

Draft Bill Out to Consultation

*Annual Report of
The Lay Observer
for Northern Ireland*

2013

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2013

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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“We must use time wisely and forever realise that the time is always ripe to do right”.

– Nelson Mandela

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Chapter 1

Opening Comments

Under existing legislation the focus of Complaints Handling is on regulating the solicitor - resolving the client complaint fairly is a by-product of the process.

1.1 This is my tenth Annual Report, and the thirty-sixth in the series. This comes at an interesting time when the Government put out for consultation the Draft Legal Complaints and Regulation Bill (Northern Ireland) 2013 last November. This will reform the structure of and approach to handling complaints by clients against solicitors and barristers in both these branches of the legal profession, as well as other elements of regulation. My appointment under the present arrangements extends until the end of March 2014, or such earlier date as proposed new structures have been put in place.

Although this Report refers to 2013, arrangements have been made in March 2014 for me to continue in post until 31st March 2016 or until the proposed new legislation has been fully implemented whichever is the sooner.

1.2 My Report deals with the work of The Lay Observer for Northern Ireland during the calendar year 2013. Under the current legislation [The Solicitors (Northern Ireland) Order 1976 and The Solicitors (Amendment) (Northern Ireland) Order 1989] work continues until any new arrangements have been put in place arising from the Draft Bill.

1.3 My routine work is overseeing the Complaints Handling Processes of the Law Society. This has two main elements. **One** concentrates on investigating individual complaints taken against the Law Society of Northern Ireland. My role is to deal with those complainants who, having brought their complaints to

the Law Society remain dissatisfied after the Society has concluded their investigations. This is the second tier of the Complaints Handling Process.

1.4 The first tier is where clients complain directly to their solicitors. They do so under regulations put in place in September 2008, and supplemented on 1st September 2012. These arrangements properly applied by the Law Society have already reduced the number of complaints being directed to the second tier. However, it should be noted that of the many hundreds of thousands of legal transactions taking place each year, only a tiny percentage raise client complaints that ever reach beyond the first tier.

1.5 The **other** main element of my work is concerned with the overall 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 from the aspect of regulating solicitors. 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 in 2012 is contained in Appendix 2 to this Report – the formal Response from the Law Society to my Annual Report for last year, 2012.

1.6 The Law Society and the Lay Observer work together towards agreed goals in relation to the regulation of solicitors. But other aspects of the

legislation have to do with providing a good service to complainants within the limitations of the current legislation. We are agreed on the general goal of improving the service to clients by learning in the profession from the process, 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. I have been striving to assist and encourage the Law Society to improve **their** service to complainants; this has not always borne the potential fruit that I have proposed.

- 1.7 It seems to be generally agreed, and certainly is between the Law Society and the Lay Observer, that the current legislation needs to be changed as soon as possible. The current approach is no longer fit for purpose. This is largely in my view to do with the fact that the legislation is pointed towards regulating solicitors; resolving the complaint brought by the client appears incidental and a by-product of complaint handling as now in operation. I welcome the Draft Bill for its approach, much enhancing its focus on the needs of clients alongside regulation.
- 1.8 Handling complaints has a wider perspective than simply helping individual complainants and regulating the profession. Good complaints resolution has three key elements. Firstly, the complaint itself must be resolved objectively, fairly and transparently. Secondly, specific service improvement should result

from the complaint in the legal practice concerned. Thirdly, learning for the profession should result from an overview of all complaints, their resolution and from service improvements. These three key elements form the essence of good complaints handling.

- 1.9 In dealing with complaints, the Lay Observer champions only the truth. I take an independent view of the facts and draw conclusions; from that I make suggestions for resolution, make observations, and provide recommendations. An independent and well communicated view helps de-fuse and diffuse the emotional and factual impact on clients. In a wider context, I help and encourage service improvements and provide pointers to learning which if acted upon may reduce the incidence of future complaints.
- 1.10 By the same token, the Law Society at the second tier should never 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 case. The Law Society needs to ensure that the wording they use in handling client complaints, in empathising with the complainant, and the explanations they give are all directed towards a clearly neutral but empathetic position in the complaint. They should also ensure that maximum clarity and transparency is evident in communicating with complainants.
- 1.11 The Law Society continues to develop ways of feeding back experience from the Complaints Handling Process into Continuous Professional Development (CPD). They also use complaints to inform priorities in CPD.

Profile given by the Presidential Team, the approach to client care, and preparing newly qualified solicitors for their professional work, all continue to deliver better performance in the profession. This is indicated in the complaint statistics in this Report.

- 1.12 The Client Complaint Committee clearly has a difficult and sensitive part to play in enhancing the service provided by 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. Under the Draft Bill however, the challenges for the lay-led client complaint committees will be significantly different.
- 1.13 During the year I have had valuable meetings with the Presidential Team and the Chief Executive of the Law Society, representing the Council. I am grateful for this constructive contact. These meetings are valuable as they enable both parties to consider strategic matters, and provide an exchange of views at that level.
- 1.14 My day-to-day links are with the Head of Complaints and her staff. I have always aimed to work in a co-operative and courteous way, and to maintain appropriate professional and personal relationships between our respective roles. Our overall aims are the same, namely to enhance service provision from the solicitors' profession to Northern Ireland society. I have to report that administrative arrangements were put in place in the Complaints Department whereby I no longer physically meet either the Head of Complaints

or her staff when I visit the Law Society – all contact is conducted at arms-length. I do not consider this as appropriate as the Complaints Department is separated physically from the rest of the Law Society. It is from **within** the Department that I would prefer to access files.

- 1.15 I maintain helpful and positive contact with the Department of Finance and Personnel at all levels. The Permanent Secretary plays a central part in providing me with a virtual office; for this and for his support in doing my work, I am grateful. I report formally to him under the legislation, and I thank him for his interest in my work.
- 1.16 For day to day management matters, I 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 Jones for the many ways in which she consistently and readily supports me in my work, providing necessary advice when required – I also associate with her name that of Ms Helen Frazer. This team from the Department contributes to my efficiency in many ways.
- 1.17 The Lord Chief Justice of Northern Ireland was willing to meet with me to discuss my work during the year. This is encouraging. It provides a distinctive overview of my work, and information in the ways in which my work can be of value in helping improve the service available to the public and stakeholders within the Justice System in Northern Ireland.
- 1.18 I am encouraged by the interest in my work shown by the First Minister, the Deputy

First Minister, the Minister for Finance & Personnel and the Minister for Justice. Some have commented on my work, as have NIO Ministers, a number of Members of Parliament, and the various Northern Ireland political parties, their MLA's and Government officials. In addition, the Attorney General and the Advocate General for Northern Ireland have noted my work.

- 1.19 I continue to have valuable and helpful contacts with my counterparts in the other jurisdictions of the United Kingdom and Ireland. I meet and share experience with complaints handlers and persons in Ombudsman Schemes in regular private meetings and in workshops. I continue to operate to the standards published by the Ombudsman Association. Achievement of these standards enable me to continue membership of the Association. I am grateful to the Department for supporting me to participate actively in these ways with the Ombudsman Association.

Chapter 2

Draft Legal Complaints and Regulation Bill (Northern Ireland) 2013

Two objectives of the Draft Bill 2013 make it clear that resolving the client complaint and regulating the profession have equal merit.

- 2.1 After many years and following a number of reviews a Draft Legal Complaints and Regulation Bill (Northern Ireland) 2013 went out to consultation last November. This is the result of the study undertaken by the Bain Review team which published its report in 2007. This Draft Bill, when it becomes law, and its consequential arrangements are in place, will abolish the post of Lay Observer for Northern Ireland after almost 40 years continuous operation; along with it the third tier will effectively disappear, although appeal to the courts will be available.
- 2.2 During this time there has been a leapfrogging over arrangements in Northern Ireland by the other jurisdictions in the United Kingdom, where the regulation and complaints handling in both branches of the legal profession have moved on. It is to be expected that the Draft Bill after consultation and legislative processes will bring the arrangements in Northern Ireland into the 21st Century with coverage over solicitors, and for the first time barristers as well.
- 2.3 The period of consultation begun in November 2013 ends in February 2014. Thereafter, there will be due process to carry the Draft Bill through the Northern Ireland Executive and the Northern Ireland Assembly and into effect in due course. Meantime, the Draft Bill does not in any respect alter the current arrangements for dealing with the complaints of clients of solicitors. These arrangements continue to be applied by the Client Complaint Committee of the Law Society and the Lay Observer until the new arrangements are in place.
- 2.4 Nevertheless, the Draft Bill presents opportunities and challenges for the Law Society, the Bar Council and Consumer Organisations to consider. I have therefore provided in this Report a number of pointers to the future, which might need to be considered and prepared for in the new situation. I hope that these will be perceived to be attempts to be helpful, and will not be seen as stretching my presumption too far, given that I shall be no part of the new arrangements. In this context I have been asked by the Department of Finance and Personnel to review how the changes have progressed since recent reforms in the other jurisdictions in these Islands, with particular emphasis on the challenges and practicalities that have had to be faced. This has been done using my existing contacts with Ombudsmen, Commissioners, Adjudicators and Complaint Handlers concerned in England & Wales, and in Scotland, as well as what has been happening in Ireland.
- 2.5 I have provided a detailed response in the consultation on the Draft Bill. This has given me an opportunity to further highlight a number of practicalities which I believe from my experience may need specific and effective attention in implementing the new arrangements that will emerge. I understand that responses made to DFP will be available on the Government website, including that of the Lay Observer.

2.6 The Draft Bill requires the Law Society and the Bar Council to take full responsibility for all aspects of complaints handling in their respective branches of the legal profession, under the oversight of a commissioner. The Draft Bill lays down detailed arrangements to which the members of each branch of the legal profession must adhere in relation to individual client complaints in the first instance. Where these cannot be satisfactorily concluded by the professionals concerned, it is for the Client Complaint Committees in the Law Society and the Bar Council to deal with them. The Complaint Committees will be armed with extensive new powers, including two types of compensation and other sanctions. The Complaint Committees will be chaired by lay persons and there will be a lay majority. Complaint Committees will require to be given equal status with other key committees in each organisation.

2.7 These arrangements will all be overseen by a Legal Services Oversight Commissioner. The person appointed will have extensive and important powers to oversee the work of the Complaint Committees as well as other aspects of regulation. The post-holder will also be required to discuss and approve a wide range of matters with the office holders of the organisations as well as with their Complaint Committees. The Commissioner's operation will be independent, but reports can be called for from the Commissioner by the Government as required and requested.

2.8 These requirements suggest to me that the Commissioner can seek to regulate as lightly or as heavily as may be necessary and as

circumstances dictate. And of course this places a very major burden of probity and responsibility on the post-holder's shoulders. The costs of the Commissioner's operation will be borne by each branch of the profession, and resource will be collected by a general levy, as well as a specific levy on those legal professionals who are found wanting.

2.9 I regard it as important for all, to consider that the Draft Bill has the word 'complaints' in its title. It is also important to note that the Government has highlighted that the reforms in the Draft Bill are presented in the context of several objectives including the following:-

- protecting and promoting consumer interests
- promoting public understanding of citizens' legal rights
- encouraging a strong, effective and independent legal profession

2.10 Discussions with colleagues in other jurisdictions where change has already taken place indicate a number of key challenges that may arise as any new arrangements are implemented. These include:-

- arrangements will have to be clarified in how best to deal with any 'tail' of cases left over from the Lay Observer operation following its closure
- care, attention and time will need to be given to a transition phase during which new ways of thinking and in particular

new mind-sets about complaint handling and other regulation requirements will need to be developed

- care and attention will need to be given to the challenge of ensuring that the new lay-led and complaint committees can have similar status in the relevant bodies given that they will have lay chairs
- it might be seen as wise that as much of the detailed regulations and arrangements arising from the Draft Bill are not included in the primary legislation
- it is important that the Continuous Professional Development system plays a central part in the effective promotion of the schemes. As well, information to the professional and public needs to be provided in advance of the implementation of new arrangements

2.11 Early planning to meet the key challenges will help achieve an effective transfer to the new arrangements.

2.12 Probably the most important comment that might be seen as a guiding light is to encourage **co-operation and accommodation** between the Commissioner and the regulators attached to each branch of the legal profession. The system will work well if the entire operation is guided by ‘doing what is right’ – an adversarial approach would not be appropriate in my opinion.

2.13 These ideas are offered in a spirit of helpfulness, and arise in the light of my extensive experience of complaint handling and in the context of my consultations with colleagues in other jurisdictions where reform has already taken place. It now remains for the legislative processes to run their course. In the meantime, the current scheme continues under the present legislation; it is this on which, during 2013, I now report further.

Chapter 3

Work of the Lay Observer in 2013

‘Complaints provide vital information on service improvement as well as insights into how the profession operates - as such, they are valuable gifts to the profession’.

3.1 During 2013, I investigated complaints from a total of 48 complainants compared with 43 in 2012, 38 in 2011, and 42 in 2010.

3.2 When the Law Society receives a complaint, in most cases that complaint can be analysed under several different categories. In 2013, the Law Society received 217 categorised complaints from 103 complainants. The figures for this and previous years are as follows:-

	No. of Categorised Complaints	No. of Complainants
2013	217	103
2012	183	90
2011	201	122
2010	218	110

3.3 I have to report that while the number of cases remain at a broadly stable level, the complexity of the cases I receive continues to increase. I identify cases as **highly complex**, **complex**, and **others**. Complexity derives from the amount of time I require to conclude each complaint. The analysis of the cases I have concluded in 2013 shows:-

- There were **48 complaints to me** in 2013, 43 in 2012, 38 in 2011 and 42 in 2010
- There were **24 very complex cases** in 2013, 17 in 2012, 15 in 2011, and 7 in 2010. Each case took three or more days to conclude

- There were **8 complex cases** in 2013 requiring one and up to two days to conclude, 5 in 2012, 10 in 2011, and 17 in 2010

- This means that the number of complex and very complex cases together were **32 in 2013**, 22 in 2012, 25 in 2011, and in 2010 there were 24

- There were **16 other cases in 2013**, 21 in 2012, 13 in 2011, and 18 in 2010. Each of these cases took a day to conclude

3.4 The trend overall in the complexity of my investigations is steadily increasing. This is an indicator that the Law Society has applied effectively the regulations and guidelines introduced in 2008 and 2012.

3.5 I receive three ‘types of Complaint’. **Firstly**, there are those ‘complaints’ which have not met the definitional requirements, as derived from the legislation. These are often not within my remit, but I may not be initially aware of this, and so I may have to access and to study material which can be very detailed. This requires considerable work on my part before I can come to a conclusion. Some of these complainants take the view a wrong decision has been made to exclude them from the complaints handling processes. I provide an opinion as to whether the case has been dealt with correctly or not. If I believe it has not, I will revert to the Law Society for a re-consideration of their decision, or direct the

complainant to where it can be tackled. I have to say that it is seldom that such a complaint needs to be reverted to the Law Society

3.6 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. Most will have been to the Law Society already, but have simply been told that the Society cannot deal with their difficulties, and in too many cases without further explanation of the reasons. I believe that where I can help such persons understand, I should do so, and seek to try to alleviate any strength of feelings involved. I do so by explaining as clearly as I can why the case cannot be resolved using the current system. I am prepared to do this even where I only answer questions or make non-legal suggestions which may be helpful. In so doing I can help clients of the legal profession, and also help the way the profession is seen. I assist the public by helping would-be complainants feel that they have had at least independent consideration. All these require time, commitment and energy from me to complete. There were five complex cases in this category in 2013, with twenty others which were very much less involved. The latter are not recorded in the statistics I have provided in the second paragraph 3.2 above.

3.7 **Secondly** there are those complainants, who having had their complaints dealt with by the Law Society, remain dissatisfied and then complain to me – these are within my remit and are those cases to which the legislation is directed. I dealt with thirty seven such cases in 2013; there were two others started but

not concluded in 2013. With a total of only 103 complainants to them in 2013, the Law Society might well assess why as many as 37 complainants find it necessary to refer their complaints to me. This represents 30% of the second tier cases being referred to the third tier. Difficulties with communication will likely be a recurring theme.

3.8 **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 complaints appear to be on the increase, and I dealt with six complex cases in this category in 2013.

3.9 Thus, I report a continuing increase in the complexity of complaints reaching me. I also report 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.

3.10 I would also report that during 2013, I dealt with two cases in other jurisdictions where there was a conflict of interest there for the complaint handler at the third tier. There is a long standing agreement to provide this service between jurisdictions. In the past, I have received a similar service where I have encountered a conflict of interest as Lay Observer in Northern Ireland. An example of such a conflict is where a solicitor who is

the subject of a complaint has carried out a professional service for the complaint handler.

- 3.11 I am a part-timer, and I operate without assistance. All administrative and secretarial tasks are carried out directly by me, in addition to investigations, reporting and auditing work. A proportion of my work is carried out unpaid for the benefit of the public. I continue to provide a low cost, efficient and effective service on behalf of the public and the Government within the current arrangements.

Chapter 4

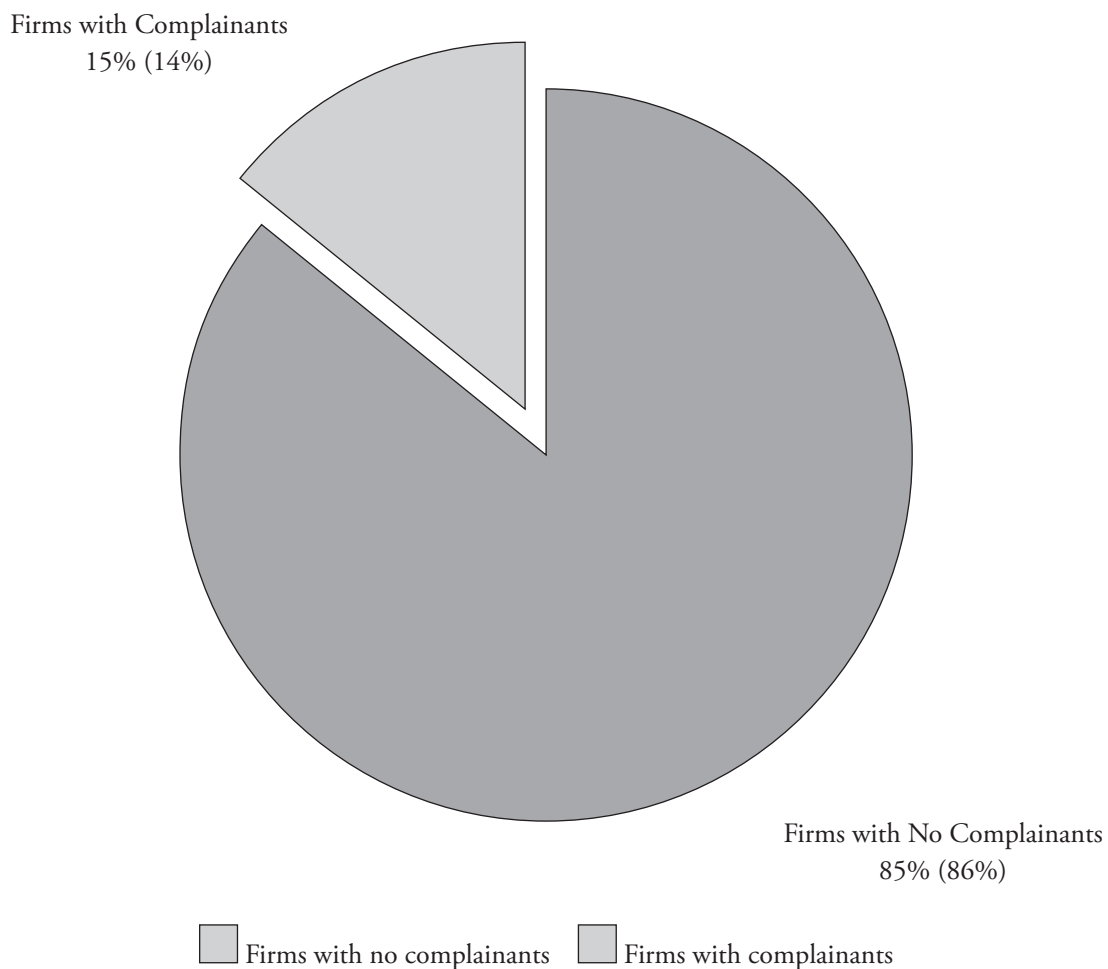
Final Outcomes 2013

Solicitors attract a very small incidence of client complaints that need to go to the Law Society; 85% of solicitors' firms attracted no such complaints in 2013.

Note: the complaints referred to in Chapter 4 are those which achieved a final outcome in the year 2013 at the second tier.

Chart A

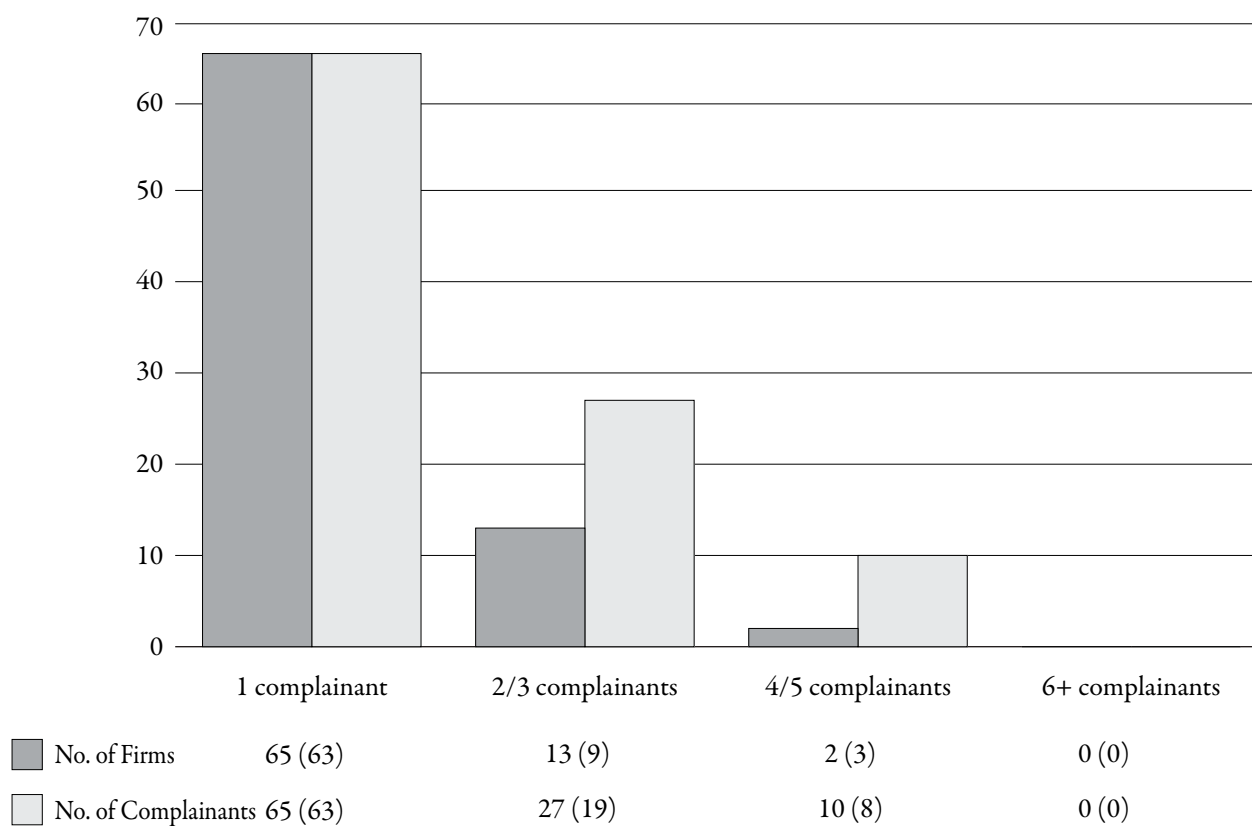
% of Solicitor Firms with **Complainants** and % of Solicitor Firms with **No Complainants** to the Law Society in 2013 (figures in brackets are for 2012).



The total number of firms 'on the register' in 2013 at the Law Society is 531. Of these 451 (85%) attracted no complaints that were referred to the second tier. 80 solicitor firms attracted complainants that were referred to the second tier; this represents 15% of the total.

Chart B

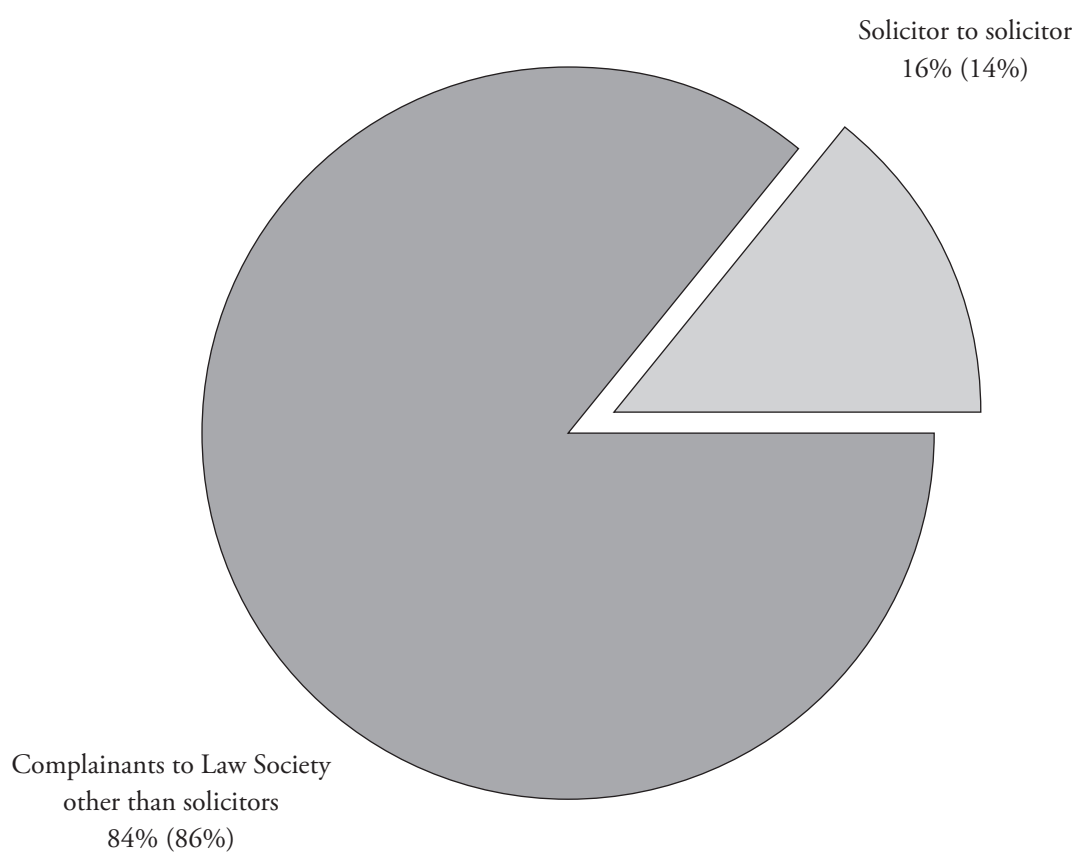
Number of Complainants / Number of Firms with complainants to the Law Society in 2013



Note: The figures in brackets refer to 2012.

Chart C

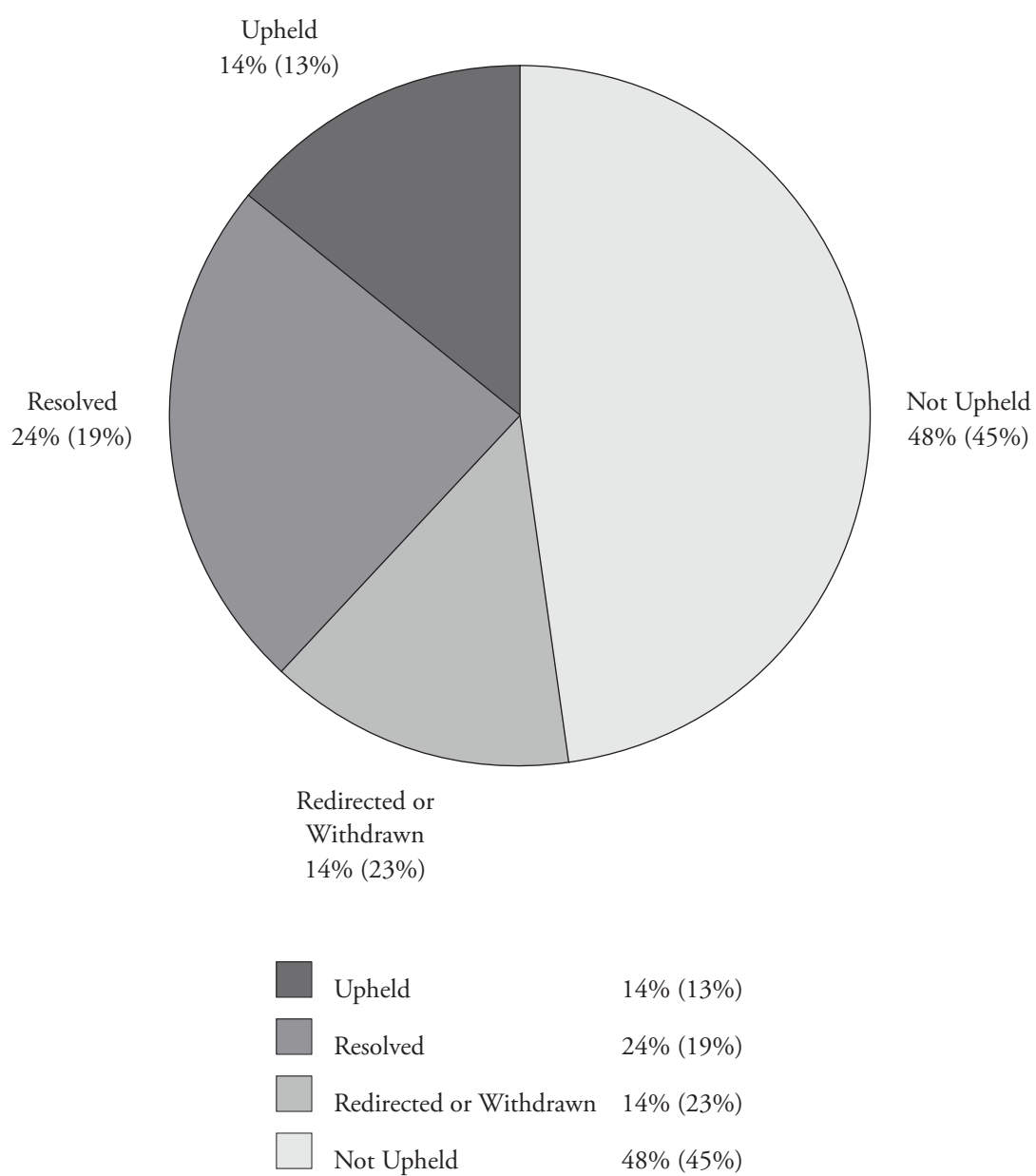
Solicitor to Solicitor as % of total complainants to the Law Society in 2013.



Solicitor to solicitor complainants to the Law Society in 2013 amounted to 16 (13) out of a total number of 103 (90). Figures for 2012 are shown in brackets.

Chart D

Summary of final outcomes for complainants to the Law Society registered and completed in 2013.
(figures in brackets relate to 2012)



Chapter 5

Comment on Final Outcomes 2013

Timetabling by the Law Society in dealing with client complaints continues to improve; from the point of view of the complainant however, the complexities involved need to be carefully and repeatedly explained to them.

- 5.1 The number of solicitor firms 'on the register' for the period concerned was 531. Complainants were recorded against 80 solicitor firms. This means that 85% of solicitor firms attracted no complainants at the second tier in 2013 – with 86% in 2012, and 84% in 2011. This appears to be satisfactory for the profession as a whole.
- 5.2 Chart B shows the relationship between the number of complainants forwarding complaints to the Law Society and the number of solicitors firms involved. The number of multiple complaints to individual firms (*ie* two or more complainants to one individual firm of solicitors) in 2011 was 21, in 2012 it was 11 and in 2013 it was 15.
- 5.3 Closer inspection indicates that:
- In 2013**
- 2 firms had 5 sets of complaints
 - 13 firms had 2/3 sets of complaints
 - 65 firms had one set of complaints
- In 2012**
- 2 firms had 4 sets of complaints
 - 9 firms had 2/3 sets of complaints
 - 63 firms had one 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 one set of complaints
- 5.4 The vast majority of firms with complaints had only one complainant. A caution is given that solicitor firms do specialise, and some types of clients and work by their very nature can attract numbers of complaints that can be difficult to resolve. So I emphasise that solicitor firms should not be judged solely on the number of complaints they receive which are then dealt with by the Law Society at tier two.
- 5.5 Chart C is about complainants 'solicitor to solicitor' in 2013. Such complaints arise 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 must not be used to put management pressures from one solicitor on to another via the Law Society in order to achieve a result; it ought to be used fundamentally to be of **direct** assistance to solicitors' clients. Solicitor to solicitor complaints show an insignificant increase to 16% in 2013 compared with 14% in 2012 and 12% in 2011 (numerically, 16 complaints out of 103). Once again the Law Society would need to watch this carefully to ensure that complaints are genuinely on behalf of their clients to achieve good service, and that there is no trend of solicitors using the system for managing their affairs solicitor to solicitor.
- 5.6 Chart D shows the proportion of final outcomes for complainants who registered complaints with the Law Society and had them concluded in 2013. The proportion of complaints **upheld**

was 14% in 2013, 13% in 2012 and 14% in 2011. This is consistent with a greater emphasis being placed on better quality internal complaints handling required of solicitors firms. A complaint is of the utmost importance to the complainant and this proportion reinforces the idea that the Complaints Handling Processes are by no means a waste of time for a complainant or indeed a complaint handler in the solicitors' profession.

5.7 Alongside those complaints upheld, should be placed the 24% of complaints that were **resolved** in 2013. Together these show that a significant proportion – 38% - of complaints to the Law Society had in the calendar year 2013 substance and justification. A further 14% were redirected or withdrawn, leaving 48% not upheld. The comparable figure for 2012 was 45%. These proportions – 52% upheld, redirected or resolved and 48% not upheld - have important significance. **The public should be encouraged by the Law Society to recognise that where a complaint is justified, they do indeed find against a solicitor, or resolve matters for the client.**

5.8 However, it remains the opinion amongst many complainants that where a complaint is not upheld, not only do offending solicitors get off too lightly, the wrong for the complainant is not put right directly. **It is an unfortunate fact that solicitor and the complainants have made their judgement so often based on the way the Law Society has communicated with them.** Their perceptions are often made worse since there is usually no direct redress, (for example by compensation) for the complainants through the current arrangements. Still, complainants

have been allowed to underestimate the internal inconvenience and professional embarrassment that attaches to a solicitor when an investigation by the Law Society for any reason becomes necessary. I do recognise that solicitors cannot often be required by the Law Society to take action under the present legislation, but **nor are they usually even invited by the Law Society to apologise or explain to a complainant, or take some other action on their conclusion of a complaint.**

5.9 This in my view remains unsatisfactory. These choices by the Law Society in the proposed new arrangements are unlikely to be available. Good practice in and research into Complaints Handling indicates that what complainants most often want is a simple apology. But, apologies are not readily given by legal professionals including the Law Society – perhaps because they believe they may be held liable. This however is not an argument for failing to apologise when one is clearly in the wrong, or empathising with the misfortunes of a client. Nevertheless, I also understand that solicitors may well find that as a result of complaints, they may be required to account for themselves using other Law Society mechanisms. **Solicitors emphatically ought to take note of this and the Law Society should highlight that this potential is open to them, and that they will take such action where necessary.**

5.10 A complainant is acting as 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 and be seen to be appreciated by the Law Society. Although the Law Society does

not give a client explicit credit for bringing forward a justified complaint, it is clear to me that they do value what complainants and complaints tell them. Indeed they use the consolidated results from the Complaints Handling System to inform their Continuing Professional Development Programme. This is something of which the Law Society should therefore be proud. The Law Society would do well to make it clear to complainants **at every available opportunity** that they appreciate their help in this way. I ask the Law Society to do the right thing and directly clarify this in their complainant correspondence. It would emphasise how seriously the Law Society takes the Complaints Handling Processes

- 5.11 In 2013, the proportion of complaints **not upheld** was 48%, compared with 45%, in 2012, and 40% in 2011. Thus, as many as 52% of the complaints that were concluded in 2013 at the second tier, have apparently 'satisfactory' outcomes for the complainant. **That such a high proportion is so dealt with should continue to be a matter of satisfaction for the Clients Complaint Committee and the Complaints Department of the Law Society.**

- 5.12 The timetabling figures for concluding investigations of complaints in 2013 show a small improvement over previous years. They are as follows:-

Times	2013		2012	
	Propn	Cum	Propn	Cum
Within 3 months	47%	47%	55%	55%

Times	2013		2012	
	Propn	Cum	Propn	Cum
Over 3 & less than 6 mos	51%	98%	42%	97%
Over 6 mos & less than 9 mos	2%	100%	3%	100%
To Disciplinary Tribunal	3%		2.5%	

- 5.13 There are three notable observations. **First**, the proportion of cases concluded within 3 months of receipt into the Complaints Handling Process fell to 47% from 55% in 2012 (51% in 2011). Despite the fall, this sustains a reasonable standard which some years ago was at unacceptable levels.
- 5.14 **Second**, there has been an improvement in the number of complaints being concluded beyond 6 months to 2% in 2013, from 3% in 2012 and 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 now 16 weeks.
- 5.15 But most importantly, hiding within these figures is the fact that 85% of were concluded **within** sixteen weeks. This indicates that the Law Society were right in their estimation when they increased the target time to conclude an investigation to sixteen weeks; the majority of complainants therefore are receiving the targeted standard. It is important to ensure that those complaints which took longer than sixteen weeks to conclude were

examined to ensure that there were valid reasons for the excess over sixteen weeks. They may have presented complications. They should also be examined to ensure that the complainants were properly kept informed of the fact that their cases would be, and were delayed, and the reasons for the delay.

- 5.16 Complainants now have a greater propensity to complain when things are not crystal clear to them. This needs to be recognised – it is a phenomenon which is recognised in complaints handling schemes across all sectors. Successive Lay Observer audits have shown that some solicitors seek to be challenging of the Law Society. But it is to their great credit that the Law Society in most cases is insistent in applying the regulations firmly, and in my view, appropriately. The Society is right to do so even where so doing extends the timetable. It is essential that the Society keep complainants informed when the process of a complaint for whatever reason is not to the timetable planned. This does not always happen as it should.
- 5.17 Since 2012, it has been required of solicitor firms to **deal properly** with matters of client care themselves before allowing the matter to proceed to the Law Society. Accordingly, the Committee oversees these processes to ensure that solicitors firms deal thoroughly with complaints at the first tier of the Process, and that they make serious attempts to resolve the complaint at that level. The Law Society has made it plain to solicitors that they will not tolerate unreasonable resistance from them. Some firms clearly do not like this, and some have displayed significant resistance

despite thus creating additional costs and inconvenience for themselves. When this happens the Client Complaint Committee should be and is unrelenting in ensuring compliance.

- 5.18 Where a complaint proceeds to the second tier in the process at the Law Society, the Complaints Department ensures that the solicitors concerned provide the fullest information. This may include lifting the file, and directing the solicitor to produce detailed chronologies and notes about the case. These stringent requirements, with accompanying inconvenience, cost and lost opportunities for the solicitor are not obvious to the complainant – in my opinion, the Law Society should explain this to complainants. In essence it is actually a penalty on the solicitor whose standards may be found to be shortcoming. Clients need to know the lengths to which the Law Society goes to bear down on a solicitor in the process of investigating and concluding client complaints, and the punitive effect.
- 5.19 Working through this activity in a thorough way can serve to elongate the part of the process given over to fact finding. However it clearly achieves an indirect contribution to higher professional standards in the profession and helps deter poor standards. I can confirm that these features are borne out in complaints being dealt with at the second tier. There is evidence to suggest that this strong message is 'getting through' to solicitors, and I have no doubt also that the excellent work in CPD is having an effect as well. The statistics indicate a generally assiduous approach to regulation in the solicitors' profession. This tightening

effect continues and must be encouraged further, given the likely requirements of the arrangements under the Draft Bill. However, complainants need to understand how practically the process of investigation and analysis, and also the professional embarrassment involved, are punishment in themselves for solicitors.

5.20 Complaints must be properly concluded. I have provided ample evidence in my Report that the processes of dealing with complaints have become more systematic and thorough, and are aimed at regulating solicitors. Also, I am in no doubt that the quality of investigation should take preference over simply trying to meet unrealistic timetabled targets.

5.21 **But it is right also to expect the Law Society to adopt and carry through the requirements of good complaints handling from the point of view of the complainant.** The complainant should be kept informed of progress or changes against a definitive timetable, and the Law Society needs to keep the general timetables in tight control. Successive audits suggest that this feature of good complaints handling is not always observed, although the actual timetabling itself is improving. In making a complaint and it being dealt with, complainants are entitled to have expectations - as this is so, then those expectations require to be identified and managed. That in my opinion is the duty of the Client Complaint Committee and the Complaints Department. In this context careful explanations **in addition to** sending brochures and accompanying notes presented in clear terms is essential. Proper and timely

information to the complainant carefully communicated is part and parcel of good complaints handling practice. So too is sign posting to those experts who can help where the Law Society cannot. Communications should be written in empathetic tones and should help a Complainant feel that his/her complaint is important to the Law Society.

5.22 **Finally, it is important to note that the solicitors' profession in Northern Ireland remains one of very low complaint incidence.** No-one knows the number of transactions with clients that solicitors undertake (there must be many thousands every year), and we do not know how many result in complaints at the first tier. We do however have a clear view that only 103 complainants (representing 217 complaint categories) remain dissatisfied and take their complaints to the Law Society. These numbers are very much lower than are often popularly perceived to be the case by the public and the press.

Chapter 6

Complaints Statistics 2013

Most solicitors never come into contact with the complaints system. Regular communication with clients appears to be the best way of avoiding complaints

**Information relating to complaints examined by The Society
For the 12 months ending 30th September 2013**

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	5		2	4	4	1	3	1			6	1						1		1	8	37
2. Failure to keep client properly informed	9		2	6	8	1	4	1			8	1	1					1			5	47
3. Delay/Failure to respond to reasonable enquiries	2		2	3	6		3	1			8	1	2					1			3	32
4. Withholding/loss of documents	3		2	1	3	1	1			1	2										2	16
5. Disclosing confidential information											1											1
6. Acting in a conflict of interest situation			1				1				2									1	2	7
7. Acting contrary to client's instructions	2		1	1	2		3	1			1	1	2	1						1		16
8. Breach of undertakings																						
9. Failure to provide bills of costs/cash/statements; incurring expense without client's authority				2	1						3										2	8
10. Failure to deal with legal aid issues properly	2						1				3		1									7
11. Failure to provide proper client care information or not complying with agreed client care arrangements				1		1	1				3										1	7

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	2		1					1			4	1										9
13. Failure to properly consider client's complaints under solicitor's own in-house complaints procedure	2		2	2	4		3	1			6	1	1							1	4	27
14. Other factors						1															2	3
15. All factors (total 1 - 14)	27		13	20	28	5	20	6		1	47	6	7				3			4	29	217

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 2013

‘The changing pattern of complaints helps in planning the Law Society’s Continuing Professional Development Programme; this is a valuable gift to the Law Society from clients who have reason to complain.’

7.1 In 2013 there were 207 categories of complaint from 103 complainants.

7.2 The Law Society classifies complaints according to their nature. Each complaint may have more than one descriptor so that one individual complaint can figure in more than one classification. Since November 2008, the Law Society has used fifteen descriptors.

7.3 The five most frequently occurring **nature of complaints** in recent years were:

Nature of Complaints	2011	2012	2013
Undue delay or inaction	26%	21%	17%
Failure to keep client informed	15%	20%	21%
Delay/failure to respond – enquiries	11%	13%	15%
Acting contrary to client instructions	9%	8%	7%
Withholding or loss of documents	12%	13%	7%
	73%	75%	67%

7.5 Together these five descriptors accounted for 67% of the total complaints received in 2013, when classified by **nature of complaints**. ‘A failure to consider complaints under house rules’ in 2013 accounted for a further 12% of complaints.

7.6 It will be noted that all 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.

7.7 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. Since November 2008, the Law Society has used fifteen descriptors for **circumstances of complaints**.

7.8 Six frequently occurring **circumstances of complaints** were:-

Circumstances of Complaints	2011	2012	2013
Conveyancing	12%	22%	13%
Family Law – General	22%	16%	21%
Accidents (incl. personal injuries)	9%	15%	12%
Wills & Probate	15%	24%	13%
Medical Negligence	11%	5%	0%
Criminal Injuries	7%	0%	2%
	76%	83%	61%

7.10 Together, these six **Circumstances** account for 61% (a large fall since 83% in 2012) of the complaints received in 2013 when classified in this way. It will be noted that these figures indicate a fall in the incidence of Wills & Probate, a reduction in both Medical Negligence and Criminal Injuries circumstances of complaints. There is a decrease in complaints arising from Accidents. Not listed above are Contracts, responsible for 9% of the cases in 2013, and Commercial responsible for 6%. These figures have obvious relevance for the Law Society in planning programmes of Continuous Professional Development (CPD).

7.11 It will be noted that **conveyancing** has fallen in 2013 in the *circumstances of complaints*, having risen dramatically in 2012, and having been the most frequently occurring in the years prior to that. There is always property moving in the market, and property values are 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 the incidence of Family Law complaints has risen again in 2013, but there has been another fall in complaints relating to Will & Probates. Both Medical Negligence and Criminal Injuries have fallen out of the 'top six' *circumstances*.

7.12 The figures for 2013 are showing a wider spread than in previous years for the incidence of complaints apart from the top three or four categories in either *nature* or *circumstances*. This, along with the increasing complexity of cases at the second and third levels of complaint handling, suggests to me that CPD is doing its job, and that the Law Society is ensuring that solicitors are being increasingly held to account for failing to follow the regulations. I do highlight that where solicitors have not been using their in-house procedures, which under the regulations they are required to have in place and to use correctly, they should be held to account by the Law Society. If solicitors fail in this respect, they are liable to be reported to the Council of the Law Society for further action to be taken against them.

Chapter 8

Law Society Response to 2012 Report

Tough on regulating solicitors; weak in resolving matters for the complainant

- 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
- 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 2012 Report, which is published as Appendix 2, 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 administrative and physical changes serving to separate ever further the Complaints Department from representative and other regulatory functions of the Law Society. This endeavour is consistent with the likely new requirements arising from of the Draft Bill 2013.
- 8.4 The Law Society also reports on the effects of their earlier review of governance of practice and procedures of the Client Complaint Committee – to which mention was made in my previous Report for 2012. This further tightening of the relevant rules, which were implemented from 1st September 2012, continues to provide evident benefits to the regulatory role of the Law Society. It frontloads and increases the responsibility on the solicitor against whom a complaint has been taken by a client in requiring the provision of significant 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 more severe – although very occasionally, it would seem to me that the application of the penalties had not been taken as assiduously as might have been the case. 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 has been kind enough to consult me in an appropriate timeframe to enable me to reflect and comment. I am grateful for this, and assure those to whom I report that the debates are generally open and beneficial. They have also in their Response commented on the further progress in the link with Continuing Professional Development (CPD) and the need for service improvement and priorities that are triggered in part by the Complaints Handling System. All of this is to be commended, and I now do so.
- 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 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. **Fundamentally, this work is directed towards the regulation of the solicitors' profession.** It is 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 these aspects of their Response.

8.8 However, I am disappointed in those aspects of the Response which relate to improving things for the complainant. It is particularly so in the context of the Draft Bill which was released by the Government in November 2013, where the responsibilities for consumer satisfaction in relation to client complaints will be better balanced with the need for regulation. This aspect will be required to be of a high standard. While I accept that the Draft Bill has only recently been issued, it has been obvious for some time what it was likely to contain – in fact since the Bain Review was published seven years ago. After all the tightening of the regulation of solicitors has been based on that aspect of what was likely to be the new arrangements, and the likely future change has been acted upon in good faith and at considerable expense by the Law Society in anticipation. This has included greater separation from the representational aspects

of the work of the Law Society – with all the physical office alterations that has required.

8.9 It has been equally obvious for the same length of time that the interests of the complainant – the 'consumer' – would attract more attention in the new arrangements. I have attempted to provide guidance as to the changing approaches to complaint handling across other professional sectors in successive Reports in the hope that the Law Society would respond in an appropriate fashion. I have as well done so in the context of my recommendations in successive reports. While there has been some movement, it has not been nearly enough. In the last Response from the Law Society, which was largely focussed on improving regulatory matters, the Society suggests that there would be little further movement towards meeting these other requirements of good complaint handling resulting from my 2012 Report.

8.10 Now that the Draft Bill has been published, it is abundantly clear that the proposed legislation is focussed not solely on aspects of change relating to structures and regulation, but it is equally focussed on a cultural shift in the way that complainants need to be treated. The proposed Oversight Commissioner will have very extensive powers of intervention in achieving these changes, which will need to be balanced across the main objectives of the draft legislation. I go no further at this point than to highlight that there is no time to lose now in taking things forward, if the changeover is to be as seamless as possible.

Chapter 9

Recommendations 2014

‘Waste no more time arguing about what a good man should do. Do it.’ Marcus Aurelius, Meditations

- 9.1 I have clarified how the Law Society has continued the trend of tightening up the application of the changes made in 2008 and in 2012. This has had the effect of improving the fact finding elements of processing complaints. The changes were implemented to ensure that solicitor firms tighten up their internal 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 before the Complaints Department will accept a complaint at the second tier. In my opinion this is absolutely correct, and it is very clear that this has borne much fruit.
- 9.2 This is a sensitive process for the Law Society to manage, as it should in no circumstances drive complaints ‘underground’. **The Complaints Handling System is there for those clients who have or believe they have reason to complain about their solicitors, as well as for regulating solicitors.** This must never be forgotten, and clients have this right under the legislation. 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 is evident that there is a small number of solicitors who have not responded. Indeed a few have strenuously resisted Law Society requests and directions; the Society is rightly not tolerant of this, and all solicitor firms would do well to recognise this intolerance.
- 9.3 It is essential that the aims of Complaints Handling are clear and made clear to everyone. **The Law Society of Northern Ireland under the Draft Bill would retain its regulatory role; this is highly to be prized by the Society, as it has been very substantially diluted elsewhere in other UK jurisdictions.** In fact in England & Wales, and in Scotland, the complaints handling function has been completely removed from the respective Law Societies in those jurisdictions.
- 9.4 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. These principles provide a basis, along with other sources, for objective measurement against which the Law Society can calibrate its own efforts.
- 9.5 I see little point in going back to my Recommendations of previous years. It is not possible for me to enforce them in any case. However, I would like to point out the fact that it would be as well for the Law Society to consider very thoroughly and soon, the change in mind-set that will be required to carry the complaint system forward to meet the likely client complainant oriented requirements of the Draft Bill. A study carried out by me at the suggestion of the Department of Finance & Personnel indicates that in the case of both Scotland and England & Wales, it has taken a full five years for the new arrangements to fall properly into place. New structures,

philosophies and approaches always take time to bed down. The Law Society faces one big advantage, and this is that they will continue to have full authority for the handling of complaints BUT they will need new thinking, and new systems and procedures under the oversight of the proposed Commissioner.

9.6 It might be thought to be beneficial for the Law Society (and incidentally the Bar Council) to continue and develop contact with the Scottish Legal Services Commission, and the Legal Ombudsman for England & Wales to take advantage of continuing lessons these bodies might provide for the Client Complaint Committee and the Complaints Department.

9.7 In line with previous years Recommendations, 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. It is most likely under the new arrangements that they will be required to do this. They will also be likely to be required to direct and guide those whose complaints need to be dealt with elsewhere than the processes of the Law Society.

9.8 I take the view that to make any more specific recommendations to the Law Society at this stage would not be helpful. The Law Society faces in my view a very challenging set of requirements and objectives on the assumption that the Draft Bill will go through its legislative processes relatively unscathed. I have sought to point out what some of the implications of these changes will be, and it is a matter now for the Law Society to respond to the challenges they face in transferring to the new arrangements. I am happy to commit that if required, I shall be pleased to assist the Law Society in any way, if it seems to them that my knowledge and experience in the legal sector and other areas of complaint handling would be useful to them.

Chapter 10

Concluding Comment

'De-escalate a complaint at the earliest opportunity'

10.1 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 Ombudsman Association.

10.2 The nature and likely structures of the proposed new approach to complaint handling and regulation for the legal profession (solicitors and barristers) are now much clearer. Their introduction and implementation await the legislative passage of the Draft Bill. The Law Society and The Lay Observer are required to operate the current regime with continuing commitment and effectiveness until the new regime is in place, and the necessary structures are ready to commence. Every effort must be made by the Law Society and by the Lay Observer, in relation to client Complaints Handling Processes to make the transfer when it comes, as seamless as possible.

10.3 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 from 31st May 2014.

10.4 My contact details are:-

Alasdair MacLaughlin

Lay Observer for Northern Ireland
Room 21 Rathgael House
43 Balloo Road
BANGOR BT19 7NA

e-mail: a.maclaughlin@btinternet.com
website: 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 registered solicitor. **I will continue to presume to invite every solicitor firm to review the Report to ascertain if there are implications for their practice.**

Alasdair MacLaughlin
31st May 2014

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 as a management consultant (15 years), the CBI Director Northern Ireland (10 years), and the Director General of the Ulster Farmers' Union (10 years).

For the past eight years, he was also the Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland – a position he vacated 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 NI Economic Council, and of the 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 an organist, is interested in nature and walking, and plays golf for fun.

Appendix 2

Law Society Response to 35th Report

Response of the Law Society of Northern Ireland to The 35th Annual Report of the Lay Observer for Northern Ireland Entitled “Continuing Progress”

Introduction

This is the Law Society of Northern Ireland’s formal response to the Lay Observer’s Report for 2012.

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.

In responding to the Lay Observer’s recommendations the Society, like the Lay Observer, is conscious of the need for the implementation of the proposals outlined in the Report on Review of the Legal Services chaired by Sir George Bain. Those proposals would provide enhanced remedies for complainants, including compensation for distress and inconvenience and financial loss with decisions taken by majority Lay Committees.

The Society has taken significant steps towards making provision for the implementation of the Bain proposals, including independent office space for the new department and the development of online records for transfer of data.

The re-structuring of our telephone system is working well. It provides 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 is pivotal in the complaints information process as the majority of the complaint forms now received are in the downloaded format. The website is under review and when completed the public will have easier access to complaints information and our Regulations and Standards.

Over an eighteen month period the Society undertook a governance review of the practice and procedures of the Client Complaints Committee to ensure that solicitors provide better evidence based responses and that the Society’s decisions are robust and based on clear evidence. The Society’s new proposals came into effect from 1st September 2012. In consultation with the Lay Observer, time limits were extended to fifteen working days for the solicitors to respond in detail to complaint. The optimum target for concluding an investigation is sixteen weeks. The experience to date suggests that the extra time to provide more information by the solicitors is proving beneficial in terms of early final conclusion of investigations.

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. In addition the Committee now uplifts the file from the firm 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.

Last year we recorded that we were monitoring where the solicitor’s fees were reduced by the Remuneration Panels acting under the Solicitors Remuneration (N. I.) Order 1977 by more than fifty percent. This practice is ongoing.

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, it is important to operate the current regime with continuing commitment and effectiveness until new legislation is in place. We continue to review our documents and publications with a view to improvements for the benefit of all those using the process.

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. During the course of the Lay Observer's year the following Client related seminars were organised - Building Strong Client Relationships, Civil Legal Aid, Conveyancing, Immigration, Probate Matters – Good Practice, and Dealing with Bereaved Clients.

In addition the Professional Ethics & Guidance Department organised a Risk Management Seminar held over four venues. The topics and speakers were varied, designed to give practitioners guidance and assistance across a range of issues. The Client Complaints Department took part through Moira Neeson giving a presentation of the operation of the Solicitors (Client Communication) Practice Regulations 2008. The cross fertilisation of information and advice across the regulatory departments is ongoing and beneficial.

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 on client care issues and also highlight to solicitors the need to keep their clients fully engaged whilst carrying out their work.

Recommendations

At paragraph 9.6.1 the Lay Observer, referring to his recommendations in his 2011 Report, states: *"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"*.

We would confirm that work in these areas is ongoing and where improvements can be made they are being made. We would generally repeat our comments made in our response made to the Lay Observer's Report of 2011 and also 2010 in respect of the key headings for complaints handling in Her Majesty's Government Cabinet Office publication. In relation to two of the criteria the Society would like to develop those responses.

(a) 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. If everyone plays their part in the complaints process we should be able to conclude many of complaints within the sixteen week process. In processing complaints we must ensure a fair, full and thorough investigation of the facts. The statutory framework allows for appeals by solicitors and where such steps are taken, then the administrative time limits will naturally be extended and be outwith the Society's control.

(b) 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 procedures are subject regular internal and external reviews and the Client Complaints Department was reviewed on 11th September 2013 as part of the maintenance of our ISO 9001 accreditation and received a positive report.

Paragraph 9.6.2 *"I recommended that the Law Society further develop its paths of providing pointers to complainants to other means than those available in the Complaints Handling Process that they may employ to obtain a degree of satisfaction in their complaint"*.

We would repeat our response of 30th November 2011. Where there is a suggestion of professional negligence the Society directs a member of the public to seek independent legal advice. However the Society is not the best place to form a judgment on whether or not there is in fact professional negligence. Such assessment would require proper forensic investigation with the assistance of a solicitor. Beyond advising a complainant to seek independent legal advice it would not be appropriate for the Society to widen its scope of advice to identifying other pathways to redress. Having regard to the Society's position, there would be an expectation that its advice and information is definitive. However, the Society is not in a position to hold itself out as expert in any area other than that which falls within its remit.

Paragraph 9.6.3 *"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 standard of service in the profession".

The Society, in its correspondence with the complainant in appropriate circumstances, indicates where directions have been given to the solicitor to take general measures to correct deficiencies in his practice or procedures which will ultimately provide added value to his other clients. In that way the clients are aware of the value of their complaint.

Paragraph 9.6.4 *"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"*.

We repeat our response of 30th November 2011. The Society's complaints booklet and complaint form make clear that where a solicitor does not co-operate with the Society's investigation disciplinary action may be taken. Further the leaflet explains in summary the powers of the Disciplinary Tribunal. A balance has to be struck between giving information of benefit to the client and providing a disincentive to making a complaint. Most complainants do not wish to get their solicitor into trouble but rather hope to have their problems resolved. Consideration can be given in the course of the redrafting of the website and other documents to expanding the information on the Tribunal as the final stage of what is essentially a disciplinary process under the current legislation.

Paragraph 9.7 *"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, consider ways of*

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

We would refer you to our response of last year to the same recommendation. The Society through its CPD programme to the profession, through the Writ and its e-informer seeks to inform all solicitors of all pertinent issues and encourage them to take the necessary action to maintain standards and to protect themselves from any adverse risks. Risk avoidance is of benefit to the client and such measures are to be encouraged. In individual cases, as appropriate, the Society points out to solicitors where it expects specific action to be taken to avoid any repetition of conduct or errors. In terms of apology, it is normal courtesy to apologise if offence has been taken or given and the Society commends that action to its members in general. A complaint however is part of a disciplinary process and may possibly form part of evidence in relation to wider legal issues. Therefore under the current statutory provisions, the appropriateness of a formal apology is a matter of professional judgment in all of the circumstances and not something which the Society can insist that a solicitor provide in the absence of appropriate statutory regulatory powers.

Paragraph 9.8 *“I would also add a fifth recommendation for this year. This is that is that the Law Society do all they can to ensure that a solicitor’s firm learns from a complaint that is investigated at the second tier, and that they contrive to find ways whereby any complainant who has a complaint upheld at the second tier receives some kind of empathetic response from the Society and the solicitor’s firm concerned”.*

Where a complaint reveals systemic weaknesses or other failures, these are pointed out to the solicitor. Repeat behaviour is viewed critically and solicitors are advised that is the case.

The Society seeks in correspondence to treat complainants with courtesy and empathy and would hope solicitors aspire to doing and do the same. The Society would take a firm view if a solicitor were to write to a client in an overtly offensive or unprofessional way.

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