

# *Continuing Progress*

*Annual Report of  
The Lay Observer  
for Northern Ireland*

2012

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# 2012

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.



# *Table of Contents*

<b>Chapter</b>		<b>Page Number</b>
1	Opening Comments	2
2	Context for my Work	6
3	Work of the Lay Observer in 2012	8
4	Final Outcomes of Complaints made to the Law Society 2012	12
5	Comment on Final Outcome Statistics 2012	11
6	Complaints Statistics 2012	20
7	Comments on Complaints Statistics 2012	22
8	Law Society Response to 2011 Report	24
9	Recommendations	25
10	Concluding Comment	27
Appendix 1	Alasdair MacLaughlin, Lay Observer	28
Appendix 2	Law Society Response to 34th Report	29

# Chapter 1

## Opening Comments

- 1.1 This is my ninth Annual Report, and the thirty-fifth 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.
- 1.2 My Report deals with the work of The Lay Observer for Northern Ireland during the calendar year 2012. My routine work is fundamentally overseeing the Complaints Handling Processes of the Law Society. This has two main elements. One 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 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 properly 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 legal transactions taking place each year, only a tiny percentage raise a complaint that ever reaches the second or third tier.
- 1.4 The other main element of my work is concerned with the effective operation of the Complaints Handling Processes by the Law Society. In this context, I am pleased to report that the Law Society continues to give appropriate attention to complaints. Such 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. Their detailed account of this work is contained in Appendix 2 to this Report – the formal Response from the Law Society to my Annual Report for 2011.
- 1.5 This Response above all else exemplifies that the Law Society and the Lay Observer are working together towards agreed goals. These, in the main have to do with providing a good service to complainants within the limitations of the current legislation. We are also agreed on the importance of improving the service to clients by learning in the profession, and also by requiring solicitors to meet their obligations under the legislation, regulations and protocols. **It is my opinion that until changes are made in the legislation, there is little further development work of a structural nature that can now be tackled.** However, there are always fine tuning details that can improve the current processes.
- 1.6 It is generally agreed, and certainly is between the Law Society and the Lay Observer, that the current legislation needs to be changed urgently. The current approach is no longer fit for purpose. Until this happens, little more can be done under present arrangements to meet the needs of Complaints Handling in the 21st Century in the solicitors' profession.

1.7 I have emphasised that the purpose of handling complaints in any context has a wider perspective than simply helping individual complainants. Complaints, and their resolution, have three key elements – **firstly** there is the complaint itself that must be resolved. **Secondly**, this must be examined to determine the specific service improvement that can result from the complaint. **Thirdly**, these processes should be further studied to determine what learning can result from all complaints, their resolution and from service improvements. These three key elements form the essence of **Good Complaints Handling**.

1.8 I also 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.

1.9 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; my work

indicates that the incidence of these opinions is reducing. But, the Law Society needs to be vigilant to ensure that the wording they use in handling client complaints, in creating an appropriate empathy with the complainant, and the explanations they give are all directed towards creating a clearly neutral position in the complaint.

1.10 The Law Society continues to develop 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. This matter is extensively dealt with in their Response for 2011 in Appendix 2 to this Report. The Law Society has given enhanced profile to the Complaints Handling Processes and to Continuous Professional Development. The profile given by the Presidential Team in the Law Society, their approach to client care for solicitors, and the excellent ways continuing to be developed to prepare newly qualified solicitors for their professional work, continue to deliver better performance in the profession for the benefit of society in general. This is exemplified in the figures for complaints dealt with later in this Report.

1.11 In this context. I would particularly wish to note that during 2012, I was invited to play a key part alongside the Chairman of the Client Complaint Committee and the Head of Client Complaints of the Law Society in Workshops to do with Inheritance, Probate and Wills run by CPD Department. The locations were Londonderry, Newry, Enniskillen and Belfast. These were attended by upwards of 240 solicitors, and

in many cases also by their staff representatives. It was a particular privilege for the Lay Observer to have been invited again by the Law Society to play a part in workshops. The feedback obtained suggested that the events were well received and appreciated by those who attended.

- 1.12 I maintain regular contact with the Chairman of the Law Society Client Complaint Committee. With legal and lay representatives, the Committee 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 most likely bear so much more directly on them under any new arrangements.
- 1.13 The Client Complaints Committee has set up a Sub Committee dealing with Governance and the Complaints Handling processes. In 2012, the Sub Committee proposed changes in the timetabling of the processes, which it was felt would emphasise more appropriately the importance of solicitors providing the Committee with thorough information when a complaint is raised against a particular firm. This included an extension to sixteen weeks from twelve weeks as the targeted investigation period for concluding an investigation. A concern was expressed that this proposal might extend the period overall for concluding complaints. However, following

proper consultation, I was happy to endorse the proposals. In any case, I made clear to the Committee that it was my intention to continue to provide statistical information on the elapsed times for investigations (details in Chapter 5 of this Report). This would help to highlight any overall unnecessary lengthening of the processes. It should be noted that the rules adopted were introduced only on 1st September 2012, and so their effect cannot yet be fully assessed until next year. Details of these changes can be found in Appendix 2 of this Report.

- 1.14 During the year I have had valuable meetings with the Presidential team and the Chief Executive of the Law Society. I am grateful to the President and Mr Alan Hunter for this constructive contact. These meetings are valuable as they enable both parties to consider strategic matters, and an exchange of views at that level. In recent years, the Law Society has embarked on a programme whereby a guest speaker is invited to address the Council prior to Council meetings. I was delighted and privileged to have been invited to address the Law Society Council in October 2012. I regard this as another indication that the Law Society takes good complaints handling very seriously.
- 1.15 On a day-to-day basis, I link with Mrs Moira Neeson, Head of Client Complaints and her staff. This continues to work in an effective and professional manner. I aim to work in a co-operative way, and yet in such a way as to maintain an appropriate professional relationship between our respective roles. Our overall aims are of course, the same, namely to enhance service provision from the solicitors' profession to Northern Ireland society. The most productive



personal relationships between an assessor and the organisation being assessed is one of mutual professional and personal respect. **I believe that the working relationship between the Lay Observer and the Law Society at all levels now meets these requirements in satisfactory measure.**

- 1.16 I maintain helpful and positive contact with the Department of Finance and Personnel at all levels. The Permanent Secretary plays a part in providing me with a virtual office; for this and for his support in doing my work, I am profoundly grateful. I report formally to him under the legislation, and I thank him for the encouragement of his interest in my work.
- 1.17 For day to day management matters, I now link with Mr Martin Monaghan of the Department, and I thank him for his ready and willing facilitation of my work. I also thank Ms Sarah Boal for the many ways in which she consistently and readily facilitates, in a very pro-active and creative way, my work, providing necessary resources, advice and support when required.
- 1.18 I am delighted to report that the Lord Chief Justice of Northern Ireland was most gracious in being willing to meet with me to discuss my work during the year. This is enormously encouraging, and helps to provide information to the Lay Observer in the ways in which his work can be of value in improving the service available to the public and stakeholders within the Justice System in Northern Ireland. I am most grateful to the Lord Chief Justice for his willingness to review my work. My Annual Reports, under the legislation are submitted formally to him, but to supplement this with a

face to face meeting adds so much more value to the way in which the Lay Observer can improve and develop his work.

- 1.19 I am encouraged by the fact that the First Minister, the Deputy First Minister, the Minister for Finance & Personnel, the Minister for Justice and the Attorney General for Northern Ireland have all taken a personal interest in my work, as have NIO Ministers, a number of Members of Parliament, and the various Northern Ireland political parties, their MLA's and a number of Government officials. In addition, a number of Whitehall Departments have taken an active interest in my work – most notably the Advocate General for Northern Ireland.
- 1.20 I continue to have valuable and helpful contacts with my counterparts in the other jurisdictions of the United Kingdom and Ireland. I meet also with complaints handlers and Ombudsmen in other sectors in regular private meetings and workshops. I continue to operate to the Ombudsman Association (formerly the British and Irish Ombudsman Association) published standards relating to the principles of good complaint handling – this is the means whereby I may continue membership of the Association. Where I can, I seek to achieve higher standards of operation. The specific standards to which I work are published on my website and were also contained in Appendix 2 of my Report for 2008. I am most grateful to the Department for providing the resources for me to attend a number of workshops and meetings run by the Ombudsman Association (usually about six/ seven such events annually). These enable me to keep up to date with and share the latest experience amongst colleagues.

# Chapter 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 largely standard information each year.
- 2.2 During 2012, my work of oversight of the Complaints Handling Processes of the Law Society continued alongside dealing with complaints against the Law Society – the third tier of the Complaints Handling processes. 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:
- effective relationships with the Law Society, and the Office Bearers continue. 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
  - 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 embedded, and are being firmly applied. These were supplemented by additional guidance and improved governance arrangements from 1st September 2012
  - The methodologies of contact between the Law Society and The Lay Observer continue in an effective way
- 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, and that I remain accessible to them 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](http://www.layobserverni.com) and access to me by my e-mail address [a.mclaughlin@btinternet.com](mailto:a.mclaughlin@btinternet.com) are both of value to current and potential complainants. Approaches to me are increasingly by e-mail, and complainants often refer to having consulted the website before direct contact with me. However, when a complaint is advanced into the system, I require documentation to support it, so that hard copy files are kept by me in progressing and concluding any investigation,

and of course, thereby, a paper audit trail is created.

- 2.7 I have noticed a recent tendency in the light of the firm way in which the Law Society is applying the regulations introduced in September 2008 for some solicitors to challenge the Law Society in this connection. Solicitors would do well to recollect that dealing with complaints is part of the role of the Law Society as the **principal Regulator** of the solicitors' profession in Northern Ireland; and it is indeed a privileged role. Under any new scheme, it is almost certain that a regime with wider powers will obtain.
- 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. By the same token, there is a benefit for the regulator in learning how service might be improved as a result of what is learned from complaints handling. In addition, the Law Society appears to me now to appreciate and increasingly value complaints as a window on how the 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.

# Chapter 3

## Work of the Lay Observer in 2012

3.1 During 2012, I investigated complaints from a total of 43 complainants compared with 38 complainants in 2011, and with 42 complainants in 2010, 35 in 2009, and 43 in 2008.

3.2 It should be noted that when the Law Society receives a complaint, in most cases that complaint can be analysed under several different categories. In 2012, the Law Society received 183 categorised complaints, down from 201 in 2011. And the number of complainants was 90 compared with 122 in 2011.

	No. of Categorised Complaints	No. of Complainants
2012	183	90
2011	201	122
2010	218	110
2009	149	104
2008	317	133

3.3 It will be noted from my previous reports prior to 2008 that the **number of complainants** has now reduced to a lower general level of around 200 in any given year. This is in large part to do with the introduction of the Regulations brought in on 1st September 2008 which apply additional pressure for solicitors to resolve complaints at the first tier in their process. By either count, it will be seen that the solicitors' profession in Northern Ireland attracts a very low number of complaints, when one recognises the many hundreds of thousands transactions undertaken within a year.

3.4 As part of my oversight of Complaints Handling in the Law Society, I 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 feel the need to progress to the third tier – and, as such, are presumably seen by complainants as having been handled to their satisfaction. 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. In 2012, I audited some 22% of the complaints received.

3.5 I have to report that the complexity of the cases I receive continues to change. I have devised a simple and perhaps rather subjective format which identifies those cases which I interpret as **highly complex**, **complex**, and **others**. Complexity equates in this approach to amount of time I need to conclude each complaint. In the analysis, I make no distinction as to whether the complexity arose from nature of the issues, or simply from detail, or indeed from both. Once again, I have carried out this analysis of the cases I have concluded, and this shows:

- There were 43 complaints to me in 2012, 38 in 2011, 42 in 2010, 35 in 2009, 43 in 2008; and in 2007 there were 51 complaints
- There were **17 very complex cases** in 2012, 15 in 2011, 7 in 2010, 18 in 2009; in 2008, there were 13. Each case took three or more days to conclude

- There were **5 complex cases** in 2012 requiring one and up to two days to conclude, 10 in 2011, 17 in 2010, 5 in 2009; and in 2008 there were 6 such cases
- This means that the number of complex and very complex cases together were **22 in 2012**, 25 in 2011, in 2010 there were 24, and in 2009 there were 23, compared with 19 in 2008
- There were **21 other cases in 2012**, 13 in 2011, 18 in 2010, 12 in 2009 and 26 in 2008; each of these cases took a day to conclude

The trend overall in the complexity of investigation as I have defined it, appears to be steadily increasing.

- 3.6 In addition, I receive three 'types of Complaint'. There are **firstly**, those complainants whose 'complaints' have not met the definitional requirements, as derived from the legislation. These are usually 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. They usually contain a large amount 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 been correctly dealt with, I will revert to the Law Society for a re-consideration of their decision; this does not often happen.

- 3.7 These are 'complaints' which those complaining feel strongly should be dealt with by someone, even though they cannot strictly 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, I am by so doing, assisting the public in general by helping would be complainants feel that they have had at least independent consideration. Whatever else, all these require time, commitment and energy from me to complete. There were six such cases in this category in 2012.

- 3.8 **Secondly** there are those 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 and are those cases to which the legislation is directed. **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. These type of complaints appear to be on the increase.

- 3.9 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.

- 3.10 Mine is a part-time appointment, and I have continued for some years now 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. Following a review in 2012, a more acceptable and lower proportion of my work than in previous years is carried out unpaid, and for the benefit of the public. I believe that I continue to operate a low cost, efficient and effective service on behalf of the public and the Government within the current legislation, procedures and protocols.

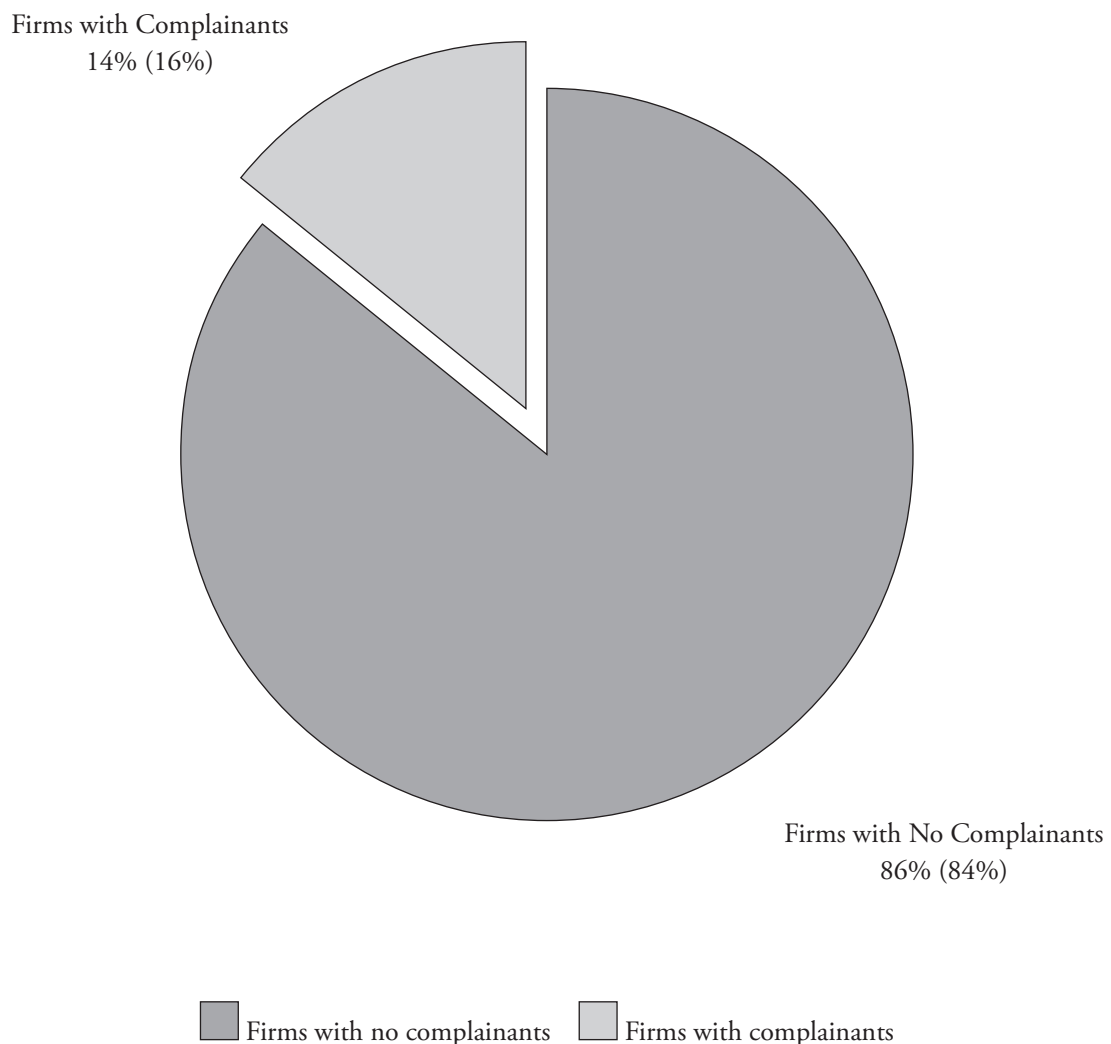
# Chapter 4

## *Final Outcomes of Complaints made to the Law Society 2012*

**Note:** the complaints referred to in Chapter 4 are those which achieved a final outcome in the year 2012 at the second tier.

### Chart A

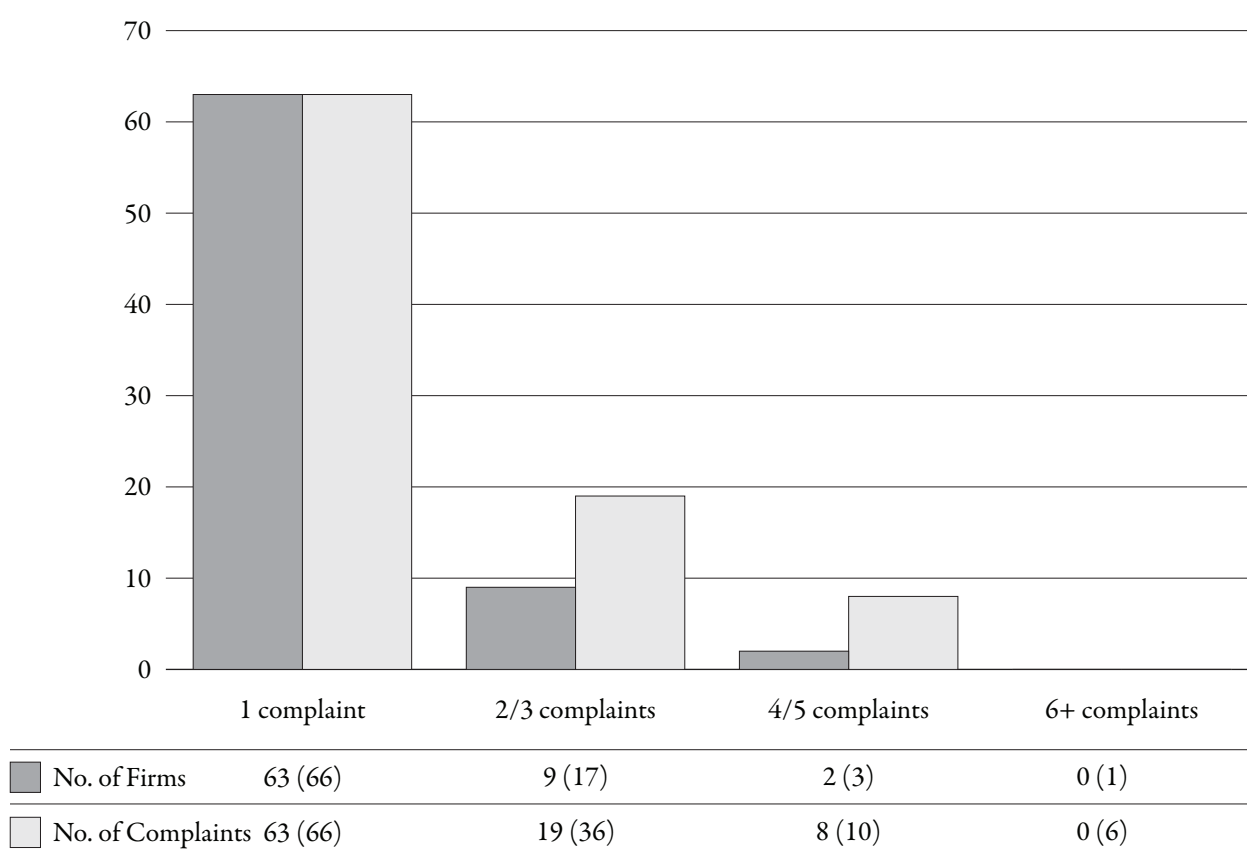
% Number of Solicitor Firms with **Complainants** and % Number of Solicitor Firms with **No Complainants** in 2012 (figures in brackets are for 2011).



The total number of firms 'on the register' in 2012 at the Law Society is 528. Of these 454 (86%) have attracted no complaints. 74 solicitor firms have attracted complainants; this represents 14% of the total.

**Chart B**

Number of Complaints / Number of Firms with complaints in 2012

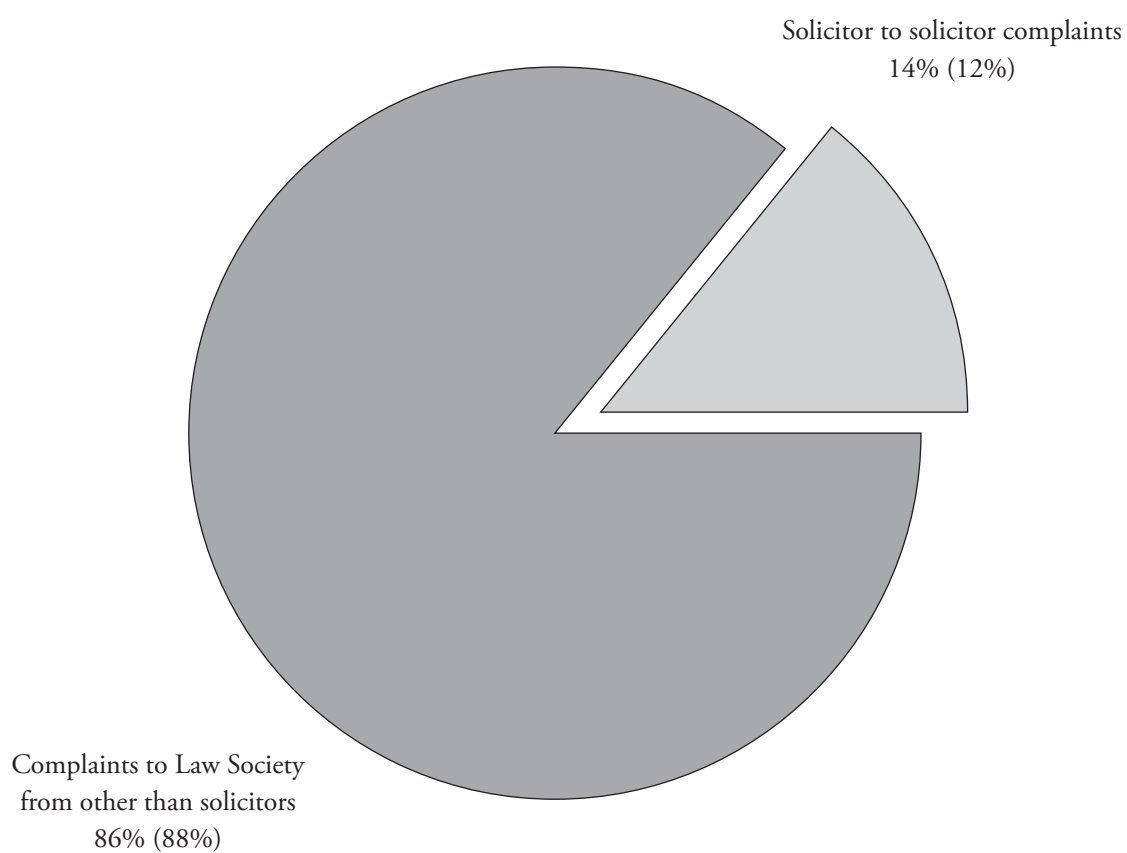


**Note:** The figures in brackets refer to 2011.



### Chart C

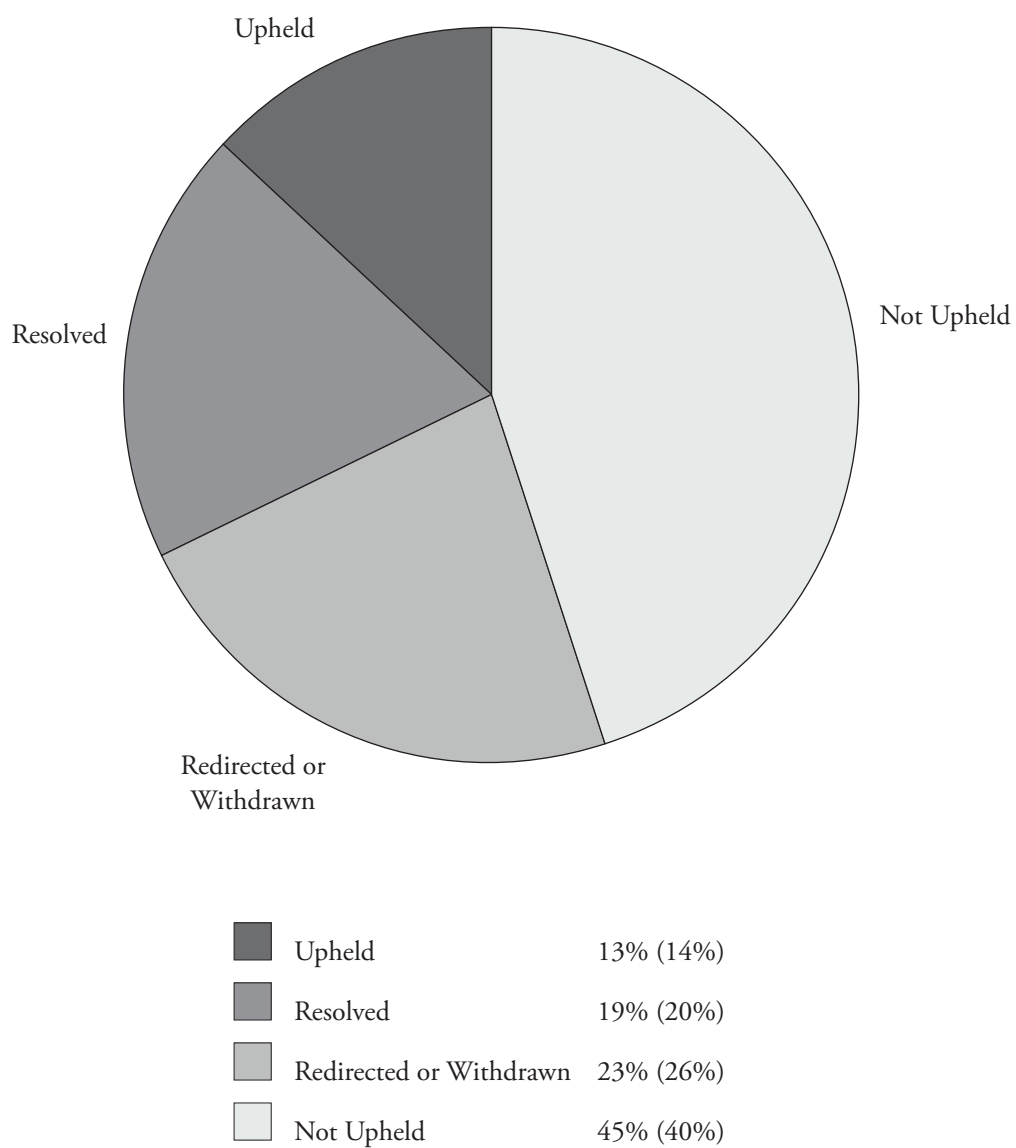
Complaints Solicitor to Solicitor as % of total complaints to the Law Society in 2012.



Solicitor to solicitor complaints in 2012 amounted to 13(15) out of a total number of complaints of 90 (122). Figures for 2011 are shown in brackets.

**Chart D**

Summary of final outcomes of complaints registered and completed in 2012.  
(figures in brackets relate to 2011)



# Chapter 5

## *Comment on Final Outcome Statistics 2012*

- 5.1 The number of solicitor firms 'on the register' for the period concerned is 528. Complaints were recorded against 74 solicitor firms. This means that 86% of solicitor firms attracted no complaints in 2012 – in 2011 the figure was 84%. This, I believe should be thought of as satisfactory in the profession. Alongside these figures, the number of complainants taking complaints has fallen from 122 in 2011 to 90 in 2012. These figures are depicted in Chart A in Chapter 4.
- 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 2011 was 21, while in 2012 it was 11. Each set of complaints equates to one complainant.
- 5.3 Closer inspection indicates that:
- In 2012** 2 firms had 4 sets of complaints 9 firms had 2/3 sets of complaints 63 firms had 1 set of complaints
- In 2011** 1 firm had 6 sets of complaints 3 firms had 4/5 sets of complaints 17 firms had 2/3 sets of complaints 66 firms had 1 set of complaints
- In 2010** No firms had more than 3 sets of complaints 19 firms had 2/3 sets of complaints 68 firms had 1 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 1 set of complaints
- 5.4 The vast majority of firms with complaints had only one set of complaints and so only one complainant. The usual caution is given that solicitor firms **do** specialise, and some types of clients and work by their very nature **can** attract numbers of complaints and complainants. Accordingly, firms should not be judged solely on the number of complaints they receive. Once again these figures should give cause for a degree of satisfaction in the profession.
- 5.5 Chart C is about complaints 'solicitor to solicitor' in 2012. 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 insignificant increase to 14% in 2012 from 12% in 2011 compared 14% in 2010, and 6% in 2009.
- 5.6 Chart D shows the proportion of final outcomes for complainants who registered complaints and had them concluded in 2012. The proportion of complaints **upheld** has decreased from 14% in 2011 to 13% in 2012. These are lower percentages than in earlier years, but are consistent with a greater emphasis being placed on better quality internal complaints handling required of solicitors under the Regulations introduced in 2008. 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 19% of complaints that were **resolved** in 2012. Together these show that a significant proportion – 32% – of complaints to the Law Society had in the calendar year 2012 very real substance and yet escaped the strict definitional filters that are currently applied. A further 23% were redirected or withdrawn, leaving 45% not upheld; the comparable figure for 2011 was 40%. These proportions – 55% upheld or resolved and 45% not upheld - have important significance. **So where a complaint is justified, the Law Society does indeed find against a solicitor, or finds a way of resolving matters for the client.**

- 5.7 In my experience, 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, through the current Complaints Handling System. Nevertheless, the complainant under estimates the perceived professional ignominy that may seem to attach to a solicitor in an investigation by the Law Society of a client complaint. I recognise that solicitors cannot often be required to take action under the present legislation, but they are not often even asked by the Law Society to apologise or explain to a complainant, or take some other action, and this in my view remains unsatisfactory. Good practice in and research into Complaints Handling indicates that very often what complainants most want is a simple apology. Apologies I believe are not readily given by legal professionals – because it seems they believe they may be held to be liable. This

however is scarcely an argument for not apologising when one is clearly in the wrong or empathising in an apologetic way with the misfortunes of a client. Nevertheless, I also understand that solicitors may well find that as a result of a complaint, they may be required to account for themselves using other Law Society mechanisms. **Solicitors emphatically ought to take note of this.**

- 5.8 In effect any complainant is acting as the eyes and ears for the regulating body. This should be, and more importantly be seen to be, of high value to the solicitors profession and must be recognised ever more clearly and be seen to be appreciated by the Law Society. Although the Law Society do not often give a client credit for bringing forward a justified complaint, it is clear that they value what complainants and complaints tell them, as they use the consolidated results for the Complaints Handling System to inform their Continuing Professional Development Programme. This is something of which in my opinion the Law Society should be proud. I believe that the Law Society would do well to make it clear to complainants whenever possible that they appreciate their help in this way. I ask the Law Society to consider how they might do this. It would emphasise to clients how seriously the Law Society takes the Complaints Handling Processes.
- 5.9 In 2012, the proportion of complaints **not upheld** was 45%, compared with 40% in 2011. The Complaints Department of the Law Society should take comfort that as many as 55% of the complaints they concluded in 2012 at the second tier have ‘satisfactory’ outcomes from the point of view of the complainant.

**That such a high proportion is so dealt with should continue to be a matter of satisfaction for the Clients Complaints Committee and the Complaints Department of the Law Society.**

- 5.10 The timetabling figures for concluding investigations of complaints in 2012 show another improvement over previous years. They are as follows:-

Times	2011		2012	
	Propn	Cum	Propn	Cum
Within 3 months	51%	51%	55%	55%
Over 3 & less than 6 mos	41%	92%	42%	97%
Over 6 mos & less than 9 mos	8%	100%	3%	100%
To Disciplinary Tribunal	3%		2.5%	

- 5.11 There are two notable observations. **First**, the proportion of cases concluded within 3 months of receipt into the Complaints Handling Process rose from 51% in 2011 to 55% in 2012. This sustains a reasonable standard having now been reached but which some years ago was at unacceptable levels.
- 5.12 **Second**, there has been an improvement in the number of complaints being concluded beyond 6 months to 3% in 2012 from 8% in 2011. It remains of poor comfort of course to those few complainants who have to wait beyond 6 months to have their complaints concluded,

particularly as the normal expectation is 16 weeks to conclude a complaint. (NOTE: this period of time was introduced in new rules on 1st September 2012, having previously been 12 weeks). However, it is categorically the case that, thanks to the tightening of the application of the Regulations since 2008, (and soon changes introduced in 2012), together with the degree to which the Law Society is insistent on asking solicitors to conform, the proportion of complaints that are complex entering the System at second and third tiers is rising noticeably.

- 5.13 It is now a fact that complainants have a greater propensity to question every step, particularly when things are not crystal clear to them, and this needs to be recognised – it is a phenomenon which is recognised in complaints handling schemes across all sectors. In addition, my audit has shown clearly, that some solicitors seek to be very challenging of the Law Society. It is to their great credit that the Law Society is insistent in applying the Regulations firmly, and in my view, appropriately. I comment further on these points below. They are right to do so even where so doing extends the Complaints Handling Process. I encourage the Society to ensure that they keep complainants informed when a complaint, due to its complexity or other reasons, is not keeping to the timetable planned.
- 5.14 The timetabling of the conclusion of complaints has maintained general levels of efficiency in the ways that were reported in my earlier Annual Reports. The Law Society has now achieved a 97% result for concluding complaints within 6 months compared with a 92% level in 2011.

5.15 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 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 2008 (and changes in 2012) 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 continues to work very hard to ensure that solicitors firms deal very thoroughly with complaints at the first tier of the Process, and that they make serious attempts to deal with the complaint at that level. In these circumstances, the Law Society has made it plain to the solicitors that they will not tolerate unreasonable resistance. This has meant that the Complaints Department has put significant pressure on firms to deal ever more thoroughly with complaints at the first tier. It is fair for me to point out that some firms clearly do not like this, and some have displayed significant resistance to supplying what is needed and when. In this context, as reported last year, the Client Complaints Committee has established a Governance Sub-Committee to carry out continuing reviews in this and other matters.

5.16 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 concerned provide the fullest information that is possible. These changes may not generally be obvious to the complainant, but the working through of

this activity in such a thorough way has served to elongate the part of the process given over to fact finding, to achieve what at the end of the day is an enhanced contribution to high 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. There is now evidence to suggest that this message is 'getting through', and I have no doubt also that the excellent work on CPD is having an effect. So in my view the statistics should be accepted as an indication of an increasingly assiduous approach to Complaints Handling in the solicitors' profession; that this tightening effect continues is therefore to be encouraged, given the likely requirements of any new arrangements Government may introduce.

5.17 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 provided ample evidence in my Report, 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.

5.18 **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, and to keep the general timetables in tight control.** My audit suggests that this feature of good complaints handling is not always observed, although it is undoubtedly improving. Nevertheless, in dealing with complaints, complainants are

entitled to have expectations - as this is so, then those expectations need to be carefully managed.

- 5.19 **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 take their complaints to the second and third tiers, and that number is extremely low.

# Chapter 6

## Complaints Statistics 2012

**Information relating to complaints examined by The Law Society  
For the 12 months ending September 2012**

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	3		1	2	7	2		1			6	1						3		1	11	38
2. Failure to keep client properly informed	5	1		2	10					1	3							3		1	11	37
3. Delay/Failure to respond to reasonable enquiries	1			1	3		1														5	11
4. Withholding/loss of documents	5			1	6		1	1		2	3										5	24
5. Disclosing confidential information					1			1														2
6. Acting in a conflict of interest situation	1			1	2																	4
7. Acting contrary to client's instructions	1	1		1	3		2			1	3										2	14
8. Breach of undertakings					1		1				1											3
9. Failure to provide bills of costs/cash/statements; incurring expense without client's authority	3		1	1	2			1			2										2	12
10. Failure to deal with legal aid issues properly	2																	1				3
11. Failure to provide proper client care information or not complying with agreed client care arrangements	1			1	1													1				4



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
12. Failure to provide proper costs information including Legal Aid Rules at the outset of the transaction or not adhering to arrangements made	3				1					2	3							1			1	11
13. Failure to properly consider client's complaints under solicitor's own in-house complaints procedure	1			2	2			1			2									1	4	13
14. Other factors	1				1						1									1	3	7
15. All factors (total 1 - 14)	27	2	2	12	40	2	5	5		6	24	1						9		4	44	183

### 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.

# Chapter 7

## Comments on Complaints Statistics 2012

7.1 Regular readers of my Reports will know that there was 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. 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 relate, amongst other reasons to likely future changes.

7.2 A consequence of that change is that a complaint is theoretically slightly less likely now than under the previous provisions to be classified under more than one heading, because of the expansion of and the comprehensive and inclusive nature of the categories selected. However, it actually seems to operate in practice otherwise and so in 2012 there were 183 categories of complaint from 90 complainants.

7.3 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. Until November 2008, the Law Society used 10 descriptors for nature of complaints; and since then, the Society has used 15 descriptors.

7.4 Statistically, the five most frequently occurring **nature of complaints** in recent years were:

Nature of Complaints	2011	2012
Undue delay or inaction	26%	21%

Nature of Complaints	2011	2012
Failure to keep client informed	15%	20%
Delay/failure to respond – enquiries	11%	13%
Acting contrary to client instructions	9%	8%
Withholding or loss of documents	12%	13%
	<b>73%</b>	<b>75%</b>

7.6 Together these five descriptors accounted for 75% of the total complaints received in 2012, when classified by **nature of complaints**. As can be observed the actual **nature of complaints** figuring in this table remain as in the previous year.

7.7 However, also in 2012, there were three other **nature of complaints** with significant incidence:

Nature of Complaints	2012
Failure to provide bills of costs	7%
Failure to provide proper costs information	6%
Failure to consider client complaint – internal system	7%

7.8 These are important headings – and should receive proper consideration by solicitors under their client care arrangements – also these headings need to be carefully watched by the Law Society in case they increase further. They

all relate after all to possibly less than 'good service'.

7.9 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 Chapter 4 above – describe how each complaint ended up, the process of complaints handling having been concluded by the Law Society.

7.10 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. Until November 2008, the Law Society classified complaints under 11 descriptors; since November 2008, these have expanded to 15 descriptors for **circumstances of complaints**.

7.11 Statistically, six frequently occurring circumstances of complaints were:-

<b>Circumstances of Complaints</b>	<b>2011</b>	<b>2012</b>
Conveyancing	12%	22%
Family Law – General	22%	16%
Accidents (incl. personal injuries)	9%	15%
Wills & Probate	15%	24%
Medical Negligence	11%	5%
Criminal Injuries	7%	1%
	<b>76%</b>	<b>83%</b>

7.12 Together, these six **Circumstances** account for 83% (76% in 2011) of the complaints received in 2012 when classified in this way. It will be noted that these figures indicate another rapid rise in the incidence of Wills & Probate, a large reduction in Medical Negligence and in Criminal Injuries circumstances of complaints. There is another increase in complaints arising from Accidents.

7.13 It may be significant to note that **conveyancing** has now risen again in 2012 in the *circumstances of complaints* having fallen away in 2011, and having been the most frequently occurring in previous years. It will be noted that the housing boom which came to an end will have impacted on this type of business. Nevertheless, there is always property moving, and values in the market are also always changing whether they are rising or falling. Either can give cause for complaint when for example delays take place. It is also important to note that Family Law has become less significant in *circumstances*.

7.14 The framework for classifying types of complaints received is now 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 any new structures resulting from the Devolution of Justice. If this is the case, then comparative statistical runs can operate across the future date lines when change comes about.

# Chapter 8

## *Law Society Response to 2011 Report*

- 8.1 My Annual Reports are published on 31st May each year, and refer to the events of the previous calendar year. I formally report by this means to the Lord Chief Justice, the Government and the Council of the Law Society. Some days later, the report is made available widely to Parliamentarians, to MLAs, to Ministers, Government Officials and others. It is also made available publicly on my website:- [www.layobserverni.com](http://www.layobserverni.com)
- 8.2 The Law Society has until the end of November each year in which to make a response. This is then made public the following May when my next Report is published. In recent years this response has been detailed, thoughtful and supportive of development as agreed between the Law Society and the Lay Observer.
- 8.3 In their response to my 2011 Report, which is published as Appendix 2 to this 2012 Report, the Law Society comments on a number of developments which have been introduced in the Complaints Handling System, and other related matters. Amongst these are changes to do with further bureaucratic and physical developments serving to separate ever further the Complaints Department from other regulatory and other functions of the Law Society.
- 8.4 Also, the Law Society reports on the review of governance of practice and procedures of the Client Complaint Committee. This has resulted in a further tightening of the relevant rules, which were implemented from 1st September 2012. This frontloads the responsibility of the solicitors against whom complaints have been taken in providing further detailed information to the Law Society at the start of an investigation. The penalties for a solicitor not co-operating with these changes have also been made appropriately harsher. The Law Society has also adjusted the thresholds for references to other aspects of regulation of the profession.
- 8.5 The Law Society in making these changes have been kind enough to consult me in an appropriate timeframe to enable me to reflect and comment. I am very grateful for this, and assure those to whom I report that the debates are refreshingly open and beneficial. They have also commented on the continuing development of the link with Continuing Professional Development (CPD) by the Society and the need for service development that is triggered in part by the Complaints Handling System.
- 8.6 In addition the Law Society is to be commended for its continuing adherence to the requirements of ISO 9001, and in the Response the Society also provides a commentary on its attempts to adhere to the Cabinet Office Principles for effective Complaints Handling.
- 8.7 I believe that these are all indicators of the importance that the Law Society places in the effective operation of the Complaints Handling System under the current legislation, with all its limitations. They are also indicative of a serious effort to ensure that whenever changes take place, structures will be as transferable as may be to the new situation when a legislative change can be achieved. I commend the Law Society for this very informative and positive Response to my Annual Report of 2011.

# Chapter 9

## Recommendations

- 9.1 As already noted, 2012 has seen continued consolidation arising mainly from Regulations introduced in September 2008, as well as other aspects of client care, and the data collection framework brought in, in November 2008. The tightened approach in the application of Complaints Handling Processes to the solicitors' profession by the Law Society is now evident in the results this report deals with, and in addition, the application of the rules have been further tightened from 1st September 2012.
- 9.2 I have attempted to clarify the ways in which the Law Society have been dealing with complaints in 2012 and that they have continued the trend of tightening up the application of the changes made in 2008. This has had the effect of lengthening the timescales of the fact finding elements of processing in a few complaints. It is being implemented to encourage solicitor firms to tighten up their own 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.
- 9.3 This is a sensitive process for the Law Society to manage, as in no way must complaints be driven 'underground'. **The Complaints Handling System is there for those clients who have or believe they have reason to complain about their solicitors.** This must never be forgotten, and clients have this right under the legislation (as amended). It is now widely agreed that Complaints Handling must be seen as a positive process out of which the solicitors' profession and the Law Society achieve additional capacity to improve the quality and efficiency of legal services. However it can be noted that there continue to be a small number of solicitors who have not put this into their focus. Indeed a few have resisted **vehemently** Law Society requests for proper information; the Society is rightly not tolerant of this, and all solicitor firms would do well to recognise this.
- 9.4 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 regulatory roles; this is highly to be prized by the Society, as it has been very substantially diluted elsewhere in other UK jurisdictions.** However complaints handling will be functionally separated from the Society under Bain proposals.
- 9.5 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. Although these principles relate to the public services, they do provide a basis, along with other sources, for objective measurement against which the Law Society can calibrate its own efforts. They have noted their approach to this in their response to my previous Report for 2011, to be found in Appendix 2.
- 9.6 Accordingly, my **Recommendations** in 2011 were
1. **I recommended** that the Law Society continued 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 recommended** that the Law Society further develop its path of providing pointers to complainants to other means than those available in the Complaints Handling Processes that they may employ to obtain a degree of satisfaction in their complaint
3. **I recommended** that the Law Society consider ways to ensure that complainants are made aware of the value of their complaints investigations, and of the Complaints Handling Processes in general to improving the standard of service in the profession
4. **I recommended** that the Law Society consider 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

9.7 As last year, I think it appropriate this year to advance again the above four development Recommendations and the additional fifth developmental Recommendation contained in paragraph 9.8. I would as last year, like to suggest that the Law Society consider further ways of specifically encouraging offending solicitors to recognise where they have gone wrong and to apologise to their clients. And further, when such situations arise, to consider

ways of persuading them to take action to ensure no repetition occurs in their practices.

- 9.8 I would also add a **fifth Recommendation** for this year. This is that the Law Society do all they can do ensure that a solicitor firm learns from a complaint that is investigated at the second tier, and that they contrive to find ways whereby any complainant who has his complaint upheld at the second tier receives some kind of empathetic response from the Society **and** the solicitors firm concerned.
- 9.9 It is therefore my clear opinion that there has been **continuing progress in 2012**, and the Law Society and the solicitors' profession are to be commended.

# Chapter 10

## Concluding Comment

- 10.1 In concluding my Annual Report for 2012, I make the following comments. **Firstly**, I emphasise that continuing 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. Mine is essentially a catalytic role, so any **commendation due is entirely theirs**.
- 10.2 **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 Ombudsman Association (formerly the British & Irish Ombudsman Association).
- 10.3 **Thirdly**, the introduction and development of any new approach to Complaints Handling continues to await the pleasure of the Northern Ireland Assembly to a timetable for full implementation that is not yet clear. 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.
- 10.4 **Fourthly**, this Annual Report will be made available primarily in electronic format. Accordingly it will be accessible on my website in that form at [www.layobserverni.com](http://www.layobserverni.com) from 31st May 2013.
- My Contact Details are:
- Alasdair MacLaughlin**  
Lay Observer for Northern Ireland  
Room S5 Rathgael House  
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- e-mail: [a.maclaughlin@btinternet.com](mailto:a.maclaughlin@btinternet.com)  
website: [www.layobserverni.com](http://www.layobserverni.com)
- 10.5 **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 solicitor firm to review the Report to ascertain if there are implications for their practices.** Parliamentarians, relevant Ministers throughout Government and appropriate Officials, will also be encouraged to access the Report.
- Alasdair MacLaughlin**  
31st May 2013



# Appendix 1

## *Alasdair MacLaughlin, Lay Observer*

Photo © Neville Latham



*Alasdair MacLaughlin has been the Lay Observer since 2004*

**Alasdair MacLaughlin** has extensive experience of private, voluntary and public sector work in Northern Ireland, Great Britain, Ireland, the EU and the USA. Originally trained as an economist, his career has been as a manager in manufacturing and consultancy (15 years), the CBI Director Northern Ireland (10 years), and the Director General of the Ulster Farmers' Union (10 years).

**Currently and** for the past eight years, he has also been the Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland – a position he will vacate in mid 2013. He is an Assessor for the CCEA – the curriculum authority in Northern Ireland and he is an independent self-employed complaints examiner. In addition he is a Trustee of the Belfast Association for the Blind.

**Previous activity** includes being a member of the boards of several private companies, and of the Probation Service of Northern Ireland. He is a former member of the Council of the University of Ulster, Governor of a Grammar School, and a member of two EU Monitoring Committees. He has been a Regulator for the Institute of Chartered Accountants in Ireland, a panel member of the Industrial Tribunals and the Social Security Tribunals, a member of the N I Economic Council, and of the former Standing Advisory Commission on Human Rights. He is an experienced advisor to the UK Government, to the Wales Assembly Government, and to the Polish Government.

Alasdair MacLaughlin is also an organist, is interested in nature and walking, and playing golf for fun.



# *Appendix 2*

## *Law Society Response to 34th Report*

### **Response of the Law Society of Northern Ireland to The 34th Annual Report of the Lay Observer for Northern Ireland Entitled “Legislation Awaited”**

#### **Introduction**

This is the Law Society of Northern Ireland’s formal response to the Lay Observer’s Report for 2011.

The Society welcomes the Lay Observer’s Report and has given all aspects of that Report careful consideration and thanks the Lay Observer for his considered views. The Society is delighted with the positive nature of the Report and will strive to maintain and improve on standards now achieved.

In responding to the Lay Observer’s recommendations the Society wishes to take the opportunity to again express its strong support for the proposals outlined in the Report on Review of the Legal Services chaired by Sir George Bain. Those proposals provide that the current arrangements would change substantially but that the Law Society would have overall responsibility for the handling of client complaints and that they would be investigated by a Committee with a lay majority and a lay Chairperson. The establishment of the Committee is to be under the oversight of a new Legal Services Oversight Commissioner who would be responsible for determining the criteria for recruitment to the Committee, have the power to monitor and set targets for complaints handling assist in promoting accessibility of the complaints handling system, consult with interested stakeholders and be able to offer advice on other regulatory functions of the professional bodies including rule making powers.

The Society has taken significant steps towards making provision for the implementation of the Bain proposals. The Lord Chief Justice’s Office has recruited a new lay

member after public advertisement who shall be added to the Committee from October 2012.

As indicated in our response in 2009, the Complaints Department is and remains physically separated from the rest of the Society in anticipation of the implementation of the Bain proposals.

Last year the Society reported having had in-depth briefing meetings with the Scottish Legal Complaints Commission, the Office of the Legal Ombudsman in England & Wales, the Law Society of Scotland and the Solicitors Regulation Authority of England & Wales. All these meetings were to explore the opportunities and challenges any new structures will present, how best to prepare for these and generally learn how to take forward proposals for change. The Society continues to liaise with these organisations. Through its Bain Working Party, the Society has once again reviewed the Bain proposals in detail and has also looked at schemes in other jurisdictions. In so doing the Society accepts the original proposals of the Bain report which meet the needs of a jurisdiction of the size of Northern Ireland.

This separation has been further emphasised to the public through the recent restructuring of our telephone system to provide links direct to the Complaints Department wherein clients are able to request complaint forms directly or are referred to the Society’s website to access forms and information on complaints or access information about the Solicitors Remuneration Certificate process, (a statutory provision for the assessment of non-contentious costs).

The Society’s website has become pivotal in the complaints information process as the majority of the complaint forms now received are in the downloaded format. We intend to develop the website further and

develop a pro forma document which the client may be able to use in taking their complaint forward to the solicitor under the solicitors' in-house complaints procedure with a view to helping focus the client's mind on the issues when raising their concerns with the solicitor. This will hopefully lead to a better outcome at the first tier level when the matter is being processed by the solicitor.

For the last eighteen months the Society has been involved in a governance review of the practice and procedures of the Client Complaints Committee to further ensure a better evidence based enquiry so that decisions are based on clear evidence. This process was undertaken because the Society was increasingly concerned about the complexity of cases which require a more detailed response resulting in slippage in achieving time limits and therefore the undermining of expectations in delivering an outcome to a complainant in respect of their complaint. The Society has concluded its governance review of issues and is taking the matter forward as and from 1st September 2012. In order to improve the quality of responses to complaints at first instance to the Society, the Society has now placed the onus on solicitors, when making their substantive response, to provide full back up evidence; where statements are supported by documentary evidence which must be provided at the outset by way of response. Failure to do so may result in the Society making a determination on the facts of the case in the absence of that evidence.

The Society recognises that by frontloading responsibility for properly researching the complaints responses on to the solicitor, that additional time will be required. Traditionally the solicitors have been given fourteen days to respond which is essentially ten working days. It is recognised that that timeframe is not sufficient to provide detailed responses and review

and provide relevant supporting documentation. The Society has therefore decided that that timeframe should be extended to fifteen working days. As a consequence the Society also believes that a sixteen week cycle would better reflect the time limit for the majority of cases under their new arrangements.

These matters were discussed with the Lay Observer at the conclusion of the governance review on the issues. We are grateful for his support in taking the matter forward in this way. It is anticipated that once the new system beds down that in fact the turnaround time for complaints will decrease.

Solicitors are generally co-operative with the Society, however from time to time there is a failure and in those circumstances the non-response to the Society's correspondence is subject of a referral to the Solicitors Disciplinary Tribunal as a breach of regulation. This action has always been followed because the Society views the failure to co-operate with the complaints process as serious and a matter of conduct which must be brought to the attention of the Solicitors Disciplinary Tribunal. Going forward in addition, the Committee will uplift the file from the solicitor with a view to considering whether there are failures in conduct or service matters and if so additional disciplinary action will be taken based on the file review.

Further, the Society has decided that it will monitor those non-contentious costs which are assessed by the Solicitors Remuneration Panel under the Solicitors Remuneration Order (N.I.) 1977. Where the panellists reduce fees by more than fifty percent, the details of the case will be brought to the attention of the Client Complaints Committee to consider whether any further action in relation to the matter needs to be taken which may include referring the fee reduction

to the Professional Ethics & Guidance Department of the Society.

The Society agrees with the Lay Observer that notwithstanding the fact that we are all waiting for change through implementing the recommendations of the Bain report that it is important to operate the current regime with continuing commitment and effectiveness until new legislation is in place. The governance review is therefore ongoing. The Society will be reviewing the client side of the equation to seek to ensure that our documents are clear and user friendly and easily accessible. We also wish to review the complaint form to ensure that it does the job it is intended to do which is allow the client to present their complaint in a clear and rational manner together with supporting documentation. We are also looking internally at other management tools which will help prepare the Society for the transition process should the Bain proposals be implemented soon.

The Society and the Lay Observer are fully committed to feeding its complaints experience back to the profession. Our CPD programme is our primary vehicle for so doing. Courses organised since the publication of the Lay Observer's Report in 2011 have included "Building Strong Client Relationships", "Dealing with Bereaved Clients" as well as relevant core issues including an Alzheimer's CPD event, Conveyancing Matters and Contentious Costs Seminar on party and party costs. We referred to the last matter in our response to the 2010 Report and would confirm that this was a seminar which was very well received and well attended.

Many of the complaints to the Society arise out of disputes about bills. The complexity surrounding the calculation of fees and the drawing of bills is something which frequently leads to misunderstanding as between

solicitors and their clients. It is therefore important to run such seminars on a regular basis and we will continue to repeat the Costs seminars on a periodic basis.

Although conveyancing is now number three in the list of complaints, it is still a significant area of concern to members of the public who are involved in the house moving process and is a key area at risk in terms of problems arising. The Society therefore keeps an active programme of conveyancing seminars in each and every year to assist practitioners in keeping up-to-date on developments and current issues. All of these seminars are extremely well attended.

In May 2012 we organised an introductory seminar on immigration work which was extremely well attended and well received. The Society therefore intends running more such seminars to improve the knowledge base and confidence within the profession to deal with such areas of business. Going forward the Society has planned a probate seminar on probate matters at which the Lay Observer has agreed to speak which will be held in November 2012.

We hope that through the active CPD programme list and the quality of the speakers and the topics, that the Society will improve and reinforce the knowledge base within the profession and thus reduce the number of complaints which it receives in relation to relevant areas of work and also highlight to solicitors the need to keep their clients on board whilst carrying out their work.

## **Recommendations**

In this year's recommendations the Lay Observer has pointed again to the guidance criteria of Her Majesty's Government Cabinet Office against which he wishes the Society to measure its own efforts in relation to

complaints. We would confirm that work in these areas is ongoing and where improvements can be made they are being made. In relation to the Cabinet Office guidance, the headings are as follows:-

#### **Ease of Access and Well Publicised**

As indicated the Society's website is now becoming the main area of access to information in relation to complaints and we note the number of complaint forms which have been downloaded. We continue to monitor the information on the website and have received good feedback in relation to its content. The complaints process, as a regulatory matter based on evidence is a written process and the Society strives through its documents and its website to ensure that the users understand why information intended to be used in a complaint must be provided in writing.

#### **Speedy**

The Society has made improvements in relation to the delivery of the quality of evidence to allow it to make more robust decisions. A balance requires to be struck between the speed of response and the quality of the decision making. We have extended the time limits to solicitors and have indicated that we intend advising complainants that the timeframe will be sixteen weeks as opposed to twelve weeks. We will still, as far as possible, endeavour to resolve all complaints as quickly as possible. If everyone plays their part in the complaints process we should be able to conclude the majority of complaints within the sixteen week process. We would repeat that in processing complaints we must ensure a fair, full and thorough investigation of the facts for the benefit of both the solicitor and the complainant. It has to be borne in mind that the statutory framework allows for appeals by solicitors

and where such steps are taken, then the administrative time limits will naturally be extended.

#### **Confidentiality with a view to protecting staff and those who complain**

We confirm that we have a high level of confidentiality on complaint matters for the protection of staff, complainants and solicitors. We are mindful of our responsibilities under the Data Protection Act in respect of all parties and we seek to balance these with our duties and responsibilities under the Solicitors (N.I.) Order 1976 as amended.

#### **Informative – providing information to management so that services can be improved**

The Society's rationale for upholding a complaint is always explained not only to the complainant but also the solicitor so that the solicitor may take on board the decision with a view to improving his/her own systems.

In addition where an investigation throws up any anomalies or issues with the Society's own procedures these are looked at with a view to seeing whether some improvement can be made or documents changed for the benefit of the entire system.

#### **Simple to understand and use**

The Society continues to monitor its documents and comments received from the lay Observer, and users of the system. There is always room to improve in any system and we are open to recommendations and suggestions from members of the public and others. We are reviewing our complaints documents with a view to seeking to ensure that they are as simple as possible and are sufficiently clear to enable the clients to make their complaints clearly and effectively.

### **Fair with a full procedure for investigations**

The Society would repeat its response in last year's Report that the Society continues to keep its processes under review. As indicated we have now implemented changes to the process in relation to how the solicitors respond and implemented consequential changes to client communication requirements. The objective of these improvements is to ensure as full an investigation as can possibly be conducted for the benefit of the parties to the complaints process.

### **Regularly monitored and audited to make sure that it is effective and improved**

ISO 9001 has been invaluable in meeting this general requirement. Under ISO 9001 the Society must generally review its documentation and procedures for improvements and to identify whether there have been any breaches in its current processes.

The Society also recognises the value of the ongoing meetings with the Lay Observer where in an informal discussion can take place and arising therefrom improvements implemented.

In paragraph 9.7 the Lay Observer states:

*"I would however like to suggest that the Society consider ways of specifically encouraging offending solicitors to recognise where they have gone wrong and to apologise to their clients. And further, when such situations arise, to consider ways of persuading solicitors to take to ensure no repetition occurs in their practices".*

As previously indicated the Society, through its CPD programme to the profession, through its magazine, The Writ and through the e-informer seeks to inform solicitors of all pertinent issues and encourage them

to take the necessary action to maintain standards within the profession and to protect themselves from any adverse risk issues. Risk avoidance is also a benefit to the client and such measures are to be strongly encouraged. In individual cases the Society does point out to solicitors where it expects them to make necessary changes to avoid any repetition of conduct or service errors.

With regard to encouraging solicitors to apologise, of course the Society does take the view that where something has gone wrong it is ultimately appropriate to apologise in a professional context just as it is appropriate in everyday life and commends that approach to its members.

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