

Action: Moving on → → →

Annual Report of The Lay Observer
2006

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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 Department of Finance and Personnel and the Council of the Law Society of Northern Ireland pursuant to Article 42 of the Solicitors (Northern Ireland) Order 1976 and Article 17 of the Solicitors (Amendment) (Northern Ireland) Order 1989.



The Lay Observer for Northern Ireland

Alasdair MacLaughlin was appointed The Lay Observer for Northern Ireland in April 2004. He is also The Independent Assessor for the Public Prosecution Service since June 2005 and an independent assessor for the curriculum authority. He has extensive experience in the private, public and voluntary sectors. Following 15 years in industry, he was the Director NI of the Confederation of British Industry for 10 years followed by 10 years as Director General of the Ulster Farmers' Union. He has recently stepped down as Chairman of CfA Ltd, which is the custodial company for National Vocational Qualifications, standards and frameworks in Administration throughout the UK. He is a member of the Probation Board Northern Ireland, where he chairs the Corporate Services Committee, and he serves on the panel for the Industrial Tribunals. He is a trustee of Relate and of the Belfast Association for the Blind.

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His appointment is made according to Article 42(1) of the Solicitors (Northern Ireland) Order 1976. Amendments to The Lay Observer's duties are made in Article 17 of the Solicitors (Amendment) Northern Ireland Order 1989, which came into effect on 3rd October 1989.

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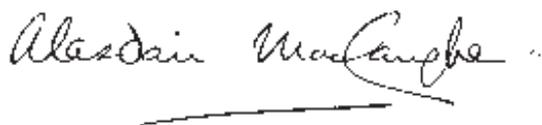
SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989

To: The Right Honourable Sir Brian Kerr QC, The Lord Chief Justice of Northern Ireland

The Department of Finance and Personnel

The Council of the Law Society of Northern Ireland

I have the honour to present the Twenty-ninth Annual Report of The Lay Observer for Northern Ireland covering the Year to 31st December 2006.



Alasdair MacLaughlin
31st May 2007

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Section 1

Opening Comments

1.1 This is my third Annual Report, and the twenty-ninth in the series. My current appointment extends to 31st March 2008. By that date, it may well be that the Government will have determined precisely how it intends to move forward in the light of the Review of Legal Services in Northern Ireland carried out by a Review Group under the chairmanship of Professor Sir George Bain. His Report was issued in November 2006, and it had been the intention of the Northern Ireland Office to make comment by the Spring of 2007. However, in the light of the Devolution Agreement in March 2007, it may well be that comment will be reserved until the Executive for Northern Ireland is in place. I shall refer to the Review later in this Annual Report.

1.2 My Report deals with the activities and work of The Lay Observer for Northern Ireland during the calendar year 2006. My routine work concentrates on investigating complaints taken against the Law Society. These are taken by clients in circumstances where the complainants remain dissatisfied after the Society has dealt with their complaints against their solicitors. My role is to operate the independent and third level of a three-tier process. In addition, I have the facility to audit a proportion of the files at level two, relating to complainants who do not approach me with a complaint at the third tier. Other work this year has related to the provision of a website and a further set of comments to the Government in relation to the Bain Review.

1.3 As reported last year, I chose no longer to have staff assistance. Furthermore, mine is a part-time operation. I am contracted to provide 85 days work per annum, and there is also an escalation element of six days for every five complaints in excess of 30 complaints per annum. In practice, there is also a 20% *pro bono publico* element in my work.

1.4 Complaints Handling, and the need to limit the incidence of complaints, as part of the regulation of the

profession, are matters which I believe should be given, and be seen to be given, high priority by its sponsors, one of which is the Council of the Law Society. In this context I met with Mr Norville Connolly, the current Chairman of the Client Complaints Committee. I thank him for his interest and commitment and for his supportiveness of my role.

1.5 My working relationship with the Law Society has changed in a very significant way in the past year. I have been meeting regularly with the Chief Executive/Secretary of the Society, Mr John W Bailie. This I believe is highly significant, as it has encouraged the two functions to relate at a strategic level in a much more dynamic and organic way. This has helped us to take a more productive approach towards better complaints handling, how it relates to Continuing Professional Development, and how to foresee more clearly how the future approaches to regulation might unfold. I take the view that this has been a successful arrangement, and I am grateful to Mr Bailie for his commitment towards obtaining the maximum benefits from the arrangement for those who bring complaints.

1.6 As ever, my day-to-day contacts are with Law Society Assistant Secretary Mrs Moira Neeson, and her assistant Mrs Priscilla Flavelle. I believe that these contacts continue to be effective and generally efficient, and that the connectivity between our respective roles is characterised by an appropriate professional distance. I remain very grateful for the way in which Mrs Neeson and her operations connect with my role, and for her responsiveness to my requirements. Ms Susan Duffy has recently taken on the role of Coordinator of Continuing Professional Development (CPD) in the Law Society in succession to Ms Eleanor McCabe. I pay tribute to the way in which both persons successively have pioneered and developed CPD in the Law Society with a close interest in how the learning from complaints handling processes can help inform and improve the provision of effective legal services. I will return to this matter later in my Report.

1.7 During the year Mrs Ann Flanagan succeeded Mr Norman Taylor, on his retirement, as the person to whom I relate in the Department of Finance and Personnel. I wish her well in her appointment, and wish to thank her and her support staff – particularly Mr Sean Gillen – for their help, support and responsiveness to my needs. Effectively, these are the people who manage to find the resources I require, who ensure my communications facilities work properly and who iron out the day-to-day challenges encountered in any such operation. I am grateful for their support.

1.8 As ever, I thank the Permanent Secretary of the Department of Finance and Personnel, Mr John Hunter for his interest in my work; I also associate with this appreciation his Deputy Secretary Mr Chris Thompson. In particular, they make strenuous efforts to underpin the independence of my function. I have met with Mr Hunter during 2006 to discuss a number of issues.

1.9 I have had no personal contact during 2006 with the Lord Chief Justice of Northern Ireland, the Rt Hon Sir Brian Kerr QC. I believe that his interest in my work and role, and his supportiveness continues and I thank him for that.

1.10 My contacts with the Ombudsman or Commissioner for Legal Services in each of the other jurisdictions on the United Kingdom and Ireland continue on a fruitful basis. I meet regularly with the holders of these posts and we remain in communication. This is particularly important at present given the changes that are in train or proposed. The Legal Services Ombudsman for England & Wales, and for Scotland and The Lay Observer meet formally each year and last did so in Manchester during 2006. In addition, I attend workshops, discussion sessions and conferences run through the good offices, or directly by the British and Irish Ombudsman Association (BIOA). This enables me to remain in contact with all the latest developments in complaints handling. In 2006, I

attended the BIOA conference in Dublin, and several BIOA meetings in London on important subjects.

1.11 Once again I have had useful contacts with Land Registers Northern Ireland, specifically Mrs Patricia Montgomery and a member of her training staff. It is now clear that a most fruitful linkage has been developed with the Law Society. I commend both the Society and LRNI for the drive, energy and commitment, which has been applied to developing this enterprise which is aimed at improving the service to the consumer in relation to Conveyancing. In the process, I fully expect that the incidence of complaints against solicitors about Conveyancing, which were reduced substantially during 2006 will reduce further over the current year 2007, and into the future.

1.12 For the present, there are now regular meetings between the Law Society and LRNI at staff level, and with the Committee in the Law Society, which deals with Non-Contentious Business. This activity has led to a well developed series of joint seminars for solicitors and their staffs and other information activity which is being pursued between the two organisations, and relating to many of the very specific blockages which have caused delay and other difficulties in the past. I again commend both organisations for this innovative and well-directed activity. I go further, and express my support and enthusiasm for their initiative. I believe that for the moment there is now no reason for me to continue my close interest in these matters, which my predecessor and I have found it necessary to report on specifically in successive Annual Reports. There will therefore not be a separate section on Conveyancing in this Report

1.13 The Regulation of Legal Services in Northern Ireland, in which Complaints Handling Processes play such a prominent part, is now about to enter a period of flux. The proposals made in the Bain Review have to be considered along with all the other matters facing Government and the Assembly in the Province. In the

meantime, I am happy to be able to report that the Law Society has been considering with me how best to prepare for the likely future structure. While there has yet to be a determination of the future structures, it is reasonable to assume that in the future there will be a larger lay involvement in complaints handling, that the independent tier will have greater powers and that penalties against those found to be transgressing will be harsher. Costs of complaints handling are also much more likely to have to be borne more directly by the legal profession. This is likely to mean new structures, new concepts and new applications in relation to complaints handling. I commend the willingness of the Law Society to discuss with me some of the likely implications of these types of changes. The sooner all these matters become very much clearer, the better.

1.14 A further point arises in that Mr J W Bailie, the Chief Executive/Secretary of the Law Society is standing down. I look forward to working with whomsoever may be appointed to succeed him. I pay tribute to Mr Bailie for his willingness to work effectively with me.

Section 2

Preamble

2.1 My principal work is and remains the oversight of the processes of Complaints Handling in the Law Society, and dealing with complainants, and their complaints against the Law Society. Nevertheless, it has been the practice for The Lay Observer's Report to be presented against a context of a theme relevant to the conditions obtaining in the year on which the Report is focused. This represents strategic work and thinking in achieving improvement and forward development. Accordingly, I have taken as my theme on this occasion — **ACTION – Moving on.**

2.2 It is gratifying to be able to note that the catalytic role of The Lay Observer continues. The catalyst in any equation actually 'does' nothing; accordingly the credit for any relevant action sparked whether in whole or in part by the role is due largely to those who have to take the necessary action in order for there to be a result. In this context, I am delighted to be able to report:

- The very valuable relationship that has developed between the Chief Executive of the Law Society and The Lay Observer. This has enabled strategic matters and potential developments to be discussed, agreed and actioned where necessary on an on-going basis. I believe that this is tying together our thinking on a number of developments thus creating a clearer understanding of what can be achieved and where we may disagree. This potentiality becomes even more important where a change process is in train, as is the case at present.
- The greater inclusion and profile for complaints handling in relation to the operation of the businesses of solicitors. The Law Society publication 'The Writ' increasingly discusses good practice, and I am pleased to be able to report greater emphasis on better complaints handling and on the role of The Lay Observer. The same can also be said of the inclusion of such topics in Continuing Professional Development (CPD). These initiatives are also being further

highlighted in new emphasis on good standards in Terms & Conditions of solicitors' business being proposed by the Law Society.

- The Law Society is in the process of updating material for clients who have the need to complain about their solicitors and about the way the Law Society deals with complaints where the solicitor has not provided the client with a satisfactory conclusion. I am pleased also that progress is being achieved in relation to better advice for those who because of present legislation cannot have their concerns dealt with via the Complaints Handling Processes of the Law Society. Additionally, I am pleased to be able to report that slightly altered practices between the Law Society and The Lay Observer have improved the efficiency of timetabling for processing complaints.

2.3 These are all forward-looking developments, which arise as a result of learning by experience, and they are aimed at providing a better service for complainants, clients and society in general. They are therefore in harmony with my theme of **ACTION - Moving on.** My recommendations this year are again focussed largely on a modest number of functional improvements, which look forward to the new order while at the same time as improving the current approach. It is vital for both the Law Society and The Lay Observer to keep feet firmly on the ground of what can be achieved under current legislation, and to provide a continuing service that is as good as we can make it under current constraints.

Section 3

What The Lay Observer does

3.1 The Lay Observer operates under the SOLICITORS (NORTHERN IRELAND) ORDER 1976 and the SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989. The profile of The Lay Observer is not high, and indeed is not intended to be so. Nevertheless, as I have emphasised previously, a distinction needs to be drawn between ensuring that the office is accessible and sufficiently known around the system so that potential users, who believe they have been wronged, can easily learn how to connect with it, and ‘touting for business’. The latter is not my aim.

3.2 Last year I highlighted the content of my leaflet, which is now made available widely and as described in my previous Report for 2005. This leaflet remains current. Visibility and accessibility of the office have been enhanced in the past year by the inception of my website and the ability to communicate with me by email. I am most grateful to Ms Karen O’Neil and her colleagues in the Press Office at the Department of Finance and Personnel for their work in setting up and designing my website. I would emphasise however, that this site is entirely freestanding and independent. As well as the usual Terms & Conditions, Home and Links territories, those who access the website can visit areas which deal with my Role, Complaints (Types of Complaint dealt with, Making a Complaint etc), Annual Reports, Useful Contacts and Feedback. The website may be accessed at www.layobserverni.com. The content of this Report for 2006 will be published on the website when it has been issued.

3.3 It is not possible for me at this stage to discuss its impact, but several complainants have mentioned the website and have also used my email address to communicate with me. However, I make it a practice always to back up any electronic communication with hard copy, which is sent to the complainant via surface mail. I am also happy to report that a number of other websites have specifically defined my site in their ‘links’,

and under their headings of ‘useful contacts’. My email address is a.maclaughlin@btinternet.com.

3.4 Last year in my Concluding Comments, I made reference to the need for me to define the principles and standards to which I operate. These clear principles need to be made transparent, be accessible and be easily understood by complainants, and it is right and proper that they should appear in a written code. This is hardly earth-shattering, being a common requirement in many similar institutions, but nevertheless it has been a significant omission in the published material of The Lay Observer, and it is one which I now make good. The content of this code is contained at Appendix 1 to this Report. This will also be added to my website once this Report has been issued.

3.5 In this context, the British and Irish Ombudsman Association is in the process of issuing guidance on Complaints Handling. This material will be incorporated into the written code as appropriate when it is made public.

Section 4

The Work of The Lay Observer in 2006

4.1 The work of The Lay Observer is fundamentally to oversee the complaints handling functions of the Law Society of Northern Ireland. The Law and protocols which have been developed over the years with the Law Society, enable The Lay Observer to:

- **Investigate** complaints brought against the complaints handling processes of the Law Society by the clients of solicitors
- **Audit** a significant proportion of those cases which are concluded by the Law Society but which are not subsequently referred to The Lay Observer

In addition, there is a range of other matters, which requires work and attention in running an effective operation, in terms of contacts and communications, and in looking to the future. The aim of this section of my Report is to amplify what is entailed.

4.2 To put these activities into perspective, I investigated 46 complaints from 44 complainants during 2006; this compares with 38 complaints from 38 complainants in 2005. The disparity between the 46 complaints and the 44 complainants arises because two complainants actually brought three different complaints to the Law Society. In 2005, I audited 80 complainant files, while in 2006 I audited 90 complainant files.

4.3 Last year I addressed an anomaly that had developed over previous years where the number of actual complainants to the Law Society had been apparently overstated. This arose because of the way complaints were categorised, where the 'complaint' of one complainant could contain more than one categorisation. So, for example, Mr A might bring a complaint which had an element of 'undue delay or inaction', and another element of 'dissatisfaction with advice given'; this is counted as two complaints, and yet only one complainant is involved in bringing the complaint on a single complaint form. Last year's

Report noted that in 2005 the Law Society had received 301 categories of complaint from 165 complainants. In 2006, the Law Society received 282 categories of complaint from 202 complainants. Thus, the number of complainants rose, while the number of complaint classifications overall fell in 2006 compared with 2005.

4.4 Last year I reported a number of 'complaints' which were brought to me, but which could not, under the law, be investigated under the complaints handling procedures of the Law Society. For some reason, which I cannot explain, the number of these being referred by dissatisfied clients has dropped away. I suspect that they are being effectively dealt with by the Law Society and in such a way that those bringing the 'complaints' are now clear how best to deal with them by alternative means. I commend the Society for this, because whether it is legitimate or not under the legislation and protocols for me to deal with such a 'complaint', there is no question that a complainant will still bring the matter to me when he/she is dissatisfied with the way the Law Society has dealt with the matter.

4.5 I also referred to the matter of complaints becoming more complex for whatever reason. The Law Society, in responding to my fourth Recommendation in my Report for 2005 (see Appendix 3 of this Report), made much of whether there is a difference between complexity of complaint and volume of material and accordingly had not attempted to determine objectively which cases were or were not more complex. To me it does not much matter, as to deal with a complaint properly requires the necessary attention and time to resolve it in a fair manner.

4.6 However, there is a marginal change from 2005 in the complaints that I have had to deal with in 2006:

- There were 46 complaints from 44 complainants investigated by me in 2006; in 2005 there were 38.

- There were 7 complex cases requiring more than one and up to two days in each case to resolve in 2006; in 2005, there were 11.
- There were 7 very complex cases requiring three days or more in each case to resolve in 2006; in 2005, there were 4.
- There were 30 other cases each of which took a day or less to complete; in 2005, there were 23.

This suggests to me an increase in ‘complexity’ – whether defined by volume or by intrinsic complexity – as although the number of complex or very complex cases added together actually fell from 15 in 2005 to 14 in 2006, there were 7 very complex cases in 2006, compared with 4 in 2005. One very complex case took me 10 days to conclude.

4.7 In 2004, a process of reviewing the Regulation of Legal Services in Northern Ireland was launched by the Government. In my two previous Reports I have commented extensively on this matter and in 2004, I made comment about the Clementi Review for England and Wales, and related this Review to a similar process for Northern Ireland. My predecessor, Professor Vincent Mageean OBE was also involved, as he prepared a detailed Review of Legal Services Provision in 2004. In my Report for 2005, I detailed the two submissions I made to the Review of Legal Services in Northern Ireland, which was progressed by the Review Group under the chairmanship of Professor Sir George Bain. The Bain Review Group reported in November 2006.

4.8 Subsequently, when the Report of the Bain Review Group had been published in 2006, I was invited to comment further in the light of what the Report actually contained. My further comments are to be found in Appendix 2 of this Report. It was gratifying to find that my analysis and opinions in relation to complaints handling, had been carefully noted by the Review Group, and that the contents of my previous

submissions were closely in harmony with the content of the Report when published. In particular, I believe that the proposals in the Bain Review Report are proportionate and appropriate to the needs of regulating Legal Services in Northern Ireland. The enhanced role foreseen for lay people is entirely appropriate, and the three-tier process through complaints handling is clear and functional. I have also welcomed the enhanced role for the proposed legal services oversight commissioner and the mechanisms for financing the functions. There is a clear incentive here for the profession to seek to minimise the causes for complaint.

4.9 In my remarks at this stage, I commented on the need to look beyond structures and procedures, and to pay attention to tone and attitudes in effective regulation. I pointed particularly towards an empathetic and complainant friendly approach by the proposed legal services oversight commissioner, while at the same time as being strictly neutral in approaching investigations, making recommendations, and concluding complaints. There is a transitional set of perceptions already existing to deal with, not least as the present arrangements are operated under legislation which effectively focuses entirely on whether or not the solicitor has done wrong in relation to a complaint. If the solicitor has been found to have done wrong, he/she can be admonished by the Law Society. I have pointed out how very mild this appears to complainants to be, as in only very few cases would anyone other than the solicitor know of the admonishment. In very severe cases, the solicitors could find themselves before a Solicitors Disciplinary Tribunal. This is a very public and salutary experience for the solicitor involved; it can lead to very heavy fines and in extreme cases curtailment or removal of a licence to practice. In certain cases, also, the solicitor may find that fees can be reviewed and reduced. However, none of this has any compensatory effect on a complainant. Put another way, the complainant is actually doing the Law Society a favour in his/her vigilance, and thereby helping the Law

Society achieve better its statutory role in regulating the profession. The language used by the Law Society in relating to complainants should reflect this.

4.10 However, complainants often feel let down; not only are they not entitled under the legislation to have any compensation, any punishment of the solicitor in consequent of his/her behaviour is often unknown to them or not understood by the complainant. Many complainants have said in the past that they have been made to feel the perpetrator of a misdemeanour as a result of the language used by the Law Society; I am happy to report that this phenomenon is happening, in my understanding, less often than it used to. Having said that, it may well be, that the approach that I have taken in communicating empathetically towards complainants may have helped lessen their negative feelings.

4.11 I therefore felt it appropriate to emphasise the value of an early initiative in the professional bodies affected by the Bain Review Report and likely subsequent Government decisions. I suggested that Government might wish to satisfy itself that, in the interim, these bodies were taking steps to prepare for the necessary shifts in structures and attitudes that might be required. This is another example of what I have called in my theme for this Report – **ACTION - Moving on**. My meetings with the Chief Executive of the Law Society, and more recently with the new President, Mr James Cooper, have led me to believe that effective, and thorough attention is being given to these matters in the Law Society.

4.12 One most important, and very exciting, development has, of course been the move towards a functioning devolved Government for Northern Ireland. The prospects for decision making in these matters at a local level may or may not have a delaying effect in the implementation of any change in the Regulation of legal services. We must simply await

further development in these matters with positive anticipation.

4.13 My first Recommendation in my Report for 2005, dealt with persuading the Law Society to take every opportunity afforded by the complaints handling processes and by The Lay Observer's oversight to feed back to the solicitors profession where it sees improvements that can be made, and in particular where prevention and support measures can be taken. In particular I recommended greater use of the exposure potential of The Writ, the journal published by the Law Society for communicating with its members. I am delighted to be able to report that the Law Society have taken up this idea enthusiastically and have subsequently placed a number of articles and comments in The Writ on complaints handling and in relation to continuous professional development, using this medium.

4.14 As in previous years, it is my intention to make this Report available to our Assembly Members, our MPs and relevant Peers some of whom reside in Northern Ireland. In addition copies will be made available to consumers groups and others sharing a similar interest. A copy will be received in every solicitor practice in the Province. I am grateful to the Department of Finance & Personnel for enabling this to take place. Under the legislation, I report formally to the Government, The Lord Chief Justice of Northern Ireland and the Council of the Law Society of Northern Ireland. The Permanent Secretary of the Department of Finance & Personnel makes arrangements to place my Report formally before the Assembly for Northern Ireland when it is in operation.

4.15 As in any organisation, there are many other tasks that require to be performed in operating the functions of The Lay Observer. Mine is a part-time role, and as reported last year, I no longer have any staff assistance. Nevertheless it is essential to operate mechanisms for communication and contact with complainants and

potential complainants. I record here my gratitude to the staff in Londonderry House for their help in realising an effective mail receipt service on behalf of The Lay Observer. It is important also to recognise that much of my work is inevitably executed physically outside the office at Londonderry House; in particular, I am regularly at the Law Society, where under the protocols I may not remove files for any purpose whatsoever. This means that all my investigation and audit work has to be undertaken in the premises of the Law Society. I am also involved in reading and research work, which is essential if one is to keep abreast of latest developments, and also best practice. This includes involvement with the British and Irish Ombudsman Association, which I find of very great value.

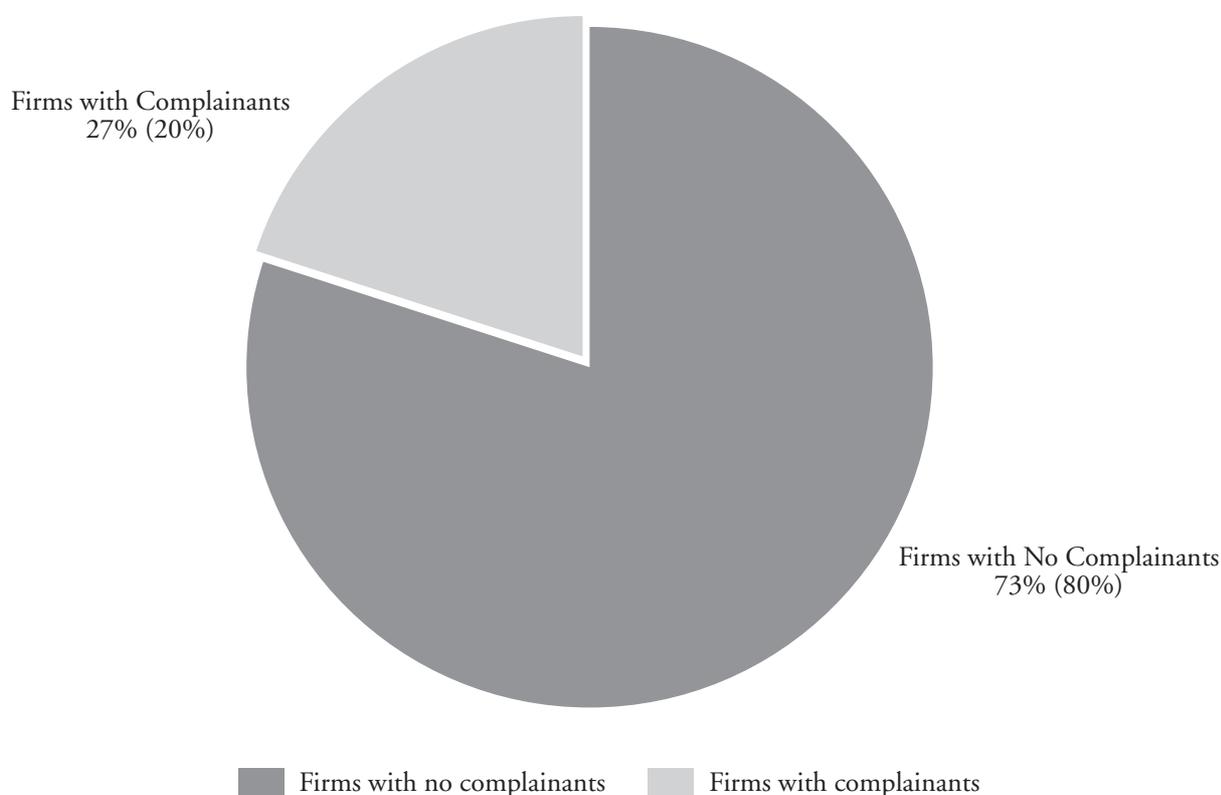
Section 5

Final Outcomes of Complaints made to the Law Society

Note: The complaints referred to in Section 5 are those which achieved a final outcome in the year 2006.

Chart A

% Number of Firms with Complainants and % Number of Firms with No Complainants in 2006



The total number of firms “on the register” at the Law Society is 514. Of these 375 (73%) have attracted no complainants. 139 solicitors firms have attracted complainants; this is 27%. These proportions have changed from 2005 levels of 20% of solicitors firms attracting complainants and 80% attracting no complainants.

Chart B

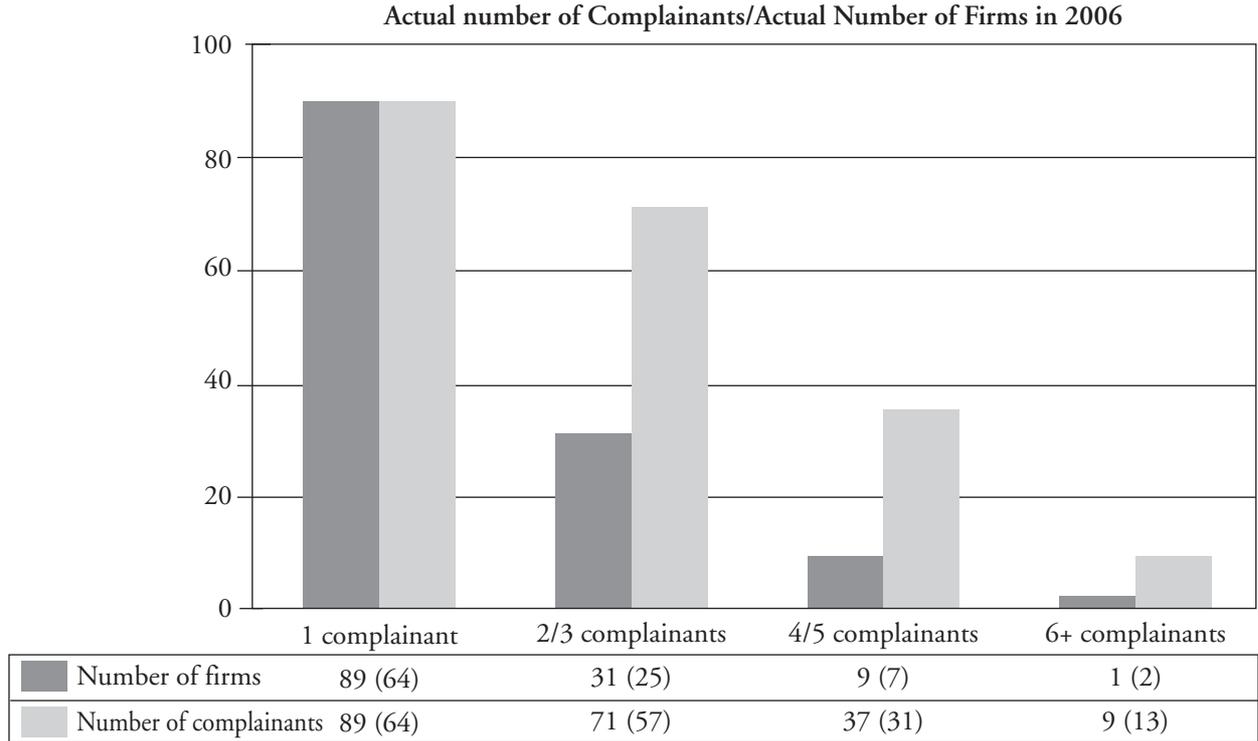
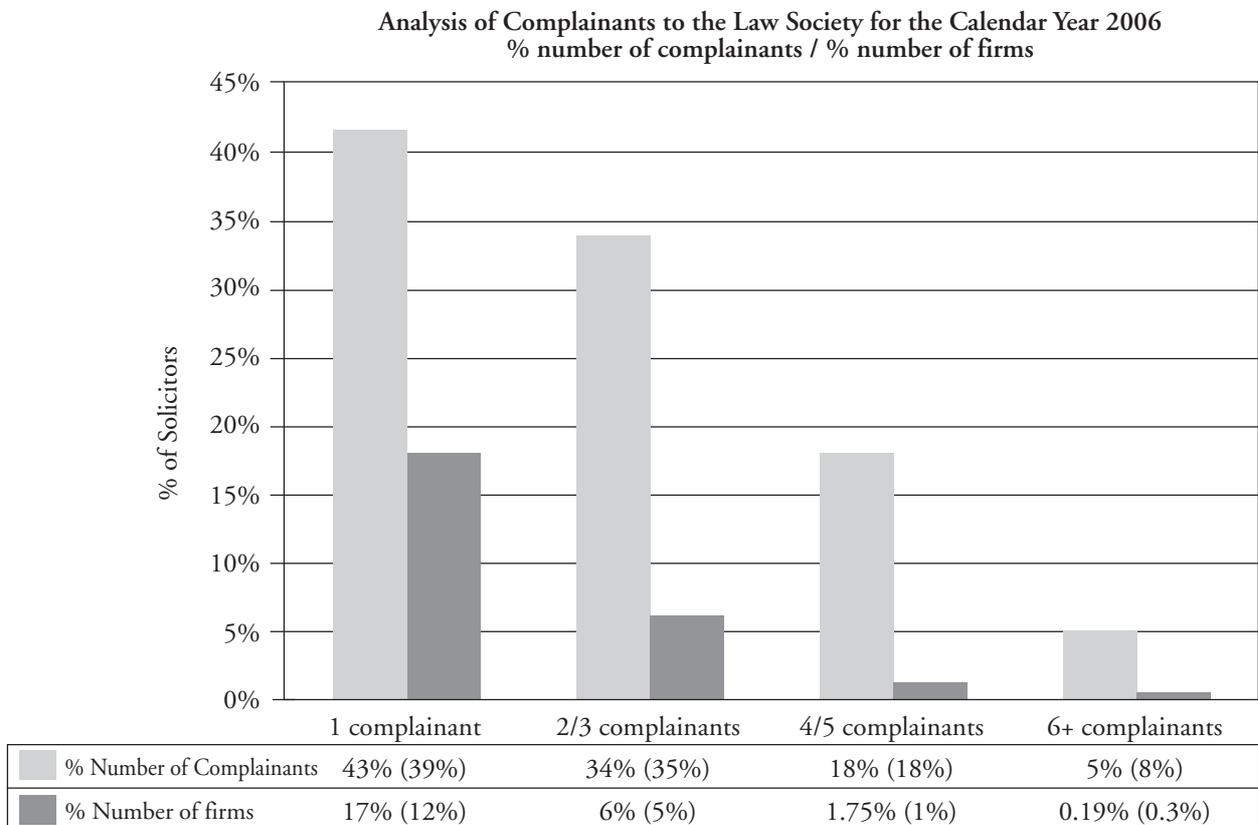


Chart B presents the actual numbers (and not the comparative percentages which are shown in Chart C). The equivalent figures for 2005 are shown in brackets.

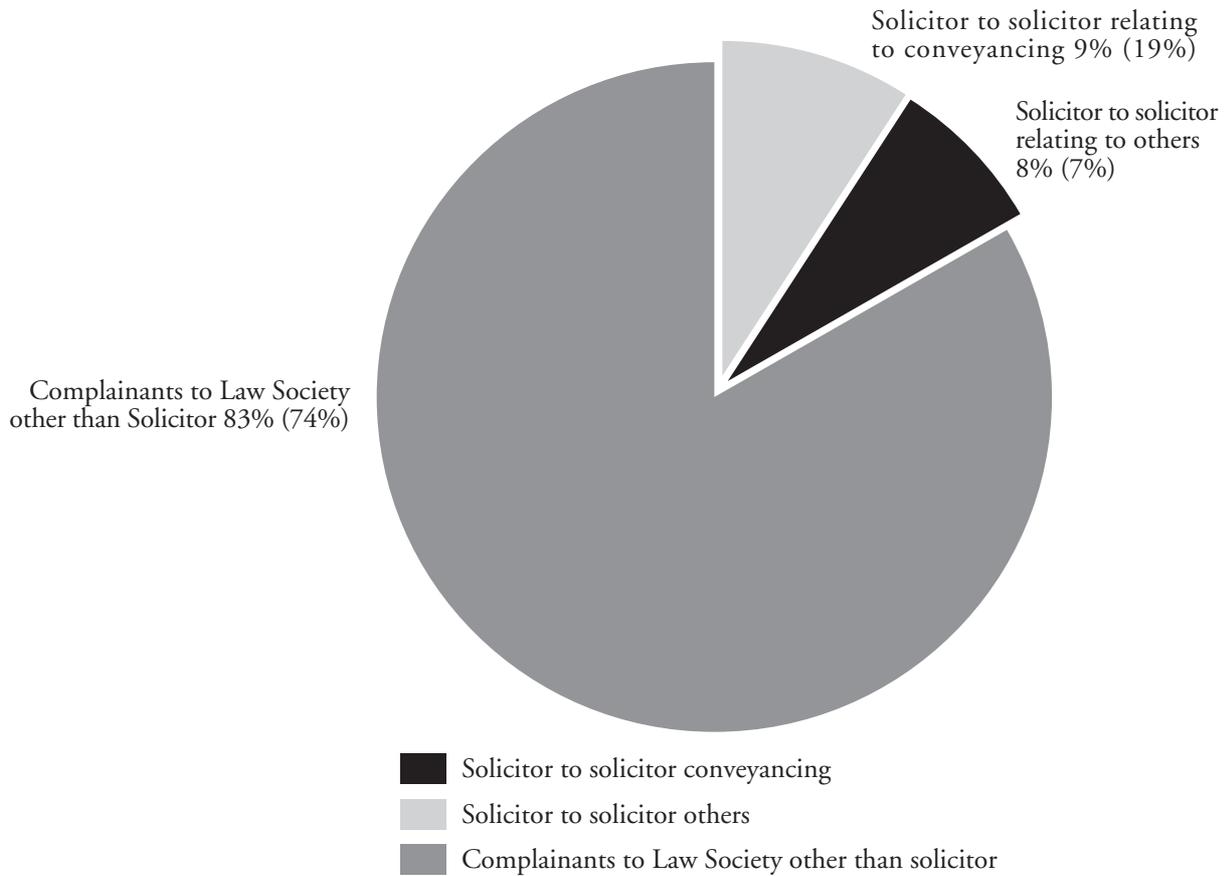
Chart C



Figures for 2005 are shown in brackets.

Chart D

Complainants Solicitor to Solicitor as % of total complainants to the Law Society in 2006

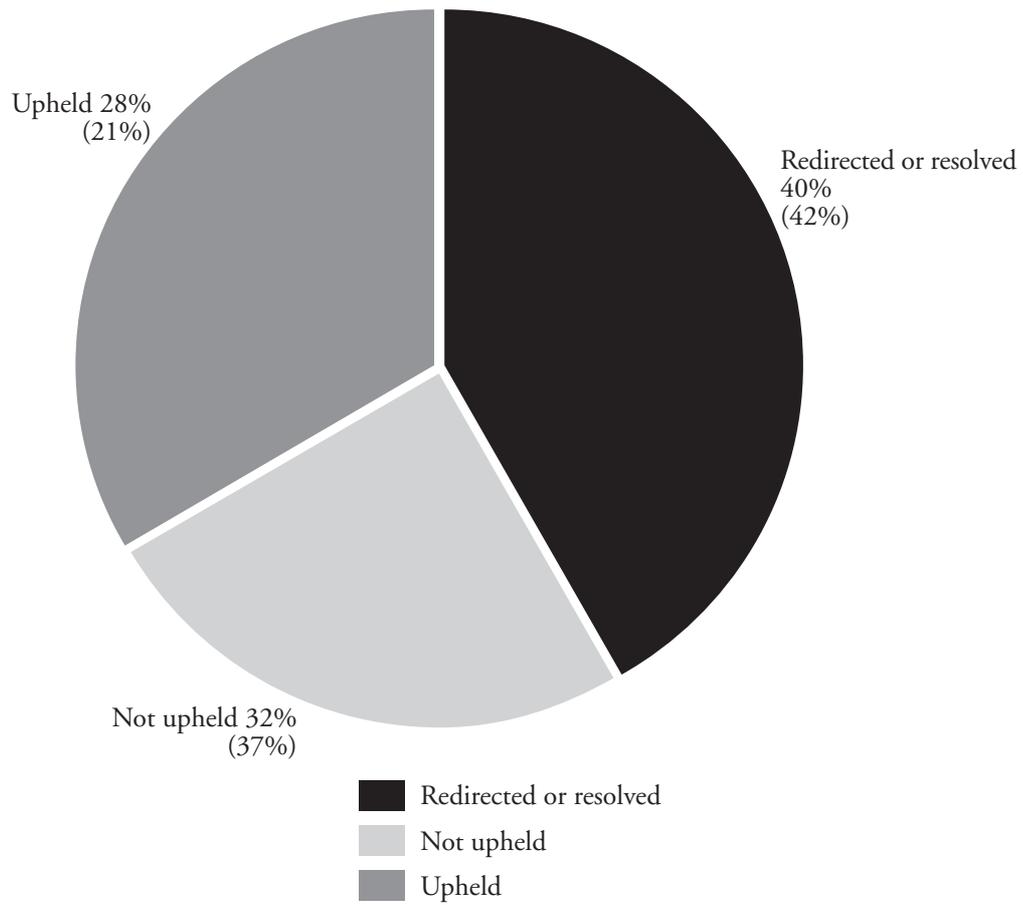


Solicitor to solicitor complainants amounted to 34 (42) out of a total number of complainants of 202 (165). 18 (31) out of the 34 (42) or 53% (74%) were conveyancing complaints.

Figures for 2005 are shown in brackets.

Chart E

Summary of final outcome on complaints registered and completed in 2006



Figures relating to 2005 are shown in brackets.

Comment

5.1 The number of solicitor firms 'on the register' fell slightly to 514 at the end of 2006 compared with 521 at the same date in 2005. Chart A indicates that a higher proportion of the total had complaints made against them. The figure rose from 20% in 2005 to 27% in 2006. The proportion of firms without complainants in 2006 therefore had dropped to 73% compared with 80% in 2005.

5.2 Chart B shows the relationship between the number of complainants forwarding complaints and the number of firms involved. In the year 2006, the number of multiple complainants to individual firms (that is, two or more complainants to one individual firm of solicitors in the year) rose from 34 in 2005 to 41 in 2006. In 2004 the equivalent number was 50.

5.3 Closer inspection indicates that in 2006 there was only one firm with 6 or more complainants, compared with 2 in 2005, and 6 in 2004. This continues a trend that I believe we would all wish to see. The single firm in 2006 with more than six complainants had 9 complainants; this compares with a firm in 2005 which had 7 complainants and one in 2004 which had 12 complainants. The figures for firms with more than 4 complainants in 2006 was 10 compared with 9 in 2005. The general trend for 2006 thus shows a very similar if slightly increased picture over 2005. Nevertheless the numbers of the solicitors' firms having multiple complainants in the year are dropping. It is most important to emphasise that individual solicitors tend to specialise. Certain types of specialisation may well intrinsically attract a greater number of complainants because of the characteristics of the clients concerned. I therefore caution against any suggestion that a solicitor firm most likely to be involved with multiple complaints is a professionally unsound organisation.

5.4 Chart C concerns itself with proportions and rather confirms the points made in the previous paragraph.

5.5 Chart D deals with complaints solicitor to solicitor. This type of complaint will of course arise from time to time for very legitimate reasons. Nevertheless, the complaints handling system should not be used as a mechanism for simply putting management pressure on one solicitor by another and it is generally agreed that this is scarcely the ideal place for tackling inefficiencies between solicitors. As mentioned in my Annual Report last year for 2005, the Law Society is concerned about any trend towards a worsening position in this category of complaint. In particular the Society would not wish to see an increase in those complaints relating to conveyancing.

5.6 The figures for conveyancing complaints in 2006 show a better picture over that for 2005, as the proportion of solicitor to solicitor complaint under the heading of conveyancing has fallen from 26% of the total in 2005 to 17% in 2006. The total number of such complaints is also down in a higher total of complainants and the proportion relating to conveyancing has dropped from 74% in 2005 to 53% in 2006. This, if sustained, is clearly a very encouraging trend.

5.7 Chart E shows the proportion of final outcomes for complainants who registered and had their complaints concluded in 2006. The proportion upheld has risen from 21% in 2005 to 28% in 2006. This is actually very encouraging in the sense that it indicates that the complaints handling process is very far from a waste of time, as some might believe. It shows that a significant proportion of the complaints to the Law Society have very real substance. No-one can therefore contend it to be a worthless exercise, or a waste of resources. It also indicates that the proposals for the future provide a better way for justice for the complainant to be further explored which is not available under the present arrangements. Anyone who feels wronged in the delivery of legal services is entitled to have their complaint investigated thoroughly, and where the complaint is substantiated the wrong must be put right.

This is often not possible under the present arrangements. In 2006 the proportion not upheld was 32% as against 37% in 2005, while 40% of complainants had their complaints redirected or resolved in 2006 as against 42% in 2005.

Time taken to Conclude Complainant Referrals

5.8 The figures for the time taken to conduct complaints referrals to the Law Society are very significant, and indicate an improving situation. During 2006, the figures were as follows:

In Year 2006	Incidence	Cumulative
within 3 mos	35%	35%
over 3 & less than 6 mos	44%	79%
over 6 & less than 9 mos	8%	87%
over 9 & less than 12 mos	4%	91%
in 12 mos	3%	94%
to Disciplinary Tribunal (three cases)	1.5%	
*ongoing	4.5%	
Total	100%	

*Note: This figure is accurate overall: it relates however to cases extending into 2007 but not concluded before 31st March 2007.

5.9 These figures show a considerable further and continuing improvement over the previous three years in the timetables for concluding complaints; the Law Society is to be commended for these efforts. It will be noted that in 2006, 87% of complaints had been concluded within nine months, and 79% in six months. By contrast, the figures for 2005 show that 67% had been concluded within nine months and that the figure for up to six months was 62%. In 2004, 48% of complaints had been concluded within 6 months; the figures for 2005 and 2006 therefore indicate major improvement in the trends.

5.10 Furthermore, the proportion of complaints, which took more than twelve months to conclude is down to

0 in 2006 compared with 6% in 2005. Reference to the comments made by the Law Society about the specific processes that are required to conclude a complaint which are contained in Appendix 3 (at paragraphs 16/17) will inform those who wish to understand what is entailed in concluding the more complex cases. There is a note of caution to be emphasised at this point. It would be quite wrong to become mesmerised by the 'magic' of improving figures, as would appear to be the fashionable at present. There is a very real distinction to be made between real improvements in efficiency and effectiveness, and the need to take the time necessary to achieve a fair and thorough conclusion to every complaint.

Section 6 Complaints Statistical Tables

Table 1 COMPLAINTS EXAMINED BY THE LAW SOCIETY FOR THE 12 MONTHS ENDING SEPTEMBER 2006

Nature of Complaints	Circumstances of Complaints											Total
	Criminal Proceedings	Matrimonial Proceedings	Admin. of Estates	Conveyancing	Property Disputes	Contract Disputes	Personal Injury	Criminal Injury	Employment	Professional Negligence	Other	
1. Undue delay	1	18	11	62	0	10	27	6	0	3	5	143
2. Withholding or loss of documents	2	5	1	11	0	0	12	0	0	0	2	33
3. Presentation of bills and accounts, lack of information, fees charged	1	3	2	0	0	1	4	0	0	0	2	13
4. Disclosing confidential information	0	0	0	1	0	0	0	0	0	0	1	2
5. Dissatisfaction with advice given	0	1	1	3	0	0	6	1	0	0	0	12
6. Acting contrary to clients instructions	0	2	0	4	0	2	0	0	0	1	1	10
7. Ethics or behaviour	3	13	3	27	1	3	7	3	0	0	0	60
8. Solicitors action caused loss	0	1	0	0	0	0	0	0	0	0	0	1
9. Legal aid	0	4	0	1	0	1	1	0	0	0	1	8
10. Other factors	0	0	0	0	0	0	0	0	0	0	0	0
11. All factors (total 1-10)	7	47	18	109	1	17	57	8	0	4	12	282

Table 2 FIVE YEAR SUMMARY OF 'GUIDE TO CIRCUMSTANCES' 2001/2002 - 2005/2006 - ACTUAL NUMBER OF COMPLAINTS

YEARS	Circumstances of Complaints											Total
	Criminal Proceedings	Matrimonial Proceedings	Admin. of Estates	Conveyancing	Property Disputes	Contract Disputes	Personal Injury	Criminal Injury	Employment	Professional Negligence	Other	
2001/02 - Year 1	12	28	19	115	1	19	51	13	1	0	27	286
2002/03 - Year 2	11	30	20	107	5	13	48	6	1	0	33	274
2003/04 - Year 3	4	52	32	148	7	7	49	13	4	0	23	339
2004/05 - Year 4	5	45	18	140	1	10	59	8	4	0	11	301
2005/06 - Year 5	7	47	18	109	1	17	57	10	0	4	12	282

Table 3 MEAN STATISTICS i.e. MOVING ANNUAL AVERAGE OF ACTUAL NUMBER OF COMPLAINTS

YEARS	Circumstances of Complaints											Total
	Criminal Proceedings	Matrimonial Proceedings	Admin. of Estates	Conveyancing	Property Disputes	Contract Disputes	Personal Injury	Criminal Injury	Employment	Professional Negligence	Other	
2001/02 - Year 1	9	39	19	108	5	24	62	10	3	1	43	322
2002/03 - Year 2	9	35	17	110	5	20	58	8	2	1	43	307
2003/04 - Year 3	8	38	21	124	5	17	54	10	2	0	30	310
2004/05 - Year 4	8	39	21	131	4	15	53	10	3	1	25	308
2005/06 - Year 5	8	40	21	123	3	11	53	10	2	1	21	296

Table 4 FURTHER ANALYSIS OF 'GUIDE TO CIRCUMSTANCES' SUMMARY 2001/2002 TO 2005/06

YEARS	Circumstances of Complaints											Total
	Criminal Proceedings	Matrimonial Proceedings	Admin.of Estates	Conveyancing	Property Disputes	Contract Disputes	Personal Injury	Criminal Injury	Employment	Professional Negligence	Other	
Change in actual numbers, Year 1 to 5 2001/2002 to 2005/06	-5	19	-1	-4	0	-2	6	-3	-1	4	-15	-4
% Change, Year 1 to 5	-42%	67%	-50%	-5%	0%	-10%	12%	-23%	-100%	400%	-56%	-1%
% of Total complaints in Year 1 2001/2002	4%	10%	7%	40%	0%	7%	18%	4%	0%	0%	10%	100%
% of Total complaints in Year 5 2005/2006	2.5%	17%	7%	39%	0%	6%	20%	3.5%	0%	1%	4%	100%

Table 5 FIVE YEAR SUMMARY OF 'NATURE OF COMPLAINTS' (1-10) 2001/2002 TO 2005/2006 - ACTUAL NUMBER

YEARS	Circumstances of Complaints										Total
	Undue Delay	W/H or loss of Documents	Bills and Accounts	Disclosing Information	Dissatisfac. with advice	Acting Contrary	Ethics or Behaviour	Solicitor's Action	Legal Aid	Other Factors	
2001/02 - Year 1	153	29	10	1	14	4	68	1	6	0	286
2002/03 - Year 2	129	26	6	1	14	7	81	0	10	0	274
2003/04 - Year 3	150	29	13	1	10	36	91	0	9	0	339
2004/05 - Year 4	128	28	21	2	8	9	93	1	11	0	301
2005/06 - Year 5	143	33	13	2	12	10	60	1	8	0	282

Table 6 MEAN STATISTICS - i.e. MOVING ANNUAL AVERAGE OF ACTUAL NUMBER OF COMPLAINTS

YEARS	Circumstances of Complaints										Total
	Undue Delay	W/H or loss of Documents	Bills and Accounts	Disclosing Information	Dissatisfac. with advice	Acting Contrary	Ethics or Behaviour	Solicitor's Action	Legal Aid	Other Factors	
2001/02 - Year 1	136	33	18	1	22	12	84	1	15	0	322
2002/03 - Year 2	136	31	16	2	18	10	80	1	15	0	309
2003/04 - Year 3	141	33	13	2	18	15	79	1	10	0	311
2004/05 - Year 4	144	30	12	2	15	14	82	1	8	0	308
2005/06 - Year 5	141	29	13	1	12	13	79	1	9	0	296

Table 7 FURTHER ANALYSIS OF 'NATURE OF COMPLAINTS' (1-10) SUMMARY 2001/2002 TO 2005/2006

YEARS	Circumstances of Complaints										Total
	Undue Delay	W/H or loss of Documents	Bills and Accounts	Disclosing Information	Dissatisfac. with advice	Acting Contrary	Ethics or Behaviour	Solicitor's Action	Legal Aid	Other Factors	
Change in actual numbers, Year 1 to 5 2001/2002 to 2005/2006	-10	4	3	1	-2	6	-8	0	3	0	-4
% Change, Year 1 to 5	-6.5%	18%	3%	100%	-14%	150%	-12%	0%	50%	0%	-1%
% of Total complaints in Year 1 2001/2002	54%	10%	4%	0%	5%	1%	24%	0%	2%	0%	100%
% of Total complaints in Year 5 2005/2006	51%	12%	5%	1%	4%	3%	21%	0%	3%	0%	100%

Section 7

Comments on Complaints Statistics

7.1 This statistical section is an important part of successive Annual Reports, not least as it provides those who are interested in the figures with a statistical run, which has been in place over a number of years. Also it gives shape to the types of complaints with which the Law Society has had to deal. The comments in this section are intended to facilitate those who wish to make comparisons and achieve greater understanding of relativities in the figures.

7.2 The source of material in this section derives from the types of complaints made to the Law Society in the twelve months ending 30th September 2006, and in the corresponding period in previous years. Raw figures are incorporated as well as averages and five-year summaries. These are designed to show fluctuations as well as to indicate trends over a longer period than twelve months – the latter provide an element of smoothing in the figures, which ‘irons out’ the natural fluctuations from year to year. The tables from which the figures are taken and against which the commentary is made are to be found in Section 6 of this Report. These are categorised by Circumstances of Complaint and by Nature of Complaint.

GUIDE TO CIRCUMSTANCES

General Comment

7.3 Overall, the total number of types of complaints dealt with by the Law Society in the twelve month period ending 30th September 2006 fell from 301 in 2005 to 282. In 2004, the figure was 339.

7.4 Across all *Circumstances*, there is a general stability in the figures shown, except for a rise from 10 complaints relating to *Contract Disputes* in 2005 to 17 in 2006, and a very significant fall in complaints relating to *Conveyancing* from 140 in 2005 to 109 in 2006. In 2004, the figure was 148. As might be expected the trends ‘smoothed’ the figures and, accordingly, the moving averages in the tables indicate

rather more modest shifts under the heading of *Conveyancing*.

7.5 In this part of Section 7, the comments made on ‘Guide to Circumstances’ are presented in order of classification and not in any other order of significance. This arises for historic reasons, so that the order may always be, in the statistical sections, the same year by year.

Criminal Proceedings

7.6 The actual number of complaints under this heading has risen again in 2006 to 7 from 5 in 2005, and from 4 in 2004. This is a small proportion of the total of 282 at 2.5%, up from 2% in 2005.

Matrimonial Proceedings

7.7 These cases represent 17% of the total in 2006, and there were 47 cases compared with 45 in 2005 and 52 in 2004. These cases are distressing particularly where children are involved. Much work is being undertaken in the Family Courts to attempt to make these proceedings less adversarial, although convincing those who are centrally involved that mediation is a better route is apparently not always easy.

Administration of Estates

7.8 The figures for this particular circumstance remain the same at 18 cases as in 2005.

Conveyancing

7.9 The figures for 2006 show a sharp fall from 140 in 2005 to 109 in 2006. However, there was a sharp rise from the figures in 2004 to 148 from 107 in 2003. So there is evidence of a significant year on year fluctuation. It is encouraging however that solicitor to solicitor cases are significantly down, and that the proportion of these cases in the total complaints figures is 39% in 2006 compared with 43% in 2005. *Conveyancing* is the largest single heading in the Guide

to Circumstances, and has been a matter of continuing concern over many years.

Property Disputes

7.10 Complaints in this category remain at 1 for 2006, and this is not a significant figure in the total.

Contract Disputes

7.11 The number of these types of cases rose in 2006 to 17 having been 10 in 2005, which raises the proportion in the total to 6% having been 5% in 2005.

Personal Injury

7.12 These cases provide the second largest single category in the Guide to Circumstance. The figure for 2006 was 57, down from 59 in 2005.

Criminal Injury

7.13 This heading remains the same at 8 cases for each year 2006 & 2005.

Employment

7.14 *Employment* cases have fallen from 4 in 2005 to 0 in 2006. Overall this heading is not significant in the total.

Professional Negligence

7.15 There were 4 such cases in 2006 compared with none in both 2005 and 2004.

Other

7.16 There were 12 cases under the *Other* heading in 2006 as against 11 in 2005 and 23 in 2004.

NATURE OF COMPLAINTS

7.17 In this part of Section 7, comments on the *Nature of Complaints* are presented in sequence of classification and not in any other order of significance. This is

intended to facilitate those who wish to analyse the figures and to make comparisons year by year.

7.18 *Undue Delay* represents the largest single *Nature of Complaint* and as such is a matter of concern to everyone, not least the public where a significant cost to society is built up. In 2006 there were 143 cases compared with 128 in 2005, representing a significant rise to 51% of the total compared with 41% in 2005.

Principal *Circumstances* relating to *Undue Delay* were:

Heading	2006	2005	2004
• Conveyancing	62	68	72
• Personal Injuries	27	20	21
• Matrimonial Proceedings	18	21	23
• Administration of Estates	11	9	13
• Contract Disputes	10	2	3
• Other	5	3	8

Withholding or Loss of Documents

7.19 The number under this heading in 2006 was 33, up from 28 in 2005.

Bills and Accounts

7.20 The number here fell from 21 in 2005 to 13 in 2006.

Disclosing Confidential Information

7.21 This heading shows a rise from 1 case in 2005 to 2 cases in 2006. Being at the heart of the solicitors profession, the action, even if only alleged, of *Disclosing Confidential Information* provides 2 cases too many.

Dissatisfaction with Advice given

7.22 There were 12 cases under this heading in 2006, compared with 8 in 2005.

Acting Contrary to Client Instructions

7.23 There was one more case in this heading in 2006 at 10 compared with 9 in 2005.

Ethics or Behaviour

7.24 This is the second largest and therefore most significant heading under *Nature of Complaints*. As such, this heading needs careful attention. The figure for 2006 is 60, well down on the figure of 93 in 2005, 91 in 2004 and 81 in 2003.

Solicitors Action Caused Loss

7.25 There was 1 case under this heading in both 2005 and 2006.

Legal Aid

7.26 The number of complaints under this heading is down in 2006 to 8 from 11 in 2005. In one sense it may seem surprising that there are not more complaints under this heading, as the conditions of legal aid can be difficult for the lay person to comprehend and handle in certain circumstances.

7.28 The picture resulting from trends, which can be seen in Table 6 and in relation to proportions and relative change as against the various headings relating to *Nature of Complaints*, indicates a modest but none the less welcome downward trend. Given the greater public awareness of and continuing development of complaints handling systems in every sector and profession, it might not be surprising if the trends had in fact been significantly upwards.

OVERALL PICTURE Nature of Complaints

7.27 The actual number of complaints by *Nature of Complaint* is noted below:

Nature of Complaint	2005	2006	Variance
Undue Delay	128	143	+15
Withholding/Loss Docs	28	33	+ 5
Presentation Bill/Accts	21	13	- 8
Disclosing Information	2	2	0
Dissatisfaction with advice	8	12	+4
Acting Contrary	9	10	+1
Ethics or Behaviour	93	60	-33
Solicitor Action caused loss	1	1	0
Legal Aid	11	8	-3
Others	0	0	0
Totals	301	282	-19

Section 8

Continuing Professional Development

8.1 The Continuing Professional Development (CPD) scheme, which was introduced by the Law Society has been in operation since 2005. This initiative has been given high priority by the Law Society. All solicitors concerned are required to complete 15 hours of CPD each practice year and participation is mandatory. The solicitor must complete and register a Record Card of the eligible activity of development with which he/she has been involved, and this is registered with the Law Society at the end of each CPD year.

8.2 This is a flexible scheme, which enables members of the profession to select training and development according to their needs, and in addition there are a number of permitted means by which the necessary learning can take place (eg individual study, group learning, preparing for and tutoring other members of the profession, conferences and seminars etc). There is provision also for part-time members of the profession. The Society takes very seriously its role in ensuring compliance with the overall scheme and also, where the records of a solicitor might be specifically examined, the Society validates what was done.

8.3 The Society provides some training programmes for its members, but deliberately does not seek to be the sole provider or sponsor. It also monitors and provides recognition to training programmes and coverage provided by others to ensure relevance, appropriate impact and agreed standards.

8.4 The key to ensuring such programmes have real benefits to the profession is the linkage to real need as understood and felt by the profession. In previous years I have commented on the need for the Complaints Handling Process to be connected to improvement, and learning. This should be a principal role for a complaints system alongside the other principal roles of helping the complainant and ensuring the perpetrator is admonished if found to be in the wrong. I am aware that the Law Society agrees with me that CPD should link closely with the complaints handling system, and thereby initiate effective learning activity to help deal with the causes of various types of complaints.

8.5 Such activity helps to prioritise need. Accordingly, CPD is focussing, along with the core needs for practising solicitors, on such matters as setting up an appropriate complaints system in a practice, dealing with and managing client perceptions, and complaints relating to conveyancing. It is the linkage with the needs perceived and felt by solicitors that will ensure the continuing potency of the Law Society's CPD programme.

8.6 The CPD programme also offers a geographically wide spread for its work, and seeks to operate with high quality and reputable providers. Linkages with local solicitors associations provides an additional dimension to fulfilling specific local needs and encourages higher participation, as well as a boost for the roles of the local solicitors associations.

8.7 It is very encouraging to note a growing interest and participation in the scheme. It is also noteworthy that indirectly – for example in relation to conveyancing – the Scheme has also begun to be helpful to solicitors' support staff as well. In addition, the Law Society is also encouraging solicitors' businesses to become accredited in other programmes such as LEXCEL, ISO 9000, and Investors in People (IiP). This is further indication that the profession is anxious to seek enhanced competence in its ranks.

8.8 I fully recognise that it is no part of my role to oversee processes other than those to do with complaints in the Law Society. Nevertheless, there is a clear interconnection between the incidence of complaints and attempts to remove the characteristics, which can so often give rise to complaints. The Law Society has found it useful to make this interconnection using CPD, and it is most certainly my view that as it develops this in an effective way, there will be in future, a benefit for complainants, solicitors and society in general. I commend the work of the Society in this context.

Section 9

Recommendations

9.1 It is readily agreed that complaints bring a bad name to any profession if they are badly handled, as I said in my Report last year. I have chosen to make my Recommendations against the backdrop of a particular theme. My first Report in 2004 focussed on **ACTION – Prevention and Cure**; in 2005 I looked towards **ACTION – Squaring the Circle**. This year my theme is **ACTION – Moving on**.

9.2 My working relationship with the Law Society has changed and developed in my three years as The Lay Observer, and I have deliberately sought to describe and work towards some very specific goals. But in particular, I have been anxious to recognise with the Law Society how to determine the changes that are required to keep pace with developments in the approach to complaints handling, and how best to move forward with these changes in mind. At the same time it is imperative to continue to deal with the on-going situation of investigating and auditing complaints to the best possible standard.

9.3 In ensuring action, the Chief Executive/Secretary of the Law Society and I have been meeting regularly to attempt to move things on in the light of my Recommendations, but also informed by unfolding events. I therefore have no hesitation in highlighting that against each of the five Recommendations there has been action and progress. This is to the credit of the Law Society and its staff.

9.4 I continue to be at pains to emphasise that every complaint has something to teach an organisation about how to do things better. It is in this way that complaints handling provides a very potent input to quality control, training and development and better administrative procedures. This is important for the Law Society as an organisation, but it is also vital in emphasising the role of the Society as the principal regulator of the members of its profession. The Bain Report, and I fully endorse this, believes that it is right and proper for the Law Society to continue to be the

principal regulator. The big challenge for the Law Society is to ensure that the Government agrees and that the Law Society demonstrates that it is and continues to be effective. Proper and appropriate use of the complaints handling system is clearly a central part of achieving this important objective.

ACTION – Squaring the Circle **My Recommendations last year**

9.5 In 2005, I offered five functional Recommendations for 2006. I received a timely response from the Law Society on target to the agreed timetable on 30th November 2006. The responses by the Law Society are shown at Appendix 3, along with each of my Recommendations. I have to say that I have been very much encouraged this year not simply by each response, which has been clearly articulated towards taking action. It is also very pleasing to note that the responses have been towards achievement, and that they have not in any sense been grudging, defensive or reluctant.

ACTION – Moving on **My Recommendations this year**

9.6 My **first Recommendation** this year relates to the nature of my meetings with the Law Society. I recommend that in the coming period my contact with the Law Society should take three main forms:

- With the President, his Team and the Chairman of Client Complaints Committee on an annual basis to discuss overall strategy, and to re-affirm the importance with which complaints handling and external oversight is taken by the Law Society as well as by The Lay Observer
- With the Chief Executive/Secretary of the Law Society to discuss on-going activity between The Lay Observer and the Law Society at a strategic level and as events require

- With the Assistant Secretary as required, along with the Chairman of Client Complaints Committee when appropriate, on an ad hoc basis defined by expediency

This has been found to work well during 2006, and it should be continued in 2007.

9.7 My **second Recommendation** relates to the importance of providing continuing profile for complaints processes and in particular to highlight how complaints processes can help ensure a better quality of service to the client of the solicitor. This can also be used to show that the Law Society continues to give high priority to improvement in relation to better complaints handling by solicitors. It is my understanding that there is to be an initiative in 2008 relating to terms and conditions of service that solicitors will be expected to provide to clients. This is aimed at giving a greater clarity to the client both of what he can expect from the solicitor, and how the client himself can contribute to a better delivery of service. This will therefore define the parameters of many aspects of service, and will clarify how, when and where a solicitor may provide best service for the client. This will likely include when and how a client should complain and to whom. This is intended to give attention in every client/solicitor relationship to clearer criteria for delivery of a quality legal service, nearer to the point of supply of that service. I recommend that every opportunity be taken by the Law Society to ensure that members understand what is being done, why and how this can relate to a more complaint free service.

9.8 My **third Recommendation** is about timetabling. At present, the Law Society aims to conclude its complaint handling process for each complaint in 12 weeks. In practice it is clear that this is not possible in every case. It is my understanding that the Law Society aims to conclude a case as quickly as possible consistent with delivery of a thorough review and investigation of the complaint. It is also evident, as I have shown at

paragraph 4.5 above, that the cases that are referred to me are becoming gradually more time consuming to investigate, either because of the complexity of the case, or because of the volume of material from the complainant and/or the solicitor that has to be examined. Although as yet the Law Society has no mechanism in place to carry out analysis similar to that provided at paragraph 4.5 above, it is clear from anecdotal evidence that their experience of investigating complaints is very similar to mine. Accordingly, I think that, while it is appropriate for the Law Society to aim to complete cases within 12 weeks, it is right that the Society make it clear to every complainant on receipt of the completed complaint form, a realistic timetable for the conclusion of his/her complaint from experience. Should this require a review in the light of the events of any investigation, I recommend that the Law Society inform the complainant of any such re-assessment. It is unrealistic to expect that every case will be concluded in a standard period of twelve weeks, so to pretend that this is possible is not helpful. It is my understanding that work is already underway by the Law Society to provide a regular rolling review of every case on a three months basis. In the context of time taken to conclude complaints in the Law Society, consideration of the data in paragraph 5.8 above is interesting. In fact, looking behind these figures, three quarters of all complaints are completed in or around 14 to 20 weeks from registration. To me the overriding principle should be that each complaint should be concluded as quickly as possible but consistent with a thorough investigation and treatment of the particular case.

9.9 My **fourth Recommendation** relates to written language used in communicating with clients. I have commented on this in previous Reports. It is my clear view that language that is appropriate for use between legal professionals is not appropriate for use with the lay complainant – even when the lay complainant uses such language him/herself. I recommend that the Society review this matter carefully, and resolve to communicate with complainants using plain English. I

shall be looking out for examples of where this does not happen during my audits in 2007.

9.10 My **fifth Recommendation** relates to the perhaps rather obvious look to the future in the light of the eventual results of the Review of Legal Services in Northern Ireland. In particular, I recommend that this should be a subject of continuing attention for discussion between the appropriate office bearers and staff including the new Chief Executive/Secretary of the Law Society after appointment and The Lay Observer. In this way preparation in relation to dealing with complaints by the Society and by The Lay Observer and under any future regime, will be kept under review.

9.11 As is my custom, I urge the Law Society to consider these recommendations, **ACTION** them as appropriate, and continue its work towards improving further in a dynamic manner. I also request the Society to continue to engage with me in **Moving on**.

Section 10

Concluding Comment

10.1 In concluding my Annual Report for 2006, I make four additional points. **Firstly**, it is important to recognise that improvements in the complaints handling processes at the Law Society and in conjunction with other stakeholders, represent their work, and not that of The Lay Observer. In respect of my Recommendations, these largely relate to things that might be done by the Law Society alone or acting in conjunction with other stakeholders. Any commendation due, therefore, for action taken is in large measure for the Law Society and the stakeholders concerned.

10.2 **Secondly**, I believe that it is appropriate that the way The Lay Observer operates needs to be governed by a clear set of principles, and that these need to be transparent and accessible. The criteria and guidelines against which I work are shown at Appendix 1 of this Report. They will be published shortly on my website, and will be subject to continuing review, particularly in the light of new advice and guidelines from the British and Irish Ombudsman Association.

10.3 **Thirdly**, while it is important to recognise that a new approach to the Regulation of Legal Services is on its way, the current complaints handling processes must be kept going, constantly being improved and being brought fully up to date. When a new regime is implemented for Regulation of Legal Services, it would be appropriate that complaints handling is in excellent shape, and is ripe for transformation to a new order with as little disruption as possible. I look forward very much to assisting with the transitional processes in any way I can. In the meantime progress must be maintained for the benefit of all stakeholders and the public.

10.4 My **fourth point** has to do with maintaining contact with those to whom The Lay Observer reports on an annual basis. These are The Lord Chief Justice of Northern Ireland, The Department of Finance & Personnel, and the Council of the Law Society. I

request each to consider affording The Lay Observer one meeting each year for purposes of accountability and information.

Alasdair MacLaughlin
31st May 2007

Appendix 1

Performance Indicators & Outcomes

The Lay Observer currently operates to the following standards:-

- New complaints are acknowledged within five working days of receipt
- Letters enquiring about a current complaint are answered within five working days of receipt
- Investigations are concluded normally within eight weeks of acknowledgement
- Where an extension is required, the complainant is informed prior to the expiration of the original eight week estimate, with full reasons
- No serious complaint against The Lay Observer to be substantiated
- Annual Report to be published according to programme; publication date is 31st May each year
- Every solicitor practice, MLA, Northern Ireland MP, any other MP with an interest in Northern Ireland and appropriate members of the Upper House to have received a copy of Annual Report by mid July each year
- Service to be provided within budget

While objective standards are vital, subjective indicators are also observed.

The Lay Observer:

- Seeks to provide a courteous, prompt and efficient service
- Communicates in simple English and does not use jargon
- Empathises with the complainant, while offering a strictly neutral investigation
- Sets out the facts as he sees them
- Provides reasons for arriving at a decision
- Provides any appropriate suggestions, which expressly may not be interpreted as legal advice

Alasdair MacLaughlin
1st January 2007

Appendix 2

LEGAL SERVICES in NORTHERN IRELAND:

Complaints, Regulation, Competition

Comment from The Lay Observer for Northern Ireland

1. The Secretary of the Review Group has invited comment from me as The Lay Observer for Northern Ireland on the Report of the Review Group, which was published on 23rd November 2006. I do so with particular reference to Complaints.
2. The Review Group rightly notes the specific features of the market for legal services in Northern Ireland and also the relatively low incidence of complaints. While agreeing with this in principle, it is worth pointing to the fact that the 'filters' for defining a 'complaint' against solicitors are currently very narrow. This has the effect of confining the number of complaints that can be considered under complaints handling mechanisms. There are many 'complaints' that under the legislation cannot be handled under complaints handling procedures; this obviously leaves many 'complainants' dissatisfied.
3. I believe that the Review Group has devised proposals that are appropriate and proportionate to the needs of Northern Ireland. Their proposals will enable, in the context of regulation the achievement of standards, which will match or exceed those available elsewhere in the UK and Ireland.
4. I welcome the proposed enhanced role for lay persons in handling complaints, and also the separation of the complaints handling function from the representational functions. It is right and proper that the handling of complaints should be the clear responsibility of the professions. The widening of the eligibility for

defining complaints is also much to be welcomed.

5. I suggest that there should be clarity about the entry and handling levels and procedures for complaints. There should be a three-tier process with one entry point for an individual complaint. This means that the complaint should be defined by the complainant, taken in most cases initially to the legal services provider complained of, then as necessary to the professional body concerned, and normally only then to the Commissioner. The latter should not seek to re-investigate; rather he/she should pass the matter down for the professional body to re-examine in the light of comments by the Commissioner. Clearly, there may be entry point issues for complaints where conduct as opposed to service is involved.
6. I welcome the wide-ranging powers proposed for the Legal Services Commissioner, and the way in which the Office is to be financed. This provides a direct incentive for the professions to carry out their complaints and other regulatory functions to the highest standards. I particularly welcome the proposal to retain the audit function; this will enhance the role of the LSCNI over similar post-holders in other jurisdictions. The potential available to the LSCNI to set targets and to monitor progress is also much to be welcomed, as are the principles of transparency. It is vital that the powerful Solicitors Disciplinary Tribunal is retained, as is proposed. The ability to award compensations where appropriate is a key proposal. This should be invoked only sparingly, and efforts should be made to avoid any public perception that awards are easy to obtain.
7. Much of the foregoing has to do with procedures and structures, roles and responsibilities. However, of equal importance is tone and attitude. Effective regulation is much bound up with meeting and managing the expectations of public and of complainants. Sympathetic and

reasonable action by LSCNI towards all the stakeholders involved, but particularly complainants pre-complaint, during complaint handling processes and at the conclusion of complaints must be carefully managed. This has become an increasingly important aspect of the effective work of the regulator, the commissioner and the ombudsman whatever the field of operations. This is a major pre-occupation of the British & Irish Ombudsmans' Association which produces helpful material.

8. Creating and maintaining accessibility and profile are also most important. Current and would-be complainants need to feel that their complaints will be taken seriously, and that investigations and conclusions are being conducted in the interests both of the complainant and the better performance of the legal services professions. Under the current legislation on complaints to solicitors, the focus is on whether the solicitor has done wrong or not; there is no direct comfort for complainants other than that of knowing that they have reported the complaint, that in some cases the solicitor has been admonished and only occasionally penalised. There is no element of redress for the complainant, who is often left feeling that the complaint is most unwelcome. This must be changed in any new regime.
9. Major shifts in attitude therefore towards complaints in particular, as well as to other regulatory aspects, will be required in the professional bodies in order to achieve successful transition to whatever Government decides to implement. In the transition period, in addition to the necessary procedures, roles and structural arrangements, Government may wish to satisfy itself that organisational development takes place to provide for essential shifts in attitude prior to implementation.

10. I welcome the opportunity to make comment at this stage, and thank the Review Group for the opportunity to do so.

Alasdair MacLaughlin
7th February 2007

Appendix 3

Note from The Lay Observer: This is the response from the Law Society to the Recommendations contained in my Report for 2005. To help make it easier for the reader to relate to them, I have inserted my Recommendations in italics prior to the relevant narrative.

RESPONSE to LAY OBSERVER'S REPORT 2005 (SQUARING THE CIRCLE)

Introduction

1. This is the formal response of the Law Society of Northern Ireland to the Report of the Lay Observer (entitled 'Action: Squaring the Circle'). This formal response is designed to augment and follow-through on work in hand as canvassed in regular contacts with the Lay Observer since production of his Report.
2. At the time of this response, the fundamental review of the structure of Legal Services Regulation under the Chairmanship of Sir George Bain has just been published. The recommendations in that Report in relation to complaint-handling are extensive and clearly will require a thorough evaluation. Generally the Review Group found that Northern Ireland has a strong and robust legal profession that has provided a good service to consumers, offering choice and access to justice, but also that it is not perfect. The Report identified weaknesses in the system and proposed reform, specifically an improved model of complaints-handling. It is clear that the process of change will present many demands and challenges for the legal profession. The Society is committed to engage constructively with the reform agenda.
3. In the interim we agree with the assessment of the LO that there is need to maintain the work of continuous improvement to the present system. Within the parameters of the powers and jurisdiction available to the Society, we affirm our intention to operate a system of complaints-

handling consistent with achieving outcomes which are fair and which can command the confidence of both the complainants and the profession.

Recommendation 1

My first Recommendation relates to the learning organisation. I urge the Law Society to take every opportunity afforded by the complaints handling processes and by The Lay Observer oversight to feed back into the organisation and to the profession where it sees improvements that can be made and in particular where prevention and support measures can be taken. I recommend that The Writ is used to profile complaints handling and in particular what the Annual Report of the Lay Observer is saying, and other matters relevant to the matter. Comments from the Chairman of the Clients Complaints Committee and/or the President would be of additional value to make Law Society members more aware in a straightforward way. It would also indicate to members that the Society takes the matter seriously and wants to see improvements, and a reduction in the incidence of complaints.

4. In his most recent Report the Lay Observer sets out five recommendations to which we respond seriatim. As regards Recommendation 1, the Society shares the perspective of the Lay Observer that a prominence and emphasis should be afforded to complaints issues on a regular and sustained basis. The message as to the importance of complaints and complaints-handling needs to be repeated on an on-going basis and will always merit attention. The Society believes that a good start has been made by publication in The Writ of a feature dealing with both the role of the Lay Observer and in particular the import of his Annual Report.
5. In terms of Continuous Professional Development it is pleasing to be able to report generally the continued success of the initiative taken by the Society some two years ago whereby

the Society, through a dedicated member of staff, has become involved in providing and co-ordinating CPD programmes. The Society agrees fully with the Lay Observer that complaints are potentially a source of valuable learning for the profession. Accordingly, we anticipate that these issues will continue to receive regular attention in terms of publications to the profession and the provision of client care seminars. In particular the Society's CPD Co-ordinator has been tasked to include in the next CPD programme modules which address:

- (a) Common errors in complaints
- (b) How to handle complaints

Recommendation 2

My second Recommendation concerns 'complaints' which under the legislation cannot be registered by the Society as complaints. I refer particularly to those complaints relating to alleged mis-selling of endowment life insurance, to complaints against solicitors by complainants who are not their clients and contests over fees. I have found that these consistently arise as complaints to me, even though under the legislation, the regulations and the protocols, I usually may not investigate them. In most cases my reading of the problem is that the complainants simply do not understand in logic why the Law Society cannot deal with what they perceive as their complaints or they cannot comprehend what the Law Society is attempting to convey. I believe that the Law Society, as a means of securing better client alignment, could well reduce the frustration and animosity in these cases if they could provide a well prepared and simple leaflet in clear everyday English explaining why they cannot deal with the matter. This does not need to be elaborate, and indeed a typed sheet of A4 paper would suffice for most instances. Too often language is used to communicate with complainants, which is designed for communication between professionals. This is not helpful to persons who are not legally qualified.

6. As regards the second recommendation, the Society accepts that it has a responsibility to explain as clearly as possible the nature of the complaints-handling process, and the extent of its jurisdiction (what it can and cannot do). We also attempt to provide practical assistance to those who contact the Society in circumstances in which we cannot help, but in which there may be other courses of action open to the enquirer which are available and have the potential to secure the outcome they seek. This has, of course, been the principle and basis on which the current leaflets used by the Society were revised some time ago at the request of the previous Lay Observer.
7. The Society accepts that there is more work to be done to revise, improve and update these leaflets for the purposes identified by the Lay Observer. Specifically we agree that it is important to make every effort to minimise the frustration and animosity referred to by the Lay Observer.
8. We note and understand the point made more generally by the Lay Observer that action to address these communication issues is the responsibility of the Society rather than the Lay Observer.
 - (a) We plan to complete a revision of the current leaflets for the purposes identified by the Lay Observer by April 2007;
 - (b) We have already begun the process of re-presenting the information within the leaflets by way of the Society website a process which will be completed in line with the same timescale.
9. In some more complex instances we do not think that an attempt to give extensive advice and guidance of a generic nature would be appropriate or helpful, and has the potential to either make matters worse or increase the risk of misunderstanding. In these circumstances we believe that it may be a better strategy to

publicise the fact that the Society may not be able to provide a solution directly, but can re-direct and advise the enquirer as to what can be done.

Recommendation 3

My third Recommendation relates to the timetables of dealing with investigations both within the Law Society and between The Lay Observer and the Law Society. It is important that the timetables that have been developed are adhered to when possible. Where they cannot, which is perhaps becoming more frequent, a communication should be sent immediately a delay is recognised warning the complainant that the timetable referred to originally cannot be kept. It is an unfortunate fact that in both my complaints handling work and my auditing of files that there is too frequent an elongation of process without informing the complainant and also sometimes in informing The Lay Observer. I also note that the TONE of correspondence is important; the wrong tone will often create an antagonism which is not necessary and eventually attracts complaints to The Lay Observer. It is for example quite possible to be humanly empathetic towards a complainant without at the same time admitting any responsibility. I urge the Society to re-visit these facets of complaints handling with a view to achieving some improvement in managing complainant expectations and perceptions in complaints handling.

10. In relation to the third recommendation, the Society shares the Lay Observer's concern about the elongation of the time to process complaints. Delay is not in the interests of either the complainant or the solicitor and the Society has always striven to progress cases by the most expeditious and effective means possible. The current time management target for straightforward cases, introduced following the introduction of a rebuttal procedure for complainants in 2001, has always been experimental and is overdue for review.
11. On inception it was considered that a rebuttal process might only add an extra four weeks to the

process. It has however, become clear in the intervening years operating the rebuttal system that current time targets in fact allow insufficient time for complaints to be properly addressed by both the solicitor and the complainant and a more realistic projection, taking account of the complainants' expectations needs to be considered and discussed with the Lay Observer.

12. Where delays are anticipated, the Society agrees that this should be relayed to the complainants. Currently where cases are waiting for consideration by the Client Complaints Committee complainants are advised accordingly and where possible the month is indicated. Should there thereafter be unforeseen slippage, this is also reported. This process could be extended to the solicitor.
13. The Society is exploring the introduction of a systematic case-status review at the end of the agreed predicted conclusion period and reporting the current progress to the complainant or solicitor as appropriate. Those who seek a progress report are and will continue to be given an individual indication of the status of the case.
14. The Society is also concerned about any delays in procedures between the Office of the Lay Observer and the Law Society and is willing to discuss how and why these have occurred and consider any suitable amendments to existing protocols.

Recommendation 4

My fourth Recommendation has to do with the question of whether complaints handling processes have become more elongated and complex by virtue of more complexity and complainants who are more focussed and aware of their rights. I recommend that the Law Society pursues the feasibility of methodologies by which this could be more objectively measured. For my part, I have already sought to categorise the complaints that reach me (see paragraph 4.9

above), and I will therefore be able to review this on an on-going basis qualitatively and quantitatively.

15. In respect of the fourth recommendation, this identifies two issues, volume and complexity. The Law Society agrees that there has been an increase in the volume of papers received from both complainants and solicitors which require due consideration by the Society. For example one page complaints and two page responses are few and far between. We agree with the Lay Observer's analysis that complainants are better informed about the processes involved in their own cases and are able to use the information to, for the most part, better articulate their concerns. Solicitors are also keen to support their answers with documentary evidence and sometimes Counsel's reports.
16. It is perhaps of assistance to record briefly what is involved in the complaints process. The new complaint and accompanying papers must be analysed and if in order, referred to the solicitor. These papers are re-considered when the solicitor's reply and accompanying documents are received to ensure that all the issues have been addressed in the solicitor's response. Thereafter the complainant is asked to comment. These comments or rebuttals also have to be reviewed in the context of the Society's procedures, particularly on new evidence, the original complaint made and the solicitor's response.
17. It is at that stage the case may be concluded or referred to the Client Complaints Committee. In the latter case a summary report is prepared and attached to the papers to assist the Committee. Where complaints, responses and comments are relatively brief, then it may be possible to turn around cases very quickly. However, as can be seen from the summary with an increase in the volume of papers generally and the opportunity to respond adding to that volume individual

cases will inevitably take longer than previously required or anticipated.

18. Complexity of itself is not necessarily reflected in file volume. Sometimes the issue is the extent of the solicitor/client relationship and that may not be straightforward. The Society has to explore this issue in considerable detail to ensure that it fulfils its statutory remit. There is also the potential for evidence of a public nature being available which might assist with resolving the complaint.

The Society has statutory control only over solicitors and hopes complainants see the value of co-operating with the procedures for pursuing their own complaints. However, sometimes the Society is looking to outside institutions for co-operation in circumstances where it is necessary to allow time for a response from that third party. These difficulties can lead to an elongation in the process, which is not foreseeable.

19. Because of these variables, the process of distinguishing the complex from the simple is not straightforward. The Society would welcome any assistance the Lay Observer can offer on this issue by reference to criteria which he has used to distinguish between complex cases, the very complex cases and the more straightforward cases which he has had to consider in the past year. (Para 4.9)

Recommendation 5

My fifth Recommendation reverts back to my fourth Recommendation in my Annual Report of 2004, which related to the matter of explaining to complainants how solicitors have been exposed and made to feel a measure of disapproval from their colleagues as a result of having a complaint taken against them to the Law Society. I suggest that the Law Society also look further. In many instances where the solicitor is found to be at fault but where no penalty applies, I would suggest that the Law Society should at least comment appropriately to the solicitor

involved and in strong enough terms to weigh against the offending behaviour. The treatment of a solicitor should in my opinion be treated as a learning opportunity, if for no other reason than to express the disapproval of the Law Society, and to make clear that the Law Society does not wish to see a repetition of a misdemeanour. Examples include ignoring deadlines set by the Society, poor communication with clients and incomplete responses to issues put for comment. Complainants quite frequently express outrage to me that for example their comments will be ignored if they do not provide them to the Law Society within the timetable promulgated, whereas the solicitor will get away sometimes without even an excuse with delays which the Law Society should not find acceptable. Also, I was astounded to learn in 2005 that the Law Society did not feel it was their business to inform a solicitor of the views of The Lay Observer when he expressed disapproval of the way the solicitor treated the Law Society. This is nonsense given that it is not for The Lay Observer to deal directly with solicitors. I suggest that the Law Society should also reconsider this methodology.

20. By way of his fifth recommendation the Lay Observer identifies a range of issues concerning the complaint-handling process and the interface between the role of the Society and that of the Lay Observer. We believe that the several issues cannot be adequately or fully addressed by way of a formal response, but we do consider that these can be addressed constructively in discussion with the Lay Observer. It is clear that the recommendation (which is essentially about working practices and methodology) gives rise to a range of issues, which require clarification of misunderstandings and review of the role of the Lay Observer and the Client Complaints Committee. The Society will wish to respond positively to the recommendation because we are committed to address deficiencies in the current methodology, particularly any perception on the part of any complainant that the methodology favours the respondent solicitor.

Law Society of Northern Ireland
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