

# *DEVOLUTION in SIGHT*

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



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

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 Northern Ireland pursuant to Article 42 of the Solicitors (Northern Ireland) Order 1976 and Article 17 of the Solicitors (Amendment) (Northern Ireland) Order 1989.

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# Section 1

## Opening Comments

- 1.1 This is my sixth Annual Report, and the thirty-second in the series. During the year, I was appointed under present arrangements until the end of March 2014, or such earlier date as the proposed new structures have been put in place, following the implementation of the relevant parts of the devolution of Justice to the Northern Ireland Assembly.
- 1.2 My Report deals with the activities and work of The Lay Observer for Northern Ireland during the calendar year 2009. Routine work concentrates on investigating complaints taken against the Law Society of Northern Ireland. Essentially, I operate the **third** – and independent – tier of the Complaints Handling Process in place to assist the clients of solicitors who have reason to complain against their solicitors. The Complaints Handling Process is governed by the same legislation under which my activities are included, and which is listed on the initial pages of this Report. My role is to deal with those complainants who, having brought their complaints to the Law Society – the second tier - remain dissatisfied after the Society has concluded their complaints.
- 1.3 The **first** tier is where the clients complain directly to their solicitors. Since September 2008, there are new regulations that lay down requirements for solicitors to have in place clear Terms & Conditions of Service, including a complaints handling process. These arrangements, which anticipate the likely new structures after devolution of Justice to the Northern Ireland Assembly, will effectively reduce, and have already reduced, the number of complaints being directed to the **second** tier. This is where the Law Society deals with the complaint when the client remains dissatisfied with the outcome of the first tier of the Complaints Handling Process.
- 1.4 It is important to note that no-one knows the extent, nature or number of complaints received at the first tier. This Report is concerned primarily with complaints received at the second and third tiers of the Complaints Handling Process.
- 1.5 I am pleased to report that the Law Society continues to give increasing attention to complaints. A detailed account from their point of view is contained in Appendix 2 to this Report. From my point of view, this Response makes very encouraging reading as a statement of intent and a report on progress. This bodes well for the transfer of powers in relation to the proposed new regime for handling complaints. The detailed timetable for this is a matter for the Northern Ireland Assembly at Stormont. The attention to complaints from the Law Society is, of course, entirely as it should be, and is consistent with their role as the principal regulator of the solicitors' profession.
- 1.6 I must emphasise that the purpose of handling complaints in my view, and also as most other complaints handlers see it, is now being seen in a much wider perspective. The current thinking is now governed by what might be termed the Virtuous Circle of Complaints. Essentially this sees complaints and their resolution as having three key elements – **first** there is the complaint itself that must be resolved. This then must be examined to determine the **service improvement** that can result. Finally, these processes should be further studied to determine what **learning** can result from complaints and their resolution and from service improvements. This is the process that I have been encouraging within the Law Society for the past six years. It is very commendable, and gratifying, that the Law Society has in effect been developing just this approach in its Complaints Handling.

- 1.7 I also should emphasise that in dealing with complaints at the third tier – ie my level as Lay Observer – or at any other level the process is not about becoming the complainants' champion. My role is to take an independent view of the facts and to draw conclusions; from that then it may be appropriate to make suggestions for resolution and other observations, and where necessary to provide recommendations. In so doing, it is the hope that an independent view can help to defuse and lessen the emotional, and factual impact. Taking this into a wider context, I can help identify and encourage service improvements and in so doing provide pointers towards learning about minimising future complaints. However I must be constantly mindful that complainants often see me as their champion and I must do all I can to dispel such perceptions.

*Professionals may perceive complaints as being personal and non-constructive and try to distance themselves from the issues at stake or push responsibility on to others. The challenge is to guarantee a turn-around in perception and result in ownership, accountability and service improvement.' Mahatma Ghandi*

- 1.8 By the same token, the Law Society is not the solicitors' champion. The Society must be mindful that complainants can see them as the solicitors' champion. I encourage the Law Society to examine what they can do at the second tier to help minimise these perceptions.
- 1.9 Also of significance in addition to dealing properly with complaints raised by clients of solicitors, is work to reduce the chances of complaints arising in the first place. This is done by service improvement by individual solicitors and by providing appropriate learning for the profession.

These now form a standard focus of the work of those who are involved with complaints handling internationally. The Law Society is to be commended for the fact that it is developing effective and increasingly flexible ways of feeding back experience from the Complaints Handling Process into the Continuous Professional Development (CPD). They also use this as a means of determining priorities for attention under CPD. This along with the enhanced profile being given by the Presidential Team in the Law Society, the approach to Terms & Conditions for solicitors, as well as the excellent ways continuing to be developed to prepare newly qualified solicitors for their professional work, already deliver enhanced performance in the profession for the benefit of society in general.

- 1.10 I continue to enjoy effective contacts with the Presidential and Office-bearer Team. The Client Complaints Committee, with legal and lay representatives have a difficult and sensitive part to play in enhancing the service of the profession. It is useful for me to remain in open contact, so that I may understand more clearly the challenges the Committee faces. These contacts are particularly helpful, as the importance of complaints being properly dealt with in a more holistic way has never been higher. It will be noted, in this context that the cost implications for the Law Society, and for the profession as a whole of the incidence of complaints will bear so much more directly under the proposed new arrangements.
- 1.11 During the year I have also had valuable meetings with the Chief Executive and Secretary of the Law Society. I am grateful to Mr Alan Hunter for this constructive contact. On a day-to-day basis, I link with Mrs Moira Neeson and her staff. This continues to work in an appropriate and professional manner. In this, I aim to work

co-operatively, and yet in such a way as to maintain an appropriate professional distance between our respective roles.

- 1.12 I maintain helpful and positive contact with the Department of Finance and Personnel at all levels. I am particularly grateful to Mrs Anne Flanagan and her staff, Mr Sean Gillen and Ms Wenda Pollock for the ways in which they facilitate my work providing necessary resources and administrative support. Very helpful too are the staff in Londonderry House who ensure that mail and messages left by complainants reach me in a timely way. As mine is a part-time role, these contacts make my role workable on a day-to-day basis, and I am grateful to them all.
- 1.13 I have not been invited to meet with and account for my work directly to the Lord Chief Justice of Northern Ireland in recent years, and nor does the post holder of the day correspond with me directly, despite the fact that all my letters to him are personally addressed.
- 1.14 I am encouraged by the fact that the Attorney General for Northern Ireland has taken continuing personal interest in my work, so too have NIO Ministers, a number of Members of Parliament, and the various Northern Ireland political parties and their MLAs.
- 1.15 I continue to have valuable, helpful and fulfilling relationships with my counterparts in the other jurisdictions of the United Kingdom and Ireland. I also meet with complaints handlers and Ombudsmen in other sectors in regular meetings and workshops. This is facilitated through my membership of the British & Irish Ombudsman Association (BIOA). These contacts are most important in ensuring that the quality of my work corresponds to and is informed by advancing levels of good practice.

As reported in a previous Report, the BIOA has published standards relating to the principles of good complaint handling. I confirm that I work to these principles, and to higher standards where possible, and as appropriate and relevant. The standards to which I work are published on my website and were contained in Appendix 2 of my Report for 2008.

# Section 2

## Context for my Work

- 2.1 Every year, in my Report, I summarise the sources for my authority in this section as The Lay Observer for Northern Ireland, and also the context for my work. This section contains in essence standard information each year.
- 2.2 The theme of my 6th Annual Report is **DEVOLUTION in SIGHT**. This Annual Report is an opportunity to set the principal work of The Lay Observer within a particular context – one at this time where there will soon be major changes following the agreement that Justice is devolved to the Northern Ireland Assembly.
- 2.3 During 2009, my work of oversight of Complaints Handling Processes of the Law Society continued alongside dealing with complaints against the Law Society. I also continue to work in co-operation with the Law Society to think ahead to ensure that the transition into the new situation will be as seamless as possible.
- 2.4 It is in this way that my catalytic role develops. I am pleased to be able to report that:
- the valuable relationships with the Chief Executive/Secretary of the Law Society, and the Office Bearers continue effectively. This creates the basis for strategic discussions when and as required
  - the Law Society continues to give increasing profile to the importance of reducing the reasons which give rise to complaints. They have done so using their regular magazine, *The Writ*, but also in speeches, and most effectively in the CPD programmes
  - the new regulations introduced by the Law Society in September 2008 in connection with solicitors' business, and the modified material for guiding clients and lay people in making complaints have now been operating for over one full year, and so their positive impacts can begin to be observed
- The methodologies of contact between the Law Society and The Lay Observer continue to improve in order to attain maximum efficiency. In particular, I would point to increasing use of electronic communications in day-to-day contact.
- 2.5 I am pleased to be able to participate where-ever possible in preparing for an effective transition. However, I am acutely aware, and I know the Law Society agrees on this, that operations must continue effectively and efficiently within the confines of the current legislation. We therefore cannot under the current law, step outside the existing parameters.
- 2.6 The Lay Observer operates under the **SOLICITORS (NORTHERN IRELAND) ORDER 1976 and the SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989**. As already stated in previous Reports, the public profile of my role by design is not high. Nevertheless it is appropriate to ensure that potential complainants are aware of the existence of the office, while at the same time ensuring that it is not appropriate to promote the service.
- 2.7 My leaflet is made available to complainants when requested, and copies are distributed to relevant agencies in the community. Also, the website established at [www.layobserverni.com](http://www.layobserverni.com), and access by my email address [a.maclaughlin@btinternet.com](mailto:a.maclaughlin@btinternet.com), are of value to current and potential complainants. Many now approach me initially by email, and also refer to having consulted the website before contacting me. However, when a complaint is being advanced against the Law



Society, I insist that there is documentation to support it, so that hard copy files are kept by me for reference in concluding my investigations.

- 2.8 There is an additional point that is of relevance to this Report for 2009, and about which I made only brief mention in my last Report for 2008. On 1st November 2008, the Law Society introduced a new framework for gathering information relevant to complaints. In particular, there has been refinement and fundamental changes in the recorded information about the **nature of complaints** and of the **circumstances of complaints**. This is much to be welcomed as it provides a more accurate and focussed targeting for feeding data to Continuing Professional Development processes, and other improvements in service. It does however have the consequence that the run of statistics published in successive Lay Observer Reports has been disturbed from those of the past decade or more, and on-going comparisons with current information becomes statistically invalid. Accordingly, those sections of my Report dealing with Complaints Statistics and comments on trends will no longer support the historical data in all respects.

- 2.9 On a more general point, we all need to be vigilant that the change in the approach to Handling Complaints that will arise as a new system is put in place does not have the effect of driving legitimate complaints ‘underground’. There is a vital balance to be achieved between both complainant and responder following clear and effective procedures on the one hand, and on the other, an empathy towards those who are not so well versed in the mores of the law.

- 2.10 Clients are entitled to make complaints against their solicitors, and it would be a retrograde step if too strong a culture of argument over whether tight procedures for complainants have been

met or not were to be permitted to develop. Such a culture would inject an enhanced and inappropriate adversarial quality into Complaints Handling. This could only harm the reputation of the Law Society as an effective handler of complaints. Dr Maurice Hayes – himself a former Northern Ireland Ombudsman – described so very accurately the view of the layman in his recent Dave Ellis Memorial Lecture on Access to Justice in the Law Society of Ireland: ‘The majesty of the law, so reassuring to those steeped in it, can be oppressive to those who meet it only periodically’.

- 2.11 Complaints Handling Processes must be ‘user friendly’ and helpful to those who have to use them, and who feel the need to complain. The Law Society, I contend, would do well to appreciate and value complaints as a window on how the lay public sees the solicitors’ profession.

# Section 3

## *The Work of The Lay Observer in 2009*

- 3.1 During 2009, I investigated complaints from a total of 35 complainants. This compares with 45 complainants in 2008, and 51 in 2007. It must be pointed out that when the Law Society receives a complaint, in most cases that complaint can be analysed under several different categories.
- 3.2 In 2009, the Law Society received many fewer categorised complaints, namely 149 as compared with 317 in 2008, and 295 in 2007. And the number of complainants was 104 in 2009, compared with 133 in 2008 and 295 complainants in 2007. In 2006, the number of complainants was 202 with 165 in 2005. This is a most important set of figures, as it shows that the number of complainants to the Law Society has reduced yet further in 2009, having fallen significantly in 2008 from around the 200 level to 133, while the number of categorised complaints has reduced very dramatically.
- 3.3 I have the privilege of being permitted to audit a random sample of those complaints which reached the second tier – at the Law Society – but which do not reach me at the third tier. This is a most valuable exercise, because it enables me to see what happens in complaints, that the complainants do not see the need to progress to the third tier. These complaints include those that are *upheld*, *resolved* or are *re-directed* or which are considered in some alternative way, and those which are *not upheld*. I audited some 30% of these complaints in 2009.
- 3.4 Again, this year I have to report that the complexity of the cases I receive continues to increase. I have devised a simple format which identifies those cases which I interpret as **highly complex**, **complex**, and **others**. Complexity equates in this approach to the length of time it takes me to conclude each complaint. In the latter analysis, I make no distinction as to whether this arose from complexity of issues, or simply of detail, or indeed from both. Once again, I have carried out this analysis of the cases I have concluded, and this shows:
- There were 35 complaints in 2009, 45 complaints in 2008; and in 2007 there were 51 complaints
  - There were 18 very complex cases requiring three days or more in each case to complete in 2009; in 2008, there were 13
  - There were 5 complex cases requiring more than one and up to two days in each case to complete in 2009; in 2008, there were 6
  - This means that the number of complex and very complex cases together in 2009 was 23, compared with 19 in 2008
  - There were 12 other cases in 2009; in 2008 there 26 each of which took up to a day to complete, there were 35 in 2007.
- 3.5 I also have to report a changing pattern of enquiries. I now get more new enquiries from would-be complainants who think that the Law Society is not dealing properly with their queries. Some compare the situation that existed prior to 1st September 2008 when the new regulations were introduced with the subsequent conditions. In some cases these complaints straddle the periods concerned. I have some sympathy with this mis-understanding; it is difficult for someone to comprehend how reference back to solicitors who they are complaining about is not 'another stalling tactic' by the Law Society, particularly when the reason they are doing so is to do with the new regulations. In order to assist such would-be complainants it is necessary for me to provide careful explanations and an extra degree of empathy. These cases will of course reduce the further time elapses since the introduction of the new Regulations Order of 2008.

3.6 The flow of queries and complaints to me also requires a degree of further comment, not least in that the Law Society raised queries with me suggesting a difficulty in comprehending the number of complaints and other cases I receive. In essence I receive three types of 'complaint' – I use inverted commas because of course only one of these effectively fits with the definition of a complaint defined in the law and regulations for inclusion in the formal Complaint Handling Processes. There are **firstly**, those complainants whose 'complaints' have not met the definitional requirements, as derived from the legislation. These are not within my remit, but I may not be initially aware of this, and so I may have to access and to study the files concerned. **Secondly** there are those complaints that I handle having been brought to me by complainants, who having had their complaints dealt with by the Law Society, remain dissatisfied and complain to me – these are of course entirely within my remit. **Thirdly**, there are complainants whose complaints have been already concluded by me, but who come back and challenge me, often providing additional information, raising new questions, or commenting unfavourably on the process in part or as a whole.

3.7 It will be readily recognised that these are all 'complaints' in their perception, which would-be or actual complainants feel strongly should be dealt with by someone. I do not often realise the differences until I have consulted a file, and in any case, I believe, until the authorities tell me otherwise, that where I can help such persons – particularly those expressing dissatisfaction with the Law Society – I should seek to try to alleviate the strength of feelings involved. I am prepared to do this even where I only answer questions or make non-legal suggestions which may be helpful. In this way, I believe that I can help clients of the legal profession, and also help

that profession, as well as assisting the public in general. In any event, all of these require time, commitment and energy by me to complete.

3.8 I report a continuing real increase in the complexity of complaints reaching me in recent years. Also, I have to report again an increase in the number of complainants who want to challenge the limits of my authority and the conclusions that I have reached, although my conclusion of a complaint is actually the end of the matter, unless there are actionable issues. Most cases involving a wish to challenge may arise because of the limitations of the legislation, which no longer appears to match public expectations. It is proving more and more difficult to convince complainants of these limitations under the legislation; this is perhaps an illustration of how timely the changes that will result from Devolution of Justice to the Northern Ireland Assembly are turning out to be. The Law Society have made it clear that they wish to see the Bain Proposals implemented and in place as soon as possible in this context.

3.9 Mine is a part-time appointment, and I have continued to operate without assistance from support staff. All administrative and secretarial tasks are carried out directly by me, as well as the investigations, reporting and auditing work. I contend that I operate a low cost, efficient and effective service on behalf of the public, the solicitors' profession and the Government within the legislation, procedures and protocols.

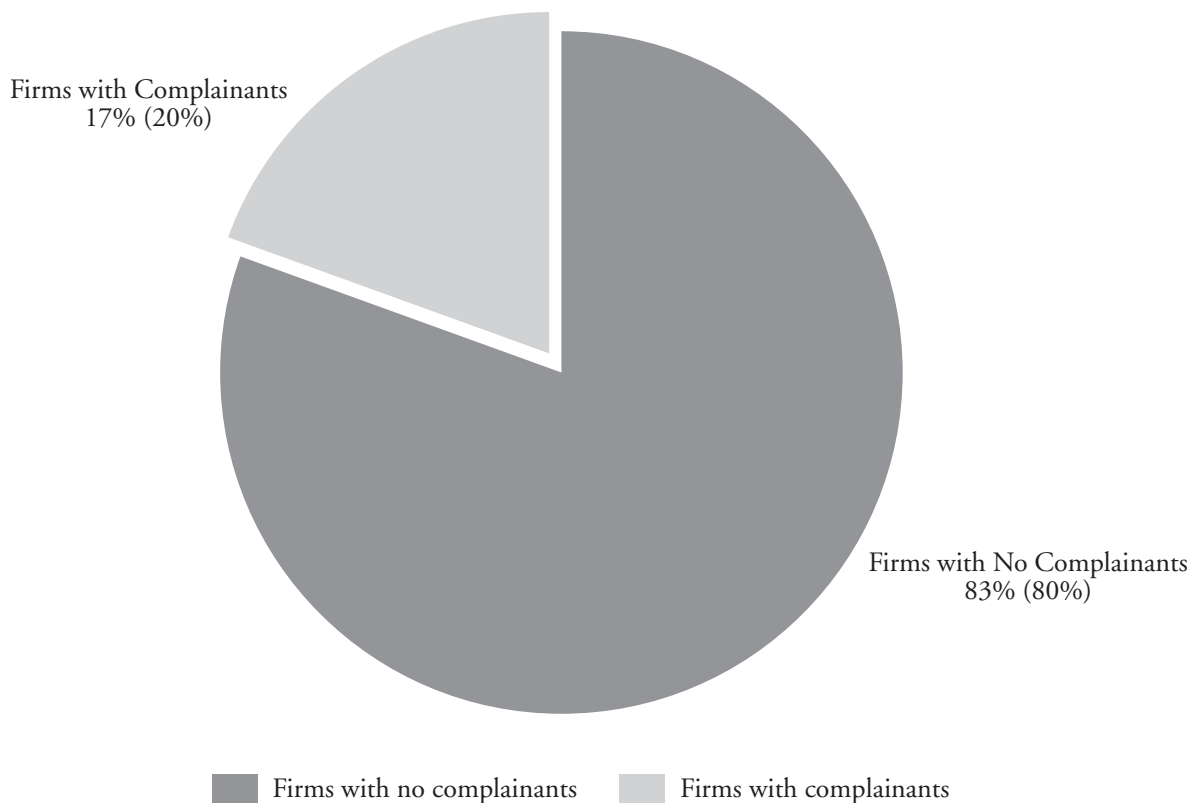
# Section 4

## *Final outcomes of Complaints made to the Law Society*

*Note: the complaints referred to in Section 4 are those which achieved a final outcome in the year 2009 at the second tier*

**Chart A**

% Number of Firms with Complainants and % Number of Firms with No Complainants in 2009



The total number of firms 'on the register' at the Law Society is 540. Of these 449 (83%) have attracted no complaints. 91 solicitor firms have attracted complainants; this represents 17%. The corresponding figures for 2008 were 80% attracting no complaints with 20% attracting complainants.

Chart B

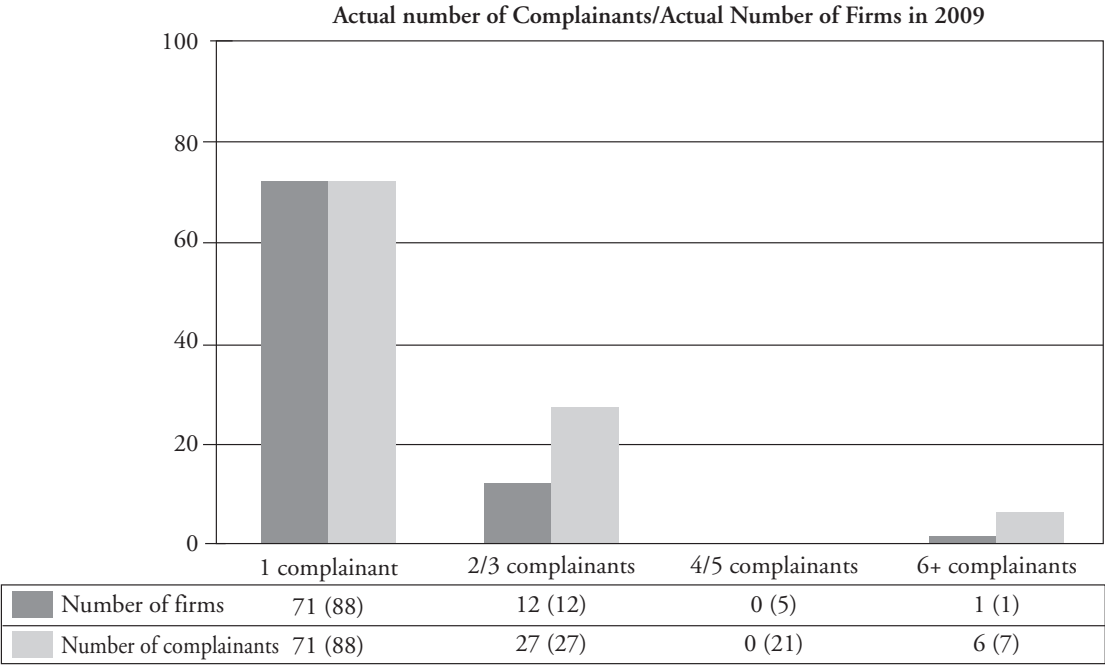
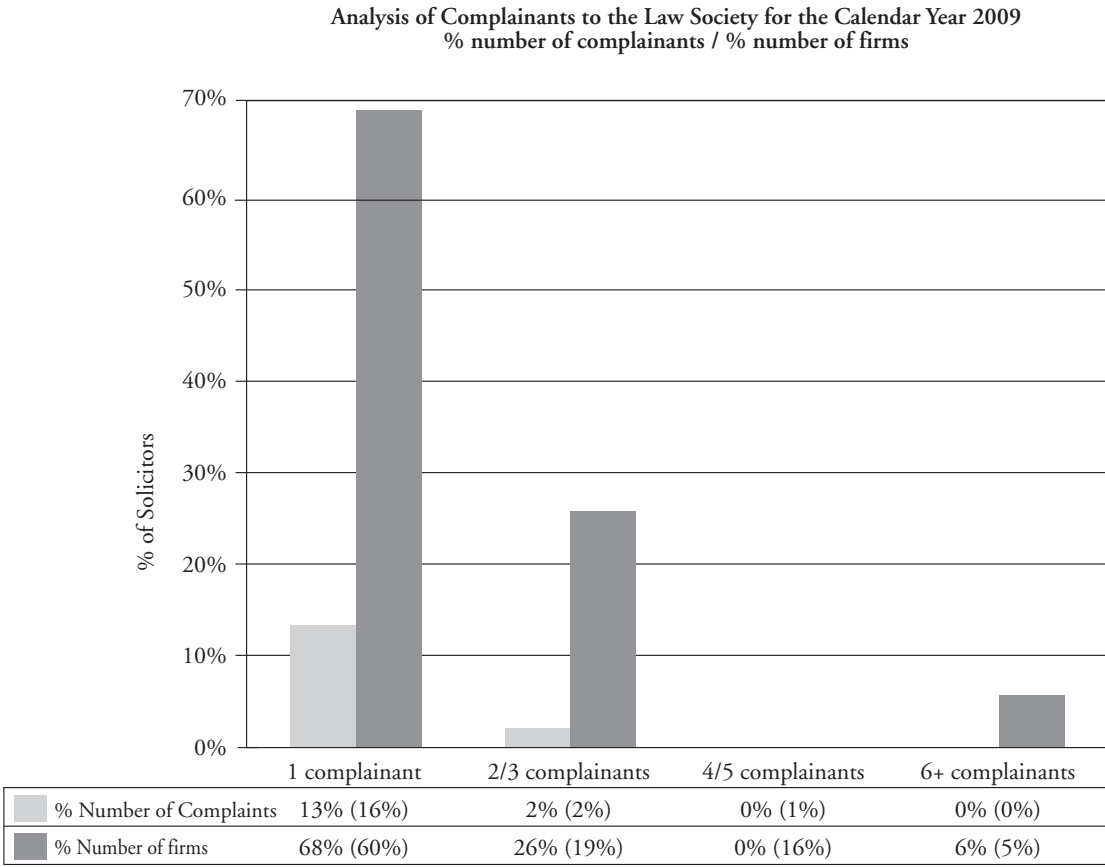


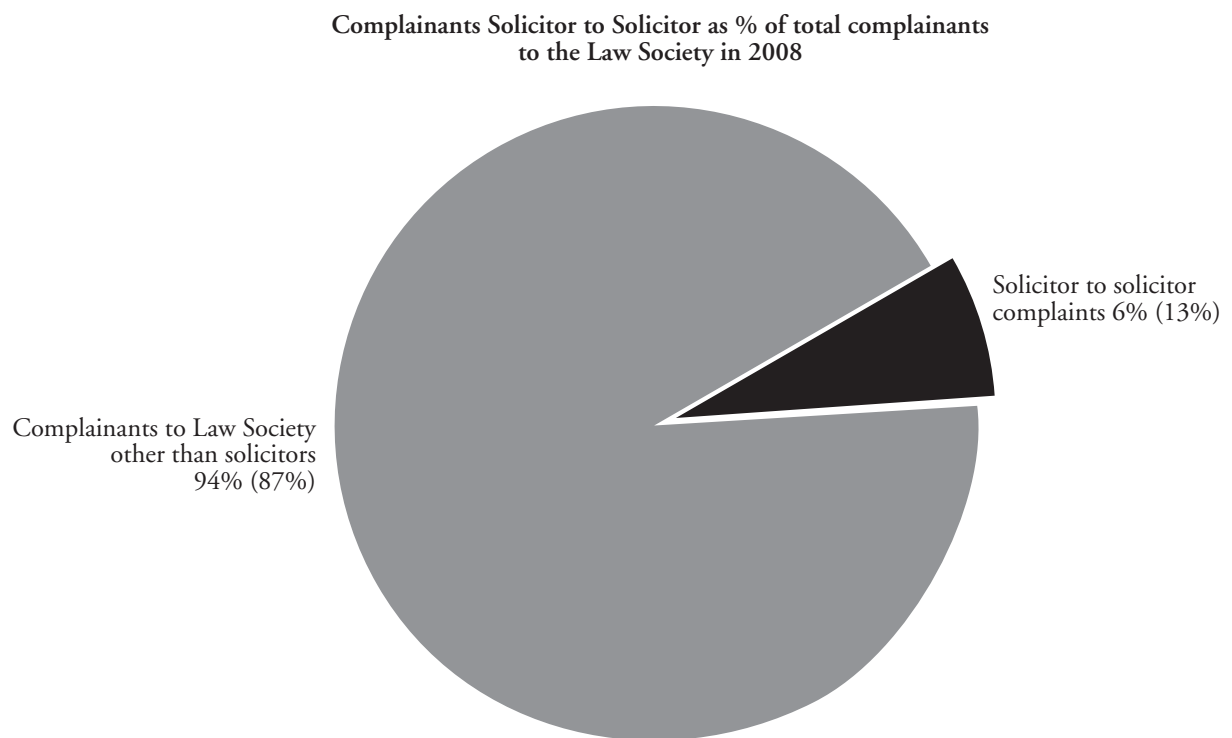
Chart B presents the actual numbers (and not the comparative percentages which are shown in Chart C) and reflects the same statistical pattern. The equivalent figures for 2008 are shown in brackets.

Chart C



Figures for 2008 are shown in brackets.

Chart D

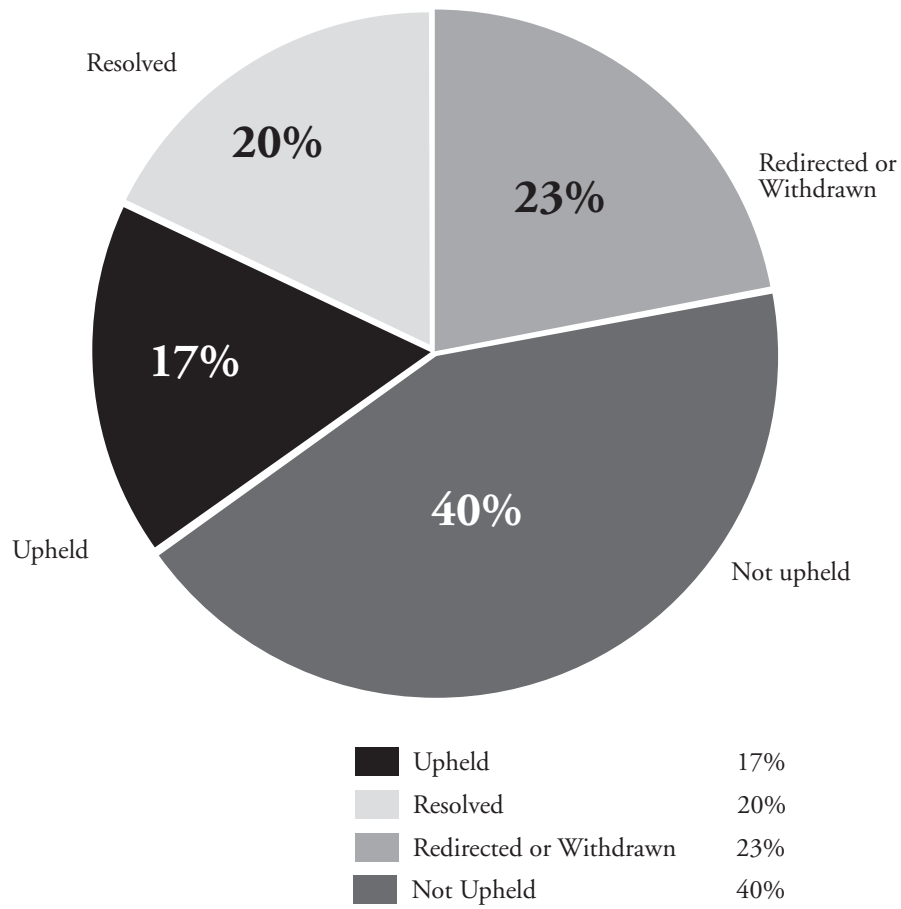


Solicitor to solicitor complaints amounted to 6 (18) out of a total number of complaints of 104 (133)

Figures for 2008 are shown in brackets

Chart E

## Summary of final outcomes of complaints registered and completed in 2009



# Section 5

## Comment on Final Outcome Statistics

5.1 The number of solicitor firms 'on the register' for the period concerned is 540. It is noteworthy that the proportion of total solicitor firms against whom complaints were taken in 2009 has fallen again in 2009 from 20% in 2008 to 17% in 2009. This means that 83% of solicitor firms attracted no complaints in 2009. The number of complainants taking complaints has also fallen from 206 in 2007 to 133 in 2008, and 104 in 2009. These figures are depicted in Chart A. As every complainant represents a cost against society as well as against the Law Society and the profession, these improvements must be most satisfying to all concerned.

5.2 Chart B shows the relationship between the number of complainants forwarding complaints and the number of solicitors firms involved. The number of multiple complainants to individual firms (ie two or more complainants to one individual firm of solicitors) in 2009 was 13 compared to 18 in 2008, and 42 in 2007.

5.3 Closer inspection indicates that:

- In 2009 1 firm had 6 sets of complaints  
0 firms had between 4/5 sets of complaints  
12 firms had 2/3 sets of complaints  
71 firms had one set of complaints
- In 2008 1 firm had more than 6 sets of complaints  
5 firms had 4/5 sets of complaints  
12 firms had 2/3 sets of complaints  
88 firms had one set of complaint
- In 2007 4 firms had more than 6 sets of complaints  
3 firms had either 4/5 sets of complaints  
35 firms had either 2/3 sets of complaints  
91 firms had one set of complaints

The picture overall therefore indicates a substantial fall in both the number of complainants as well as the number of firms each attracting higher numbers of complainants. The usual caution is given that solicitor firms **do** specialise, and some types of clients and work **do** attract a greater number of complaints and complainants. Accordingly, firms should not be judged solely on the number of complaints they receive.

5.4 Chart C is about proportions and simply restates and serves to confirm Chart B.

5.5 Chart D is about complaints 'solicitor to solicitor'. Of course such complaints arise from time to time where a solicitor feels a complaint (usually on behalf of a client) must be made against another solicitor. However, the Complaints Handling Process in my opinion should not be used to put management pressure from one solicitor to another in order to achieve a result; it ought to be used fundamentally to be of **direct** assistance to solicitors' clients. Solicitor to solicitor complaints show a total fall in 2009 to 6 from 18 in 2008. This is a further most welcome downward trend, and to some degree may reflect the excellent work through CPD towards reducing complaints to do with conveyancing and other causes.

5.6 Chart E has been reconfigured from that used in previous Reports. It shows the proportion of final outcomes for complainants who registered complaints and had them concluded in 2009. The proportion of complaints **upheld** has decreased to 17% in 2009, compared with 26% in 2008 and 31% in 2007. A complaint is of the utmost importance to the complainant, and this proportion indicates the Complaints Handling Processes are by no means a waste of time. Alongside this figure should be placed the 20% of complaints that were **resolved** in 2009. Together these show that a significant proportion



– 37% - of complaints to the Law Society have very real substance and yet can escape the many definitional filters that are currently applied. They therefore have very great significance. Or course, one complaint which is found to be justified is one too many in an important profession. Nevertheless, it is vital for the public to recognise that where a complaint is justified, the Law Society does indeed find against a solicitor.

5.7 I have to report that it remains the feeling amongst many complainants that not only do offending solicitors get off far too lightly, the wrong for the complainant simply is not put right directly. This is an accurate perception in many complaints since there is no direct redress for the complainant through the current Complaints Handling System. Solicitors are not asked to apologise or explain by the Law Society to their clients. I believe that this is unsatisfactory, and I would anticipate that this may be a practice which in the future structures might be found to be unsatisfactory.

5.8 In effect any complainant is acting as the eyes and ears for the regulating body. This should

be of high value to the solicitors' profession and must be recognised and be seen to be appreciated by the Law Society. Once again this situation will likely change under new legislation, not least as firms having complaints upheld against them will have to bear the costs of Complaints Handling Processes, along with the Law Society and so indirectly by the solicitors' profession as a whole.

5.9 In 2009, the proportion of complaints **not upheld** was 40%, compared with 33% in 2008. But in addition, 23% of complaints were **redirected or withdrawn** in 2009. These are also significant figures, and the Complaints Department of the Law Society must take a degree of satisfaction that as many as 60% of the complaints they conclude at the second tier have a 'satisfactory' outcome from the point of view of the complainant. This must surely be the principal aim of an effective Complaints Handling System.

5.10 In 2009, there have been yet more highly significant improvements in the time the Law Society takes to conduct complaints referrals. During the years 2008 & 2009, the figures were as follows:

Times	2009		2008	
	Propn	Cum	Propn	Cum
Within 3 months	61%	61%	49%	49%
Over 3 & less than 6 mos	34%	95%	36%	85%
Over 6 mos & less than 9 mos	5%	100%	11%	96%
Over 9 mos & less than 12 mos	0%		4%	
In 12 mos			100%	
*ongoing	6%			
To Disciplinary Tribunal	2%		1%	

*Note \* While this figure is accurate overall, it relates only to cases which extend into 2010, but which had not been concluded before March 2010.*

These figures mask in part a continually changing and improving situation. There are two notable observations. **First**, the proportion of cases in 2009 concluded within 3 months of receipt into the Complaints Handling Process rose to over 60% of complaints received, compared with 50% in 2008.

5.11 **Second**, there has been a significant fall effectively to only a nominal figure in the number of complaints being concluded beyond 6 months. While this is of poor comfort to those complainants who have to wait beyond 6 months to have their complaints concluded, it is, when compared with the figures from previous years a remarkable achievement. I encourage the Society to seek to reduce these times still further. To be able to achieve this will help enhance the reputation of the solicitors' profession.

5.12 It is quite evident that the timetabling of the conclusion of complaints has maintained improvements in efficiency in the ways that were reported in my previous Annual Reports. In 2007, 75% of the complaints received were concluded within six months; this figure had risen to 85% in 2008, and now the Society has achieved well over 90%. **This is an astonishingly good result.** It indicates continuing progress, with which the Client Complaint Committee should be justifiably pleased.

5.13 Once again, I would like to emphasise that it is important in all of this to keep a sense of proportion. It is absolutely of the essence to ensure that complaints are properly concluded. In my opinion, and I have referred earlier in my Report to the evidence for it, complaints are continuing to become more complex in nature and process. I believe that quality of investigation should take preference over trying to meet possibly unrealistic timetabled targets.

However, I consider that it is right to expect the Law Society to keep the complainant informed of progress against a definitive timetable.

5.14 Finally, it is important to note that, from my independent viewpoint, the solicitors' profession remains one of low complaint incidence. No-one knows the number of transactions with clients that solicitors undertake, and we do not know how many result in complaints at the first tier – made by clients to solicitors direct – or how many are successfully resolved. We do however have a clear view of those who remain dissatisfied after the first tier, and the number is very low. Nevertheless, one complaint being escalated to tiers 2 or 3 is one too many.

# Section 6

*Law Society of Northern Ireland  
Information relating to complaints examined by the Society  
for the 12 months ending September 2009*

Nature of Complaints	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
1. Undue delay or inaction	4		2	5	11	1	2			3	8		1	1				2		5	3	48
2. Failure to keep client properly informed	5			1	5		2	1		1	8		1	2						1	2	29
3. Delay/Failure to respond to reasonable enquiries	1		1	1	5		2	1			3			1					1	3	1	20
4. Withholding/loss of documents	1		1	1	4					1	2							1	1	1		13
5. Disclosing confidential information			1	1	1																	2
6. Acting in a conflict of interest situation					3								1									4
7. Acting contrary to client's instructions	3		1		2		1	1		2	2			2	1			3				18
8. Breach of undertakings																						
9. Failure to provide bills of costs/cash/statements; incurring expense without client's authority					1						1											2
10. Failure to deal with legal aid issues properly											1							1				2
11. Failure to provide proper client care information or not complying with agreed client care arrangements			1												1							2



# Section 7

## Comments on Complaints Statistics

- 7.1 There has been a substantial change this year in relation to data collection, since November 2008, when the Law Society decided to develop the statistical framework that it has used for the past number of years, and during which time I have analysed in my Annual Reports. I was consulted about this, and was able to see how important this could be in providing more targeted information about complaints. The context for these changes related clearly to the changes brought about initially by the development of the link between complaints and Continuous Professional Development, the introduction of the new Solicitor Regulations of 2008, the likely changes under the Recommendations of the Bain Enquiry, and as Devolution of Justice is completed.
- 7.2 One major consequence of this change is to interrupt the statistical information about complaints that has been running over a long period of years. However, as this Report has already indicated, the pattern, nature and timetable of concluding Complaints within the Complaints Handling Processes of the Law Society have all developed and changed beyond recognition. Accordingly, I do not have a difficulty with ending these statistical runs. Indeed, it is a healthy matter to be able to recognise when things ought to change. I think that this may well provide a more appropriate statistical platform for the new arrangements when the Devolution of Justice to the Northern Ireland Assembly has been fully accomplished. Accordingly, I commend and support these changes made by the Law Society.
- 7.3 One important consequence of this is that a complaint is less likely than under the previous provisions to be classified under more than one heading, because of the comprehensive and inclusive nature of the categories selected. However, it still does happen; so in 2009 there were 149 categories of complaint from 104 complainants. Due note is taken of this in subsequent paragraphs in this Report.
- 7.4 In recent years, the Law Society has classified complaints according to their **nature**. Each complaint can have more than one descriptor which means that one individual complaint can figure more than once. An example of where this might occur is where a complainant expresses dissatisfaction with the 'billing' process, and where also there was 'undue delay' in dealing with the case. Until November 2008, the Law Society used 10 descriptors for nature of complaints; since then, the Society uses 15 descriptors.
- 7.5 Statistically, the most frequently occurring nature of complaints in 2009 were:
- |  |     |
|--|-----|
| Undue delay or inaction                          | 33% |
| Failure to keep client informed                  | 20% |
| Delay/failure to respond to reasonable enquiries | 14% |
| Acting contrary to client instructions           | 12% |
| Withholding or loss of documents                 | 8%  |
- Together these descriptors account for 87% of the total complaints received when classified in this way by **nature of complaints**.
- 7.6 It will be noted that these refer to complaints as they are presented and registered at the beginning of the process. Outcomes – which are analysed in Section 4 above – describe how each complaint ended up, the process of complaints handling having been concluded by the Law Society.
- 7.7 The Law Society has also classified complaints according to the type of activity each case required – these are termed **circumstances of complaints**. Once again it is possible for a complaint to be classified under more than one heading. So for example, a complainant could bring a complaint relating to Family Law, which might also have a

component of Professional Negligence associated with it. Until November 2008, the Law Society classified complaints under 11 descriptors; since November 2008, these have expanded to 15 descriptors for **circumstances of complaints**.

- 7.8 Statistically, the most frequently occurring circumstances of complaints were:

Conveyancing	20%
Family Law – General	18%
Accidents (incl. personal injuries)	9%
Contract Disputes	6%
Trusts Tax Financial Planning	6%
Commercial Work	5%
Family Law – Children	5%
Medical Negligence	5%

Together, these eight Circumstances account for 74% of the complaints received when classified in this way by **circumstances of complaints**.

- 7.9 This framework for classifying types of complaints received could become the basis for a new statistical run. It would be the clear hope that this may well better meet the changed needs and demands of the new structures resulting from the Devolution of Justice.
- 7.10 I do not intend to make comparisons with the data collected and analysed in my previous Annual Reports. To do so would be statistically invalid because the categories are different in description. More crucially, to attempt to do so would be to try to make comparisons using a framework that is now deemed to be outdated, and therefore no longer of relevance. Readers however may choose to do so using my previous Reports, but I would advise caution, and would add that the main purpose of such an exercise ought to be solely to confirm the generally improving trends that have emerged in recent years in Complaints Handling in the solicitors' profession.

# Section 8

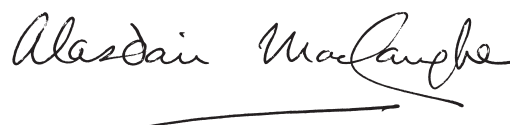
## Recommendations

- 8.1 As already noted, 2009 has seen absorption of further changes and their consolidation into the Complaints Handling Processes of the Law Society. These changes – including the introduction and issue of new Regulations including outlining Terms & Conditions of Service for solicitors, in September 2008, and the new data collection framework brought in, in November 2008, have had further tightening effects in the application of Complaints Processes of the solicitors profession and the Law Society.
- 8.2 Alongside these, it is also evident that complaints handling by solicitors' firms has become more effective, resulting in a reduction of the number of complainants progressing to tiers two and three in the processes. What we are unable to quantify is the incidence of complaints taken against solicitors at tier one – ie between the client and the solicitor. What we do know is that there are fewer complaints coming to both the second and third tiers. This must be of clear satisfaction to all concerned and to the general public – the inference has to be drawn that these reductions indicate a more effective complaints handling process, tackling complaints more frequently at the interface between the client and the solicitor. **This is where complaints ought to be resolved.**
- 8.3 However, as we enter the new structures which will begin to apply as the Devolution of Justice to the Northern Ireland Assembly becomes fully established, we must be careful for many reasons – which have received mention already in this Report – that in no sense must complaints be driven 'underground'. A complaints system, it is now widely agreed, must be seen as a positive process out of which the solicitors' profession and the Law Society achieve the capacity to improve the quality and efficiency of legal services.
- 8.4 **It is for this reason that in this Annual Report I advance only one major Recommendation.**
- 8.5 It is essential that the aims of Complaints Handling are clear and made clear to everyone. As the regulator for the solicitors' profession – which in my judgement is to be highly prized by the Law Society for Northern Ireland – this needs to be driven firmly and clearly by the Law Society. In this and previous Annual Reports I have referred to standards that have been developed elsewhere against which complaints processes can be calibrated. **Firstly**, I have suggested the Virtuous Circle of Complaints Handling (see Section 1 paragraph 1.5 above). **Secondly**, I would point to the guidance criteria issued by Her Majesty's Government Cabinet Office. This refers to eight qualities or criteria for effective complaints handling. **Thirdly**, I have referred in previous Reports to the publication entitled *The Principles of Good Complaints Handling*, which is published by the British & Irish Ombudsman Association. I have made copies of this booklet available to the Law Society.
- 8.6 As a means of preparing for the new structures likely to emerge as a result of Devolution of Justice **I recommend** that the Law Society review complaints processes against these collective criteria in the coming months. **If they do so, it is my opinion that the Society will have an excellent basis for translating complaints systems of the highest standard of quality into the new circumstances arising from full Devolution of Justice to the Northern Ireland Assembly.**

# Section 9

## Concluding Comment

- 9.1 In concluding my Annual Report for 2009, I make the following comments. **Firstly**, I emphasise that improvements in the Complaints Handling Processes at the Law Society and, where relevant, in conjunction with other stakeholders, result from their work, and not that of The Lay Observer. As mine is essentially a catalytic role, **commendation due is entirely theirs**.
- 9.2 **Secondly**, the work of The Lay Observer is governed by a set of principles to achieve best results. These principles are published on my website [www.layobserverni.com](http://www.layobserverni.com) and they are further expounded in the document entitled The Principles of Good Complaints Handling, which is published by the British and Irish Ombudsman Association.
- 9.3 **Thirdly**, the Devolution of Justice to the Northern Ireland Assembly is being put into effect, but to a timetable for full implementation that is not yet clear at the time of writing this report. The Law Society and The Lay Observer are required to operate the current regime with continuing commitment and effectiveness until Devolution is fully in place, and the necessary structures are ready to commence.
- 9.4 **Finally**, in addition to those to whom I formally report – The Government, The Lord Chief Justice of Northern Ireland, and the Council of the Law Society – a copy of this Report is being sent to every Member of the Northern Ireland Assembly and to the principal solicitor of every solicitor practice in the Province. I continue to presume to invite each solicitor practice to review the Report to ascertain if there are implications for the practice concerned. A copy is also sent to appropriate Parliamentarians, to other interested parties and to officials.



Alasdair MacLaughlin  
31st May 2010



# Appendix 1



The Lay Observer for Northern Ireland

**Alasdair MacLaughlin** was initially appointed The Lay Observer for Northern Ireland in April 2004. He is also The Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland since June 2005; he occupies the first such post for Prosecution Services in these Islands. He is an independent assessor for the curriculum authority and a member of the Industrial Tribunals Panel. He has extensive experience in the private, public and voluntary sectors. Following 15 years in industry, he was for 10 years the Director Northern Ireland of the CBI, followed by 10 years as Director General of the Ulster Farmers' Union. He has served on EU Monitoring Committees, and until recently was the Chairman of CfA Ltd, which is the custodial company for National Vocational Qualifications standards and frameworks in Administration for the UK as a whole. During the year, he stepped down as a member of the Probation Board of Northern Ireland, where he chaired one of the two principal committees. He is a trustee of RELATE and of the Belfast Association for the Blind.

The Lay Observer can be contacted at:

Londonderry House

21 Chichester Street

BELFAST

BT1 4JB

Email: [a.maclaughlin@btinternet.com](mailto:a.maclaughlin@btinternet.com)

Website: [www.layobserverni.com](http://www.layobserverni.com)

The Lay Observer's 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

# Appendix 2

## **RESPONSE OF THE LAW SOCIETY OF NORTHERN IRELAND TO THE 31st ANNUAL REPORT OF THE LAY OBSERVER FOR NORTHERN IRELAND**

### **INTRODUCTION**

This is the Law Society of Northern Ireland's formal response to the Lay Observer's Report for 2008.

The Lay Observer's Report and recommendations and the Society's response are part of a continuum to try and improve the existing procedures for complaints handling with a view to having a solid framework upon which to build on the full implementation of the recommendations of Sir George Bain.

The last year has been a significant one for the Society. We have returned to Law Society House. As part of the refurbishment, the Society has now in place enhanced services and systems to help the profession give a modern and efficient service to clients. Also as part of our preparation for implementing the Bain proposals, when we returned to Law Society House, the Client Complaints Department was physically separated from the rest of the Society's departments. Provisions have been made for the practical changes in office space and working practices the Bain proposals may demand.

In addition the last year has seen significant regulatory changes for the profession and the Society. The Solicitors (Client Communication) Practice Regulations 2008 were introduced on 1st September 2008 and have had a year to bed down. These regulations provide that clients should receive information about what work will be done, how costs will be calculated, the name of the person dealing with their case and who to contact about their concerns. In the event that a client wishes to make a formal complaint solicitors must have their own in-house complaints procedures.

In the lead up to the introduction of these Regulations we held five seminars across the province at which the details of the Regulations were explained. The Society has put the Regulations on the website together with suggested clauses for the firms to use in putting together their own terms of engagement letters or leaflets. Advice has been given to those solicitors who have individually sought it. In our outreach to members we asked the local Solicitors Associations for feedback and comment from them in the event that their members are having difficulties. Members of the Sub-Committee who were involved in drafting the Regulations have spoken at seminars organised by other special interest groups explaining the Regulations and will continue to do so.

The Society is committed to ensuring that these Regulations are implemented properly for the benefit of the solicitors' client base. We will continue to encourage and educate our members in respect of the advantages and requirements of them and where appropriate, take action in the event of any breaches.

We believe we have already evidence of the positive effects of the Solicitors (Client Communication) Practice Regulations 2008 and continuing emphasis on client care through the medium of CPD. The number of registered complaints cases dropped from 206 in 2007 to 133 in 2008. We anticipate that we will continue to improve on that number this year.

As part of the general engagement on helping the profession deal with complaints, the Client Complaints Committee sponsored two further seminars this year - one on matrimonial and family law matters and another on administration of estates. These seminars again were held at four venues in Belfast, Newry, Enniskillen and Londonderry and were generally well attended and well received. This commitment to general education in respect of complaints handling and client care will continue.

Last year we indicated that we had redrafted our information and complaint form and documents, which we hoped, would facilitate members of the public when making their complaints and would ensure that they understood our procedures in full. These forms and documents have been monitored over the last year and it is our intention to slightly modify the form to make further improvements so that complainants can make their problems clear and understand the Society's role. It is also our intention to add a resolution form, which will allow clients to structure their complaints to their solicitors to make it easier for the clients' concerns to be considered under the in-house complaints procedures.

As indicated last year we continue to work towards acquiring ISO9001 accreditation. To that end we have introduced refinements to our procedures and all initial enquiries or complaints are now acknowledged with an indication of when we will provide a substantive response. All written communications with the Society whether electronic or otherwise are processed in the same way and are logged centrally, with the earliest enquiry being answered first. This is to ensure the Society treats every enquirer/complainant fairly and this is explained to anyone contacting the Society.

We are drafting a FAQs sheet which we intend putting on our website so that members of the public will have some general information in respect of costs, how to complain, when to complain and other issues. Standard responses/information and supporting documents are being drafted to guide staff in dealing with telephone calls so that there is consistency in the information provided to telephone enquirers.

The Society considers that it has a role to play to be of positive assistance to members of the public or their representatives, even in circumstances where we are unable to pursue a complaint. Where possible therefore enquirers are redirected to the appropriate body or guidance is offered as how best to take matters forward.

## RECOMMENDATIONS

The Lay Observer in his Report last year made no specific recommendations other than to encourage the Society to continue to improve on the recommendations made in the 2007 Report. The Society confirms that it has endeavoured to comply with the recommendations previously made by the Lay Observer.

We had used our CPD programme to inform the profession about complaints and how to deal with these sympathetically. We intend organising further seminars in 2010 in relation to immigration matters and will give consideration to other areas of work, which might benefit from advice on handling complaints.

We have endeavoured to keep as closely as possible to our time limits and where we are outwith those time limits we have been keeping the parties to the complaint informed.

The Committee noted the Lay Observer's comments with regard to use of English and we would confirm that we are mindful of these comments and are continuing to be as clear as possible, taking account of the complexities of some cases.

We are also aware of the distress complainants can experience as a result of raising a formal complaint about their solicitors, which the Lay Observer has commented on in various reports and we therefore endeavour to write in as empathetic terms as possible.

The Society continues to engage with the Lay Observer throughout the year and not just at formal intervals and we welcome the opportunity to discuss matters of mutual interest as and when required.

On a final note, since the last Report we have recruited a caseworker who works between the Client Complaints Department and the regulatory side of the Society. This

is a developing role but the current objective is to assist with complaints with a view to improving response times overall.

Dated: 30th November 2009.

Barry Finlay  
President of the Law Society of Northern Ireland

# Appendix 3

## *Principles of an effective complaints system*

Eight basic principles of an effective complaints system have been identified by HM Government's Cabinet Office Best Practice (COBP). This states that a complaints system should be:

- *easy to access and well publicised*;
- *speedy* – with fixed time limits for action and keeping people informed of progress;
- *confidential* – to protect staff and those who complain;
- *informative* – providing information to management so that services can be improved;
- *simple* – to understand and use;
- *fair* – with a full procedure for investigations;
- *effective* – dealing with all points raised and providing suitable remedies; and
- *regularly monitored and audited* – to make sure that it is effective and improved.