

New Legislation in Place

*Annual Report of
The Lay Observer
for Northern Ireland*

2015

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First published 2016

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2015

SOLICITORS (NORTHERN IRELAND) ORDER 1976

SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989

Presented to the Lord Chief Justice of Northern Ireland, the Permanent Secretary 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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Chapter 1

Opening Comments

- 1.1 The Lay Observer for Northern Ireland is the public official charged with overseeing the Complaints Handling System in place covering the solicitors' profession in Northern Ireland. I investigate complaints from clients that firstly, solicitors and secondly, their representative and regulating body – the Law Society of Northern Ireland – cannot resolve to the satisfaction of the client. Mine is the final stage in the Complaints Handling Process. This is my **twelfth** Annual Report and the **thirty eighth** in the series.
- 1.2 The Legal Complaints and Regulation Bill published in 2013 has now completed all its stages in the Northern Ireland Assembly in 2015/2016. The Act reforms the structure of and approach to handling complaints made by clients against solicitors **and** barristers in all branches of the legal profession. In effect, the Act does away with the Lay Observer for Northern Ireland. A Legal Services Oversight Commissioner is to be appointed resulting from the new legislation, along with new powers of regulation in the overall profession.
- 1.3 This Report deals with the work of the Lay Observer for Northern Ireland during the calendar year 2015. Under the present arrangements, this work continues to be directed by the current legislation until such times as arrangements resulting from the new legislation can be put in place.
- 1.4 My routine work is overseeing the Complaints Handling Process of the Law Society. The nature of this work is described in detail in paragraphs 1.4 to 1.7 in my Annual Report for 2014.
- 1.5 The Law Society and the Lay Observer work together to clear goals in investigating complaints by clients against their solicitors - part of the regulation of the profession. Fundamentally, the focus of the current legislation is heavier on regulating solicitors, but in my opinion is too light on assisting the client who has a complaint. The resolution of complaints for clients can be convoluted. The powers of the Law Society in dealing with complaints are limited and the needs and interests of the client are often not well served by the current system. These priorities will be in better balance once the new Act comes fully into effect.
- 1.6 Handling complaints has a wider perspective than simply helping individual clients and regulating the solicitors' profession. Good complaints handling has three main elements. **Firstly**, the complaint needs to be resolved. **Secondly**, specific service improvements should result as required in the legal practice concerned. **Thirdly**, there may be learning for the profession as a whole to prevent the causes of complaints from re-occurring. In future the new legislation provides for additional means for regulating and providing sanctions where necessary against solicitors **and** barristers in delivering legal services. This will raise new challenges for the complaints committees in the professions.
- 1.7 In dealing with complaints, the Lay Observer focuses only on the truth as established within the limitations of power conferred by the legislation; he is not there to champion the position of the complainant or to pass judgement on a solicitor. I take

an independent view of the facts and draw conclusions. This approach has to be carefully pointed out to complainants to ensure that they do not have expectations of me which I would be unable to fulfil. I make suggestions for resolution, make observations and provide recommendations. While my powers are limited, an independent view can often help de-fuse and diffuse the emotional and factual impact on complainants; these effects should not be under-estimated.

- 1.8 I help and encourage service improvements and provide pointers for learning which may help reduce the incidence and impact of future complaints. I do have the power to send a solicitor to the Solicitors' Disciplinary Tribunal in certain circumstances, but I take the view that this is more properly the role of the Law Society – it should not be a matter for the public purse to have to fund. I take the view that if a solicitor should be referred to the Tribunal, then it is for the Law Society to do so, and to bear the costs involved.
- 1.9 By the same token, the Law Society should also focus on the truth, and not appear to be the champion of the solicitor. Every year there are cases where complainants feel that the Law Society is simply representing the interests of the solicitor in the Complaints Handling System, and not those of the client. This is perhaps not surprising in that the Law Society is in existence to represent the solicitors' profession. However, the Law Society is also responsible under the law to regulate the solicitors' profession. What the Law Society can do to assist a complainant is

often expressed in terms of what they cannot do for the client.

- 1.10 Thus the perception carried away from the process by the aggrieved client is often highly coloured by a view that the Law Society is looking after the solicitor, and not the complainant. There is a significant responsibility on the Law Society to ensure that the language and tone used to the client is appropriate to counter such perceptions. So often my role in dealing with complainants is explaining to them what the Law Society seems to have been unable to make clear to them when they have attempted to resolve a complaint. This is as much about the tone of responses as it is about the words actually used. In my opinion the Law Society still has something to achieve in this context.
- 1.11 The Law Society is very effective in feeding back experience from the Complaints Handling Process into Continuous Professional Development (CPD), and I commend them for this. They also use complaints handling experience to help develop priorities in CPD. Added to this, the President and the senior team give profile to these needs, and the experience also feeds back via a range of other ways of informing the profession, and to those in training. All this contributes to better performance in the profession, and this is as it should be.
- 1.12 The Client Complaints Committee (CCC) of the Law Society handles this sensitive work within the Law Society. I maintain limited contact with the Chair of the CCC and the relevant staff, so that I may understand more

fully the challenges the CCC faces in carrying out its work. Under the provisions of the new legislation, the role and structural nature of the CCC will change very significantly.

- 1.13 During the year I have had meetings with the President and the senior Team and with the Chief Executive of the Law Society, representing the Council. I am grateful for these meetings, and for their constructive nature. I value this as it enables both parties to consider strategic matters, and provide an exchange of views and information.
- 1.14 My day to day links are with the Law Society's Director of Client (Solicitors) Complaints and her staff. I can report that in 2015 these have been functional and appropriate.
- 1.15 I maintain excellent contact with the Department of Finance & Personnel. This is my sponsoring Government Department, and appropriate personnel provide support for me in a number of ways. In particular I am provided with a virtual address, as well as a website, which the Department maintain on my behalf. I wish to thank the Permanent Secretary for making all this possible.
- 1.16 On day to day matters, I link with Mr Martin Monaghan and his colleagues. I thank them for their very willing help in providing advice and solving any problem I may face. I would have to say that in the normal course of events, my need for such help from Department staff is infrequent.
- 1.17 The Lord Chief Justice takes an interest in my work. His role over the Justice System in the

Province provides a distinctive overview of the work of the solicitors' profession, and I value his advice and observations. He is in any case a formal recipient of my Annual Report under the legislation.

- 1.18 I am encouraged by the interest in my work expressed by Ministers of the Northern Ireland Government, and the Assembly.
- 1.19 I continue to enjoy helpful contacts with my counterparts in the other Jurisdictions of the United Kingdom and Ireland. I meet contacts mostly through the Ombudsman Association. It is to the professional and operating standards laid down by the Ombudsman Association that I work and apply international standards; the latter are laid out on my website (www.layobserverni.com). I also meet in informal discussions, workshops and formal contacts with other complaints handlers, as well as taking advantage of interpersonal contact and discussions on a regular basis with other ombudsmen and complaints handlers. These effectively act as mentors. I am grateful to the Department for supporting me in these activities.

Chapter 2

Work of the Lay Observer in 2015

2.1 During 2015, I investigated complaints from a total of 41 complainants compared with 45 in 2014, and 48 in 2013. This represents an encouraging and declining trend at present.

2.2 When the Law Society receives a complaint, in most cases it can be analysed under several different categories of complaints. In 2015, the Law Society received a total of 218 categorised complaints from 87 complainants. Comparative figures are:

	No. of Categorised Complaints	No. of Complainants
2015	218	87
2014	214	76
2013	217	103
2012	183	90

2.3 The figures indicate that categorised complaints being received by the Law Society (and by the Lay Observer) remain fairly steady year on year, but with a modest downward trend in the number of complainants. The degree of complexity of the cases is increasing in a continuing trend. This suggests that the Regulations brought in during 2008 and amended in 2012 have helped to conclude the more straight-forward complaints before they reach the second tier (Law Society) or the third tier (Lay Observer).

2.4 In 2015, I report that the most complex of the complaints are becoming yet more convoluted and demanding to deal with for both the Law Society and the Lay Observer, at the second and third tiers respectively. In 2015 I received

19 very complex cases compared with 21 in 2014, I had 9 complex cases in 2015 compared with 9 in 2014, and 13 other cases in 2015 compared with 15 in 2014. In **very complex** cases I spend cumulatively three or more days concluding the cases, in **complex** cases I spend one to two days, while in **others** I spend up to one day to conclude.

2.5 I receive three types of complaint. **First**, there are those cases which have not met the definitional requirements as derived from the legislation. These are usually not within either the remit of the Law Society, or mine. Nevertheless, they **are** complaints from the point of view of the complainant, and often have some substance.

2.6 In these cases, the client believes his/her issues should have been registered into the formal complaints handling system. Sometimes there are files at the Law Society, and I am permitted to access these so that I can discover if the Law Society was correct in not entering the matter into the Complaints Handling Processes. Would-be complainants can be helped with explanations as to why their concerns were not entered into the System, and I can explain the reasons. I can also give advice on where the person may be able to go for assistance in taking their complaints in other directions. However, as I am not permitted to be legally qualified in my post, such advice from me has no legal standing. The plain fact is that they have found that their relationship with their legal advisors has been unsatisfactory, and I regard it as within my limited role to attempt to help them. There were two of these cases in 2015 - one less than in 2014.

- 2.7 **Secondly**, there are those complaints which are within my formal remit – the complainants have had their complaints dealt with by their solicitor and the Law Society, then remain dissatisfied, and so bring their complaints to me. I dealt with 37 of these cases out of the 41 cases I concluded in 2015.
- 2.8 **Thirdly**, there are complainants whose complaints have already been dealt with by me, but where they wish me to re-consider their cases. Sometimes this is because there is new information, or the complainants have some tangential questions that occur to them. If there is substance in these particular cases, then I may recommend that they take a fresh complaint to the Law Society. I dealt with two of these cases in 2015, three fewer than in 2014.
- 2.9 In addition, I receive many queries for guidance from the public on what to do with their legal issues. Some of these already know that they cannot take a complaint for entry into the formal complaints handling system; they have been told so by the Law Society. But in the absence of specific guidance, they do not know where to turn, and so come to me for advice – sometimes in exasperation. Once again, I believe it to be within my remit to at least signpost these persons where I can – but always recognising that as a lay person, any advice I give has no legal standing
- 2.10 I also report that I dealt with two cases in other jurisdictions – these are not counted in my caseload for the year 2015. They were where a conflict of interest exists in connection with the complaint handler in that other jurisdiction. These tasks arise under a protocol agreed years ago where complaints handlers assist each other in these cases. An example is where a complaint is brought against a solicitor, who may be very well known personally to the chief complaint handler. No such cases arose **within** the jurisdiction of Northern Ireland in 2015.
- 2.11 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 as well as investigations and auditing. My work is located mostly in my own home, with occasional visits to the Law Society. A proportion – about five percent - of my work is carried out unpaid for the benefit of the public. **As such, I believe that I provide a low cost, efficient and effective service on behalf of the public within the current arrangements.**

Chapter 3

Final Outcomes 2015

Solicitors attract a very small incidence of client complaints that need to go to second tier at the Law Society – 85% of solicitors' firms attracted no tier two complaints in 2015.

- 3.1 In 2015, the total number of solicitors' firms 'on the register' in the Law Society was 518 (525 in 2014). Of these, 449 firms (451 firms in 2014) attracted no complaints that were referred to the second tier of the Complaints Handling Process at the Law Society:-

Year	Firms with complaints	Firms with no complaints	Total firms
2015	69	449	518
2014	65	460	525
2013	80	451	531

Thus, 15% of firms attracted complaints at the second tier in 2015; this compares with 12% in 2014, and 15% in 2013. Also 53 of the 69 firms attracted only one complaint at the second tier in 2015.

- 3.2 The number of individual firms who received multiple complaints (ie two or more complainants to one individual firm of solicitors) in 2015 was 13; this compares with 13 in 2014, 15 in 2013, and 11 in 2012. This suggests a continuing trend away from multiple complaints to individual firms which are escalated to the second tier.

- 3.3 Closer inspection reveals that:

In 2015

13 firms had 2/3 sets of complaints (In fact, 10 firms had two complaints each, while 3 had three complaints each – exactly the same as last year)

In 2014

13 firms had 2/3 sets of complaints (In fact, ten firms had two complaints each, while three had three complaints each)
52 firms had one set of complaints

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

- 3.4 Thus the majority of these firms had only one complainant whose complaint was elevated **to the second tier**. The trends suggest that the incidence of multiple complaints to individual solicitors firms is reducing. These trends, if continued, would reduce the costs of dealing with complaints on the solicitors' profession and Law Society. I have emphasised over the

years that it is not appropriate to measure the performance of individual solicitor firms against multiple complaints. The same reasoning applies that I have used in previous years; solicitors' firms do specialise, and certain types of work attract complaints more than others.

- 3.5 Some complaints are 'solicitor to solicitor'. These arise where a solicitor – usually on behalf of a client – brings a complaint against another solicitor. While generally legitimate, it is really not appropriate to use the Complaints Handling System as a means of managing activities between solicitors. It should be used only where direct assistance for the client is to be obtained. There was a most unwelcome increase in 2015 in this activity where 18% of complaints at the second tier were of this category. This compares with 13% in 2014, 16% in 2013, and 14% in 2012.
- 3.6 I would again urge the Law Society to keep a careful eye to the incidence of this type of complaint to ensure that they are totally appropriate. Many of these complaints appear to be resolved **during** the process of investigation, leading me to ask whether they should have been brought forward in the first place by the solicitors, if the profession is working efficiently solicitor to solicitor. It is also questionable if they should have been accepted into the complaints handling system. It is surely **bad practice** for a solicitor to have to use the Client Complaints System to encourage another solicitor to 'hurry up' the inter-actions between them.

- 3.7 The proportions of final outcomes for complainants who registered complaints with the Law Society, and had these concluded in the proper time frame, has been of continuing interest as measures of how well the system is working.
- 3.8 The proportion of complaints **upheld** in favour of the client/complainant in 2015 was 25% compared with 2014 where the equivalent figure was 23% - much higher proportions than in 2013 with 14%, 2012 with 13% and 14% in 2011. This figure underlines just how important the system is to complainants. It is an indicator that complaints are most important and justified in the view of clients who bring a complaint to the second tier of the Complaints Handling Process. But quite apart from this the complaints handlers within the Law Society should take comfort that complaints are so often justified. And clearly they contribute to improving good quality service within the profession.
- 3.9 In 2015, 6% of those complaints **upheld** were referred to the Solicitors' Disciplinary Tribunal. Reference to the Tribunal is a most serious matter for any solicitor, particularly if the matters considered by the Tribunal do not go in his/her favour. He/she stands to lose licence to practice at all; less serious cases could result in the solicitor only being allowed to practice under very close and strict professional supervision. Once again, this underlines that the Law Society does not stand back from taking serious action against those who do not meet the standards required by the regulations.

3.10 Alongside **complaints upheld** should be placed the 21% of complaints that were **resolved** in 2015. Together these two categories represent 46% of complaints to the Law Society at the second tier and had substance and justification. A further 19% were redirected or withdrawn, and so presumably were felt to have been disposed of to the satisfaction of the complainant.

3.11 **This leaves only 35% which were not upheld in favour of the client/complainant.** These proportions – namely 65% upheld, redirected or resolved and 35% not upheld (compared with 60% and 40% respectively in 2014) – have an important significance in recognising that the Complaints Handling System of the Law Society is not simply – as is sometimes thought – there to screen and protect the solicitors’ profession. Rather, it is part of the regulation of the profession. **A high proportion (65%)** of complainants therefore had a degree of satisfaction in the way the Law Society disposed of their complaint.

3.12 **I think that the Law Society should make more of these facts in their publicity and information about the Complaints Handling System. I go further to say that I am dismayed that the Law Society does not thank complainants for taking the trouble to bring forward complaints, particularly in the light of the high proportion – 65% - at the second tier which are upheld, redirected or resolved.** The plain fact is that the Law Society, as principal regulator of the solicitors’ profession, is assisted by considering the causes and ways of preventing the complaints brought forward by clients. Complaints have a significant impact on the priorities of the Continuing Professional Development Programme as well as indicating ways of improving service by solicitors. These facts confirm just how much value the Law Society and the profession gain from clients who take the trouble to complain. The system still remains daunting for many of them, so to that extent complainants are to be commended for bringing forward their concerns.

3.13 The timetables for concluding investigations into complaints by the Law Society shows **a major change in pattern during 2015.** They are as follows:

Times	2015		2014		2013	
	Proportion	Cumulative	Proportion	Cumulative	Proportion	Cumulative
Within 3 months	25%	25%	58%	58%	47%	47%
3-6 Months	60%	85%	38%	96%	51%	98%
6 plus months	15%	100%	4%	100%	2%	100%
To Disc. Tribunal	6%		5%		3%	

- 3.14 The current target time for concluding a complaint by the Law Society is now given as 16 weeks – it used to be twelve weeks. The new time frame is consistent with the front-loading on to the solicitor the responsibility for providing the fullest possible information at the commencement of the second tier. So although the proportion of all complaints being concluded within 12 weeks of the commencement of an investigation was 25% (58% in 2014), **this rose to only 53 % (87% in 2014) up to sixteen weeks.** In 2014, almost 60% of the complaints received were concluded within 12 weeks of being registered into the Complaints Handling System, and 87% were concluded within 16 weeks.
- 3.15 There has clearly been a significant regression in the achievement of timetabling within the target period of sixteen weeks. There is also an unwelcome increase in the proportion of complaints that took longer than six months to conclude, from 4% in 2014 to 15% in 2015. The reasons are not at all clear to the Lay Observer and in any case it is for the Law Society to explain. There may have been internal issues of some relevance to this.
- 3.16 However, there is evidence that the more complex investigations are becoming ever more complicated, and so solicitors are taking longer to gather information and they also contribute to longer investigation periods by delays in responding to requests by the Law Society for proper information in the first place. The more complex the case, the more detail the solicitor has to provide – including summaries and timetables. It is my view also, that the Client Complaint Committee may have found

itself swamped by the increasingly complex cases it has to address. I believe that it is far better in complaints handling to conclude a complicated complaint properly rather than chasing an unrealistic timetable. But it is also incumbent on the complaint handler **to make it clear to clients during the process,** when a re-timetabling is necessary. When this is not done, the process becomes so much more tortuous for the client, whose frustration and intolerance is thereby increased, thus encouraging the client to take the complaint to the Lay Observer. I would encourage the Law Society to analyse all the reasons carefully with a view to taking any necessary action. Also, under the new arrangements, it seems unlikely to me that the complaints requiring Law Society investigation will become any less complex.

- 3.17 Many complainants still feel that even where a complaint is upheld in favour of a client, the offending solicitors ‘get off’ far too lightly - and that the complainant receives no redress. **It is unfortunate in many of the cases received at the third tier, that the fact that the Law Society cannot help the complainant is the reason for bringing the complaint to the Lay Observer.** Nevertheless, this is not a valid reason for failing to explain the costs and professional discomfort a solicitor faces in going through the second tier of the complaints system. I do not agree with the argument the Law Society makes that to explain this would put complainants off complaining in the first instance because they ‘would not want to put their solicitor to the trouble’. I simply do not accept that this would be the case.

3.18 I have urged the Law Society to consider these points and make them clear to complainants. Also, the question of making apologies where appropriate and asking solicitors to do so, was dealt with in my earlier Reports. In their Responses the Law Society has commented and what they have said speaks for itself – see Appendix 2. It would seem that it will take the introduction of the new arrangements for these matters to be properly addressed. The Law Society will then likely be required to take note of and apply all these tenets of good complaints handling.

3.19 Complainants have therefore been allowed by the Law Society to under-estimate the internal inconvenience, costs, upheaval, and professional embarrassment and in some cases odium, attaching to a solicitor when an investigation by the Law Society becomes necessary. And where complaints are upheld, complainants normally go without any apology where it often seems to me to be appropriate for the Law Society and/or the solicitors to do so. While I do recognise that solicitors cannot be required to do so under the present legislation, that is not an argument for failing to suggest how a solicitor might improve his service by taking action which the Law Society should feel free to suggest. Advice could suggest specifically to the solicitor how to ‘do the right things and do things right’ in the context of a complaint investigation.

3.20 Finally, it is most important to note that the solicitors’ profession in Northern Ireland – unlike the legal professions elsewhere in these Islands, and incidentally in many other fields of professional activity – **the level of**

complaints against solicitors in Northern Ireland remains very low. This should be seen in the light of the enormous volume of transactions that solicitors must undertake for clients every year in the Province. No-one knows the figure, but given that there are over 500 firms of solicitors with around 2500 solicitors licensed to practise, there must be many hundred thousands of transactions, and tens of thousands clients. It is noteworthy that only 87 clients (representing 218 complaint categories) found it necessary to take their complaints to the second tier of the Complaints Handling Process. These figures are very much lower than popularly believed.

Chapter 4

Complaints Statistics 2015

“Many solicitors never come into contact with the complaints system at the second tier. Relevant, regular and timely 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 September 2015

Statistics provided by the Law Society

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	6	1		1	6	2	3			3	5	1	1					1			10	40
2. Failure to keep client properly informed	1				7					2	8		1					1			6	26
3. Delay/Failure to respond to reasonable enquiries	2	1			6	1	2			1	6		1					1			5	26
4. Withholding/loss of documents	6	2	2		5	1	3			2	3									1	4	29
5. Disclosing confidential information	1						1						1									2
6. Acting in a conflict of interest situation		1						1		1			1								1	5
7. Acting contrary to client's instructions				1	5		4			4	3							1			1	19
8. Breach of undertakings																						0
9. Failure to provide bills of costs/cash/statements; incurring expense without client's authority		1			2																2	5
10. Failure to deal with legal aid issues properly					1					1	1											3
11. Failure to provide proper client care information or not complying with agreed client care arrangements				1						1	2										1	5

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		3		1			1	5										5	18
13. Failure to properly consider client's complaints under solicitor's own in-house complaints procedure	1	1	1	1	5	1	2	1		4	4		1					1			8	31
14. Other factors	1	1	1	1	1		1				3											9
15. All factors (total 1 - 14)	19	8	5	5	41	5	17	2		20	40	1	6					5		1	43	218

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-U)

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. Statistics have been supplied by the Law Society.

Chapter 5

Comments on Complaints Statistics 2015

Putting the little things right can make all the difference

5.1 In 2015 there were 218 categories of complaint from 87 complainants to 69 solicitor firms. Details are shown in the Table in Chapter 4. The figures for 2014 were 214 categories of complaint from 76 complainants to 65 solicitor firms.

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

5.3 The most frequently occurring **nature of complaints** in recent years have been:

Nature of Complaints	2012	2013	2014	2015
Undue delay/inaction	21%	17%	21%	18%
Failure to keep client informed	20%	21%	18%	12%
Delay in/failure to respond/enquiries	13%	15%	12%	12%
Acting contrary to client instructions	8%	7%	8%	9%
With-holding or loss of documents	13%	7%	9%	13%
Failure to consider complaints under Regns.	7%	12%	11%	14%

5.4 Together these six descriptors accounted for 78% of total complaints received in 2015, and 79% in 2014, 79% in 2013 and 82% in 2012. One category in particular **Failure to consider complaints properly under Regulations** rose significantly in 2015, possibly due directly to a greater degree of emphasis on those solicitors who offended in this way, by the Law Society. This is a disappointing result for 2015, and yet it is encouraging that the Law Society takes the matter so seriously.

5.5 The table which is contained in Chapter 4 makes clear that the Law Society also classifies complaints according to the type of professional work involved in the cases concerned. These are termed **circumstances of complaints**. Once again, it is possible for a complaint to be classified under more than one heading. Since 2008, the Law Society has used fifteen descriptors for **circumstances of complaints**.

5.6 The three most frequently occurring **circumstances of complaints** in recent years were:-

Circumstances of Complaints	2012	2013	2014	2015
Conveyancing	22%	13%	21%	19%
Family Law – General	16%	21%	15%	18%
Wills & Probate	24%	13%	13%	20%

- 5.7 Together these three **circumstances of complaint** accounted for 57% and if you add in the category of Family Law – Children – the figure rises to 66% of the complaints received in 2015. The Law Society uses this information along with other data they collect to help guide the content of their Continuous Professional Development (CDP) Programme.
- 5.8 The incidence of complaints in **Conveyancing** is at a higher level in the past two years. It has long been a common cause for complaint, and the constantly changing nature and characteristics of the property markets have an important bearing.
- 5.9 **Family Law** has been changing in recent years, with a greater emphasis on mediation; compromise is often a principal feature, and this can lead to conflict with the professional trying to get agreement with the opposing parties. Many complaints arise as in mediation, it is impossible to satisfy both parties. It is often that the solicitor ‘can barely do right for doing wrong’ whatever the outcome for the client. This is an unenviable situation and I fully empathise with solicitors as well as with clients in these emotionally-charged types of business. Both categories of **Family Law – General and Children** account between them for 27% of the complaints. Complaints relating to **Accidents** formed a lower proportion in the total than in the previous year – 9% as against 21% in 2014.
- 5.10 However, **Wills & Probate** showed a large increase in the total in 2015 – when it reached 20% as compared with generally lower levels of 12%-14% in the two previous years. In my experience, clients have high expectations of solicitors in these circumstances in these cases. Alas, from experience, it would appear that clients do not always appear to understand the complexity of the various roles for the participants in wills and probate, leading to discontent and confusion.
- 5.11 Like last year, there is a greater spread amongst **nature or circumstances** of complaints. In general, there is some evidence that the CPD Programme is having a positive effect. The figures also suggest that the Law Society generally ensure that within the limitations of the legislation, they hold to account solicitors who fail to follow regulations, **although there have been some notable exceptions**. Where this happens, I point this out to the complainant and to the Law Society. I particularly highlight those solicitors who do not use or use correctly, their in-house complaint handling procedures. The Regulations require solicitors to do so and they must be held to account by the Law Society where they fail to do so. Offending solicitors are liable to be reported to the Council of the Law Society, and may face reference to the Solicitors Disciplinary Tribunal for further action to be taken against them. Several cases of suitably harsh warnings and action in this matter by the Law Society have been taken against solicitors in recent years.

5.12 Further analysis shows clearly that 80% of the complaints in 2015 involved fundamentally inefficient service. The straightforward difficulties that arise in any business too frequently are the main causes of complaints against solicitors namely:-

- there have been delays which were not expected and/or explained
- there has been a failure to keep the client informed of the progress of the case
- inquiries have been lodged by clients which have not been answered
- actions have been taken which were not part of the client instruction with no explanation
- documents have been with-held or lost
- complaints having been made, have not been processed according to the rules and regulations

5.13 To avoid and prevent precisely these events from happening and recurring is what good and efficient business is all about. The Law Society is to be commended for emphasising these matters in their CPD Programme and in early professional training.

Chapter 6

Law Society Response to 2014 Report

“Good and careful complaints handling alleviates complaints for clients who have reasons to complain.”

- 6.1 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 under the legislation to the Lord Chief Justice, to the Government and to the Council of the Law Society. The Report is made available also to Parliamentarians, to MLAs, to Ministers, Government Officials, other interested parties, and to the Public. It is available on my website :- www.layobserverni.com from publication date.
- 6.2 The Law Society has the right to comment on my Report, and they do so at the end of November after publication on 31st May each year. By protocols agreed many years ago, their Response is then made public when my next Annual Report is published the following May. **This is 17 months after the year-end to which the Report refers.** This is too long a gap, and it is to be hoped that a more rational approach will be taken in reporting under the new arrangements.
- 6.3 Their Response, dated end November 2015, is thoughtful, detailed and generally supportive of what I have written. Where I think the Law Society could do more, I have indicated this. I commend their efforts to lay on the profession the responsibility for dealing properly with complaints in the first place – at the first tier of the Complaints Handling Process.
- 6.4 There is clear evidence that this emphasis is bearing fruit. For example, there has been an overall reduction in the number of complainants bringing cases to the Law Society. However, it is also clear that complaints being brought to the second tier are tending towards greater complexity. The more straightforward complaints are apparently being dealt with more frequently and better at the first tier – judging by the fewer straight forward cases elevated to tiers two or three.
- 6.5 The complaints coming to the Lay Observer – the third tier of the process – are increasingly complex in substance and tone. Complainant frustration and emotion can be high, suggesting that communication with the complainant prior to the third tier has not been effective. Examination indicates that a lack of expressed empathy either in words or in tone, is a major contributory factor in encouraging a complainant to take a complaint to the Law Society, and to the Lay Observer. However, sometimes it takes a totally independent person **to comment** for a client **to hear** what is being stated. Too often at the third tier, I need to explain from first principles what lies behind what has been stated by both the solicitor and the Law Society in a complaint.
- 6.6 I again commend the Law Society for its work in ensuring that the profession knows clearly what the current legislation and regulations mean for them through the Continuing Professional Development Programme, publications and other contacts. This leaves the individual solicitor in no doubt as to

what he/she ought to do, but also what the penalties are for failing to deal with complaints properly and not following regulations. The Law Society now faces the major challenge of helping the profession come to terms with the new arrangements and I wish them well in tackling this task. They will need to implement major change in their own operations as well as raising awareness of the major shift in approach needed to meet the requirements of the new legislation. There will be many practical implications for the profession.

- 6.7 I believe that the Law Society should make more of explaining the penalties facing solicitors when dealing with complainants, politicians and the public. The costs, inconvenience and implications for professional reputation for a solicitor, when responding properly to a complaint - whether a complaint is upheld against him/her or not at the second tier - are very significant. Complainants need to have these implications for a solicitor spelt out clearly to them.
- 6.8 The Law Society would appear to be content at present to simply leave clients to glean all this for themselves by inference from leaflets and the observable effects for the solicitor they can see in the process. Almost every other profession and occupation regulator has tumbled to the importance of ensuring complainants are clear about the penalties on the subject of a complaint during and following an investigation. **The time is well over-due for the legal profession to do so also.** In my experience of dealing with complainants against solicitors, I believe that the number of frustrated complainants would

have been rather fewer coming to the Lay Observer had this been better tackled. I trust that the new arrangements will encourage the legal professions regulators to do so.

- 6.9 I note that the Law Society should make it plain to complainants that they appreciate the trouble clients have taken in bringing forward their complaint to the Complaints Handling System. It is after all an important part of their regulation of the profession. I cannot see how this expression could influence any legal process which can result from a complaint. It would however create an atmosphere of good-will with complainants, which so many of them – rightly in my view – think is so often lacking. The absence of good-will induces feelings – however mistaken - in complainants that they have wasted their time, and that the Law Society is simply siding with the profession they represent. The new arrangements are likely to require this type of thinking. **In any event, this kind of thinking has already been adopted in other professions and occupations with up-to-date and modern complaints handling processes.** Once again, I express the hope that these matters will be attended to in the new arrangements.

Chapter 7

Concluding Comment

“Solicitors should review this Report against their complaint handling experiences in their own practices.”

7.1 It would not be appropriate for the Lay Observer to make specific Recommendations for the future now that the current arrangements will shortly be coming to an end. The Complaints Handling System of the Law Society continues to operate under the current legislation, but only until the new arrangements are fully in place. Nevertheless, I have provided a number of pointers in this Report which I believe may be helpful to the Law Society and others in planning to meet the new arrangements.

7.2 The work of the Lay Observer is governed by a set of principles clearly laid out on my website, and in my leaflets. I operate my role to standards laid down by the Ombudsman Association of which I am a member. It is from these standards that I derive my legitimacy as a complaints handler.

7.3 Meantime, the Law Society and the Lay Observer maintain the Complaints Handling System under the present legislation until the new arrangements come fully into play. My appointment has been renewed until the end of December 2016, or such other earlier date as arrangements are in place.

7.4 This Report is available in electronic format. It is accessible on my website:- www.layobserverni.com from 31st May 2016.

7.5 My contact details are:-

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7.6 This Report is made available formally to the Government, the Lord Chief Justice of Northern Ireland and the Council of the Law Society of Northern Ireland. Every solicitor's firm in the Province receives a copy electronically. **I hope that principal solicitors will make it their business to review the content of the Report to determine its relevance to the work of their own firms.**

Alasdair MacLaughlin
31st May 2016

Appendix 1

Who is the Lay Observer?

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

More recently, he has reviewed the work of Office of the Prisoner Ombudsman for Northern Ireland, and also that of the Police Ombudsman for Northern Ireland. He has also been the Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland. He is an Assessor for the CCEA – the curriculum authority in Northern Ireland and he is an independent self-employed complaints examiner.

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 lectured and tutored in management subjects in a number of Universities and Colleges throughout the UK and Ireland. 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 former Standing Advisory Commission on Human Rights. He is an experienced advisor to the UK Government, to the Wales Assembly Government, and to the Polish Government.

Alasdair MacLaughlin is a devoted grandfather, and he is an organist, is interested in nature and walking, and playing golf for fun. He is a Trustee of the Belfast Association for the Blind.



Alasdair has been the Lay Observer since 2004

Appendix 2

Law Society Response to 37th Report

Response of the Law Society of Northern Ireland to the 37th Annual Report of the Lay Observer for Northern Ireland Entitled “Awaiting Enactment”

Introduction

1. This is the Law Society of Northern Ireland’s formal response to the Lay Observer’s Report for 2014.
2. 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.
3. Since the Law Society last responded to the Lay Observer’s 36th Report, the Legal Complaints and Regulation Bill (Northern Ireland) 2015 (the Bill), following consultation, has been introduced to the Assembly and passed the second stage and is now proceeding through its committee stage. The Law Society attended the Department and Finance committee and gave evidence on the Bill on 24 September 2015.
4. The Society continues to work towards the setting up of the Solicitors Complaints Department which will be required to service the Solicitors Complaints Committee on implementation, taking account of the provisions contained in the Bill.
5. As the Lay Observer is aware, prior to the publication of the Bill, the Society had taken significant steps towards making provision for the implementation, including independent office space for the new Department and the development of online records for transfer of data. Further infrastructure will be provided as

and when required to ensure the Society can deliver on its responsibilities for the new system.

6. The complaints redress provisions in the Bill encapsulate a Committee led system with external oversight, through the offices of the Legal Services Oversight Commissioner (LSOC), all paid for by the professional bodies. The Society recognises the importance of the LSOC in overseeing an effective and efficient complaints system and the wider role of that office in regulation, going forward. The Lay Observer has expressed the view before that co-operation and accommodation between the professional bodies, the complaints committees and the LSOC will be key to the successful implementation and the operation of the proposed statutory provisions and that an adversarial approach would not be appropriate. The Society wholeheartedly agrees with this view and will be mindful of it going forward.
7. The Society agrees with the Lay Observer at paragraph 8.1 of his Report that until there are legislative changes there is little scope for further structural change. Any ongoing work will be a continuing refinement of the current approach. We, like him, are committed to operating the current system in an efficient and effective way.

Continuing Professional Development (CPD)

8. The CPD programme is used to inform the complaints experience to the profession, to provide professional updates and to explain new developments in law and regulatory changes. All solicitors are required to include three hours specific Client Care and Practice Management group study in their CPD programme. Solicitors

are also obliged to do a minimum of ten hours group study overall and a further five hours may be private study. Group study may consist of workshops, seminars, lectures and tutorials. The Law Society's CPD programme is primarily composed of seminars and workshops. The CPD requirements oblige solicitors to fill in an annual return of their CPD compliance.

9. During the course of the year Client Care related seminars included: Anti-Money Laundering & Mortgage Fraud; Building Strong Client Relationships; Dealing with Bereaved Clients; Comprehending Conveyancing; Conveyancing Conference; Costs: Non Contentious Costs and Party and Party Costs; Dealing with Distressed Properties; NI Residential Property Market Conference; Practice Management; Risk Management CPD Day; Setting up & Executing, Conveyancing Transactions Effectively; The Five Practices of Successful People Management; Title Insurance – Solving Title & Title & Related Issues without Risk; Agricultural Law and Agricultural Conveyancing; CML Handbook; Conflict of Interest and Gifts; Data Protection Masterclass; Drafting and Presenting Matrimonial Petitions; Legal Bookkeeping Course; Mediation Series; Scam Alert – Combating Fraud; The Office - Strategies for Success.
10. Client care and complaints handling are linked to risk management, to include practice and procedures required to protect firms and their clients from errors and omissions and from third party fraudulent attack. As part of ongoing advice the Risk Management course runs as an all-day series of seminars on risk related areas of practice over four venues. This year the topics covered information on the 4th EU

directive on money laundering, cybercrime and fraud, avoiding professional negligence claims, accounting risk issues and Home charter compliance.

11. Reducing risk and good client care are two sides of the same coin and the Society ensures that even when seminars are topic specific, that the client care element is identified and highlighted to the profession.
12. From January 2014, practitioners who undertake Conveyancing work are required to use three hours of their group study, on conveyancing. This year there were 14 separate topics related to conveyancing issues covered by our CPD courses to assist solicitors in this important area of work.
13. A Client Care seminar will take place in December 2015, focussing on complaints handling in-house, the advantages of so doing and what the complaints landscape could look like upon implementation of the Bill. Speakers will include a representative from the Scottish Legal Complaints Commission and other experts in client care issues.
14. There have been significant changes to the provisions of legal aid and the regulations relating thereto. Legal aid advice and regulatory compliance are an intrinsic part of client care and the provision of advice and assessment of entitlement to legal aid are requirements under the Solicitors (Client Communication) Practice Regulations 2008. The Client Complaints Department will be contributing to a forthcoming two part series of seminars on the Civil Legal Services (General) Regulations 2015 which will be held across four centres to

maximise the profession's access to advice and guidance on those regulations.

15. Through an active CPD programme, the high quality of speakers and relevant topics, the Society seeks to continually improve and reinforce the knowledge base within the profession and thus reduce the number of complaints which it receives on client care issues. We welcome the Lay Observer's continued interest in and support for our CPD programme.

Comments on the Report and Recommendations

16. It is noted that the Lay Observer states in paragraphs 8.1 that he makes no specific recommendations in relation to further changes in procedures to the complaints investigation process. *"In essence the complaints handling system continues to operate reasonably well under the current legislation. ... There is little scope for further structural change, but there is always scope for continuing refinement of the current approach leading to greater rigour in the current system."* We are pleased to note the position and assure the Lay Observer that the absence of specific recommendations will not mean the Society becomes complacent with the system.
17. The Society notes that the Lay Observer, at paragraph 7.2, commends the Society for trying to front load onto the profession the responsibility for dealing comprehensively with complaints in the first place, resulting in the reduction of multiple complaints coming to the Society and also the reduction in the overall number of complaints. We welcome the improvement in the profession's handling of complaints and firmly believe that in the context of a service complaint, the best resolution is one which the parties reach by agreement, as it facilitates a long term working relationship between the legal firm and the client.
18. The Lay Observer at paragraph 4.15 refers to clients being allowed by the Society to underestimate the internal inconvenience, costs, upheaval and professional embarrassment attaching to a solicitor when an investigation becomes necessary, resulting in a mistaken sense that the solicitor gets off too lightly. The Society's view is that through its procedures the client can see the detailed information the solicitor must provide to address the complaint, as the reply and supporting documents are copied to them for comment. It is evident that to provide such detailed responses will require significant investment in time and cost to the solicitor. Explicit information, at the commencement of a complaint, may act as a disincentive to a complainant wanting to bring their case to the Society.
19. The Society would not want a complainant to be discouraged about making a complaint as a result of being overburdened by concern about the consequences for the solicitor if they do so. By the same token, it does not assist a process which is designed to address client concerns (within the constraints of the legislation), if it became a vehicle for those clients who see it as opportunity to cause further inconvenience and cost to the solicitor who may have delivered good service and dealt with the complaint in-house in a comprehensive and fair manner. A balance has to be struck, so in our general documents to complainants, we emphasise that the Society and solicitors take complaints very seriously as there is the risk of reputational damage.

20. With regard to the issue of apology as referred to at paragraph 4.15, we have commented extensively on the issue at paragraph 27 of our last response. As stated therein a complaint 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. It is noted that Clause 32 (2) (a) of the Bill provides for a specific power to require a solicitor to apologise. The Society commented on this in its response and said *“there is no Northern Ireland equivalent of Section 2 of the Compensation Act 2006 in England & Wales (which provides that “an apology, an offer or treatment of redress shall not of itself amount to an admission of negligence or breach of statutory duty”). We consider this to be an essential requirement”*.
21. We are still of that view and have raised the issue with the Finance and Personnel Committee in our oral evidence on 24 September in relation to clause 32 (2) (a). We have also since written to the Chair of the Committee on the matter at his request. We note that an Apologies (Scotland) Bill 2015 is being considered by the Scottish parliament. In circumstances where the process is one of regulation, the Society should not suggest a resolution it could not enforce, as to do so would attract complaints about the Society of a different nature.
22. In our general documents to solicitors, when forwarding a complaint, we remind solicitors that there are steps which can be taken to reduce the opportunity for complaint by having good office management practices and that whatever the outcome of the complaint, they should see if there are lessons they can learn to inform client care.
23. The other side of the argument is that it should be noted that there are instances where complaints have been received after the solicitor has already apologised and offered some form of financial redress, by way of fee reduction which has been rejected by the client. The Society has to address the complaint against that background.
24. As the Lay Observer is aware the Society is constrained by the terms of the Solicitors (N.I.) Order 1976 as amended and Article 41A which is headed *“Imposition by Council of Disciplinary Sanctions for Inadequate Professional Service”* and *“Power of the Council to impose Sanctions for Inadequate Professional Service”*. At all times any conclusions reached by the Society must be based on facts as shown in the papers. The process is penal in nature, therefore the principles of sentencing apply, which means the Society has to decide if any action needs to be taken and if so, at what level. Appeals against any decision made against the solicitor or firm under Article 41A lie to the Lord Chief Justice. The Society believes, overall, it has moved as far as it possibly can in the application of its statutory powers on a case by case basis and has also created a system which provides information to clients empowering them to determine what further action they need to take if they are not happy with the Society’s outcome.
25. The Lay Observer at 1.11 says that what the Society can do is expressed in what they cannot

do for an aggrieved client, resulting in the client having a misconstrued view, in our opinion; the Society is looking after the solicitor. We are also mindful of the balance with one of the Lay Observer's earlier recommendations which was that the Society manages expectations of aggrieved clients. Unfortunately, due to the fact that the legislation has remained unchanged and does not provide the range of redress available in other jurisdictions, there is a gap between what the Society can do and what the complainant may anticipate or consider possible. To meet the Lay Observer's wishes we have front-loaded this information so the complainant is in no doubt about the Society's powers. There are many instances where we need to examine a complaint not with regard to the service issues but also in respect of practice and regulatory compliance.

26. The Society's website plays an important role in providing information to anyone wishing to make a complaint about their solicitor. The new website will be launched in 2016 and will be accessible and user friendly. In the meantime all the complaints documents continue to be downloadable.
27. Our documents and publications are under continuous scrutiny with a view to improvements for the benefit of all those using the process.
28. The Society has developed its objective to standardise the stage 1 in-house complaints process. A new form has been developed and rolled out with effect from 2 January 2015 and included in the complaints documents for clients to use when taking the matter forward with their solicitors first, under the solicitors' in-house complaints procedure, to assist in structuring

their complaint. The Society notified the profession about the form through the Continual Professional Development (CPD) Seminar on Risk in October 2014 and also through the E-Informer.

29. We are monitoring use of the form to ensure it is achieving its objective of enabling clients to make detailed and comprehensive complaints by identifying all relevant issues, so that their solicitors address those concerns in a comprehensive way. Ideally we would like solicitors to incorporate the form into their own documents. Encouraging their use by firms will be the next stage of the process.
30. Having changed the requirements on solicitors to produce evidence in support of their responses, the Society continues to receive more detailed information from solicitors addressing complaints, supplemented by the relevant Client Care documents, including their in-house complaints procedures, their firm record of the in-house complaint and how it was dealt with, and the response given to the client's initial complaint. This enables the Committee to monitor adherence to the Regulations. Any breaches of the Solicitors (Client Communication) Practice Regulations 2008 are taken into account, when the Client Complaints Committee decides the outcome of the complaint.

We look forward to continuing to work with the Lay Observer pending the implementation of the Bill.

