

FURTHER PROGRESS

*Annual Report of The Lay Observer
for Northern Ireland*

2010

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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 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 seventh Annual Report, and the thirty-third in the series. My appointment under present arrangements extends until the end of March 2014, or such earlier date as 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 2010. Routine work concentrates on investigating complaints taken against the Law Society of Northern Ireland. 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 (as amended) 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 investigations.
- 1.3 The **first** tier is where the clients complain directly to their solicitors. They do so under current regulations put in place in September 2008. These arrangements tightly applied have already reduced the number of complaints being directed to the second tier. Incidentally, it cannot be established how many complaints reach firms of solicitors in Northern Ireland each year. However, it should be noted that of the many hundreds of thousands of transactions taking place each year, only a tiny percentage ever reach the second or third tier.
- 1.4 I am pleased to report that the Law Society continues to give committed attention to complaints. A detailed account of their work in this context is contained in Appendix 2 to this Report – the formal Response from the Law Society to my Annual Report for 2009. This meticulous and thorough Response makes encouraging reading as a statement of intent and a report on progress; it bodes well for the transfer of powers to any new regime for handling complaints. The detailed timetable for this is a matter for the Northern Ireland Assembly. The attention 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.
- 1.5 I must emphasise that the purpose of handling complaints has a wider canvas than simply helping individual complainants. Complaints, and their resolution, have 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 from the complaint. Finally, these processes should be further studied to determine what **learning** can result from the complaint and other complaints, their resolution and from service improvements.
- 1.6 I emphasise that in dealing with complaints against the Law Society at the **third** tier – the independent level provided by the Lay Observer – the process is not about becoming the complainants' champion. I take an independent view of the facts and draw conclusions; from that process, I make suggestions for resolution, make observations, and where necessary provide recommendations. An independent view can help to defuse and lessen the emotional, and factual impact on clients, and taking this into a wider context, I can help and encourage service improvements and in so doing provide pointers towards learning about minimising future complaints.
- 1.7 It is my clear opinion that the Law Society at the **second** tier should be aiming to achieve similar outcomes within and appropriate to their powers. In no sense should they be or appear to be the solicitors' champion. Every year, there

are instances where complainants feel that this is precisely what the Law Society has been in their particular case. I would encourage the Law Society to continue to examine from first principles what they do at the second tier and to see how they can minimise these perceptions. To achieve clear success will be the most likely way in which the Society can ensure that they continue to retain supervision of tiers one and two – a result that neither the Law Societies of England & Wales, and of Scotland have been able to achieve in full.

- 1.8 Work resulting in service improvement by individual solicitors and by providing appropriate learning for the profession reduces the chances of complaints arising in the first place. The Law Society is to be commended for the fact that it is developing effective and flexible ways of feeding back experience from the Complaints Handling Process into Continuous Professional Development (CPD). They also use this as a means of determining priorities for attention under CPD. In addition, the enhanced profile given to the Complaints Handling Processes by the Presidential Team in the Law Society, the approach to client care for solicitors, and 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.
- 1.9 I have regular contact with the Presidential and Office-bearer Team. The Client Complaints Committee, with legal and lay representatives has a difficult and sensitive part to play in enhancing the service of the profession. It is useful for me to remain in open contact with the Chairman and staff, 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 any likely new arrangements.

- 1.10 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 effective and professional manner. I aim to work co-operatively, and yet in such a way as to maintain an appropriate professional distance between our respective roles. I take the view that our aims are the same, namely to enhance service provision of the solicitors' profession.
- 1.11 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, Ms Wenda Pollock, Mr Sean Gillen and others for the ways in which they facilitate my work providing necessary resources and administrative support when required. Much assistance is given by reception staff at Londonderry House; as my role is part-time, these persons are most helpful to me in ensuring that my mail and messages are received in a timely manner – I am very grateful to them.
- 1.12 Despite the fact that my reporting to him is formalised in the legislation, I am no longer invited to account in person for my work directly to the Lord Chief Justice of Northern Ireland, and nor does the post holder of the day correspond with me directly.
- 1.13 I am encouraged by the fact that the Minister for Justice and the Attorney General for Northern Ireland have both taken a personal interest in my work, as have NIO Ministers, a number of Members of Parliament, and the various Northern Ireland political parties and their

MLAs. In addition, a number of Whitehall Departments have had access to and have taken an active interest in my work.

- 1.14 I continue to have valuable and helpful contacts with my counterparts in the other jurisdictions of the United Kingdom and Ireland. I meet too with complaints handlers and Ombudsmen in other sectors in regular meetings and workshops. I continue to operate to the BIOA published standards relating to the principles of good complaint handling and achieve higher standards where possible and appropriate. The standards to which I work are published on my website and were also 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 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 During 2010, my work of oversight of the Complaints Handling Processes of the Law Society continued alongside dealing with complaints against the Law Society. I continue to work in co-operation with the Law Society, and others, to think ahead to ensure that the transition into any changed situation will be as seamless as possible.
- 2.3 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 causes of complaints. They have done so using their regular magazine, *The Writ*, but also in speeches, and most effectively in the CPD programmes
 - the regulations introduced by the Law Society in September 2008 in connection with solicitors' business, and the modified material for guiding clients/potential clients are now increasingly firmly embedded
 - The methodologies of contact between the Law Society and The Lay Observer continue to improve in order to attain maximum efficiency including increasing use of electronic communications in day-to-day contact
- 2.4 I am pleased to be able to participate where-ever possible in preparing for any effective transition to a new regime under Devolution. 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 will not therefore, under the current law, step outside the existing parameters.
- 2.5 The Lay Observer operates under the **SOLICITORS (NORTHERN IRELAND) ORDER 1976** and the **SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989**. The public profile of my role by design is not high. Nevertheless it is appropriate to ensure that potential complainants and stakeholders are aware of the existence of my office, while at the same time ensuring that it is not appropriate to promote my service.
- 2.6 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, and access by my email address a.maclaughlin@btinternet.com, are of value to current and potential complainants. Increasingly, approaches to me are by email, and persons often refer to having consulted the website before direct contact with me. However, when a complaint is advanced, I require documentation to support it, so that hard copy files are kept by me in concluding my investigation.
- 2.7 On a more general point, all involved need to be vigilant at all times that any tightening and greater discipline in the approach to Handling Complaints does not have the effect of driving legitimate complaints 'underground'. There is a vital balance to be achieved between both complainant and responder following properly clear and effective procedures on the one hand, and on the other, providing an empathy and approachability towards those who are not so well versed in the mores of the law.

- 2.8 Given the way that they will likely develop, Complaints Handling Systems must be 'user friendly' and helpful to those who decide to enter them having a legitimate reason to complain. The Law Society increasingly appreciates and values complaints as a window on how the lay public sees the solicitors' profession, and as a way of enhancing performance in the profession. The further development of this philosophy of improving service will be essential for any future new regime.

Section 3

Complaints Work of The Lay Observer in 2010

- 3.1 During 2010, I investigated complaints from a total of 42 complainants. This compares with 35 complainants in 2009, and 43 in 2008. It should be noted that when the Law Society receives a complaint, in most cases that complaint can be analysed under several different categories.
- 3.2 In 2010, the Law Society received a larger number of categorised complaints, 218 as compared with 149 in 2009, and 317 in 2008. And the number of complainants was 110 in 2010, compared with 104 in 2009 and 133 complainants in 2008. In 2007, the number of complainants was 295, with 202 in 2006. The interpretation of this set of figures requires care, as the categorisation of complaints was reviewed in November 2008. This increased the number of categories involved; thus a precise comparison with figures prior to 2008/9 is not valid. It will be noted on the other hand that the number of complainants has reduced to a lower general level; that comparison is valid, as there was no change in the definition of a complaint.
- 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. Like 2009, I audited some 30% of these complaints in 2010.
- 3.4 I have to report that the complexity of the cases I received continues to change. 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 amount of work needed 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 42 complaints in 2010, 35 in 2009, 45 in 2008; and in 2007 there were 51 complaints
- There were 7 very complex cases in 2010, 18 very complex cases in 2009; in 2008, there were 13. Each case took three or more days to conclude
- There were 17 complex cases requiring one and up to two days to conclude in 2010, 5 in 2009; in 2008, there were 6 such cases
- This means that the number of complex and very complex cases together in 2010 was 24, in 2009 there were 23, compared with 19 in 2008
- There were 18 other cases in 2010 each of which took up to one day to conclude, 12 in 2009 and 26 in 2008; there were 35 in 2007.

- 3.5 In essence I receive three types of ‘Complaint’. There are **firstly**, from 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. These often contain large amounts of detail, which requires considerable work on my part before I can come to a conclusion. In any case, some complainants say they have not been treated properly by the Law Society, and so take the view that the Law Society has come to a wrong decision or conclusion. In these cases, I provide an opinion as to whether the case has been dealt with correctly or not. If I believe they have not, I will revert to the Law Society for a re-consideration of their decision.

- 3.6 These are all 'complaints' which those complaining feel strongly should be dealt with by someone, even though they cannot be entered into the Complaints Handling Processes. I believe that where I can help such persons, 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 the profession, as well as assisting the public in general. In any event, all of these require time, commitment and energy by me to complete.
- 3.7 **Secondly** there are those from 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 those from 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.
- 3.8 I report a continuing 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.
- 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. A proportion of my work is carried out *pro bono publica* and I contend that I operate a low cost,

efficient and effective service on behalf of society and the Government within the legislation, procedures and protocols.

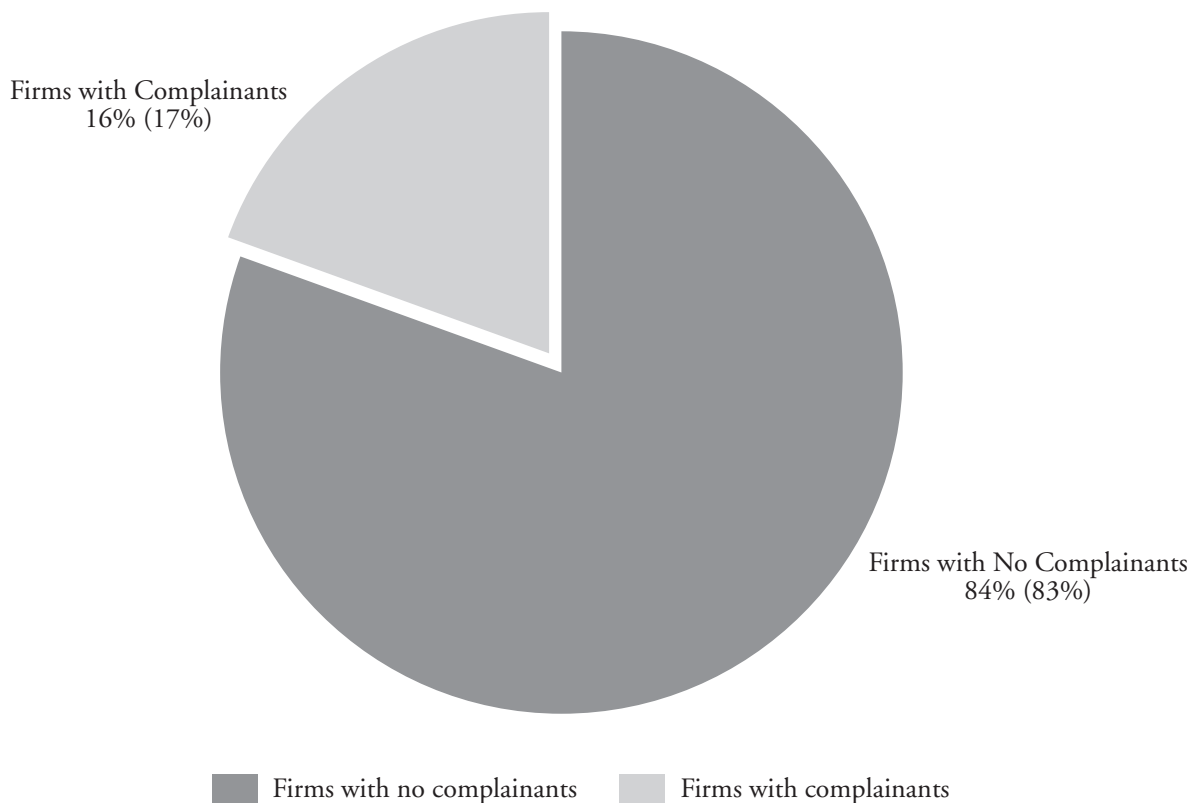
Section 4

Final outcomes of Complaints made to the Law Society 2010

Note: the complaints referred to in Section 4 are those which achieved a final outcome in the year 2010 at the second tier

Chart A

% Number of Firms with Complainants and % Number of Firms with No Complainants in 2010



The total number of firms 'on the register' at the Law Society is 541. Of these 453 (84%) have attracted no complaints. 87 solicitor firms have attracted complainants; this represents 16%. The corresponding figures for 2009 were 83% attracting no complaints with 17% attracting complainants.

Chart B

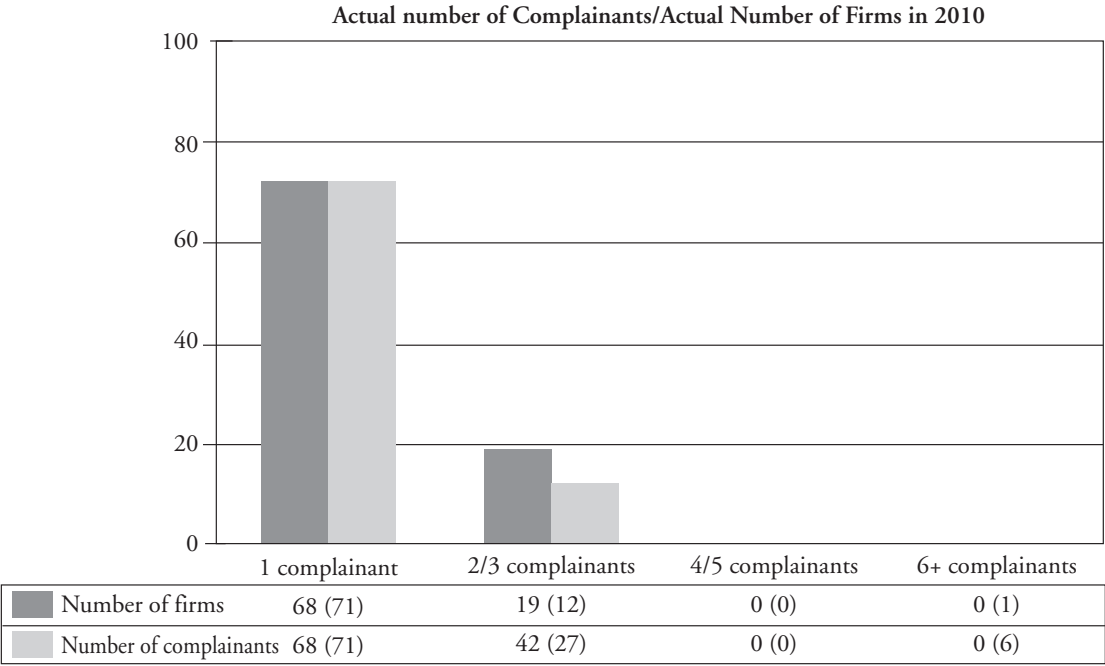
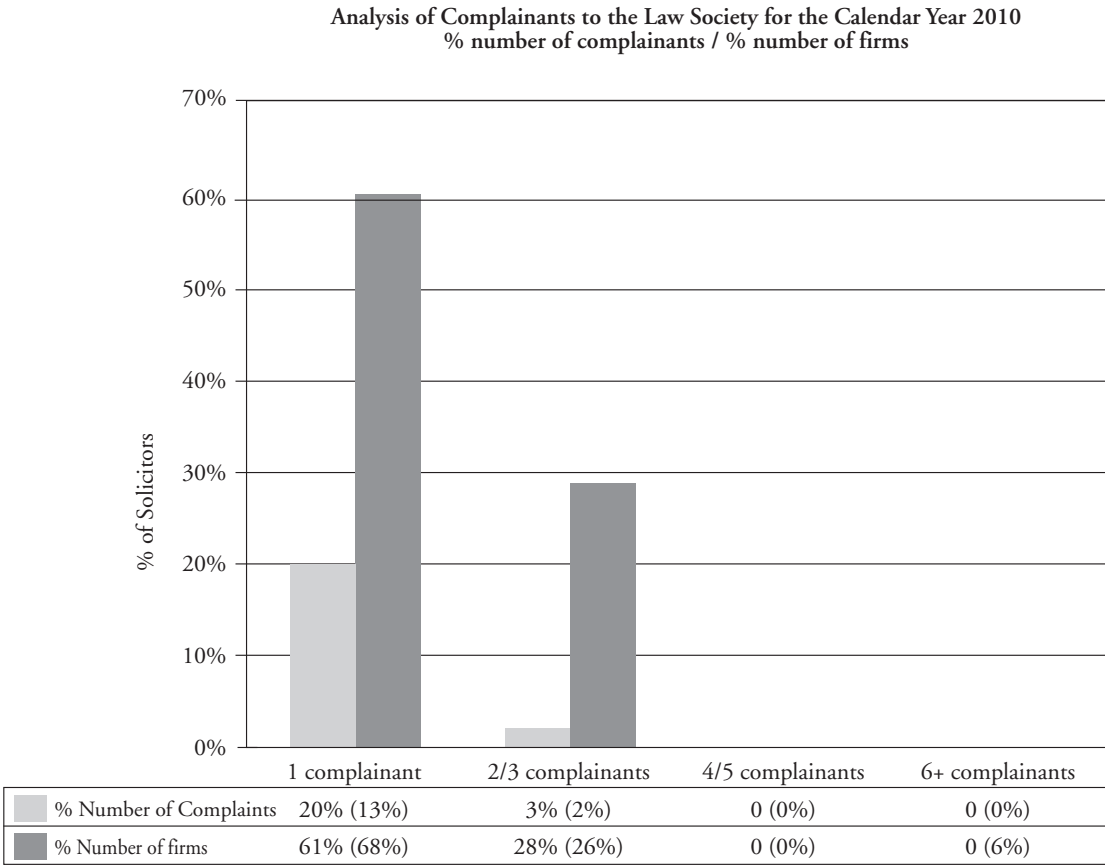


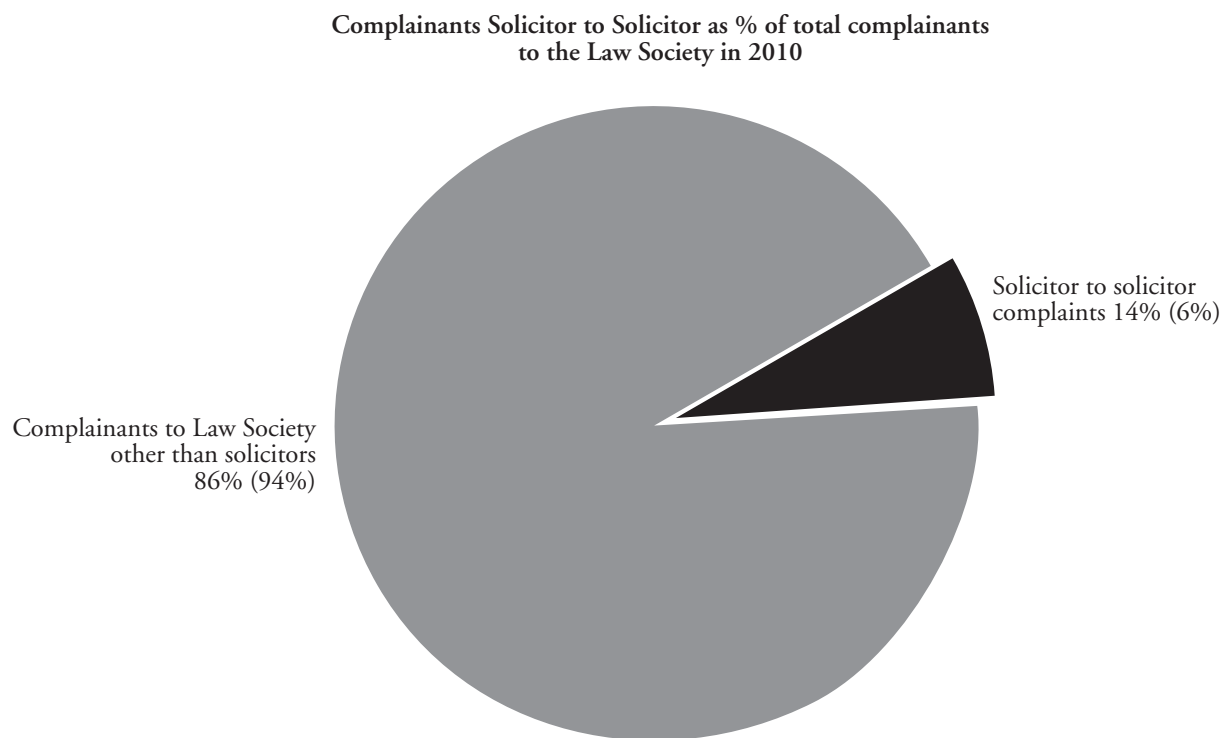
Chart B presents the actual numbers (and not the comparative percentages which are shown in Chart C) and reflects the same statistical pattern. The equivalent figures for 2009 are shown in brackets.

Chart C



Figures for 2009 are shown in brackets.

Chart D

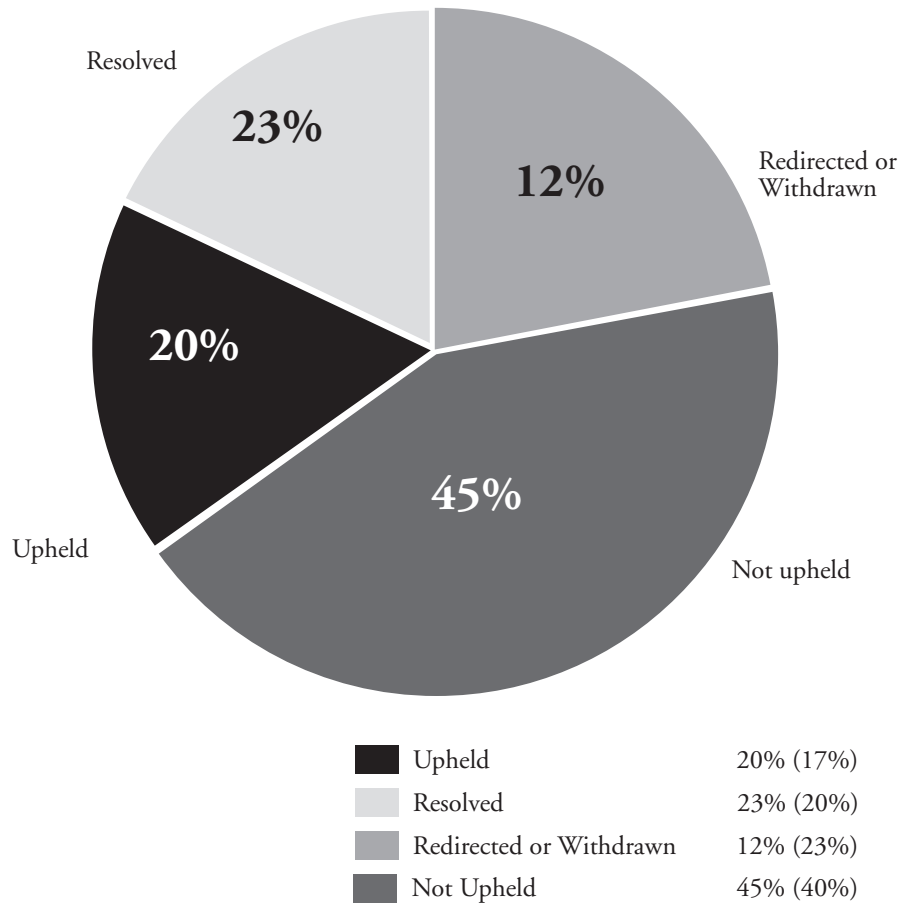


Solicitor to solicitor complaints in 2010 amounted to 15 (6) out of a total number of complaints of 110 (104)

Figures for 2009 are shown in brackets

Chart E

Summary of final outcomes of complaints registered and completed in 2010



Section 5

Comment on Final Outcome Statistics

— 2010

5.1 The number of solicitor firms ‘on the register’ for the period concerned is 541. It is noteworthy that the proportion of total solicitor firms against whom complaints were taken has fallen slightly once again in 2010 to 16% from 17% in 2009. This means that 84% of solicitor firms attracted no complaints in 2010. Alongside these figures, the number of complainants taking complaints has risen slightly from 104 in 2009 to 110 in 2010, having been 133 in 2008. 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, the apparent achievement of a new lower general level must be 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 complaints to individual firms (ie two or more complaints to one individual firm of solicitors) in 2010 was 19, while in 2009 it was 13 compared to 18 in 2008.

5.3 Closer inspection indicates that:

- In 2010 No firms had more than 3 sets of complaints
19 firms had 2/3 sets of complaints
68 firms had one set of complaints
- In 2009 1 firm had 6 sets of complaints
No 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 complaints

The overall picture suggests that the former pattern of some high multiple complaints for some firms might have been broken. The usual caution is given that solicitor firms **do** specialise, and some types of clients and work by their very nature **do** attract a greater number of complaints and complainants. Accordingly, firms should not be judged solely on the number of complaints they receive. Chart C is about proportions and simply restates and serves to confirm Chart B.

5.4 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. I have stated before, and do so again that the Complaints Handling Process in my opinion should not be used to put management pressures from one solicitor on 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 shows an increase total in 2010 to 14% from 6% in 2009 and from 18% in 2008. This must be carefully monitored in 2011, to ensure that the proportion is not allowed to grow.

5.5 Chart E was reconfigured in 2009 from that used in previous Reports. It shows the proportion of final outcomes for complainants who registered complaints and had them concluded in 2010. The proportion of complaints **upheld** has increased to 20% from 17% in 2009, and compared with 26% in 2008 and 31% in 2007. A complaint is of the utmost importance to the complainant and this proportion once again indicates that Complaints Handling Processes are by no means a waste of time. Alongside this figure should be placed the 23% of complaints that were **resolved** in 2010. Together these show that a

significant proportion – 43% - of complaints to the Law Society had in 2010 very real substance and yet escaped the definitional filters that are currently applied. They therefore have important 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.**

5.6 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 example by compensation, for the complainant through the current Complaints Handling System. Also, solicitors are not asked by the Law Society to apologise or explain to a complainant, and this appears to me to be unsatisfactory. **However, it is my understanding that solicitors may find that as a result of a complaint, they may be required to account for themselves using other Law Society mechanisms.**

5.7 In effect any complainant is acting as the eyes and ears for the regulating body. This should be and be seen to be of high value to the solicitors' profession and must be recognised more clearly 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. These costs could well include a financial redress to the client. In the meantime, it may be prudent for the Law Society to note to them this important service that complainants provide to the profession.

5.8 In 2010, the proportion of complaints **not upheld** was 45%, compared with 40% in 2008. In addition, 12% of complaints were **redirected or withdrawn** in 2010. The latter figures are significant, as in effect they also help resolve the complaint. The Complaints Department of the Law Society must take a degree of satisfaction that as many therefore as 55% of the complaints they concluded in 2010 at the second tier have a 'satisfactory' outcome from the point of view of the complainant. This compares with a 60% figure for 2009. It is surely the principal function of an effective Complaints Handling System to help clear up a complaint for the complainant. **That such a high proportion are so dealt with should be a matter of satisfaction for the Clients Complaints Committee and the Complaints Department of the Law Society.**

5.9 In 2010, the highly significant improvements in the time the Law Society took to conduct complaints referrals in 2009 **has not been sustained.** During the years 2009 & 2010, the figures were as noted on the following page:

Times	2009		2010	
	Propn	Cum	Propn	Cum
Within 3 months	61%	61%	43%	43%
Over 3 & less than 6 mos	34%	95%	36%	79%
Over 6 mos & less than 9 mos	5%	100%	13%	92%
Over 9 mos & less than 12 mos		0%		0%
In 12 mos		0%		0%
*ongoing		6%		8%
To Disciplinary Tribunal		2%		3%

*Note * This figure relates only to cases which extend into 2011, but which had not been concluded before March 2011.*

5.10 There are two notable observations. **First**, the proportion of cases in 2010 concluded within 3 months of receipt into the Complaints Handling Process fell to 43% compared with 60% in 2009 of complaints received, and 50% in 2008.

5.11 **Second**, there has been a rise in the proportion of complaints being concluded beyond 6 months to 13% from the nominal figure achieved in 2009. This is of poor comfort to those complainants who have to wait beyond 6 months to have their complaints concluded. But when compared with the figures from a few years ago this still represents generally a reasonable achievement. I encourage the Society to seek again to reduce these times. To be able to achieve this will help enhance the reputation of the solicitors' profession in handling complaints properly.

5.12 The timetabling of the conclusion of complaints has maintained general levels of efficiency in the ways that were reported in my earlier Annual Reports. In 2007, 75% of the complaints received were concluded within six months; this figure had risen to 85% in 2008, over 90% in 2009, with 79% achieved in 2010.

5.13 However, it would be wrong not to highlight other points that have arisen which lie behind these figures. The most important of these relate to the increasingly painstaking and firm way in which the Client Complaints Committee of the Law Society has sought to ensure that the essence and spirit of the Regulations relating to client care introduced in September 2008 are fully implemented. It has been essential to ensure that solicitors firms now deal properly with matters of client care themselves before allowing the matter

to proceed to the Law Society. Accordingly, the Committee has worked very hard to ensure that solicitors firms deal very thoroughly with complaints at the first tier of the process and make serious attempts to deal with the complaint at that level. This has also meant that the Complaints Department have put pressure on firms to deal ever more thoroughly with complaints at the first tier.

5.14 And, in the instances where a complaint has been permitted to proceed to the second tier in the process, the Complaints Department has been at pains to ensure that the solicitors provide the fullest information that is possible. These changes are generally not obvious, but the working through of this activity in such a thorough way has served to elongate the process to achieve what at the end of the day is an enhanced contribution to higher professional standards in the profession. I can confirm that these features are borne out in my audit of complaints dealt with at the second tier. For these reasons, I am content that the effect in the statistics should be accepted as an indication of an increasingly assiduous approach to Complaints Handling in the solicitors profession; a tightening effect therefore is to be welcomed. I am confident that once this ethos is translated to solicitors in general, the achievement of better timetabling standards will resume.

5.15 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, the processes of dealing

with complaints have become more complex and thorough. I believe that quality of investigation should take preference over simply trying to meet unrealistic timetabled targets. **However, I also consider that it is right to expect the Law Society to keep the complainant informed of progress or changes against a definitive timetable.**

- 5.16 Finally, it is important to note that the solicitors' profession remains one of very 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, or how many are successfully resolved. We do however have a clear view of those who remain dissatisfied, and the number is very low. It is probably not realistic to expect the incidence of complaints to fall substantially more than they have already fallen in recent years.

Section 6

*Law Society of Northern Ireland
Information relating to complaints examined by the Society
for the 12 months ending September 2010*

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	13	2		4	9	1	1	1			11		4							2	2	50
2. Failure to keep client properly informed	12	1		3	6	1		2		2	4		3							1	1	36
3. Delay/Failure to respond to reasonable enquiries	3	1		1	7					1	2		3							1	4	23
4. Withholding/loss of documents	5			1	10						5		1							1	2	25
5. Disclosing confidential information											2											2
6. Acting in a conflict of interest situation		1			2		4														1	8
7. Acting contrary to client's instructions	1			4	5	2	5	1		1	4	1	1							1	3	29
8. Breach of undertakings											1											1
9. Failure to provide bills of costs/cash/statements; incurring expense without client's authority	2				2		1				2											7
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

[illegible]

CIRCUMSTANCES of COMPLAINTS

Key to the code letters in use (horizontal headings) since November 2008

A	Accidents	B.	Bankruptcy & Insolvency Debt
C.	Commercial Work	D.	Contract Disputes
E.	Conveyancing	F.	Criminal Injuries & Criminal Damage Compensation
G.	Criminal Law	H.	Employment Law, Equality/Discrimination Issues
I.	Enforcement of Judgments	J.	Family Law – Children
K.	Family Law – General	L.	Immigration & Asylum
M.	Land & Property Disputes	N.	Libel & Slander
O.	Licensing	P.	Mental Health
Q.	Planning	R.	Medical Negligence
S.	Professional Negligence	T.	Trusts, Tax & Financial Planning
U.	Wills, Probate & Intestacy	V.	All other circumstances (total A-T)

Note: In most cases the classifications at 1-14 and A-U refer to the principal complaint made to the Society, but in some cases a single complaint may be included under one or more heading.

Section 7

Comments on Complaints Statistics 2010

7.1 There was, as noted in my 2009 Report, a substantial change in relation to data collection in November 2008, when the Law Society decided to develop further the statistical framework that it had 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 valuable 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 was to interrupt the statistical run of information about complaints that had been continuous 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 had no difficulty in ending these statistical runs.

7.3 A 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 2010 there were 218 categories of complaint from 110 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; and since then, the Society has used 15 descriptors.

7.5 Statistically, the most frequently occurring **nature of complaints** in 2010 were:

	2010	2009
Undue delay or inaction	23%	33%
Failure to keep client informed	17%	20%
Delay/failure to respond – enquiries	11%	14%
Acting contrary to client instructions	13%	12%
Withholding or loss of documents	11%	8%

Together these five most frequent descriptors account for 75% of the total complaints received in 2010 when classified in this way by **nature of complaints**.

7.6 It will be noted that these relate 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 Conveyancing 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:

	2010	2009
Conveyancing	21%	20%
Family Law – General	20%	18%
Accidents (incl. personal injuries)	19%	9%
Contract Disputes	7%	6%
Land & Property Disputes	7%	
Wills & Probate	6%	

Together, six Circumstances account for 80% of the complaints received in 2010 when classified in this way.

- 7.9 The framework for classifying types of complaints received will likely 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. If this is the case, then comparative statistical runs can operate across the date lines for change.

Section 8

Recommendations

- 8.1 As already noted, 2010 has seen continuing absorption of changes and their consolidation arising from Regulations introduced in September 2008, other aspects of client care, and the new data collection framework brought in, in November 2008. The tightening effects in the application of Complaints Handling Processes to the solicitors' profession by the Law Society are also now evident.
- 8.2 While the statistics provide results of some marginal improvements and also some marginal deteriorations, this is by no means the whole picture. I have attempted to clarify that the ways in which the Law Society have been dealing with complaints in 2010 have continued a trend of tightening up the application of the changes made in 2008. This has had the effect of somewhat lengthening the timescales of the processing of some complaints. However, this is being done to ensure that solicitors firms themselves also tighten up their approach to dealing with complaints at the first tier. The Law Society has made it clear that solicitors firms must exhaust their own Complaint Handling Processes before they will accept a complaint at the second tier. In my opinion this is absolutely correct. When this realisation becomes evident to increasing numbers of solicitors firms, then a higher standard will have been reached all round.
- 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 – all of 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 essential that the aims of Complaints Handling are clear and made clear to everyone. The Law Society of Northern Ireland under the Bain Proposals would retain much of its regulatory role; this is highly to be prized by the Society, as it has been diluted elsewhere. In this and previous Annual Reports I have referred to standards that have been developed elsewhere against which complaints processes can be calibrated. Once again, I point to the guidance criteria issued by Her Majesty's Government Cabinet Office. This refers to eight qualities or criteria for effective complaints handling, and these are noted in Appendix 3 to this Report. These principles provide a basis, along with other sources, for objective measurement against which the Law Society can calibrate its own efforts.
- 8.5 Last year I recommended that the Law Society reviews its complaints processes against these collective criteria. **As they do so, it remains my opinion that the Society will have an excellent basis for translating complaints handling systems of the highest standards and quality into the new circumstances arising from full Devolution of Justice to the Northern Ireland Assembly.** In this report, I repeat this Recommendation.
- 8.6 However, there are other important points of detail on which I would like to place emphasis. **Firstly**, a criterion of redress and/or remedy, which is seen by the Cabinet Office as part of *effectiveness*, is limited at tiers 2 & 3 in the Law Society's Complaints Handling Processes. This is because of the nature and limitations imposed by the legislation. It is becoming increasingly important to explain to complainants that they may have to use other means in order to obtain such remedies. My audit work has revealed that such explanations are more and more becoming features of responses to complainants. The emphasis here could well change in a future system, where a commissioner may be empowered

to award sums of money to complainants as well as other means of redress.

8.7 **Secondly**, it is an important feature of the Complaints Handling Processes that they draw the attention of the Law Society to potential inefficiencies by solicitors firms. So for example, valuable information is made available to focus and guide the Continuing Professional Programme, as well as regulatory initiatives by the Law Society. In this way, complainants actually provide a most valuable opportunity not just to put things right in their own case, but also in providing essential information for the Law Society to use in improving service and professional training. I take the view that every opportunity should be taken to ensure that complainants are made aware that their raising matters for complaint is of value to the Society and is accordingly given recognition.

8.8 **Thirdly**, it is encouraging to note that the Law Society is increasingly less tolerant of solicitors who do not keep to timetables and procedures set down by the Law Society when responding to complaints. My auditing work reveals that these requirements are being increasingly made explicit to the solicitors concerned, and further pressure is applied to ensure that solicitors conform to what the Law Society requires. This is right and proper, and I support what the Law Society is doing. However, complainants do not always have sight of these pressures. It would be my opinion that the Law Society should make it clear to complainants when they have applied pressures to solicitors in their cases. This is one way in which the Law Society could help alleviate the perceptions clients often have that the Law Society 'is on the side of the solicitor'.

8.9 Accordingly, my **Recommendations** in this Report are that:

1. **I recommend** that the Law Society continues to measure its Complaints Handling Processes

against the criteria laid down in the Cabinet Office guidance, other sources of criteria mentioned last year, and those contained in the ISO 9001.

2. **I recommend** that the Law Society further develops its path of providing pointers to complainants to other means they may employ to obtain a degree of satisfaction in their complaint than those available in the Complaints Handling Processes.
3. **I recommend** that the Law Society considers ways to ensure that complainants are made aware of the value of the Complaints Handling Processes to improving the standard of service in the profession.
4. **I recommend** that the Law Society considers how best to ensure that complainants are made aware of just how seriously the Complaints Handling Processes bear on a firm of solicitors against whom a complaint is taken.

Section 9

Concluding Comments

- 9.1 In concluding my Annual Report for 2010, I make the following comments. **Firstly**, I emphasise – as I always do at this point in my Reports - that such improvements in the Complaints Handling Processes that have been achieved 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 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 full Devolution of Justice awaits the pleasure of the Northern Ireland Assembly, and 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 a new regime is in place, and the necessary structures are ready to commence. Every effort is being made by the Law Society and by the Lay Observer, in relation to solicitors' Complaints Handling Processes to make that transfer when it comes, as seamless as possible.
- 9.4 **Fourthly**, this Report is prepared and written at a time of stringency in achieving cost reductions, and I have decided to make my contribution to that process as an official of Government. Accordingly, I have proposed that this Annual Report be made available primarily in electronic format. Accordingly it will be made available on my website in that form at www.layobserverni.com from 31st May 2011. In addition, the distribution of my Report will no longer be by

hard copy, with the exception of those to whom I formally Report.

- 9.5 I have also closed my office, and instead developed a virtual office, and complainants will in future use electronic, or surface mail methods to communicate with me. Accordingly, there will be a further substantial proportionate lowering of my costs, following my earlier decision to employ no staff and to operate my office on my own. From 31st May 2011 my postal address will be:-

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- 9.6 **Finally**, in addition to my formal Report to the Government, the Lord Chief Justice of Northern Ireland, and the Council of the Law Society – I shall be using a variety of means including the Law Society's regular information operation to make it accessible to every solicitor registered with the Law Society. **I will continue to presume to invite every solicitors' firm to review the Report to ascertain if there are implications for the practice concerned.** Parliamentarians, relevant Ministers throughout Government and appropriate officials, will also be encouraged to access the Report.



Alasdair MacLaughlin
31st May 2011

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 and in this post, he occupies the first such role 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.

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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 32nd ANNUAL REPORT OF THE LAY OBSERVER FOR NORTHERN IRELAND ENTITLED “DEVOLUTION IN SIGHT”

INTRODUCTION

This is the Law Society of Northern Ireland’s formal response to the Lay Observer’s Report for 2009.

In a response to the 2008 Report we recorded the effect of a return to Law Society House and the enhanced facilities which were available to the profession at large to assist them in providing high quality services to their clients. In addition we recorded that the Society had physically separated the Client Complaints Department from the rest of the Society’s Departments, in anticipation of moving forward towards the implementation of the Bain proposals as outlined in Sir George Bain’s Report.

The Society welcomed the Bain Report when published and in his address at the Council Dinner the President of the Society called for the implementation of the Bain proposals in full.

¹ *“The Bain Report will, when implemented, lead to a new structure for the governing bodies of the profession in Northern Ireland. It remains the authoritative text on a proportionate and rational model for this jurisdiction and has been accepted by Government as the way forward. For obvious reasons, implementation of the Report, which requires legislation, has not yet been taken forward by the Assembly.*

The Society calls upon the Minister to bring forward legislation; at the earliest opportunity, to implement the recommendations contained in the Bain Report. We have taken many steps administratively to implement the proposals, but some of these recommendations do require legislative authority, without which we cannot move further. The Society urgently needs the powers set out in the

Bain Report in order to meet the challenges we face”.

In the interim the Society continues to provide for legislative change. In addition to the enhanced separate office arrangements for the Complaints Department from the other Departments in the Society, the Society launched its new website on 30th November 2009. The layout and content of the website is designed to be of wider use to the general public and also gives better support to the profession in delivering services to their client base. Also for the benefit of the public we have included a solicitors’ directory which lists most of the firms in Northern Ireland who wish to advertise their services through the Law Society’s website. Solicitors can be searched for under individual solicitor names, a firm, a geographical location or categories of work undertaken.

The Law Society’s Regulations and Standards are also included on the website in full for the first time. The information is set out in such a way as to enable a member of the public searching for information regarding solicitors’ duties and responsibilities to a client to be easily accessed in that the Solicitors (N.I.) Order 1976 as amended (the Order) is included followed by core Practice Regulations and miscellaneous Client Care Regulations. Other Regulations are listed alphabetically under appropriate headings .

The provision of Services Regulations 2009, (SI2999) which are EU Regulations, came into effect on 28th December 2009. They contain, in a different format, most of our own client care provisions, but also include requirements to provide VAT references, insurance scheme provisions and a link or reference to any Professional Regulations or Standards to which the service provider must adhere. We have met these additional requirements by way of a link to Regulations/ Standards in the Servicing the Public section. We have also included those Regulations, as they are pertinent to the Client Care process.

¹ • President’s Address to Council Dinner 24.09.10
Norville Connolly

Information about complaints is an integral part of the website allowing members of the public and other key stakeholders to review the complaints process and if needs be, be able to access the complaints documents. The complaints section is created in a five stage format to ensure that the general public and other stakeholders are aware of the three-tier complaints resolution system which is now in place i.e.:-

1. The in-house complaints stage whereby all solicitors must have an in-house complaints procedure to deal with complaints directly at first instance under the Solicitors (Client Communications) Practice Regulations 2008;
2. The formal complaint to the Law Society of Northern Ireland as provided in the Order; and
3. The review process by the Lay Observer as provided by Article 42 of the Order.

Complainants may also download the forms and supporting documentation. The information leaflet *"Making a complaint about your Solicitor"* can also be downloaded. There is also a link to the Lay Observer's website.

The revised Remuneration Certificate leaflet *"Have you a query about YOUR solicitor's bill?"* is now uploaded to the website. The Solicitors Remuneration Order (N.I.) 1977, provides that the Society administers a scheme for the provision of remuneration certificates i.e. certificates of reasonableness in respect of non-contentious business. This is a statutory function outwith the context of the complaints investigation but allied to the Client Complaints Department because only solicitors' clients may request remuneration certificates. The new leaflet explains in more detail how to access the process. All indications are that it is beneficial to the public in clearly understanding their entitlement to query a solicitor's bill if that is their only concern about their solicitor's service.

The Law Society has continued its policy, with the support of the Lay Observer, of feeding complaints experience back into the Continued Professional Development

(CPD) courses. Our 2009 activities included two Client Complaints Committee sponsored seminars on Probate and Matrimonial matters as referred to in our last response. These were well attended and well received. In addition in 2009 the following seminars dealing with client care matters were arranged:- Mortgage Fraud, Surviving the Recession, Risk Management and Practice Management.

In order to provide a picture of the ongoing nature of CPD and the Client Complaints Committee's work we advise we have recently provided a seminar in relation to Non Contentious Costs. Costs of solicitors' services are one of the most important factors in considering what action a client can and should take in relation to seeking a solicitor's assistance. However, the costs process is a complex one with different statutory provisions depending on the nature of the business being done. Non-Contentious costs are costs generally which relate to business which is not of an adversarial nature and which the client would generally have to pay without reimbursement from a third party. In the context of the obligations which solicitors now have to provide fuller fee information and costs estimates to clients, it is essential that solicitors are fully conversant with legislative and judicial requirements in respect of the delivery of bills, to avoid clients' frustrations about lack of information and clarity.

Other seminars provided in 2010 with Client Care focus were Recent developments on Conveyancing, Land Registry, Maximising Client Relationships, Getting the most from Staff, Inheritance Tax, Risk Management, Managing Client and Self and Practice Management Lexcel. Forward planning for 2011 has commenced and currently includes Client Complaints Committee sponsored seminars relating to Contentious Costs, Immigration, Update on Solicitors (Client Communications) Practice Regulations 2008 and Client Care principles and how to deal with a complaint about conduct or service.

Last year we reported that we were seeing the benefit of the Client Care Regulations with a decrease in the

number of complaints to the Society and that trend has continued. In 2007 there had been 206 registered cases against solicitors, in 2008 there was a drop to 133 and in 2009 the number was 105. We consider this to be a significant drop and feel that we now have firmer evidence that the lower number of complaints is a result of better engagement by the profession under their in-house complaints procedure. The Society's policy is that irrespective of when the business commenced the solicitor should try to resolve the complaints under their in-house complaints procedure first and all members of the public who seek to make a complaint are referred back to the solicitor. The Society monitors progress in that follow up correspondence is sent to anyone who has contacted the Society in writing or by telephone and been provided with the appropriate complaint documents to enquire if matters are resolved. In the vast majority of instances no response is received or we are informed matters are resolved.

In 2008 we indicated we were continuing to work towards acquiring ISO 9001 accreditation. In so doing we have introduced refinements to procedures to facilitate better services to the public and also to our members. The Society is making significant progress in that regard.

We have, with the Lay Observer, completed the review of the Protocol regarding Complaints Handling as between the Lay Observer and the Law Society of Northern Ireland when complaints reach the third stage or when the Lay Observer is performing his audit functions under the provisions Article 42(1)(a) of the Order.

The intention is to ensure that the Lay Observer has access to all the relevant information required to fulfil the statutory functions in a timely and convenient manner. The Society will continue to co-operate with the Lay Observer in relation to the provision of all relevant information as required.

RECOMMENDATIONS

The Lay Observer, in his Report last year, made only one major recommendation at paragraph 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".

We have indicated that our endeavours to introduce ISO 9001 are moving towards fruition. We believe that ISO will assist the Society in addressing many of the Lay Observer's concerns. ISO is an established quality framework based on a structured approach to best practice. It is aimed at bringing out the best in any organisation by enabling them to understand their processes for delivering their services to members, clients and stakeholders/interested parties.

ISO is based on the principles of customer focus, leadership, and a systems approach to organisational management. As a diagnostic tool it helps to achieve continuous improvement and to demonstrate outcomes by the measurement of customer feedback and satisfaction.

A central feature of the Quality Standard is the requirement to analyse the efficiencies and effectiveness of systems and procedures to identify and minimise risk within an organisation. ISO standards can be applied to any complaints handling model and in considering this recommendation, will be a positive tool to drive up standards.

The "collective criteria" referred to in paragraph 8.6 of the Lay Observer's Report was defined in paragraph 8.5 thereof to include the "*Virtuous Circle of Complaints Handling*", guidance criteria issued by Her Majesty's Government Cabinet Office and the publication entitled "*The Principles of Good Complaints Handling*" published by the British and Irish Ombudsmen's Association (BIOA).

The Lay Observer summarised the principles behind the "*Virtuous Circle of Complaints Handling*" at paragraph 1.6

of his report stating that first there is the complaint itself which must be resolved. Secondly there is an examination of the complaint to develop service improvement and finally there is the learning experience leading to an overall improvement of service. The Society considers that it is de facto following this process in two ways.

First of all, the Society has a policy of feedback of the complaints experience to the profession through its CPD seminars and also through individual responses in respect of individual complaints. It is hoped that in so doing the profession will better improve their individual complaints handling processes within their offices and will change any practices or procedures which have been identified as causing problems for clients.

The second part of the process is that the Society tries to learn from its own complaints handling experience by reviewing what has occurred in any individual complaint. It considers whether changes need to be made either in the overall procedures for dealing with complaints or in terms of how it explains its processes to members of the public and in providing responses to individual complainants. It hopes to avoid the undue use of legal jargon, as encouraged by the Lay Observer, to ensure that the complaints process and the responses in respect of individual complaints are in sufficiently clear terms as to allow a complainant to understand the position fully.

The Lay Observer also drew the Society's attention to the guide and criteria issued by Her Majesty's Government Cabinet Office and the publication of *"The Principles of Good Complaints Handling"* published by the BIOA. Both of these have similar objectives of ease of access, speed, flexibility, openness and transparency, confidentiality, informative, simple to understand and use, with outcome decisions being consistent and of a high quality. As previously indicated, the Society strives to provide open access to as much information about its statutory functions and remit and its complaints handling process as is possible through its website through its written publications and in individual correspondence. Our processes aim to achieve the

outcomes and objectives as outlined by the Cabinet Office and the BIOA publication.

In addition to seeking ISO accreditation the Client Complaints Committee has appointed a Sub-Committee to review its governance and its responsibilities under the Solicitors (N.I.) Order 1976 as amended. Proposals from this Sub Committee shall move towards implementation throughout 2011. The Governance Sub-Committee shall so review Client Complaints Committee practice and procedures in the course of that governance review set against the ISO quality mark and the requirement for standardisation and record keeping and will take account of the principles and publications referred to by the Lay Observer in his annual report. The Society will also review those procedures in the light of the publication of the Northern Ireland Ombudsman's Office on *"Rights, Responsibilities and Redress - A Framework for Effective Complaints Handling"* and hopes to continue to improve the complaints experience for the complainant, the professional and the Society in general.

This response from the Society sets out some of the continuous improvements taking place in respect of handling client complaints within the Society's role. We look forward to our ongoing discussions with the Lay Observer in our respective roles.

Dated: 24th November 2010.

Norville Connolly
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.



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