

*The  
Annual Report of  
the Lay Observer  
for Northern Ireland*

2018/19

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SOLICITORS (NORTHERN IRELAND) ORDER 1976

SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989

Presented to the Lord Chief Justice of Northern Ireland, the Permanent Secretary Department of Finance, and the Council of the Law Society Northern Ireland pursuant to Article 42 of the Solicitors (Northern Ireland) Order 1976 and Article 17 of the Solicitors (Amendment) (Northern Ireland) Order 1989.

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# Chapter 1:

## Opening Comments



*Marian Cree*

- 1.1 This is my second report since being appointed on 3rd April 2017 as Northern Ireland's first Legal Services Oversight Commissioner (LSOC). As set out in my previous report, the secondary legislation necessary to enact all of the LSOC powers has still not been made due to the collapse of the NI Assembly in January 2017. Therefore I continue to act in a dual role as both LSOC, carrying out some preliminary work, and, primarily, as the Lay Observer. Although the Act provides for a LSOC report, that provision is not yet commenced, and this report therefore is provided under the existing Lay Observer legislation, the Solicitors Order (Northern Ireland) 1976. It focuses on my work as Lay Observer but does also include some narrative on my work as LSOC.
- 1.2 This report reflects my work from April 2018 to March 2019 in the context of the complaints process as it relates to Solicitors and the Law Society NI. The Lay Observer role relates only to complaints associated with solicitors and ultimately the Law Society. The LSOC role is more embracing in the context that it will, once implemented, relate to both solicitors and barristers.

- 1.3 As with my previous report, a key trend is the resolution of complaints for clients does not always result in the outcome that the client hopes for. This is due to a number of reasons, not least the fact that the powers of the Law Society in dealing with this aspect of Complaints Handling are limited. Issues that frequently resulted in an individual complaining to me as they were unable to have their complaint investigated by the Law Society included the complaint being outside the 6 month limit, as set out in the legislative framework, and conduct issues relating to a solicitor as well as complaints about Barristers. Consequently, the existing process that is operated within the boundaries of legislation has yet again flagged up the fact that it does not always serve the needs and interests of the client. The new process would have allowed the issues I have listed to be included in the complaints process but unfortunately we are not there yet.
- 1.4 However, this report presents a more positive trend in how complaints are registered and handled by the Law Society which I will outline in the subsequent chapters.

# Chapter 2:

## Role of the Lay Observer

- 2.1 The work of the Lay Observer is governed by a set of principles clearly laid out on my website. It is to be noted that I also operate my role to the standards laid down by the Ombudsman Association, of which I am a member. It is from these standards that, in part, I derive my legitimacy as a complaints handler and in the way I carry out my work.
- 2.2 The Lay Observer for Northern Ireland is the public official charged with overseeing the Complaints Handling System in place covering the solicitor profession in Northern Ireland. I investigate complaints from clients who have exhausted the complaints process firstly with their solicitors (Tier 1), and secondly, solicitors' representative and regulating body – the Law Society of Northern Ireland (Tier 2). Mine is the final stage in the Complaints Handling Process (Tier 3).
- 2.3 My post as the Lay Observer for Northern Ireland is part-time. I employ no staff and all administrative tasks and secretarial work are carried out by me directly, in addition to investigations and auditing. My work is located either at the Law Society or in my own home.
- 2.4 During the year I have had valuable meetings with the President and the Senior Team and with the Chief Executive of the Law Society, representing the Council. I am grateful for these meetings, and for their generally most constructive nature. I value this contact as it enables both parties to consider strategic matters, and provide an exchange of views and information appropriate to that level.
- 2.5 My day to day links are with the Law Society's Director of Client (Solicitors) Complaints and his staff. I can report that in 2018/19 I found them to be very helpful and accommodating as well as professional.
- 2.6 I maintain helpful and excellent contact with the Department of Finance at all levels. This is my sponsoring Government Department, and appropriate personnel provide support for my function in a number of ways. In particular, I can be contacted by complainants through their address, as well as a website, which technical persons in the Department maintain on my behalf. I wish to thank the Permanent Secretary for making all this possible.

- 2.7 On day to day matters, I link with Mr Jonathan McNaught and his colleagues. I thank them for their very willing and invaluable facilitation, which is often proactive, and always imaginative, in providing advice and help in solving any problem I may face.
- 2.8 The Lord Chief Justice takes an interest in my work. His role over our Justice System provides a distinctive overview of the work of the solicitors' profession, and I value his advice and observations. He is, of course, a formal recipient of my Annual Report under the legislation.



# Chapter 3:

## Law Society Complaints Statistics 2018/19

3.1 When the Law Society receives a complaint, it classifies the complaint firstly according to the type of professional work involved in the cases concerned. These are termed **circumstances of complaints**. They then assign a **category** to the complaint which in most cases can be analysed under several different categories of types of complaints. The figures provided by the Law Society for 2018/19 are as follows:

**Table 1: Circumstances of the Complaint / number of associated Complaints**

Circumstance of complaint	Number	Circumstance of complaint	Number
A. Accidents/General Litigation	20	L. Immigration & Asylum	3
B. Bankruptcy & Insolvency Debt	0	M. Land & Property Disputes	7
C. Commercial Work	3	N. Libel & Slander	0
D. Contract Disputes	2	O. Licensing	0
E. Conveyancing	19	P. Mental Health	0
F. Criminal Injuries & Criminal Damage compensation	0	Q. Planning	0
G. Criminal Law	5	R. Personal Injury	3
H. Employment Law, Equality/Discrimination Issues	4	S. Professional Negligence	1
I. Enforcement of Judgments	0	T. Trusts, Tax & Financial Planning	0
J. Family Law – Children	1	U. Wills, Probate & Intestacy	14
K. Family Law – General	19	<b>TOTAL</b>	<b>101</b>

Note: In most cases a single complaint may be included under one or more heading.

**Table 2: Category of Complaints / number of associated Complainants**

Nature of Complaints		
Code	Category	Number of Complainants
1	Undue delay or inaction	72
2	Failure to keep client properly informed	93
3	Delay/Failure to respond to reasonable enquiries	80
4	Withholding/loss of documents	34
5	Disclosing confidential information	9
6	Acting in conflict of interest situation	11
7	Acting contrary to the client's instructions	27
8	Breach of undertakings	0
9	Failure to provide bills of costs/cash statements; incurring expense without client's authority	12
10	Failure to deal with legal aid issues properly	9
11	Failure to provide proper client care information or not complying with agreed client care arrangements	24
12	Failure to provide proper costs information including Legal Aid Rules at the outset of the transaction or not adhering to arrangements made	41
13	Failure to properly consider client's complaints under solicitor's own in-house complaints procedure	57
14	Other factors	0
	<b>All factors (total 1 – 14)</b>	<b>469</b>

# Chapter 4:

## Comment on Complaints Statistics 2018/19

- 4.1 In the 2018/19 year the Law Society received a total of 469 categorised complaints from 101 complainants. These complaints were made in relation to 87 solicitors. 8 solicitors' firms had more than one complaint made against them during the period of this report with 1 solicitors' firm receiving 5 complaints. Whilst the number of categorised complaints has risen from the 328 recorded in 2017/18, the increase can be viewed as positive. Following feedback from complainants to me regarding the restrictive nature of the categories that the Law Society used to register complaints under, the Law Society has taken steps to ensure ALL of the issues that a complainant raises with them are recorded and investigated, hence the rise in categorised complaints.
- 4.2 The number of complainants has also risen from 73 recorded in 2017/18 to 101 in 2018/19. It is difficult to identify why the increase has happened. It would be easy to infer that it may be due to an increase in a less than satisfactory service, however, it could also be as a direct result of the Law Society taking significant steps in the last 12 months to make their complaints process more transparent and accessible. I will comment further on this later in my report.

The outcomes of the 101 individual complainants that were received by the Law Society were:

Not Upheld	38
Upheld	30
Discontinued	11
Resolved	2
Ongoing	20

- 4.3 It is worth noting that two of the upheld complaints also resulted in the solicitor being referred to the Solicitors Disciplinary Tribunal, which can have a profound effect on the solicitor's ability to practise. Whilst all of the other upheld cases had some degree of sanction against the solicitor, it should be noted that twenty one cases had a formal warning/ reprimand associated with them. This is in comparison to only 3 cases that received a formal warning in the period covered by my last report. Again, I would suggest that this demonstrates the Law Society taking a sterner approach to the area of complaints.

- 4.4 These outcomes are extremely positive and demonstrate the extent to which the Client Complaints Committee (CCC) strives to deliver a fair outcome based on all of the facts that they gather to inform their decision. It also demonstrates the Law Society's commitment to maintain standards and execute their powers as the Regulator for the sector.
- 4.5 'Conveyancing, Wills, Probate & Intestacy' remains an area that receives a high number of complaints, accounting for 33 of the 101 complaints that the Law Society received. However, 'Accidents/general litigation' and 'Family Law' received 20 and 19 complaints respectively. I am aware that the Law Society uses this data and identifies trends to inform the Continuous Professional Development programme for solicitors – I commend this approach. I am also aware of the steps that the Law Society have taken and remain proactive in picking up on these type of trends and addressing them through a number of strategies. I will comment further on this in Chapter 5 of my report.
- 4.6 Finally, it is most important to note that **the level of complaints against solicitors in Northern Ireland still remains very low**, unlike in the legal professions elsewhere in the United Kingdom, and as well as in comparison with many other fields of professional activity. This should be seen, as I have emphasised before, in the light of the enormous volume of transactions that solicitors here must undertake for clients every year. No-one knows how many this must be, but given that at 31st August 2019 there were 487 firms (excluding sub offices) practising within private practice, then I would assume the volumes of transactions are in the thousands.

# Chapter 5:

## Work of the Lay Observer 2018/19

- 5.1 I reviewed 22 complaints referred to me by complainants after they had been reviewed by the Law Society's Client Complaints Committee (Tier 2). This equates to 21% of the complaints that were subject to the Tier 2 process. This compares to the 31% that I reviewed last year, which demonstrates a positive trend of less complaints reaching the Lay Observer process (Tier 3). I upheld 5 of the 22 complaints, resulting in a referral back to the Law Society for further consideration. I also dealt with 15 other queries from complainants where the nature of their query was either outside of my remit or I carried out some remedial investigation to enable me to signpost them to other organisations/bodies who could provide assistance.
- 5.2 As with previous reports by the Lay Observer, the cases I received during the period of this report were mainly complex in nature. The complexity derives mainly from the fact that many complaints have multiple categories associated with them as outlined in the above statistics. The increase in categorised complaints has contributed to the length of time it takes for me to review a case as I have to satisfy myself that I have reviewed every aspect of the complaint.
- 5.3 On review of the overall categorised complaints figures outlined in table 2, it is clear that in the majority a key issue was poor communication on behalf of the solicitor. Categories 2, 3, 7, 11, and 13 above, all of which relate to communicating with the client, were the basis for 281 of the 469 categorised complaints that the Law Society received – in essence approximately 60%. So often my role in dealing with complaints is explaining to the complainant what the solicitor, and in some instances, the Law Society seems to have been unable to communicate when they have attempted to resolve a complaint. It could be surmised that many of the complaints would not have got to the second tier of the complaints process if the solicitors who had complaints made against them had adopted a more proactive and regular communication approach with their client. Quoting pieces of legislation and/or subsections of legislation in response to a complainant appears to create more confusion and frustration rather than explain why a certain decision could or could not be made.
- 5.4 A more concerning issue is the fact that 57 of the categorised complaints related to the solicitor failing to properly consider the client's complaints under the solicitor's own in-house complaints procedure. Whilst the Law Society has taken

significant steps to address this issue and remind solicitors of their obligations regarding complaints, it is unacceptable that a solicitor would believe that ignoring a complaint from a client who has paid for their services is appropriate.

5.5 As I stated earlier in my report, it is very positive to note that the Law Society, and specifically the CCC, have taken a proactive approach to the issues I have raised with them and have taken steps to address some of these issues in a number of ways, including:

- Issuing a formal note to all solicitors regarding the importance and procedures of the 'in-house' complaints process and the use of plain English.
- Inclusion of the in-house complaints process in regulatory inspections and the development of an in-house complaint database to ensure good practice is maintained.
- A focus on issues that are becoming trends in the complaints process in Continuous Professional Development (CPD) seminars, including the in-house complaints process, Family Law, Wills and Probate and Conveyancing.
- Using solicitors who are specialists in certain areas such as conveyancing to deliver the CPD sessions so real life examples can be used.
- Taking a proactive approach and arranging seminars in the coming months on new trends in the complaints process, such as family law, and building seminars into the current CPD process.
- Presentation to every apprentice in the sector on the overall complaints process, showing live case study examples and emphasising the importance of handling complaints appropriately.
- The Law Society President is a current full member of the CCC, demonstrating the serious and important nature that the Society has given to the overall complaints process.
- The Solicitor Complaints Department's Lessons Learnt Log now includes comments/ feedback from me on each case as it is closed where appropriate.

5.6 The Society has also taken positive steps to address issues that I raised in my report last year, for example the introduction of a 'reasonable adjustment process' to assist complainants who may not speak English as their first language, who have mental health problems, disabilities or numeracy and literacy problems. This will make a significant improvement on how individuals who may require adjustments can access and navigate the complaints process. Some elements of the 'reasonable adjustments process' include:

- Filling in the complaints form over the telephone and then sending it to a nominated person for review and signature where a complainant has literacy problems.

- Additional time allocated for responses from individuals who do not speak English as their first language.
- The availability of new software on the Society's website which will enable them to translate documents and information quicker.
- A Plain English Audit of the Society's complaint forms to ensure directions are clear and more 'customer friendly'.
- Guidance to solicitors emphasising that if a client states they wish to make a complaint, then that complaint must be actioned irrespective of whether or not the complaint is written on the Society's in-house complaint form.
- The launch of a short online complaints video on the Society's website explaining how to make a complaint in easy steps.

5.7 All of the above demonstrates a willingness within the Law Society to continue to improve their complaints process for all concerned. It shows their desire to make the process more transparent and customer focused, whilst still working within the legislative and regulatory framework which governs them and all solicitors in Northern Ireland.

5.8 Whilst my office is independent from the Law Society, there is still an element of working together in the interests of the overarching complaints process. Regular meetings with the Society's Head of Solicitor Complaints and members of the CCC have resulted in many of the changes that I have outlined above being developed and introduced by the Society.

# Chapter 6:

## Work of the Legal Services Oversight Commissioner

- 6.1 As noted earlier in this report, I am still operating in a dual role, albeit the greater percentage of my time has been devoted to the Lay Observer functions. The Lay Observer role relates only to complaints associated with solicitors and ultimately the Law Society. The LSOC role is more embracing in the context that it will, once fully implemented, relate to both solicitors and barristers. In the past 12 months I have continued to maintain communication with both the Law Society and the Bar Council in relation to the new processes envisaged under the Legal Complaints and Regulation Act (Northern Ireland) 2016 (the 'Act'). However, without the necessary secondary legislation being in place to introduce the outworkings of the Act, momentum for developing the new processes is diminishing. It would be regrettable for both me personally, and for those individuals who avail of legal services, if the excellent preparatory work that was carried out by the professional bodies representing the legal profession was lost.
- 6.2 Throughout the period of this report I have received a number of complaints from individuals that I have been unable to assist as their complaints did not fall within the legislation associated with the Lay Observer and the current Law Society complaints process. However, these complainants would have been able to have their complaint investigated under the new legislation associated with the LSOC. Issues such as the complaint not being received within the legislative timeframe or the complainant not being the direct client of the solicitor are a few examples of issues that would be eligible under the new Act. The inability to award compensation to those complainants whose complaints have been upheld is another issue that would be possible under the new process. I have found myself apologising to those complainants that, whilst their complaint has been upheld, there is no financial recompense available to them. This has been very regrettable and frustrating for both me and the individuals. I have had to explain to those individuals that whilst the office of the LSOC has been established, the complaints process that sits alongside that office has not been introduced.
- 6.3 I have received three Freedom of Information requests during the period covered by this report. They have been responded to in line with the guidance associated with the Freedom of Information Act 2000. I welcome the fact that, as a Public Appointee, my working practices are open and transparent for those members of the public that I provide a service for.



# Chapter 7:

## Closing Comments

- 7.1 Whilst I continue to enjoy the challenges of both the Lay Observer role and that of the LSOC, it has been another frustrating year due to the limited progress that has been made on the new complaints processes. In essence, the Complaints Handling System of the Law Society continues to operate under the current legislation whilst preliminary work continues to run alongside it in preparation for the practicalities of the new arrangements. This position is one that the Law Society (like me) have no other choice but to operate, as they too must abide with the legislation as it exists today.
- 7.2 However, the positive issues that I have outlined in my report demonstrate the willingness and a commitment by the Law Society to continue to improve the complaints process. All improvements to the current processes bring the Society closer to the type of complaints service envisaged under the new Act.
- 7.3 This Report is presented to the Lord Chief Justice of Northern Ireland, the Permanent Secretary Department of Finance and the Council of the Law Society Northern Ireland pursuant to Article 42 of the Solicitors (Northern Ireland) Order 1976 and Article 17 of the Solicitors (Amendment ) (Northern Ireland) Order 1989. It is also laid before the Northern Ireland Assembly pursuant to Article 42(8) of the Solicitors (Northern Ireland) Order 1976.

I understand that the Law Society will take steps to ensure that every solicitor on the NI register receives a copy electronically. **I hope that solicitors will make it their business to review the content of the Report to determine its relevance to the work of their own firms.**



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# Appendix 1:

## Who is the Legal Services Oversight Commissioner?

I, Marian Cree, have been the Legal Services Oversight Commissioner since 3rd April 2017. My appointment is for an initial term of 3 years.

My career has been varied. I left school aged sixteen and joined the Northern Ireland Civil Service. I became a career civil servant, spending the next thirty two years working across a wide range of posts, including Head of Learning and Curriculum Policy within the Further Education Division with lead responsibility in NI for the Reform and Regulation of Vocational Qualifications and the curriculum within the FE sector. I had lead responsibility within the Department for Employment and Learning (DEL) for the joint working policies with the Department of Education on 14-19 reforms, including the Post Primary Review. I was also Deputy Programme Manager for a range of joint DEL/Social Security Agency Welfare Reform Projects.

In more recent years I was the Head of Energy Policy at the Consumer Council NI (CCNI) with responsibility for developing policies in line with CCNI's statutory duties on all aspects of the energy market in NI. A key function of my role was to represent consumers' interests in the 'Price Control' and 'Tariff Review' process for regulated energy companies.

I was the initial appointee as the Head of the Competition and Markets Authority (CMA) NI office when it opened in May 2015. My role brought me into contact with a wide range of organisations in both the private and public sector, such as the Institute of Directors, Confederation of British Industry, Federation of Small Businesses, Manufacturing NI, and law firms in NI which provide advice and services on competition law. I was involved in a number of the CMA Market Studies including Energy, Legal Services, Pay Day Loans, Care Homes, and Banking. Whilst not all of these Market Studies covered Northern Ireland within their scope, I was responsible for ensuring that their outworking's were brought to the attention of the relevant Regulators and Government Departments in NI, and to assess the extent to which they could be incorporated in their policies going forward.

I also hold a non-remunerated Board position with ASCERT. This is an organisation that helps young people and adults with addiction problems by providing initiatives and support programmes to reduce harm and support positive change.

I am a mother and a grandmother and play a very active role in my daughter and her two children's lives.

# Appendix 2:

## Law Society Response to Lay Observer Report 2017/18

### RESPONSE OF THE LAW SOCIETY OF NORTHERN IRELAND TO THE 2017/2018 ANNUAL REPORT OF THE LAY OBSERVER FOR NORTHERN IRELAND

#### Introduction

- 1.1 This is the Law Society of Northern Ireland's formal response to the Lay Observer's Report for 2017/18.
- 1.2 The Society welcomes this Lay Observer's (LO) Report which is the first Lay Observer's report published by Ms Marian Cree, since her appointment in April 2017. The LO has brought focus to a number of important issues in relation to the management and determination of client complaints. The Society wish Ms. Cree well in her role and are committed to working in a collaborative, supportive and constructive manner with her office to ensure that the system for investigating and determining complaints is as effective as possible. The Society recognise the essential function that Ms. Cree fulfils and will continue to view her statutory reports as an opportunity to reflect and improve overall service delivery in relation to client complaints.
- 1.3 As the LO indicates in her report, the Legal Complaints and Regulation Act (Northern Ireland) 2016 is not yet fully operational. The Society looks forward to the full enactment of the Act and to the introduction of the new powers of the Solicitor Complaints Committee in investigating and determining service complaints. The Society has undertaken significant preparatory work to ensure that an adequate and effective system for the management, investigation and consideration of service complaints is in place when the new legislation is fully enacted. Until such times as the new complaints protocols are in operation the Society continues to investigate complaints through its existing legislative and procedural framework.
- 1.4 The Society is committed to raising the importance of effective complaint management with solicitors, particularly at first tier level. This is an area that the Society continues to highlight through its CPD programme as well as through ongoing work directly with members to ensure that effective in-house complaints procedures are in place. The need for solicitors to communicate clearly in a straightforward manner with clients particularly when dealing with complaints is a theme that the Society has reminded solicitors of within its CPD programme as well as through correspondence directed from the Client Complaints Committee.

- 1.5 The Society recognises that there is a requirement to outline the costs, inconvenience and implications for professional reputation where complaints are not managed effectively. The Society continue to do this through CPD seminars and publications.
- 1.6 The Society notes the LO's comments at paragraph 4.6 of her Report that the level of complaints against solicitors in Northern Ireland remains very low. The low level of complaints is also seen in the light of the enormous volume of transactions that solicitors undertake for clients every year as well as in comparison with many other fields of professional activity. The Society is encouraged by this conclusion although recognises that where complaints are raised, the systems in place at first tier level and within the Society at second tier must be accessible, thorough, consistent and effective. The Society very much considers service complaints as an opportunity for Solicitors to learn and to improve the adequacy of their professional service safeguard and protect the interests of the Complainant and the Solicitor equally.

## Continuing Professional Development (CPD)

- 2.1. The CPD programme is used to feed the complaints experience back to the profession, to provide professional updates and to explain new developments in law and regulatory changes. All solicitors are required to include three hours specific Client Care and Practice Management group study in their CPD programme. All solicitors are obliged to do a minimum of ten hours group study overall and a further five hours of private study. Group study may consist of workshops, seminars, lectures and tutorials. The Law Society's CPD programme is primarily composed of seminars and workshops. The CPD requirements oblige solicitors to fill in an annual return of their CPD compliance. The records are checked for compliance by the CPD Department.
- 2.2 The CPD sessions are themed and there is input from a range of professionals on relevant and topical issues. Within the last year the Society has provided a number of specific Client Complaints Seminars including: Handling Client Complaints: Overview and Update and Managing Client Complaints in Family Proceedings.
- 2.3 The 'Handling Client Complaints' seminars were delivered by the Head of Solicitor Complaints. Participants were also addressed by the Chair/Members of the Client Complaints Committee as well as local practitioners with experience of handling client complaints in their own Firms. The seminars were delivered at four separate locations throughout Northern Ireland and were interactive events where attendees were encouraged to ask questions and engage with the presenters.
- 2.4 The 'Managing Client Complaints in Family Proceedings' seminar was delivered by the incoming President of the Law Society who is also an experienced member of the Client Complaints Committee. Complaints in relation to Family and Matrimonial Law had seen increases over recent years and the Society considered that a standalone event providing advice and assistance to practitioners in this field would be a welcome addition to the CPD programme.

- 2.5 The importance of effective and clear communication with clients was highlighted through a number of CPD seminars including: Dealing with Bereaved Clients and those experiencing Emotional or Difficult circumstances; Talking Costs with Clients;
- 2.6 During the course of the year additional Client Care related seminars included: Anti-Money Laundering Update Course; Party and Party Costs; Non-Contentious Costs; Cyber crime and cyber security; Practice Management; Risk Management; Legal Book keeping Course; Compact Research Course; Probate, A practical Guide to Estate Administration;
- 2.7 The Society recognises the need to identify and highlight the impact that good client care can have on reducing risk, both legal and reputational. Since January 2017 all Principal Solicitors, Consultants and Assistant Solicitors in private practice are required to complete at least 2 hours of Compulsory Risk Management CPD annually.
- 2.8 The Society has designed a bespoke Risk Management module which covers three key areas; File Management and Avoiding Claims, Anti Money Laundering and the General Data Protection Regulations. To increase accessibility the module was provided on nine occasions at a range of locations throughout the year. Solicitors were also permitted to complete an online webinar on Risk Management as part of their CPD private study requirement.
- 2.9 The Law Society of Northern Ireland has been proactive in terms of alerting and informing members of the typology and cyber-attacks when they occur. It also hosts regular seminars on Cybercrime as part of the Risk Management Series. The Society has been recognised for the cyber security work it has provided so far and it remains fully committed to supporting its members and the wider community when appropriate. The Society is conscious that the secure retention of data, client information and records may impact on a particular area of client complaint and therefore the Society has been proactive in advising and supporting the profession in this important area of practice.
- 2.10 The LO commends the Society on its use of data and trends to inform the CPD programme for solicitors. The Society believes that this approach can be an effective way to identify areas where additional focus and training advice may be required. As part of the incoming CPD programme and following the success of the Family Complaints seminar the Society has introduced standalone complaints handling seminars in the areas of Conveyancing, Probate and Matrimonial. The bespoke seminars will concentrate on each particular area of Law and will be delivered by the Head of Solicitor Complaints and a practitioner experienced in each of the respective fields. The seminars will provide insight to members and address the main categories of complaint received including delay, updating client's and responding to reasonable enquiries.
- 2.11 The Society introduced, from January 2014, a requirement for practitioners who do Conveyancing work to complete at least three hours of their group study on

conveyancing. The introduction of the Compulsory Conveyancing training was to ensure that members keep up to date with developments in the field of conveyancing and are able to continue to advise clients in an accurate and professional way, thereby reducing the number of conveyancing related complaints. The initiative is a direct example of reviewing trends in complaints, assessing previous related complaints and putting in place additional training measures to effectively address the issue.

- 2.12 In 2017/18 the Society ran a number of relevant Conveyancing courses including: Home Charter Update; Comprehending Conveyancing; Apartments Masterclass; Distressed Conveyancing; Land and Property Services – an update; Statutory Agencies in the Development process; Common Commercial Conveyancing Issues; Acting for a private landlord as well as the Society’s annual Conveyancing Conference where over 250 solicitors were in attendance. The CPD programme is reviewed annually to ensure that Conveyancing Course topics are available to ensure that practitioner’s skills and knowledge base are kept up to date and current.
- 2.13 The Society is aware that complaints in relation to Wills, Probate and Intestacy are consistently higher than a lot of other areas of practice. To address this issue, the Society has introduced varied and detailed CPD seminars to provide advice, assistance and to demonstrate best practice in this area of Law. In relation to ensuring best practice in Wills and Probate work the Society provided CPD seminars for practitioners including: Administration of Estates – Dealing with the Affairs of a deceased Insolvent; Estate Litigation in Practice; Probate – A practical Guide to Estate Administration; Who would be an Executor? - Traps for the unwary personal representative; Non-contentious Probate applications; Recent Developments in Succession Law; Drafting Wills and Trusts as well as Capacity and Undue Influence.
- 2.14 In addition to the standalone complaints handling seminar for Family Proceedings the Society organised a number of topical and important Family Law modules in response to a noticeable increase in complaints relating to Family Law. These modules included: Pension Options in Divorce; International Aspects of Family Law and the Children’s Order Conference.
- 2.15 The Society has recently published guidance to assist solicitors dealing with Probate Matters. The Guidance relates to ‘Larke v Nugus’ letters where a solicitor writes, on behalf of a beneficiary, to the solicitor who executed the Will seeking information relating to the execution. This can be an area where complaints arise around the validity of a Will and can also lead to service complaints where the Solicitor is acting as an Executor.
- 2.16 The guidance from the Society emphasises the need to send full and clear correspondence seeking information as well as the importance of providing a comprehensive response to any request for information in a reasonable timeframe. Taking this action will assist in resolving disputes as early as possible saving

costs for all parties and mitigating against the risk of a service complaint or professional negligence action. Such measures are part of the Society's overall aim of enhancing the adequacy and effectiveness of professional service through guidance and training.

- 2.17 Through an active CPD and Client Care training programme, the quality of the speakers and the topics, the Society seeks to continually improve and reinforce the knowledge base within the profession and thus reduce the number of complaints which it receives on client care issues and also highlight to solicitors the need to keep their clients fully engaged whilst carrying out their work. The CPD programme is designed to react and respond to issues and themes that may arise through registered complaints.
- 2.18 The Law Society welcomes the LO's continued interest in and support for our CPD programme. The Society also welcomes the recognition from the LO for its commitment to maintain standards for the solicitor profession. The CPD programme is a useful mechanism for communicating with solicitors, providing advice and demonstrating best practice. The Society is continually reviewing the programme to ensure that lessons learned from complaint trends are reflected in the modules and events on offer.

## Client Complaint Training and Review

- 3.1. In addition to the Law Society CPD programme events the Society provides speakers for other training events to ensure that key themes in relation to the management and consideration of client complaints are circulated amongst as wide a stakeholder audience as possible.
- 3.2 The Head of Solicitor Complaints presented recently to the Belfast Solicitor's Association on the Handling of Client Complaints. The talk focused on a number of areas including the importance of dealing efficiently with a client complaint at the first tier in-house once received. In addition, in keeping with the LO's comments the Society continued to emphasise the learning opportunities to be found when complaints arise.
- 3.3 One of the key themes of the talk was 'Learning Lessons'. The Society agrees with the LO that this is a key component of effective complaint management. The following extract from the Head of Solicitor Complaints speaking notes at the Belfast Solicitors' Association presentation demonstrates the importance placed on practitioners learning from complaints:

*'Learn Lessons – if a complaint is received take the opportunity to review how you provide your professional service. If there is merit in the complaint, consider how things may be done differently in the future.'*

*Does the complaint highlight a flaw in current procedures within your practice that may need to be improved? Does the complaint investigation highlight a need to more routinely record telephone attendances, consultations, interactions with clients, provide update letters, improve terms of engagement correspondence?*

*Does the complaint demonstrate a need for further training or advice? Don't rest on the status quo – if there is some measure that can be introduced to improve, give it consideration.*

*How do you communicate with clients? Do you use language that is easy to understand, plain and to the point or do you fill client correspondence unnecessarily with legal jargon? Complaints received can provide a good opportunity for reflection and improvement.'*

- 3.4 In addition to advising its membership, the Society is reflective when considering how to enhance the adequacy and effectiveness of its management of client complaints. As part of its file closure process the Society review all client complaint files to consider if lessons can be learned. This will include consideration of any available report from the LO as well as any feedback received directly from the complainant or the Client Complaints Committee. A lessons learned log is retained by the Client Complaints Department and service improvements are introduced as required on foot of this closure review process.
- 3.5 The Society is acutely aware of the requirement to provide clear and robust regulatory guidance and training to Solicitors. The Society is also cognisant of the need to ensure that trainee Solicitors are informed at an early stage of their regulatory obligations regarding client communications, dealing with complaints and providing an adequate professional service to their clients.
- 3.6 In 2018 the Society commenced a standalone Law Society module at the Institute of Professional Legal Studies where trainee solicitors attend a series of lectures and seminars on the work of the Law Society to include regulatory matters relating to client complaints. The Chief Executive asked the Head of Solicitor Complaints to provide an overview of client complaints to trainees to include an outline of the Law Society's legislative framework, an overview of the requirements on solicitors when dealing with in-house complaints, the benefits of effective communication as well as an outline of how the Society investigates complaints and the solicitor's obligations when dealing with a complaint from the Society. The Client Complaint seminar ran for a full day and included practical case studies for trainees to consider. This seminar was well received and will form an important part of the module in the forthcoming academic year.

## **Complaint Statistics 2017/18**

- 4.1. The LO's identifies that the number of complaints received during the period of 2017/18 was lower than previous years but that the categories of complaint has significantly risen over the same period. The Society review all complaints received and categorise the different elements of the complaint outlined by the complainant. Each element of the complaint is provided with a headline category eg Delay, Failure to keep the client informed, Withholding of documents etc.



- 4.2 The Society spend significant time reviewing the categories of each received complaint to ensure that all particular areas of complaint raised by the complainant are appropriately identified. This ensures that the solicitor is provided with all details of the complaint but also has the headline categories which require a response. This approach is considered to be of assistance to the solicitor in responding to the complaint as well as to the lay complainant who can clearly see the areas of complaint that the Society will be adjudicating on.
- 4.3 Furthermore, the Society provides a decision letter to the lay complainant where the Client Complaint Committee's deliberations on each headline of complaint is outlined in paragraph form to the complainant. Each headline of complaint is in bold within the correspondence with commentary provided explaining the Committee's decision for each category of complaint identified. The Society recognises the importance of explaining decisions to lay complainants in a language that is easy to understand as well as using a decision letter template that is effective and consistent. This is an area that the Society continues to keep under review.
- 4.4 The Society utilise template letters when communicating with complainants and solicitors. The templates are subject to periodic review to ensure that they are written in easy to understand language. The Society undertook a plain English audit of complaint correspondence during 2017/18 and updates and amends were made accordingly.
- 4.5 The written complaint procedures that the Society has in place are subject to external, internal and continuous self-audit. Following external audit, the assessment standard ISO9000:2015 was successfully retained in 2017 with accreditation achieved for the three-year term 2017–2020. The assessment included a review of the existing client complaint procedures, a dip sampling of random case files and an interview with the Head of Solicitor Complaints. The external assessor concluded that there were no non-conformities and confirmed that effective processes were in place.

## Outcomes

- 5.1. The Society notes the LO's observations that the complaint outcomes from 2017/18 were extremely positive and demonstrates the extent to which the Client Complaints Committee strive to deliver a fair outcome based on all the facts as well as the Society's commitment to maintain standards and execute their powers as the Regulator. The Society will continue to investigate complaints in a fair and impartial manner and will also ensure that a proportionate response is forthcoming where inadequate professional service is demonstrated.
- 5.2 The Client Complaints Committee review and discuss all reports received from the LO and take time to consider the views of the LO to ensure that the overall outcomes arrived at in cases are fair for both the solicitor and complainant within the Committee's legislative powers.

## Work of the Lay Observer 2017/18

- 6.1. The Society notes the issues identified by the LO in her report and the separate identified case studies. The Society has developed a complaints process that is accessible to members of the public wishing to complain about the service provided by a solicitor.
- 6.2. The procedures followed by the Society when investigating complaints are outlined on the Complaints Section of the Society's website. In addition, the Society provides user friendly leaflets which set out the steps that a complainant must take before lodging a complaint with the Society and also describes the kind of service complaints that the Society deals with as well as the areas of complaint that the Society cannot presently deal with under its legislation. The leaflets explain the relevant time limits for raising a complaint with the solicitor as well as with the Society. The leaflets are available on the website and are also available in paper form.
- 6.3. The Society also provides, on its website, translations of all complaints leaflets in a number of different languages to assist complainants access our complaint procedures. The Society can accommodate requests for leaflets to be translated into other languages and takes a proactive approach in that regard.
- 6.4. As part of the file management of a complaint file the Head of Solicitor Complaints will consider the needs of a particular complainant and will make reasonable adjustments to accommodate the particular requirements of a complainant. This has included, by way of example, correspondence sent in larger font, additional time provided to a complainant where English was not their first language, appointing a relative to advance the complaint on behalf of an older vulnerable complainant and liaising with a complainant via telephone where the complainant had literacy difficulties. The Society record any adjustments on file to ensure that the process of raising a client complaint is as accessible and as straightforward as possible.
- 6.5. The Society takes note of the LO's comments and will continue to ensure that all complainants are provided with the required assistance to reasonably access and utilise the complaint procedures.
- 6.6. The Society examines and determines complaints through its Client Complaints Committee, which comprises Law Society Council Members, Solicitor co-optees and appointed Lay Members. The Committee's powers are set out in Article 41A and 41B of the Solicitor's (NI) Order 1976 as amended. The Committee reaches conclusions that they deem to be fair, proportionate and reflective of the evidence before them. The decisions must also be in accordance with the Legislation. The Society appreciate that on occasion decisions will be reached that a complainant or a solicitor will not agree with. Furthermore, either party may feel aggrieved with the conclusions reached. The Society, recognises the comments of the LO in this regard and appreciates the view that has been articulated. The Society is committed to ensuring that the outcomes reached are fair to both complainant and solicitor whilst any sanction imposed is proportionate.

## **Concluding Remarks**

- 7.1. The Law Society welcomes this report of the Lay Observer for Northern Ireland.
- 7.2 The LO has brought focus to a number of important issues in relation to the management and determination of client complaints. The Society considers the review, investigation and determination of client complaints as an important part of its regulatory role as set out within the Solicitors (NI) Order 1976 as amended.
- 7.3 The Society is committed to ensuring that service complaints from clients are seen by solicitors as opportunities to learn. The Society will continue to review its training programme to enhance the adequacy and effectiveness of professional services provided by solicitors as well as ensuring that solicitors are suitably aware of their obligations when client complaints are received.
- 7.4 The Society is grateful for the LO's considered and detailed comments and looks forward to working with her over the coming year to ensure the effective, thorough and consistent investigation of client complaints.

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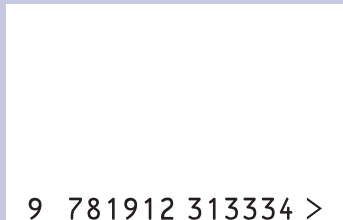
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