

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

2022/23

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SOLICITORS (NORTHERN IRELAND) ORDER 1976

SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989

Presented to the Lady Chief Justice of Northern Ireland, the Permanent Secretary Department of Finance, 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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Chapter 1:

Opening Comments



Marian Cree

- 1.1 This is my sixth report since being appointed on 3rd April 2017 as Northern Ireland's first Legal Services Oversight Commissioner (LSOC). As set out in all my previous reports, the secondary legislation necessary to enact all the LSOC powers has still not been made. This was initially due to the collapse of the NI Assembly in January 2017. Subsequently, when the NI Assembly did resume in 2020, Covid 19 arrived, which impacted on Assembly business. Following the resumption of Assembly business (after Covid 19), the Assembly collapsed again in February 2022. It is therefore yet to pass the legislation associated with my office.
- 1.2 Consequently, I continue to act in a dual role as both LSOC, carrying out some preliminary work, and, primarily, as the Lay Observer for Northern Ireland. Although the Act provides for an LSOC report, that provision is not yet commenced, therefore this report is provided under the existing Lay Observer legislation, the Solicitors Order (Northern Ireland) 1976. It focuses on my work as Lay Observer but does also include some narrative on my work as LSOC.
- 1.3 This report reflects my work from April 2022 to March 2023, in the context of the complaints process as it relates to solicitors and the Law Society NI. The Lay Observer role relates only to complaints associated with solicitors and, ultimately, the Law Society. The LSOC role is more embracing in the context that it will, once fully implemented, relate to both solicitors and barristers.

- 1.4 As stated in my previous reports, a key trend in the resolution of complaints for clients is that it does not always result in the outcome the client hopes for. This is due to a number of reasons, not least the fact that the powers of both the Law Society and my office in dealing with this aspect of complaints handling are limited. Consequently, the existing process that is operated within the boundaries of legislation has yet again flagged up the fact that it does not always serve the needs and interests of the client, something which the new process envisaged under the Act would aim to address. This report, however, presents another twelve-month period which has seen a continued positive trend in how complaints are registered and handled by the Law Society.

Chapter 2:

Role of the Lay Observer for Northern Ireland

- 2.1 The Lay Observer for Northern Ireland is the public official charged with overseeing the complaints handling system in place covering the solicitor profession in Northern Ireland. The work of the Lay Observer is governed by a set of principles clearly laid out on my website (www.layobserverni.com). It is to be noted that I also operate my role to the standards laid down by the Ombudsman Association, of which I am a member. It is from these standards that, in part, I derive my legitimacy as a complaints handler and in the way I carry out my work.
- 2.2 I investigate complaints from clients who have exhausted the complaints process, firstly with their solicitors (Tier 1), and secondly, the solicitors' representative and regulating body – the Law Society of Northern Ireland (Tier 2). Mine is the final stage in the complaints handling process (Tier 3).
- 2.3 My post as the Lay Observer for Northern Ireland is part-time. I employ no staff and all administrative tasks and secretarial work are carried out by me directly, in addition to investigations and auditing. My work is located either at the Law Society or in my own home.
- 2.4 During the year I have had valuable meetings with the President, the senior team and with the Chief Executive of the Law Society, representing its Council. I am grateful for these meetings, and for their generally most constructive nature. I value this contact as it enables both parties to consider strategic matters and provide an exchange of views and information appropriate to that level.
- 2.5 My day-to-day links are with the Law Society's Head of Professional Conduct and her staff. I can report that in 2022/23 I found them to be very helpful, accommodating, and professional. I am particularly grateful for the efforts they made to provide me with necessary data to assist in the completion of my report.
- 2.6 I maintain helpful and excellent contact with the Department of Finance at all levels. This is my sponsoring Government Department, and appropriate personnel provide support for my function in several ways. In particular, I can be contacted by complainants through their address, as well as a website, which technical persons in the Department maintain on my behalf. I wish to thank the Permanent Secretary for making all this possible.

- 2.7 On day to day matters, I link with Mr Jonathan McNaught and his colleagues. I thank them for their very willing and invaluable facilitation, which is often pro-active, and always imaginative, in providing advice and help in solving any problem I may face.
- 2.8 The Lady Chief Justice takes an interest in my work. Her role in our justice system provides a distinctive overview of the work of the solicitors' profession, and I value her advice and observations. She is, of course, a formal recipient of my Annual Report under the legislation.

Chapter 3:

Law Society Complaints Statistics 2022/23

Table 1: Circumstances of the Complaint / number of associated Complaints

Circumstance of complaint	Number	Circumstance of complaint	Number
A. Accidents	12	L. Immigration & Asylum	
B. Bankruptcy & Insolvency Debt		M. Land & Property Disputes	1
C. Commercial Work		N. Libel & Slander	
D. Contract Disputes	1	O. Licensing	
E. Conveyancing	17	P. Mental Health	
F. Criminal Injuries & Criminal Damage compensation	1	Q. Planning	
G. Criminal Law	3	R. Personal Injury	1
H. Employment Law, Equality/Discrimination Issues		S. Professional Negligence	1
I. Enforcement of Judgments		T. Trusts, Tax & Financial Planning	
J. Family Law – Children	6	U. Wills, Probate & Intestacy	8
K. Family Law – General	19	TOTAL	70

Note: *In most cases a single complaint may be included under one or more heading.*

Table 2: Category of Complaints / number of associated Complainants

Nature of Complaints		
Code	Category	Number of Complainants
1	Undue delay or inaction	56
2	Failure to keep client properly informed	50
3	Delay / Failure to respond to reasonable enquiries	51
4	Withholding / loss of documents	30
5	Disclosing confidential information	8
6	Acting in conflict of interest situation	7
7	Acting contrary to the client's instructions	14
8	Breach of undertakings	2
9	Failure to provide bills of costs / cash statements; incurring expense without client's authority	29
10	Failure to deal with legal aid issues properly	3
11	Failure to provide proper client care information or not complying with agreed client care arrangements	7
12	Failure to provide proper costs information including Legal Aid Rules at the outset of the transaction or not adhering to arrangements made	15
13	Failure to properly consider client's complaints under solicitor's own in-house complaints procedure	40
14	Other factors	8
	All factors (total 1 – 14)	320

Chapter 4:

Comment on Complaints Statistics 2022/23

Number of Complaints

- 4.1 In the 2022/23 year, the Law Society received a total of 68 individual complaints covering 320 categorised areas. These complaints were made in relation to 68 solicitors. 8 solicitors' firms had more than one complaint made against them during the period of this report. It is worth noting that 18 of the 68 complainants related to these 8 solicitors' firms, which equates to approximately 26% of the complaints received by the Law Society.

Not Upheld	29
Upheld	19
Discontinued	6
Resolved	6
Ongoing	8

- 4.2 2 of the 19 upheld complaints also resulted in the solicitor being referred to the Solicitors Disciplinary Tribunal, which can have a profound effect on the solicitor's ability to practise. All the other upheld cases had some degree of sanction against the solicitor, including in some cases a formal warning / reprimand associated with them. I would suggest this reflects that the Law Society continues to take a sterner approach to the area of complaints.

Circumstances of the Complaint

- 4.3 In my previous reports, Conveyancing received the highest number of complaints, accounting for 19 of the 90 complaints, which equates to 21% of the complaints received. In this reporting period, it accounted for 17 of the 68 complaints which equates to 25% of the complaints received. Although this circumstance of complaint area is showing no signs of improvement, Chapter 5 of my report highlights steps the Law Society has taken to address this. Furthermore, complaints under the heading of Accidents, which also featured in last year's report as an area of concern, remains so but has reduced from 25% of the complaints received in 2021/22 to 18% in this reporting period. Wills, Probate and Intestacy had 8 complaints associated with it compared to 11 in 2021/22. This equates to approximately 12% of the complaints received. Family Law (general) also received 19 complaints (28%), which is an increase

from the percentage of 12% in 2021/22. In essence, these 4 areas make up 83% of all complaints received during 2022/23.

- 4.4 I am aware the Law Society uses this data and identifies trends to inform the Continuous Professional Development (CPD) programme for solicitors – I commend this approach. I am also aware of the proactive steps the Law Society continues to take in picking up on these types of trends and addressing them through several strategies. I will comment further on this in Chapter 5 of my report.

Category of Complaints

- 4.5 On review of the overall categorised complaints figures outlined in table 2, the key issue was poor communication on behalf of the solicitor – this has been the key issue in all my reports since I took up office. Categories 1, 2, 3, 7, 11 and 12 above, all of which relate to communicating with the client, were the basis for 193 of the 320 categories associated with the 68 complaints the Law Society received – in essence, approximately 60%. Whilst this is an improvement from the 70% for this category as outlined in my report for 2021/22, it is still unacceptably high. So often, my role in dealing with complaints is explaining to the complainant what the solicitor, and in some instances the Law Society, seems to have been unable to communicate when they have attempted to resolve a complaint. It could be surmised that many of the complaints would not have got to the second tier of the complaints process if the solicitors who had complaints made against them had adopted a more proactive and regular communication approach with their client. I have made this statement in every report that I have produced since taking up office, yet the trend continues.
- 4.6 A more concerning issue is the fact that 40 (13%) of the categorised complaints related to the solicitor failing to properly consider the client's complaints under the solicitor's own in-house complaints procedure. Whilst the Law Society has continued to take significant steps to address this issue and remind solicitors of their obligations regarding complaints, it is unacceptable that a solicitor would believe that not dealing appropriately with a complaint from a client who has paid for their services is acceptable. However, on a positive note, this figure has improved from last year when 53 of the categorised complaints related to this issue. Estimated costs was also an area that was the basis for a number of the complaints as set out in categories 9 and 12 in table 2. 44 of the 320 categorised complaints related to costs, which equates to 14%. Overall, these three areas - communication, solicitors own in-house complaints procedure and costs made up 87% of the categorised complaints.

- 4.7 Finally, it is most important to note that the level of complaints against solicitors in Northern Ireland remains very low, unlike in the legal professions elsewhere in the United Kingdom and, in comparison, with many other fields of professional activity. This should be seen, as I have emphasised before, in the light of the enormous volume of transactions that solicitors here must undertake for clients every year. No-one knows how many this must be but given there were 449 firms (excluding sub offices) practising within private practice on January 2023, then I would assume the volumes of transactions are in the thousands.

Chapter 5:

Work of the Lay Observer 2022/23

Review Requests/Outcomes

- 5.1 During this reporting period I received 34 (41 last year) requests from individuals requesting that I investigate their complaints relating to the legal profession. I formally reviewed 15 of these complaints, which had already been reviewed by the Law Society's Client Complaints Committee (Tier 2). This equates to 22% of the complaints that were subject to the Tier 2 process. This compares to the 19% that I reviewed last year. I upheld 2 and partially upheld 2 of the 15 complaints that I reviewed.
- 5.2 I also dealt with 19 other queries from complainants where the nature of their query was either outside of my remit, or I carried out some remedial investigation to enable me to signpost them to other organisations/bodies who could provide assistance. These queries can be equally as complicated or time consuming. The frustration for both me and the complainant is the fact that, in many of the complaints I received, there has been the basis for a complaint, but the current legislation does not permit me or the Law Society to accept their complaint. In other cases, the complainants were wishing to complain about legal fees, conduct issues or barristers.
- 5.3 I also received correspondence from Members of the Local Assembly. Their queries related mainly to the lack of powers associated with the Lay Observer and queries regarding the implementation of the full powers associated with the Legal Services Oversight Commissioner.
- 5.4 As with previous reports by the Lay Observer, the cases I received during the period of this report were mainly complex in nature. The complexity derives mainly from the fact that many complaints have multiple categories associated with them as outlined in the above statistics. The increase in categorised complaints has contributed to the length of time it takes for me to review a case, as I have to satisfy myself that I have reviewed every aspect of the complaint. On average it takes 6 weeks to investigate a complaint from the time I receive it until I issue my final report.

Key Issues

Use of Inappropriate Statements

- 5.5 With regards to the complaints I upheld, a worrying issue related to statements by a few solicitors of their intention to engage legal representation against the complainant as they did not like the statements the complainant had made about them during the complaints process. I was also concerned that the Client Complaints Committee, who oversee the solicitor complaints process, did not at least reprimand the solicitors for such statements in their final report regarding the complaint.
- 5.6 The current client complaints process is confidential and allows each side in the process to submit their views and evidence to support their stated position. It is not a public court room, therefore issuing (what could be perceived as) a threat by a solicitor to sue a client for making negative comments about them is unacceptable and sends the wrong message to the public. Whilst this issue was not common across the complaints I reviewed, it has appeared on several occasions during my time in office - including in this reporting period. As I have stated in previous reports, Northern Ireland is a small place and word spreads quickly, which can result in a much wider negative view of the solicitor complaints process.

Ignoring the Client Complaint Process

- 5.7 Solicitors failing to properly consider the client's complaint under the solicitor's own in-house complaints procedures is also an all too familiar issue in the complaints I reviewed. This issue has appeared every year in my Annual Report as an area of concern, yet is still a dominant feature of the complaints analysis. I restate my comments from my 2021/22 Annual Report that I would strongly suggest that the Law Society consider taking a much sterner approach on this issue when deciding on sanctions against a solicitor.

Costs

- 5.8 Solicitors not providing estimated costs at the outset of business with their clients was yet again a key issue. As I set out in my last report, solicitors and the Law Society should be ensuring that something as important as costs should be provided up front and set out in layman terms, with clear plain English explanations on potential reasons for changes. Unfortunately, there appears to be little progress in this area. As I stated in my previous report, I would strongly suggest that a more serious penalty would be adopted for solicitors not providing this type of clarity, should similar complaints come before the Law Society in the future.

Standing to Make a Complaint

- 5.9 I regularly deal with complaints where the complainant has Executor status and is complaining on behalf of the Estate they are administering. Such individuals must

demonstrate to the Law Society that they do have 'standing to make a complaint'. Whilst having such status is necessary and acceptable to the complaints process, complainants do not always understand this technical aspect of the complaints process and what 'having standing' actually means.

- 5.10 During this reporting period I reviewed a complaint where the complainant was not guided by the Law Society regarding this process, which consequently led to the individual's complaint not being accepted. I have come across this issue before in previous reporting periods and therefore it is not an isolated incident. Legal standing to make a complaint is not something we as laypeople understand. We need the appropriate legal people to guide us through such issues – I would suggest that the Law Society take steps to address this issue for future complainants.

Law Society Enhancements/Training

- 5.11 As I stated in Chapter 4, the Law Society has been taking steps during this reporting period to ensure that the complaints process was open, fair and transparent for both the complainant and solicitor. The Law Society has placed emphasis on how the complaints process was communicated to the lay complainant who may not be familiar with the regulatory framework underpinning the process. All communications sent out to complainants were reviewed to ensure the process was clear and they provided a point of contact within the Professional Conduct Department should any queries arise.
- 5.12 The Law Society has also continued to resource the Client Care, Communication and Complaints Hub on the Members' Section of the website. The Law Society continued to signpost practitioners to this resource to obtain information on client care correspondence, in-house complaint management and dealing with complaints relating to a Bill of Costs, along with guidance on how to respond to a client complaint raised by the Society. The Hub also contains an overview of how the Society investigates and determines client complaints, as well as providing links to the Lay Observer's report and website for further information. In addition, the Client Complaints Committee's online video setting out the requirements to ensure effective communication with clients, to include proper responses to in-house complaints raised has been widely viewed and serves as a useful reinforcement reminder of the importance of having a robust complaints process in place.
- 5.13 The Law Society has continued to engage members via its CPD offering and has delivered a bespoke Client Complaint Series. This training focused on upstreaming many of the key themes and areas of concern identified by the Client Complaints Committee and addressed these via tailored training sessions. The series focused on:
- Family Law complaints – November 2022
 - Probate complaints – September 2022
 - Litigation complaints - May 2022
 - Conveyancing complaints – February 2023

- 5.14 The Head of Professional Conduct delivered a bespoke session on 'Dealing Effectively with In House Complaints'. This focused on the solicitor's obligations under the Client Communication Practice Regulations 2008 and also addressed observations from the Client Complaints Committee when adjudicating on complaints. This session was used to highlight that on occasions complainants are not afforded any response during the in-house complaints process. The session also reiterated that how a complaint is handled within a firm, communicated and dealt with, can often prevent matters being referred to the regulator for further consideration. This session was used to disseminate important information highlighted by my annual reports, particularly the observation that the main issue identified related to unacceptable levels of communication from solicitors with their clients.
- 5.15 All of the above demonstrates a willingness within the Law Society to continue to improve their complaints process for all concerned. It shows their desire to make the process more transparent and customer focused, whilst still working within the legislative and regulatory framework which governs them and all solicitors in Northern Ireland.
- 5.16 The Law Society's response to my last report is attached at **Appendix 1**.

Chapter 6:

Work of the Legal Services Oversight Commissioner

- 6.1 As noted earlier in this report, I am still operating in a dual role, albeit the greater percentage of my time has been devoted to the Lay Observer functions. The Lay Observer role relates only to complaints associated with solicitors and ultimately the Law Society. The LSOC role is more embracing in the context that it will, once fully implemented, relate to both solicitors and barristers. In the past 12 months I have continued to maintain communication with both the Law Society, the Bar Council and the Lady Chief Justice in relation to the new processes envisaged under the Legal Complaints and Regulation Act (Northern Ireland) 2016 (the 'Act'). In my last report I referenced the fact that the Department of Finance had commenced the remedial work necessary for the secondary legislation to be brought before the NI Assembly. Unfortunately, the NI Assembly is still not functioning and the Department has therefore been unable to progress the legislation necessary to introduce new legislation. Discussions are still ongoing between me, the Department, the Law Society, the Bar Council and the Lady Chief Justice on next steps. Both professional organisations continue to progress their work on the development of plans associated with the implementation of the new processes as soon as the legislation is passed.
- 6.2 As with previous reporting periods, I have received a number of complaints from individuals that I have been unable to assist as their complaints did not fall within the legislation associated with the Lay Observer and the current Law Society complaints process. These complainants, however, would have been able to have their complaint investigated under the new legislation associated with the LSOC. Issues such as the complaint not being received within the legislative timeframe or the complainant relating to issues of potential negligence are examples of issues that would be eligible under the new Act.
- 6.3 The inability to award compensation to those complainants whose complaints have been upheld is another issue that would be possible under the new process and was yet again a key area of complaint for a number of individuals who wrote to me. I have found myself apologising to those complainants that, whilst their complaint has been upheld, there is no financial recompense available to them. This has been very regrettable and frustrating for both me and the individuals. I have had to explain to those individuals that whilst the office of the LSOC has been established, the complaints process that sits alongside that office has not been introduced.

Chapter 7:

Closing Comments

- 7.1 Whilst I continue to enjoy the challenges of both the Lay Observer role and that of the LSOC, it has been another frustrating year due to the limited progress that has been made on the new complaints processes. In essence, the complaints handling system of the Law Society continues to operate under the current legislation whilst preliminary work continues to run alongside it, in preparation for the practicalities of the new arrangements. This position is one that the Law Society (like me) have no other choice but to operate, as they too must abide with the legislation as it exists today.
- 7.2 Notwithstanding the above, the positive issues I have outlined in my report demonstrate the willingness and commitment by the Law Society to continue to improve the complaints process. Although all improvements to the current processes bring the Society closer to the type of complaints service envisaged under the new Act, it must be emphasised that the current process is not delivering many of the outcomes that should be available from a complainant's perspective. Even an 'upheld' decision by the Client Complaints Committee does not bring the complainant any tangible outcome against the solicitor. Independent legal advice and a potential long and costly legal process is still their only option to seek compensation for poor or negligible services received from a solicitor. I genuinely hope I am still in office to see the new powers introduced and a more balanced complaints process in operation.
- 7.3 This Annual Report is presented to the Lady Chief Justice of Northern Ireland, the Permanent Secretary, Department of Finance 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. It is also laid before the Northern Ireland Assembly pursuant to Article 42(8) of the Solicitors (Northern Ireland) Order 1976.

- 7.4 I understand the Law Society will take steps to ensure that every solicitor on the Northern Ireland register receives a copy electronically. **I hope that solicitors will make it their business to review the content of the report and to determine its relevance to the work of their own firms**

A handwritten signature in dark ink, appearing to read 'M. Cree', is positioned above the printed name.

Marian Cree
Legal Services Oversight Commissioner for NI

Appendix 1:

Law Society Response to Lay Observer Report 2021/22

RESPONSE OF THE LAW SOCIETY OF NORTHERN IRELAND TO THE 2021/22 ANNUAL REPORT OF THE LAY OBSERVER FOR NORTHERN IRELAND

Introduction

- 1.1 This is the Law Society of Northern Ireland's formal response to the Lay Observer's Report for 2021/22.
- 1.2 The Society welcomes the Lay Observer's Report, which is the fifth report published by Ms Marian Cree since her appointment as Legal Services Oversight Commissioner in April 2017. In the interim, Ms Cree also acts as the Lay Observer for Northern Ireland in relation to client complaints against solicitors.
- 1.3 The Lay Observer's report will be made available to all Society members.
- 1.4 The Society is committed to continuous improvement in all aspects of the client complaint handling process. The Lay Observer continues to play an important role in assisting the Society to improve its effectiveness when handling client complaints. All reports provided by the Lay Observer are reviewed by the Society's Client Complaints Committee.
- 1.5 The Society notes the Lay Observer's comment that the level of complaints against solicitors in Northern Ireland remains low. This is testament to those within the profession who are involved in large volumes of client transactions each year.

Improvement Initiatives and Continued Professional Development (CPD)

- 1.6 The Lay Observer commends the Society's proactive approach to addressing the issues raised in her Annual Report.
- 1.7 Specifically, the Lay Observer commends the Society's use of complaints handling data to inform its programme of Continuing Professional Development (CPD) for solicitors. CPD seminars are now provided online with a library of recorded sessions available to all members. Seminars have been delivered in the areas focusing on family, litigation, probate and conveyancing complaints. These seminars are delivered by experienced practitioners and emphasise the importance of effective complaint handling.

- 1.8 The Society recently worked in partnership with the Lay Observer to deliver a CPD Webinar on 'Engaging with the Lay Complainant.' The Chair of the Client Complaints Committee, Head of Professional Conduct and Lay Observer used this webinar to outline key areas for service improvement.

Complaints Statistics 2021/22

- 1.9 This year the Lay Observer has noted that 6 of the 37 upheld complaints resulted in the solicitor being referred to the Solicitors Disciplinary Tribunal. Furthermore, it is noted that all other upheld cases resulted in sanctions against the solicitor.
- 1.10 In keeping with previous years, the highest number of client complaints concerned conveyancing transactions. The Society will continue to target this area through the CPD programme.
- 1.11 In 2021/22 the Lay Observer investigated 41 referrals from complainants compared with 25 in 2020/21. While the Lay Observer notes this could be argued as a negative trend, there are many other factors which may explain the increase. These include complainants becoming more aware of the role of the Lay Observer and delays caused by the Covid 19 pandemic.

Key issues

- 1.12 The Lay Observer has identified a "worrying trend" that estimated costs are not always being provided by solicitors to their clients at the point of engagement. The Society will be taking steps to impress the importance of providing clear and accurate information on costs in accordance with the professional obligations.
- 1.13 The failure of many solicitors to deal properly with complaints under their firm's in-house complaint procedure remains an issue. The Society will continue to stress the necessity to address complaints promptly. The Society has recently delivered a standalone CPD webinar on 'Dealing Effectively with In-House Complaints.'

Concluding Remarks

- 1.14 The Law Society welcomes the report of the Legal Services Oversight Commissioner in her capacity as Lay Observer for Northern Ireland.
- 1.15 The Society looks forward to working in collaboration with the Legal Services Oversight Commissioner as the complaints landscape changes in preparation for the implementation of the Legal Complaints and Regulation Act (NI) 2016.

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