *subsection (2)*, the rate of interest on amounts not paid when due;
- (e) such other matters as are necessary for, or incidental to, the imposition, payment and collection of the levy.

(2) Regulations under *subsection (1)* may prescribe a formula for determining the interest rate referred to in *subsection (1)(d)* by reference to—

- (a) the prevailing Euro Interbank Offered Rate,
- (b) an additional rate certified by the Central Bank of Ireland, and
- (c) such other additional rate as the Minister considers appropriate, taking into account the cost of recovering unpaid levy, including any bank charges the Authority may incur in maintaining a bank overdraft to cover a shortfall in funds arising out of unpaid levy.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the section proposed to be inserted by amendment 138.]