

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

2017/18

Contact Details

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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.

Laid before the Northern Ireland Assembly pursuant to Article 42(8) of the Solicitors (Northern Ireland) Order 1976.

Chapter 1:

Opening Comments



Marian Cree

- 1.1 This is my first report since being appointed on 3rd April 2017 as Northern Ireland's first Legal Services Oversight Commissioner (LSOC). Although my appointment, by the then Minister of Finance, was made under the provisions of the Legal Complaints and Regulation Act (Northern Ireland) 2016 (the 'Act'), the secondary legislation necessary to enact all of the LSOC powers has not been made due to the collapse of the NI Assembly in January 2017. The LSOC role was envisaged to replace that of the Lay Observer role, however due to the legislation not being made, I have been acting in a dual role as both LSOC, carrying out some preliminary work, and, primarily, as the Lay Observer.
- 1.2 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 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.

- 1.4 The most recent Lay Observer report (2016) was compiled by my predecessor Alasdair MacLaughlin. It was written in the context of it being the final report of the Lay Observer in NI and set out a summary of the issues that he saw as still prevalent in the Law Society's complaint handling process in NI. He also pointed out his hopes for changes that were proposed under the new legislation with the introduction of the LSOC. Consequently, my first report since Alasdair's last publication is more concise than previous reports as I have decided not to rehearse many of the issues that he clearly stated still remained in the system. Under the present arrangements, the Lay Observer work continues to be directed by the current legislation until such times as arrangements resulting from the new legislation can be put in place. Therefore I have been unable to introduce the new processes that he envisaged would go a long way in eradicating aspects of the existing process that were no longer 'fit for purpose'.

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 solicitors' profession in Northern Ireland. I investigate complaints from clients who have exhausted the complaints process firstly with their solicitors (Tier 1), and secondly, their 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 The Law Society and the Lay Observer work together in investigating complaints by clients against their solicitors, which is part of the regulation of the profession. There are other aspects though, in particular that of solicitors providing a good service to clients. 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. Consequently, the existing process that is operated within the boundaries of legislation does not always serve the needs and interests of the client. My predecessor had outlined his hopes that the new legislation would address many of the shortfalls of the current system by introducing a more balanced approach, through the establishment of the Legal Services Oversight Commissioner's Office and the new complaints process that is outlined in the Act. Unfortunately, this report reflects the activity over a 12 month period which operated under the old process. Therefore many of the issues that I have identified in this report, and those that have been presented to me by the clients who have asked me to review their case, have at times been direct consequence of the shortfalls in the current process.
- 2.4 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.

- 2.5 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.
- 2.6 My day to day links are with the Law Society's Director of Client (Solicitors) Complaints and his staff. I can report that in 2017/18 I found them to be very helpful and accommodating as well as professional.
- 2.7 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.
- 2.8 On day to day matters, I link with Mr Martin Monaghan and his colleagues. I thank them for their very willing and invaluable facilitation, which is often pro-active, and always imaginative, in providing advice and help in solving any problem I may face.
- 2.9 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 2017/18

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 2017/18 are as follows:

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

Circumstance of complaint	Number	Circumstance of complaint	Number
A. Accidents	5	L. Immigration & Asylum	3
B. Bankruptcy & Insolvency Debt	1	M. Land & Property Disputes	6
C. Commercial Work	0	N. Libel & Slander	0
D. Contract Disputes	6	O. Licensing	0
E. Conveyancing	18	P. Mental Health	0
F. Criminal Injuries & Criminal Damage compensation	0	Q. Planning	0
G. Criminal Law	1	R. Personal Injury	12
H. Employment Law, Equality/Discrimination Issues	0	S. Professional Negligence	0
I. Enforcement of Judgments	0	T. Trusts, Tax & Financial Planning	0
J. Family Law – Children	3	U. Wills, Probate & Intestacy	11
K. Family Law – General	8		

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	52
2	Failure to keep client properly informed	70
3	Delay/Failure to respond to reasonable enquiries	66
4	Withholding/loss of documents	23
5	Disclosing confidential information	3
6	Acting in conflict of interest situation	4
7	Acting contrary to the client's instructions	28
8	Breach of undertakings	0
9	Failure to provide bills of costs/cash statements; incurring expense without client's authority	2
10	Failure to deal with legal aid issues properly	0
11	Failure to provide proper client care information or not complying with agreed client care arrangements	25
12	Failure to provide proper costs information including Legal Aid Rules at the outset of the transaction or not adhering to arrangements made	26
13	Failure to properly consider client's complaints under solicitor's own in-house complaints procedure	29
14	Other factors	0
	All factors (total 1 – 14)	328

Chapter 4:

Comment on Complaints Statistics 2017/18

- 4.1 In the 2017/18 year the Law Society received a total of 328 categorised complaints from 73 complainants. These complaints were made in relation to 66 solicitors. Eight solicitors firms had more than one complaint made against them during the period of this report. I will not draw distinct comparisons between these figures to those reflected in previous Lay Observer reports as they run over different timescales. However, it would be appropriate to state that although the number of complainants is lower, the number of categorised complaints has significantly risen in the context of a 12 month period.
- 4.2 The outcomes of the 73 individual complainants that were received by the Law Society were:
- | | |
|--------------|----|
| Not Upheld | 30 |
| Upheld | 15 |
| Discontinued | 12 |
| Resolved | 3 |
| Ongoing | 13 |
- 4.3 It is worth noting that four 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 a sanction against the solicitor, it should be noted that three cases had a formal warning/ reprimand associated with them.
- 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, and Personal Injury accounted for 41 of the 73 complaints that the Law Society received. I am aware that the Law Society uses this data and identified trends to inform the Continuous Professional Development programme for solicitors – I commend this approach. I would also challenge the Law Society to look deeper at this issue as Conveyancing and Wills, Probate & Intestacy have been in the top three percentage of complaints brought by clients every year since 2011 as reflected in previous Lay Observer reports.

- 4.6 Finally, it is most important to note that **the level of complaints against solicitors in Northern Ireland remains very low**, unlike in the legal professions elsewhere in 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 the 5th September 2018 there were 497 firms (excluding sub offices) with 2,257 solicitors practising within private practice, then I would assume the volumes of transactions are in the thousands.
- 4.7 It is noteworthy that only 73 complaints were made to the second tier of the Complaints Handling Process in relation to 66 solicitors firms. These figures are very much lower than popular opinion particularly amongst politicians, public and press seem to believe is the case.

Chapter 5:

Work of the Lay Observer 2017/18

- 5.1 I reviewed 23 of the above complaints that had been forwarded to me by the complainants after they had been reviewed by the Law Society's CCC (Tier 2). I upheld 3 out of the 23 complaints, resulting in a referral back to the Law Society for further consideration. I also dealt with 8 other queries from complainants where the nature of their query was outside of my remit and I was therefore unable to help, however, I did endeavour 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. However, in the period from April 2017 to March 2018, in nearly all of the responses I made outlining my findings and conclusions, I found myself attempting to explain to the complainant the decision making/findings of the Law Society in lay person's language.
- 5.3 On review of the overall categorised complaints figures outlined in table 2, it is clear that in the majority of complaints reviewed a key issue evident in them all 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 218 of the 328 categorised complaints that the Law Society received. So often my role in dealing with complaints is explaining to the complainant what neither the solicitor nor subsequently 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 a 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 Individuals who have written to me in the past 12 months have at times voiced their frustration at the type of legal language used in the response they received from solicitors and the Law Society. As a lay person, I have also had to seek

clarity on certain statements used in responses or have had to search websites to read up on legislation that was referenced in a response. Whilst I can understand the Law Society's rationale for demonstrating in their responses the legislative powers/ boundaries that are guiding them, the ability to provide responses in a manner that the lay person who has turned to them for assistance can understand should have equal weighting in any response that is drafted.

- 5.5 Whilst I have mainly agreed with the decisions of the Law Society's CCC, there has been a number of issues that have arisen during the period of this Report. Although they have not resulted in me upholding a complaint, they have however, required some further correspondence with the Law Society and in particular with the CCC. Whilst these cases have been small in number, my concerns are in the context of the nature of the issues which I believe need to be addressed in the interest of future complainants. They are issues that I would wish to see the Law Society either reviewing their policy on, or taking note of, should similar issues arise in the future. In particular I have raised my concerns with the Law Society on the issues arising from the following 2 case studies:

Case Study 1

- **Provision of translation services:** It was brought to my attention whilst investigating a complaint that English was not the first language of the complainant. Whilst the Law Society did provide this complainant with a translation in relation to their initial correspondence with them, they then advised that no further translations would be provided. Therefore the complainant would have to arrange for all future correspondence to be translated themselves including the correspondence from the Law Society to the complainant. This raised a number of concerns with me not least the fact that this would introduce a cost element to the complainant to obtain these translations. On review of the number of letters submitted to the Law Society by this complainant, this would have resulted in a significant cost to them on top of all of the fees that they had already paid out to the solicitor that they were now complaining about. I would be concerned that these costs may be prohibitive in complaints where English is not the first language of a complainant who wishes to approach the Law Society.

Northern Ireland has a growing population of citizens where English is not their first language. These individuals should not be subject to additional hurdles when making a complaint. As I have pointed out above, cost should not become a prohibitive issue in any complaints process, neither should complainants be treated differently just because English is not their first language.

Whilst I am aware that in my current role as Lay Observer I have no powers to compel the Law Society to take on board my views regarding this issue, it is an issue that I will be mindful of as we move forward on the new complaints process as set out in the 'Act'.

Case Study 2

- **Interpretation of Article 41A (3):** In broad terms, Article 41A (3) states that the Law Society's CCC shall not exercise its powers if the existence of any remedy that could reasonably be expected to be available to the client in civic proceedings – and to whether it would be reasonable to expect him to commence such proceedings. I found the CCC's interpretation of this to be extremely frustrating in a small number of the complaints I reviewed. This was made very evident to me in one particular case where the CCC upheld the complaint but advised the complainant that he would have to pursue other remedies to seek the outcome that he wished for in relation to the inadequate service provided by the solicitor. It was clear to me that it was not reasonable for the complainant to avail of existing remedies for very clear and valid reasons. The client advised the Law Society that he was NOT in a position to pursue alternative methods to recoup the monies he had paid his solicitor. He also clearly stated that he wanted the CCC to make a decision on this issue as he was unable to pursue alternative methods. Article 41A (3) does allow the CCC to use its 'reasonable discretion' yet they chose not to, advising that the statutory framework is narrow. Whilst I agree with them that this is true to a certain degree, it does also give the CCC some flexibility in making decisions based on their expertise and ALL of the information in front of them. So why leave this client with an option that he made clear he would be unable to pursue?

I struggle to comprehend how the Law Society finds it reasonable to have a complaints process that can uphold a complaint in favour of the complainant but then advises that the only option for compensation is to pursue yet more legal action. This particular case raised a number of concerns with me which reinforced the rationale for the need for changes to the current system. The new system needs to embrace the law and use it fairly across both the legal system and the clients who put their trust in that system. It should always be striving to strike a balance i.e. just because a solicitor has a case upheld against them is not necessarily a balanced outcome for a client who has put their trust in that solicitor and who paid them money up front in the expectation of a professional service. Legal services are not cheap, and what may seem to be a small amount of money to someone can be all the money in the world to another. Therefore advising clients, who have already paid out significant sums of money, to go and pursue further legal or civil proceedings which will cost them even more money with no guarantee of a positive outcome is extremely unbalanced in favour of the legal profession. Unfortunately it only reinforces the perception that the Law Society is looking after the solicitor and not the complainant.

Thankfully the new regime which will exist when the 'Act' is finally passed will introduce new powers that will bring a more balanced and fairer complaints process. Unfortunately, the current political climate, which has yet to introduce the necessary legislation for change, means that we are all working towards a new complaints system whilst operating the current system which clearly has shortfalls from a client's perspective. I genuinely hope that the CCC will look to embrace the ethos of the new legislation as we move forward and be more aware of the need to 'balance the scales' when dealing with complaints which they have upheld.

Chapter 6:

Work of the Legal Services Oversight Commissioner

- 6.1 As noted earlier in this report, since taking up post I have operated dual roles, 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. Therefore in the past 12 months I have been working with the professional bodies that represent and regulate both barristers and solicitors in Northern Ireland – mainly the Law Society, the Bar Council and the Benchers. During this time there has been significant progress on the preparatory work necessary for the new complaints processes as outlined in the Legal Complaints and Regulation Act (Northern Ireland) 2016 (the ‘Act’).
- 6.2 A key aspect of my first year in office has been getting to understand the role and functions of these three distinct aspects of the legal profession and getting to know the key individuals that I need to work with to progress the outworkings of the Act. I have met with chief executives and judges, as well as members of newly established working groups within the legal profession made up of existing QCs, barristers and solicitors all of whom are working on the proposals for the new complaints processes. These meetings have been very open and productive and have demonstrated a clear willingness across the professions to work with me as we move forward with the implementation of the Act.
- 6.3 I have also found my role as Lay Observer to be of great benefit in providing me with a first-hand insight into the current complaints system. It has shown me everything that works well and the extent to which the Law Society is most sincere in its endeavour to maintain standards within the solicitor profession. However it has also shown me what is not working well – some of these issues I rehearsed earlier in this report. This information will be invaluable for me as I continue to move forward and maintain open communication channels with the appropriate areas of the legal profession.
- 6.4 In moving forward, my aim is to shape a new complaints system that will address many aspects of the current process that are clearly not working well for clients whilst at the same time ensuring that the new process can also deliver a fair and balanced outcome for the legal profession. I have read with interest the NI Ombudsman’s ‘Framework for Effective Complaints Handling’. This document

promotes a set of principles which are recommended to be at the core of the framework for effective complaint handling and are as follows:

1. Accessible and simple.
 2. Fair and impartial.
 3. Timely, effective and consistent.
 4. Accountable.
 5. Delivers continuous improvement.
- 6.5 The NI Ombudsman also states that an organisation that is developing or reviewing a complaints procedure should have a high level statement of principle, such as '*We see complaints as learning opportunities*'. This statement should be communicated both internally and externally. Without the underlying principle a complaints procedure will lack focus.
- 6.6 This statement of principle will help define the aims and purpose of the body's complaints procedure. I would commend these principles to the representative bodies in the legal profession who are currently working on new or revised complaints processes in line with their obligations under the Act.

Chapter 7:

Closing Comments

- 7.1 Whilst I have enjoyed the challenges since taking up post, it has also been a 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.
- 7.2 The new arrangements will introduce an element of compensation for the client which does not exist in the current process. My experience during the past 12 months would suggest that many complainants were initially seeking compensation. Unfortunately the current system does not provide for this which is an issue that is outside of the control of the Law Society. However, I do believe that the Law Society could better explain the penalties when dealing with complainants such as the costs, inconvenience and implications for professional reputation, which are very significant. This applies whether a solicitor is innocent of being responsible or is eventually held to be responsible for the substance of the complaint in it being progressed to the second tier. A wider understanding of this process would, I believe, go some way in demonstrating the extent to which the current process is taking complainants seriously and that the Law Society process is one that does deliver sanctions when necessary.
- 7.3 In conclusion, I look forward to my second year in post with the hope that the necessary functions are established at Stormont which will enable all of the organisations referenced in this report to move forward with the new processes.
- 7.4 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.

- 7.5 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 terms 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's (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 organisations 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 the outworkings of these Market Studies 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 2016

Response of the Law Society of Northern Ireland to the Final Annual Report of the Lay Observer for Northern Ireland Entitled “A New Future”

Introduction

- 1.1 This is the Law Society of Northern Ireland’s formal response to the Lay Observer’s Report for 2016.
- 2.1 The Society welcomes the Lay Observer’s Report and has given all aspects of that Report detailed and careful consideration. The Society thanks the Lay Observer for his considered views. The Society also notes that this report is the final report produced by Mr. Alasdair MacLaughlin as Lay Observer. The Society wishes to put on record our sincere thanks to Mr MacLaughlin for all his endeavours as Lay Observer and wish him well for the future.
- 3.1 Since the Law Society last responded to the Lay Observer’s 38th Report, Ms. Marian Cree has been appointed as the first Legal Services Oversight Commissioner for Northern Ireland. Ms. Cree is also currently undertaking the role of Lay Observer for Northern Ireland. The Society is committed to working closely with Ms Cree as she carries out the functions of the Lay Observer to maintain a high standard of complaint handling and management.
- 4.1 The Legal Complaints and Regulation Act (Northern Ireland) 2016 has introduced a new legislative framework for the management and investigation of legal service complaints. The Society is working towards the establishment of new complaints handling protocols as well as operational guides to help ensure the continued effective management of complaints.
- 5.1 The Society is committed to raising the importance of effective complaint management with solicitors particularly at first tier level. 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 will endeavour to do this in a manner that is straightforward and user friendly as well as through CPD seminars and publications.
- 6.1 The Society also notes the Lay Observer’s observations at paragraph 3.19 of his Report that the level of complaints against solicitors to the Law Society of Northern Ireland remains 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. The Society is encouraged by this conclusion although remains mindful that where complaints are raised, the systems in place at first tier level and within the Society at second tier must be robust, open and responsive. The Society is committed to ensuring that any new complaints provisions introduced by the Act appropriately safeguard and protect the interests of the Complainant and the Solicitor equally.

Continuing Professional Development (CPD)

- 7.1. 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.
- 7.2. The Law Society of Northern Ireland is committed to providing support to members on challenging issues and offering ideas and suggestions on how firms could maximise the opportunities available to them. We continue to do this by offering a series of CPD sessions delivered across Northern Ireland on an annual basis. The sessions are themed and there is input from a range of professionals on relevant and topical issues.
- 7.3. During the course of the year Client Care related seminars included: Anti-Money Laundering and Financial Crime Update Course; Effective time management; Communicating with Clients; Cyber crime and cyber security; Practice Management; Risk Management; Developing a high performance mind set; Mediation - Business Disputes; Clear and Confident Communication; Courageous Conversations; Dealing with Bereaved Clients and those experiencing Emotional or Difficult circumstances; Personal Effectiveness at work; Managing Ourselves – Being more productive in less time; Costs – Non Contentious Costs; Contentious Costs – An overview; Legal Book keeping Course; Compact Research Course; Overview of Recent Home Charter Practice Directions and Guidance.
- 7.4. Client care and complaints handling are linked to risk management, to include practice and procedures required to protect firms and their clients from errors and omissions and from third party attack, in terms of fraud. As part of ongoing advice the Risk Management course runs as an all-day series of seminars on risk related areas of practice over 4 venues. This year the topics covered included information on anti-money laundering, data protection, customer due diligence, cybercrime and fraud, accounting risk issues and Home charter compliance.

- 7.5. The Society recognises the need to identify and highlight the impact that good client care can have on reducing risk, both legal and reputational. The Society provided standalone and specific Risk Management seminars in 2016. To increase accessibility the seminar runs in several locations in Northern Ireland. The Society indicated to practitioners that it was expected that all firms would have at least one person in attendance. At the seminars the Society ensured that even when seminars are topic specific, that the client care element is identified and highlighted to the profession. From 2017 every solicitor is required to complete at least two hours compulsory risk management CPD as part of their annual CPD hours.
- 7.6. 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.
- 7.7. The Lay Observer records that the most frequently occurring complaints are in the areas of Conveyancing, Wills and Probate and Family Law. The Lay Observer records within his report that the Society is very effective in feeding back experience from the Complaints Handling Process into CPD. 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.
- 7.8. In 2016 the Society ran a number of relevant Conveyancing courses including Practical Conveyancing – Managing the Risk; Drafting of Easements; Comprehending Conveyancing; An overview of recent Home Charter Practice Directions and Guidance; Conveyancing – Is it worth the risk?. The Society undertakes an annual review of its' CPD programme and will continue to amend Conveyancing Course topics to ensure that practitioner's skills and knowledge base are kept up to date and current.
- 7.9. As part of the Complaint's Departments ongoing commitment to reflective learning from complaints that are received relating to Wills and Probate, a detailed seminar programme took place in March 2016 entitled 'Drafting Wills and Trusts'. Further relevant CPD events were undertaken including an update on Claims under the Inheritance (Provision for Family and Dependants)(NI) Order 1979 along with seminars on Controllership Applications and Will Validity Disputes.

- 7.10. In response to an increase in complaints relating to Family Law the Society organised CPD events for practitioners in the following relevant areas – Children Order Panel Day; Implication of bankruptcy on matrimonial proceedings and the family home; Advocacy – Focus on the Family Care Centre; Cross Examination of the Child Witness. Furthermore, as complaints arise in Family Law cases with regard to the securing of Legal Aid Funding the Society facilitated a new comprehensive series of seminars on The Essentials for the Civil Legal Aid Practitioner.
- 7.11. 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.
- 7.12. The Law Society and the Complaints Department, in particular, welcomes the Lay Observer's continued interest in and support for our CPD programme. The Society also welcomes the recognition from the Lay Observer that we are ensuring that the profession knows clearly what the current legislation and regulation mean for them through our CPD programme and publications.

Comments on the Report and Recommendations

- 8.1. It is noted that the Lay Observer indicates in paragraphs 7.1 that he makes no specific recommendations in relation to changes to procedures now that the current arrangements will shortly be coming to an end. The Society will however review and respond to some of the general comments provided by the Lay Observer within his report to explain the ongoing work in place to improve complaint management, handling and response.
- 8.2. The Society notes that the Lay Observer, at paragraph 1.11, commends the Society for the very effective way that experiences from the Complaint Handling Process are fed into the Continuous Professional Development (CPD) programme. The Society uses the complaint handling experience to help develop priorities for CPD events. The Society strongly believes that continuing to place client care and complaint management at the heart of CPD events will have a direct impact on reducing overall complaints. The Society also uses CPD events to reinforce the importance and benefits of good complaint handling and management.
- 8.3. The Lay Observer at paragraph 3.11 indicates that the Society should thank a complainant for bringing forward complaints. The Society does recognise that service complaints, whilst they are relatively low in volume, can provide opportunities for improvement and learning. In that regard the Society is content to receive complaints and makes use of trends in complaints casework when formatting CPD events and seminars. However, Complainants are not routinely thanked for raising complaints. The Society seeks to manage a process where both parties are treated equally and therefore the Society do not routinely express

gratitude to a complainant for raising a complaint. Any expression of gratitude may be construed as favourable to one party over another and as such the Society seeks to concentrate on reaching a fair outcome as opposed to providing positive feedback when a complaint is raised.

- 8.4. The Lay Observer at paragraph 3.16 refers to the importance of the Society explaining, to a complainant, the costs and professional discomfort caused by a solicitor in dealing with complaints. The Society within our existing literature engages in open communication with both parties to the complaint to ensure that the time and resources impact is duly appreciated. The Society must operate within their existing statutory framework. The Society adheres to Article 41A of the Solicitors (NI) Order 1976 as amended when undertaking investigations. In accordance with our legislation the Society, in our general documents to complainants, emphasise that the Society and solicitors take complaints very seriously as there is the possibility of reputational damage as well as formal sanction at the Disciplinary Tribunal.
- 8.5. The Lay Observer indicates that the Law Society in dealing with complaints within the limits of the legislation generally hold solicitors to account who fail to follow regulations. As the Lay Observer is aware the Society may only act within the confines of the Solicitors (N.I.) Order 1976 as amended. Article 41A of the Order is headed "*Imposition by Council of Disciplinary Sanctions for Inadequate Professional Service*" and "*Power of the Council to impose Sanctions for Inadequate Professional Service*". The Society aims to investigate complaints in a manner that is open and fair to all participants and ensures that decisions taken are grounded in the facts of a particular case. This approach seems to serve the system reasonably well and results in what the Observer calls '*a significant proportion*' of complainants having a degree of satisfaction in the way the Society disposed of their complaint.
- 8.6. The Society notes the comments of the Lay Observer at paragraph 3.5 regarding 'solicitor to solicitor' complaints. The Society agrees that this is an area that should be kept under review to ascertain the appropriateness of the Complaints system for dealing with such complaints. Inter professional complaints, when they arise may fall outside the remit of the Client Complaints Department. Such complaints are investigated, managed and determined through the Society's Conduct and Regulation Department. The Client Complaints Department will liaise closely with the complainant to ensure that the appropriate department within the Society responds to their particular grievance.
- 8.7. The Society does encourage the resolution of complaints before they are accepted as registered 2nd tier complaints. This is highlighted in correspondence and repeated at Client Care events and other relevant CPD seminars. There will always be occasions where a solicitor may raise a complaint on behalf of a complainant and this may be entirely appropriate. The Society does however accept the general point raised by the Lay Observer and will review similar cases as they arise in the future. The Society notes that such complaints have reduced from 18% to 7% between 2015 and 2016.

- 8.8. The Lay Observer makes reference to the time taken to resolve or complete some complaint investigations and provides commentary on cases that have taken longer than the targeted 16 weeks to complete. The Observer does accept that there is evidence that the more complex investigations are becoming even more complicated. Invariably, as the Lay Observer determines, solicitors are therefore taking longer to gather information which in turn leads to lay complainants requiring sufficient time to respond to complex legal complaints. The Society, in overseeing complaint investigations, will act to ensure that both parties are given reasonable time to respond and make submissions on what can often be issues of legal complexity.
- 8.9. The Society recognises that both complainants and solicitors are keen to see a conclusion to an investigation as quickly as possible. The Society is also aware that there is an onus on any investigation, particularly of complex matters, to be sufficiently detailed and thorough. The Society contends that the timetable is a measurable target that should be adhered to where possible. The Society does agree with the Lay Observer that in complaints handling it is better to conclude a complicated complaint properly rather than chasing a conclusion to fit the timetable. The Society has a casework review system that ensures that, on those occasions where targets are not met, the complainant is updated on progress and potential delay periodically. The Complaints Committee will also, as a fixed agenda item, consider the referral of solicitors to the Law Society Council where responses are outstanding in order to monitor the timely progress of Society investigations.
- 8.10. The Lay Observer notes that the Society classifies complaints according to their nature. Presently there are fifteen descriptors. The Lay Observer draws attention to the rise in one category namely 'Failure to consider Complaints properly under Regulations'. The Society has emphasised the importance of dealing with complaints at first source. The impact of poor handling of complaints at this first tier can not be over emphasised. The Society insists on the adherence to the Solicitors (Client Communications) Regulations 2008 and the increase in this particular category demonstrates the importance that the Society places on the use of the Regulations as a good standard in house complaint management.
- 8.11. The Society continues to receive more detailed information from solicitors addressing complaints, supplemented by the relevant Client Care documents, including their in-house complaints procedures, their firm record of the in-house complaint and how it was dealt with, and the response given to the client's initial complaint. This enables the Committee to monitor adherence to the Regulations.
- 8.12. Any breaches of the Solicitors (Client Communication) Practice Regulations 2008 are taken into account when the Client Complaints Committee decides the outcome of the complaint. Any breaches are also recorded against the Solicitor and may be referred to where a similar complaint is brought to the Client Complaints Committee again. The Committee reserves the right to take necessary and proportionate action where a breach of regulation is demonstrated.

Concluding Remarks

- 9.1. The Law Society welcomes the report of the Lay Observer for Northern Ireland and recognises that the report is presented as a final report. The report does not outline specific recommendations however the Society have provided a response to the informed comments and observations of the Lay Observer contained throughout the report.
- 9.2. The Society considers the review, investigation and determination of client complaints as an important part of our Statutory role as set out within the Solicitors (NI) Order 1976 as amended. The Society is committed to ensuring that service complaints from clients are used to enhance training within the profession and that where trends in complaints are identified the Society will proactively engage with solicitors to address such issues.
- 9.3. The Society is grateful for the Lay Observers considered views and will continue to review complaint management procedures to ensure that complaints are thoroughly investigated and that both solicitors and complainants benefit from an effective complaint investigation process.

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