

A New Future

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

2016

Alasdair MacLaughlin
The Lay Observer
2nd Floor West – Clare House
303 Airport Road
Belfast
BT3 9ED

e-mail: a.maclaughlin@btinternet.com
website: www.layobserverni.com

© CROWN copyright 2017
First published 2017

Applications for reproduction should be made to:
The Copyright Unit
St Clements House
2-16 Colegate
NORWICH
NR3 1BQ

A New Future

The Final Annual Report of The Lay Observer for Northern Ireland

2016

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 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.

Foreward

The role of the Lay Observer for Northern Ireland was established in legislative Orders in 1976 which were then amended in 1989. The term lay observer is long defunct elsewhere in relation to complaints processes – the terms ombudsman and commissioner having become more fashionable. Now, the term lay observer is to be ditched in Northern Ireland as well, when a Legal Services Oversight Commissioner takes up position during 2017.

However, the term is still used elsewhere in the context of prisoner welfare. Lay observers exist in England & Wales. These volunteer posts are part-time. The task involves the independent oversight of the welfare of prisoners when they are being escorted from police stations and prisons to courts – and back again – in England & Wales by independent contractors in the private sector, and under the management of the Department of Justice for England & Wales.

The Lay Observer in Northern Ireland has nothing to do with this service. The Lay Observer oversees the Complaints Handling Procedures of the Law Society for Northern Ireland which is the regulator and representative body for the Solicitors' profession in the Province.

There have been four holders of the post of Lay Observer in Northern Ireland, Mr E H Browne, Mr John Stanley, Professor Vincent Mageean OBE and since 2004, Mr Alasdair MacLaughlin. There is a run of Annual Reports back to the start, but it is interesting to note that the first eleven Annual Reports are confidential, and unavailable. It was the view at the time that these Reports from a public servant 'were not suitable to allow public viewing', and they are still unavailable. I imagine that it would be possible now to access these reports – but I have not taken the trouble to do so. How times have changed, when so much more goes today, and everyone else's business is so widely available.



Alasdair MacLaughlin, Copyright Fiona Mash

I have been privileged to hold this post for the past thirteen years, more than anyone else. I was originally appointed for only two years – the reason given then was that there was new 'legislation in the offing' – and that was in 2004! That I am still occupying the post is related to the fact that the new legislation 'in the offing' in 2004 was published in November 2015, has only Royal Assent since last March 2016, and the practical arrangements will only take effect later in 2017.

It has been an enormous privilege and honour for me to have had such an interesting, rewarding and absorbing role on behalf of the public. Every complaint and complainant is different and each warrants individual attention. There is always some different twist, even though the same issues warranting a complaint do not seem to change very much.

I would have to say that I have come across very few 'chancers' or 'vexatious complainers' in my thirteen years as Lay Observer. Complainants are almost always anxious and stressed about the complaints they have raised; this is all the more so when they have had the stamina to take the matter to the third level – that operated by the Lay Observer – even those who turn out to be 'barrack room boys' fixated on their own prejudices. There are always a few of these!

As if this was not difficult enough for those in the throes of a complaint, one can make the general observation that the professions seem to like to surround themselves with what I call 'foam'. This so often seems designed to obscure what these

professionals are really talking about to clients. It almost suggests that they do not have the self-confidence to explain things in simple English; clients are not foolish, and would often be much more impressed if they could understand what is going on in legal processes, and so better appreciate the complexity of professional issues. Given human nature, we all tend to be highly suspicious about things we don't understand and when we are kept in the dark by experts dealing with our most sensitive personal affairs. I urge the legal profession to bear these ideas in mind as they enter the new era of Regulation brought in by the 2016 legislation.

On the negative side, the role of the Lay Observer is often most frustrating. This arises because of the limitations of powers and sometimes too from a particular lack of reaction from the Law Society and the profession to some of the comments I make. These comments are designed to help the process of complaints handling.

The Lay Observer's only major power is that of referring a solicitor in certain extreme circumstances of wilfully bad service to the Solicitors' Disciplinary Tribunal. I have in fact never invoked this power. To do so would result in major costs for the public purse; my view is that any such costs should not fall on the tax-payer, but rather on the profession itself. Accordingly, when appropriate my custom has been to refer such matters back to the Law Society with a recommendation to deal with the issues as appropriate. In these circumstances, the Society has not shirked in its commitment to, when necessary, send a solicitor to the Tribunal or take other serious and appropriate action.

When there is action taken resulting directly or indirectly from my work, as has been the case for example in relation to the Continuing Professional Development Programme (CPD) of the Law Society, it has been very satisfying. I believe that there is recognition at top level in the Law Society that the third level of the system operated by the Lay Observer, has had a beneficial effect in their regulatory duty over the solicitors' profession. I customarily point to the fact that when action is taken, it is by the Law Society and by solicitors themselves. Thus when they do so, as a result of any prompting I may have provided, they are right, as

indeed they do, to take the credit. What has mattered to me is where things may have been improved for clients, who have indirectly found less reason to complain because the service they have received from solicitors is of satisfactory and improving quality.

The same goes for the many cases where clients with complaints have found the work of the Lay Observer to be an effective lightning conductor for their frustrations and despair. In these cases they have recounted to me that they have had not only an understanding ear, but clear explanations of the outcomes from my investigations on their behalf. Many clients have freely expressed their gratitude and thanks. All this suggests that the service provided by the Lay Observer has had a meaningful effect in both the profession, amongst clients and for society in general. I believe that at the top level in the Law Society, there is recognition over the years that this function of the Lay Observer has been of value in assisting the operation of the profession and of the Law Society.

Now new challenges will have to be faced as the old order is killed off and the new system comes into play. The Commissioner faces many challenges relating to the solicitors' and the barristers' professions. The Commissioner has strong powers and a very different role which will need to be very clearly understood by all in these professions, as well as politicians and the public. The legislation will require very different patterns of thought and activity for the regulation of the professions than hitherto in my opinion. That in turn will require different attitudes towards complainants as well as other matters, which will include a much stronger awareness of the needs, stresses and frustrations of ordinary people when they encounter solicitors and barristers and the legal system.

Unless these are tackled very seriously and thoroughly, the costs on the professions can be expected to be very substantial. Under the new regime, the professions will actually be paying for the full costs including the costs of the Commissioner's role; hitherto, the role of the Lay Observer has been a charge on the public purse.

I wish well to all concerned, as the new order at last begins to take effect and develops.

Alasdair MacLaughlin
31st May 2017

Table of Contents

Foreward

Chapter		Page Number
1	Opening Comments	2
2	Work of The Lay Observer in 2016	6
3	Final Outcomes in 2016	8
4	Complaints Statistics 2016	14
5	Comment on Complaints Statistics 2016	16
6	The Law Society Response to Lay Observer's Report	19
7	Concluding Comment	22
Appendix 1	The Lay Observer	23
Appendix 2	Response from the Law Society 2015	24

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 has not resolved to the satisfaction of the client. Mine is the third and final stage in the Complaints Handling Process. This is my **thirteenth** Annual Report and the **thirty ninth** in the series. I am required by the legislation to publish a Report each year which must be formally presented to the Lord Chief Justice, the Government and the Council of the Law Society.
- 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. It received Royal Assent in March 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 amongst other things. In effect, the Act also does away with the Lay Observer for Northern Ireland. A Legal Services Oversight Commissioner, Ms Marion Cree has been appointed. She took up post on 1st April 2017. Her appointment results from the new legislation and she has extensive new powers over the solicitors' and barristers' professions.
- 1.3 This Report deals with the work of the Lay Observer for Northern Ireland during the calendar year 2016, and to an extent the first five months of 2017. Under the present arrangements, this work continues to be directed by the current legislation until such times as detailed arrangements resulting from the new legislation can be put in place. This is now expected to be fully operational later in 2017.
- 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 — but clearly not heavily enough — on regulating solicitors, but is too light on assisting the client who has a complaint. The process of complaints handling for clients is often convoluted, but does not always provide a satisfactory solution for a complainant. The powers of the Law Society in dealing with complaints are limited by the current legislation and the needs and interests of the client are often not well served by the current system. These priorities will change very significantly and be in much better balance once the new Act comes fully into effect. In fact, the third tier will effectively disappear, and it will fall to the Law Society to have a rather more involved second tier in dealing with client complaints. That second tier in future will have a much greater lay involvement than at present and it will be lay-led.
- 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 to the satisfaction of all concerned. **Secondly**, specific service improvements should result as appropriate 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 additional means for regulating and providing sanctions where necessary against solicitors **and** barristers in delivering legal services. This has implications for Regulation and the CPD Programme for solicitors and barristers. These issues will raise new challenges for the complaints committees in the relevant 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. The Lay Observer 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 and explained 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, and they are exemplified by the number of complainants who write to me expressing their gratitude that 'at last' someone in the process appears to have listened to their problems, expressed empathy with them and explained things clearly for them.

- 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 disciplining a member of the profession. 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 bear the costs involved. The Law Society does not shirk on any occasion where it has been recommended to them to deal with the solicitor appropriately within the legislation.

- 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 I receive at the third tier where complainants feel that the Law Society is simply representing the interests of solicitors in the Complaints Handling System, and not dealing with them properly.** This is a perception that is not perhaps 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. They need to explain fully and repeatedly even to the same client why they are doing what they are doing to regulate the solicitor. The Law Society claim that this is not necessary, since it is all covered in their leaflets. I have continuously reminded them that the last thing the complainant is thinking of when in receipt

of a concluding letter after an investigation that goes against him/her is what is said in a leaflet or notes sent weeks or months earlier on in the process. The Law Society further seems to take the view that it has to protect itself from a solicitor taking action against the Society, and that this sometimes prevents it explaining matters fully to the complainant. This is understandable, but surely making a full and clear explanation in simple English should never be a reason for taking such action.

- 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 much to achieve in this context. A very simple example of this is that the Law Society find difficulty with the phrase 'I am sorry that' and confuse it with 'I am sorry for'. One implies 'I have empathy with' and the other 'I am taking responsibility for'; once again this seems to stem from a belief that the complainant would take action against the solicitor concerned or the Society itself if they express empathy with a complainant. This is understood from the viewpoint of the Law Society, but the

aggrieved client perceives that there is little or no understanding of his/her plight.

- 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 in an increasingly complex and litigious world. 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 to enable me to 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 complaints committees will be enhanced very significantly in future, and it will be led by lay people under the new arrangements.
- 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 the staff. I can report that in 2016 these have been functional and appropriate. In the summer, Mrs Moira Neeson who had been in the position for many years, retired; I wish her well in her retirement. She has been replaced by Mr John Mackell. It has been my privilege to get to know Mr Mackell and establish an excellent working relationship with him. I wish him every success as he establishes the parameters of the new regime and, with the complaints committee, sets them in motion.
- 1.15 I maintain excellent contact with the Department of Finance. 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 maintains on my behalf, but which I oversee. In addition they provide help relating to data protection and safeguarding information and financial matters. 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 help from the Department's staff is infrequent, but it is always available and anything I need is dealt with in a prompt and highly effective manner, and with great commitment.
- 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, encouragement 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 taken by the Ministers of Finance and of Justice in my work, as well as a number of individual MLAs. Occasionally also complaints are sponsored by MLAs on behalf of their constituents. I can confirm that they are understanding of the limitations of the current system – and of course a number of them have had in depth exposure to all the issues of their involvement particularly on the various committees that have worked up the new legislation.
- 1.19 I continue to enjoy helpful contacts with my counterparts in the other Jurisdictions of the United Kingdom and Ireland. I meet contacts through the Ombudsman Association and more directly. 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 and workshops with other complaints handlers, as well as taking advantage of more formal contacts and discussions on a regular basis with other ombudsmen and complaints handlers. These effectively act as mentors. I am grateful to them for their help and to the Department of Finance for supporting me in these activities.

Chapter 2

Work of the Lay Observer in 2016

2.1 During 2016, I investigated complaints from a total of 52 complainants compared with 41 in 2015, 45 in 2014, and 48 in 2013. This represents a disappointing result. It represents a large spike in the amount of underlying work for both the Law Society and the Lay Observer at a time when resources should be better applied to planning the new arrangements. I would have to add that there has been a further influx of cases into 2017. By the end of March 2017 a further 21 cases have been received, which is a flow of cases at a much higher rate than I have experienced for any similar period during my entire tenure.

2.2 When the Law Society receives a complaint, in most cases it can be analysed under several different categories of complaints. In 2016, the Law Society received a total of 367 categorised complaints from 111 complainants. Comparative figures are:

Year	No. of Categorised Complaints	No. of Complainants
2016	367	111
2015	218	87
2014	214	76
2013	217	103
2012	183	90

2.3 The figures indicate that categorised complaints received by the Law Society (and by the Lay Observer) having remained steady year on year with a modest downward trend in the number of complainants, experienced a major spike in 2016. Also, the degree of complexity of cases is increasing in a continuing trend year on year. This suggests that the Regulations brought in

during 2008 and amended in 2012 have helped to encourage the conclusion of the more straightforward complaints before they reach the second tier (Law Society) or the third tier (Lay Observer) of the process.

2.4 In 2016, I report that the most complex 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 2016 I received 32 very complex cases compared with 19 in 2015 and 21 in 2014, I had 11 complex cases in 2016 compared with 9 in both 2015 and 2014, and 9 other cases in 2016, compared with 13 in 2015, and 15 in 2014. In **very complex** cases I spend cumulatively three or more days concluding each case, in **complex** cases I spend one to two days, while in **others** I spend up to one day each 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 usually turn out not to be 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. Occasionally, I can recommend the Law Society to re-examine whether or not a complaint should have been registered into the formal System, as may be appropriate.

2.6 In these cases, the client believes his/her issues should have been registered into the formal complaints handling system. Where there are files at the Law Society, I am usually 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 give reasons and explanations if I know why. 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 2016 – the same as in 2015 and one less than in 2014.

2.7 **Secondly**, there are those complaints which are within my formal remit – the complainants having had their complaints dealt with by their solicitor and the Law Society, remain dissatisfied, and so bring their complaints to me. I dealt with 46 of these cases out of the 52 complaints I received in 2016, compared 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 four of these cases in 2016, two more than in 2015 and 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 – often quite bluntly and without much if any explanation - by the Law Society. In the absence of specific guidance, they do not know where to turn, and so come to me for advice – sometimes in exasperation, and always in frustration and bewilderment. Once again, I believe it to be within my remit to at least try to help signpost these persons where I can – but always recognising that as a lay person, any advice I give has no legal standing - which is a caveat I always emphasise for complainants where appropriate.

2.10 I also report that I dealt with two cases in other jurisdictions – these are not counted in my caseload for the year 2016 (this was the same as the figure for 2015). They were where a conflict of interest existed 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 cases of this type arose **within** the jurisdiction of Northern Ireland in 2016 – as was the case in 2015, although they have arisen in previous years.

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 completed in my own home, with regular visits to the Law Society. A proportion – about five percent - of my work is carried out unpaid on a *pro bono publico* basis. **As such, I believe that I provide an approachable, efficient and effective service on behalf of the public within the current arrangements.**

Chapter 3

Final Outcomes 2016

Solicitors attract a small incidence of client complaints that need to go to second tier at the Law Society – 83 % of solicitors' firms attracted no tier two complaints in 2016.

3.1 In 2016, the total number of solicitors' firms 'on the register' in the Law Society was 500 (518 in 2015). Of these, 413 firms (449 firms in 2015) 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
2016	87	413	500
2015	69	449	518
2014	65	460	525
2013	80	451	531

Thus, 17% of firms attracted complaints at the **second** tier in 2016; this compares with 13.5% in 2015, 12% in 2014, and 15% in 2013. Also 73 of the 87 firms attracted just one complaint at the **second** tier in 2016. While a single complaint by definition cannot define a pattern, it can suggest that the usual incidence is that complaints arise in a random way throughout the solicitors' population.

3.2 The number of individual firms who received multiple complaints (ie two or more complainants to one individual firm of solicitors) in 2016 was 14; this compares with 13 in 2015 and 2014, and 15 in 2013.

3.3 Closer inspection reveals that:

In 2016

1 firm had 5 complaints
2 firms had 4 complaints
11 firms had 2/3 complaints
73 firms had 1 complaint

In 2015

13 firms had 2/3 sets of complaints
(In fact, 10 firms had two complaints each, while 3 had 3 complaints each – exactly the same in 2014)

In 2014

13 firms had 2/3 sets of complaints
(In fact, 10 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

3.4 Thus the majority of those firms with complaints had only one complainant whose complaint was elevated to the **second tier**. **I continue to emphasise, as I have done over the years, that it is not appropriate to measure the performance of individual solicitor firms against multiple complaints.** The same comment 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. In 2016, 7% of cases were solicitor to solicitor. This compares with 18% in 2015, 13% in 2014, and 16% in 2013. **Only one** of these cases appears to have been a device to try to manage a solicitor to desist from delay or withholding documentation between solicitors.

3.6 I would 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 sometimes questionable if they should have been accepted into the complaints handling system. It remains **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. It will also likely be a costly option if allowed under the proposed new system if not for the individual solicitor firm, then for the profession.

3.7 The proportion of complaints **upheld** in favour of the client/complainant in 2016 was 13% - in 2015 it was 25% and in 2014 where the equivalent figure was 23%. This

figure is important to complainants who use the system. It is an indicator that complaints are important and justified in the view of clients who feel it necessary to 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 in recognising when complaints are justified. And clearly they contribute to under-pinning good quality service within the profession. **I have no explanation as to why the figure is so much lower in 2016 than in the previous two years.**

3.8 It should be noted that in 2016, 3% of those complaints were referred directly to the Solicitors’ Disciplinary Tribunal. In addition, a further 4% were reprimanded by the Law Society. 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 a licence to practice; less serious cases could result in the solicitor only being allowed to practice under very close and strict professional supervision. Reprimand is less serious, but is still not to be taken lightly. It is a great loss of opportunity when the Law Society does not make the importance of reprimand more clear to complainants. However, these distrains underline that the Law Society does not stand back from taking serious action against those who do not meet the standards required by the regulations.

3.9 Alongside **complaints upheld** should be placed the 7% of complaints that were **resolved** in 2016. Again this figure is well

down on those of 2015 when 21% were resolved during the process. Together these two categories - **upheld** and **resolved** - represented 20% of complaints to the Law Society at the second tier and had substance and justification. This totalled well down on the figures for 2015 when they were 46%. A further 29% were redirected or withdrawn (up on the figure for 2015 from 19%), and so presumably were felt to have been disposed of to the satisfaction of the complainant. The total therefore of all these types of cases is 49% in 2016.

- 3.10 **This leaves 51% (35% in 2015) of complaints which were not upheld in favour of the client/complainant.** These proportions – namely 49% upheld, redirected or resolved and 51% not upheld 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 and it is charged with considering matters objectively. **A significant proportion (49%)** of complainants therefore had a degree of satisfaction in the way the Law Society disposed of their complaint.

- 3.11 **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 – 49% - 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. And when a solicitor does wrong, the complainant is helping to expose this to the regulator. These are all important and should be seen to be important contributions to maintaining the integrity of the profession. These facts also confirm just how much value the Law Society and the profession gain from clients who take the trouble to complain. The system still remains really daunting and opaque for many of them, so to that extent they are to be commended for bringing forward their concerns, and persevering in trying to obtain a resolution.

- 3.12 The timetables for concluding investigations into complaints by the Law Society shows **a further regression in pattern during 2016 from 2015.** The figures for 2016 and the previous two years are as follows:

Time Taken to conclude complaint	2016		2015		2014	
	Proportion	Cumulative	Proportion	Cumulative	Proportion	Cumulative
Within 3 months	27%	27%	28%	28%	58%	58%
3-6 months	50%	75%	53%	81%	38%	96%
6 plus months	25%	100%	15%	100%	4%	100%
To Disc. Tribunal	1%		6%		5%	
Within 16 weeks	33%		55%		87%	

3.13 The current target time for concluding a complaint by the Law Society is now given as 16 weeks – it used to be 12 weeks. The greater time frame of 16 weeks is consistent with the front-loading on to the solicitor of 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 27% (28% in 2015), **this rose to only 33% in up to 16 weeks (55% in 2015)**. This contrasts with 2014 when 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.

3.14 There has clearly been a further regression albeit small in timetabling within the target period of 16 weeks. There is also a significant and an unwelcome increase in the proportion of complaints that took longer than 6 months to conclude, from 4% in 2014 to 15% in 2015 and 25% in 2016. The reasons are not at all clear to the Lay Observer and in any case it is for the Law Society to explain why this came about. There may have been staff resource issues in 2015 and 2016, and/or other internal

issues. These latter two points should not be acceptable reasons for extending the process beyond 16 weeks – remedial action can surely be taken when the need for rescheduling becomes apparent. However it is conceded that complaints continue to become more and more complex and involved.

3.15 There is evidence that investigations are becoming ever more complicated, and so solicitors are taking longer to gather information. Also solicitors contribute to longer investigation periods by delays in responding to requests by the Law Society for proper and thorough information that should have been given in the first place. The more complex the case, the more detail the solicitor has to provide – including summaries and timetables. It is in my view the case 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. To not do so,

I believe, is much too prevalent in the System at present. When it 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. This trend of increasing complexity is likely to continue, and I would encourage the Law Society to analyse all the reasons carefully with a view to taking any necessary action both now and for the future. It would be for instance very easy to keep a diary of events which could trigger the various steps in a reasonable timeline. Also, under the new arrangements, it seems unlikely to me that complaints requiring Law Society investigation will become any less complex.

- 3.16 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 and seems to be unable to explain why, in simple terms to the complainant, are so often the stated reasons 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. This second tier has been considerably tightened by the CCC in the previous two or three years. I do not agree with the argument the Law Society makes that to explain this would put off complainants from complaining in the first instance because they 'would not want to put their solicitor to the trouble thus suppressing complaints that

should be investigated'. I simply do not accept that this is factually the case in any event.

- 3.17 I have urged the Law Society and do so yet again to consider these points very seriously and to 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. And nor do complainants receive a thank-you from the Law Society; they are after all participating in an important element in the regulatory process of the solicitors' profession and so are surely assisting the Law Society in its regulatory capacity. Such an expression would not cost the Law Society a single penny, and should not even affect their pride – so it is a mystery to me why they do not do so, given that there would be a significant effect on the mood of a complainant. In their Responses over the years to the Lay Observer's Annual Reports, where the Law Society has not commented, in my stated opinion, speaks volumes on these issues. 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. I hope that they will also take on board the arguments I have made that they should begin to use more empathetic language and tone in their communications with complainants.
- 3.18 Complainants have therefore been allowed by the Law Society to under-estimate the internal inconvenience, costs, upheaval, and professional embarrassment and in some cases maybe even odium, attaching to a solicitor when

an investigation by the Law Society becomes necessary. And where complaints are upheld, complainants normally go without empathetic apology or thanks 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 the Law Society failing to suggest how a solicitor might improve his/her service by taking action in response to advice or comment from the Law Society, which it should feel free to dispense within the context of complaints handling. Advice from their Regulator could and should suggest specifically to the solicitor how to 'do the right things and do things right' in the context of a complaint investigation.

- 3.19 Finally, it is most important to note that in the solicitors' profession in Northern Ireland – unlike the legal professions elsewhere in these Islands, and incidentally in many other areas of professional activity – **the level of complaints against solicitors in Northern Ireland remains low.** Perhaps this is in part to do with the 'small community' in which they operate – many solicitor firms are themselves

small and are focussed in the locality in which they operate. They will therefore take extra pains to avoid client complaints becoming necessary. This should also 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 were 500 firms of solicitors with around 2500 solicitors licensed to practise, there must be many hundred thousands of transactions, and tens of thousands of clients every year. It is noteworthy that 111 clients only representing 367 complaint categories in 2016 (87 clients representing 218 complaint categories in 2015) found it appropriate to take their complaints to the second tier of the Complaints Handling Process. **These figures are much lower than popular or political opinion seems to believe.** Once again I believe that the Law Society should make rather more of these facts than they do. It is particularly the case that so many political representatives and the media are too often scathing of what is an essential and important profession in modern society. Such comments do not seem to recognise the high quality of service the profession provides.

Chapter 4

Complaints Statistics 2016

“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 2016**

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	2			2	10	1	2	2	1	3	11		3					7		2	14	60
2. Failure to keep client properly informed				4	13		2	3	1	3	11		2					8		2	11	60
3. Delay/Failure to respond to reasonable enquiries	1	1		3	10		1	3	1	4	13		2					6		1	12	58
4. Withholding/loss of documents	1	1		1	12		1	2	1	3	7		2					3		2	7	43
5. Disclosing confidential information					1																	1
6. Acting in a conflict of interest situation	1				1					1	1										1	5
7. Acting contrary to client's instructions				3	4		2	1		2	3		1								4	20
8. Breach of undertakings																						0
9. Failure to provide bills of costs/cash/statements; incurring expense without client's authority		1		1	4		1				1										5	13
10. Failure to deal with legal aid issues properly											1							2				3

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
11. Failure to provide proper client care information or not complying with agreed client care arrangements		1		1	4		1	1	1	2	7		1					3			5	27
12. Failure to provide proper costs information including Legal Aid Rules at the outset of the transaction or not adhering to arrangements made	1	1		1	4		1	1	1	1	9		1					2			2	25
13. Failure to properly consider client's complaints under solicitor's own in-house complaints procedure				3	14		1	3		2	8							6		2	12	51
14. Other factors							1															1
15. All factors (total 1 - 14)	6	5		19	79	1	13	16	6	21	72		12					37		9	73	367

Category:

- | | |
|---|--|
| A. Accidents (including personal injuries) | L. Immigration & Asylum |
| B. Bankruptcy & Insolvency Debt | M. Land & Property Disputes |
| C. Commercial Work | N. Libel & Slander |
| D. Contract Disputes | O. Licensing |
| E. Conveyancing | P. Mental Health |
| F. Criminal injuries & criminal damage compensation | Q. Planning |
| G. Criminal Law | R. Personal injury |
| H. Employment Law, Equality/Discrimination issues | S. Professional Negligence |
| I. Enforcements of Judgments | T. Trusts, Tax & Financial Planning |
| J. Family Law – children | U. Wills, Probate & Intestacy |
| K. Family Law – general | V. All other circumstances (total A-U) |

Chapter 5

Comment on Complaints Statistics 2016

The little things make all the difference

- 5.1 In 2016 there were 367 categories of complaint from 111 complainants to 87 solicitor firms. Details of all the categories are shown in the Table in Chapter 4. The figures for 2015 were 218 categories of complaint from 87 complainants involving 69 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	Year				
	'12	'13	'14	'15	'16
Undue delay/inaction	21%	17%	21%	18%	16%
Failure to keep client informed	20%	21%	18%	12%	16%
Delay in/failure to respond/enquiries	13%	15%	12%	12%	16%
Acting contrary to client instructions	8%	7%	8%	9%	5%
With-holding or loss of documents	13%	7%	9%	13%	12%
Failure to consider complaints under Regns.	7%	12%	11%	14%	14%
Failure to provide proper client care				5%	8%

- 5.4 Together the top six descriptors accounted for 82% of total complaints received in 2016, and 79% in 2015, 78% in 2015, 79% in 2013

and 82% in 2012. The top three descriptors listed were generally at a higher level. **Failure to consider complaints properly under Regulations** remained high in 2016. This was possibly due directly to a greater degree of emphasis on those solicitors who may offend in this way.

- 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 twenty-one descriptors for **circumstances of complaints**.

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

Circumstances of Complaints	Year				
	'12	'13	'14	'15	'16
Conveyancing	22%	13%	21%	19%	22%
Family Law – General	16%	21%	15%	18%	22%
Wills & Probate	24%	13%	13%	20%	20%

- 5.7 Together these three **circumstances of complaint** accounted for 64% in 2016, (compared with 57% in 2015) and if you add in the category of Family Law – Children - the figure rises to 70% in 2016 (compared with 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 (CPD) Programme and other ways of influencing solicitors.

5.8 The incidence of complaints in **Conveyancing** is at a higher level in the past three years and was 22% of the total in 2016. It has long been a frequent cause for complaint, and the constantly changing nature and characteristics of the property markets have an important bearing. Rapid rises and falls in the property market can often result in the solicitor being blamed for the consequences of market forces when he/she has little or no control over the matter. And it is always as well to remember that there are usually two parties in private transactions for the sale of property and that purchase of a property is probably the largest transaction a client will ever make. Given these realities, it is therefore important for solicitors to pay particular attention to communicating with their clients and explaining the delays that can happen as they do, for reasons beyond the control of the solicitor him/herself.

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 so often to fully 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 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 and in 2016 – when it reached 20% as compared with generally lower levels of 12%-14% in the two years 2014 and 2013. In my experience, clients have high expectations of solicitors in cases of this type. Also, clients have great difficulty understanding the complexity of the various roles of the participants (beneficiaries, executors, administrators, family members etc) in wills and probate business, leading to discontent and confusion if not properly explained. Once again it is clear that in many complaints the solicitor has not realised the significance or extent of such mis-understandings. They need to gauge more accurately where more care is needed in explaining the situation clearly, and where necessary repeatedly.

5.11 Like last year, there is a greater spread amongst **nature** or **circumstances** of complaints. In general, there is evidence that the CPD Programme is having a positive effect. However, the CPD is concerned with establishing the tenets of good service which is about efficiency and effectiveness. The difficulties that arise for the client, so often do because the solicitor's awareness of the limits of understanding of the client is less than it should be, even though his/her processes may be correct and efficiently carried out. The figures also suggest that the Law Society generally ensures 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. In this Report, I particularly highlight those problems with solicitors who do not use or use correctly, their in-house complaint handling procedures. The Regulations have been in place since 2008 – eight years ago. In 2016, the Law Society was telling both the solicitor and the client that those Regulations were still being applied in an ‘educational way’. In addition, the nature of any warnings to the solicitors has been simply a gentle statement that in future, further lapses will lead ‘to more serious action to be taken’. This is really rather limp, and should no longer be tolerated. **The Law Society eight years later should be requiring solicitors to recognise and adhere to the 2008 Regulations and they should 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. It is noted that some cases of suitably harsh warnings and action in this and other matters have been taken and rightly so, by the Law Society.

5.12 Further analysis indicates that 93% of complaints in 2016 (compared with 80% in 2015) involved fundamentally inefficient service. The straightforward difficulties that arise in any business too frequently are the main triggers for complaints against solicitors namely:-

- there have been delays which were not expected by and/or explained to the client
- 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

To avoid and prevent precisely these events from happening and recurring is what good and efficient business is all about. To prevent complaints arising in such events would save significant costs to all those concerned.

5.13 To ignore or place minimal emphasis on these matters – very easy to allow to happen – is what stacks up unnecessary costs. The Law Society is to be commended for emphasising these matters in their CPD Programme and in early professional training. However, the penalties for solicitors failing to provide efficiency needs to be highlighted. In future, complaints arising for these reasons will in fact incur very considerable extra costs on the profession, not least in that the cost of complaints handling and financial penalties will be borne entirely by the profession itself, under the new Regulatory regime soon to be implemented. The Law Society should not only continue its excellent work in the CPD Programme, but also, inefficiency which impacts upon the business of a client needs to be discouraged by stronger and rigorously applied Regulation.

Chapter 6

The Law Society Response to Lay Observer Reports

- 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 the November after publication of the Report 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 far too long a gap for the comment to be either in date or in any way current. It is to be hoped that a more rational approach will be taken in reporting under the new arrangements.
- 6.3 The Law Society's Response, dated end November 2016, is thoughtful, detailed and generally supportive of what I have written. Where I think the Law Society could do more than they have suggested in the Response, I have indicated in the content of this Lay Observer's Annual Report. 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. Further enhancement of this action by the Law Society will throw back more responsibility for preventing complaints on to the individual solicitor firm.
- 6.4 There is some evidence that this emphasis has been bearing fruit. But in 2016 and indeed into the new year when this is published – 2017, there has been an increase in the complaints received at both the second and third levels of the Complaints Process over previous years. In 2016 at the second level there were 367 categories of complaint received (218 in 2015), which translates into 111 complainants (87 in 2015), and involving 87 firms (69 in 2015). These increases have been from a lower and fairly steady level in previous years. There have also been increases as mentioned and analysed in other indicators (such as the timetable for concluding complaints) which suggest a general deterioration in 2016 and in the early months of 2017. The reasons are not clear to the Lay Observer, and in any case it is a matter for the Law Society to explain. Whatever else, the Law Society should be concerned that complaints from 52 (or 47%) complainants should have come to the third level when there were complaints from 111 complainants at the second level.
- 6.5 It is also clear that complaints being brought to the second tier are tending towards ever 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 levels two or three of the Complaints Handling Processes.

- 6.6 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 always been effective (whether by Law Society or solicitors). Examination indicates that insufficient communication and a lack of expressed empathy either in words or in tone, are major contributory factors in encouraging a complainant to elevate 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 explained however well an explanation is made. Nevertheless, 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. Too often the explanation is given in opaque, too technical or too succinct language for the lay person to easily understand what he/she is being told.
- 6.7 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. It is a sad fact, however, that so often, the Law Society comes across to the lay person as being too lenient with the solicitor. I have already referred to the ridiculous comments to some complainants that the Regulations in force since 2008, are still **in 2016** being embedded and applied in an educational way with solicitors, in circumstances where the solicitor should have been sanctioned.
- 6.8 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.
- 6.9 I believe that the Law Society should make more of explaining the penalties 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.
- 6.10 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 that observable effects for the solicitor they can see in the process. Almost every other professional and occupational regulator has tumbled to the importance of ensuring complainants are clear about the full penalties and their consequences for the subject of a complaint during and following an investigation. **The time is well over-due for the legal profession to do this also.** In

my experience of dealing with complaints 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 not only **encourage**, but **require** the legal professions' regulators bring their arrangements into the 21st Century in this respect.

- 6.11 I have suggested that the Law Society should make it plain to complainants that they appreciate the trouble clients have taken – particularly where there is usually no redress for the complainant – in bringing forward their complaint to the Complaints Handling System. It is after all an important part of the regulation of the profession. This suggestion has in reality been consistently ignored by the Law Society. Complaint Handling is an important source of information about the level of service being provided in 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 solicitor. I express the hope, as I have done before, that these matters will be attended to under the new arrangements; in my opinion they should be **required** under the new arrangements.

Chapter 7

Concluding Comment

- 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. These principles and standards are also published on my website.
- 7.3 Meantime, the Law Society and the Lay Observer will 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 June 2017, or such other earlier date if arrangements are then in place. The legislation enables the Commissioner to take on the role of the Lay Observer; this will happen on 30th June 2017.
- 7.4 This Report is available primarily in electronic format. It is accessible on my website:- www.layobserverni.com from 31st May 2017.
- 7.5 My contact details are:-
- Alasdair MacLaughlin
The Lay Observer for Northern Ireland
2nd Floor West – Clare House
303 Airport Road
Belfast BT3 9ED
- Email:** a.maclaughlin@btinternet.com
Website: www.layobserverni.com
- 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.**
- 7.7 In conclusion I wish for success as the legal professions, and the Lay-led Complaint Committees, and the Commissioner install and develop the new system to full operation in the months ahead.

Alasdair MacLaughlin
31st May 2017

Appendix 1

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).

He has particular expertise within the Justice System in Northern Ireland. In addition to being the Lay Observer for Northern Ireland, he was the first Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland. He was a member of the Probation Board for Northern Ireland and chaired its Corporate Committee, and sat on Industrial and Social Services Tribunals. He was a qualified Arbitrator and Conciliator for industrial disputes. 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 for the Northern Ireland Department of Justice and for the Northern Ireland Office, respectively.

Previous activity includes being a member of the boards of several private companies. He is a former member of the Council of the University of Ulster, a 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 was the Regulator - Northern Ireland for the Institute of Chartered Accountants in Ireland, 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, is an organist, and is interested in nature and walking, and playing golf for fun. He is a Trustee of the Belfast Association for the Blind.



Alasdair MacLaughlin has been the Lay Observer since 2004

Appendix 2

Law Society Response to 38th Report

Response of the Law Society of Northern Ireland to the 38th Annual Report of the Lay Observer for Northern Ireland Entitled “New Legislation in Place”

Introduction

1. This is the Law Society of Northern Ireland’s formal response to the Lay Observer’s Report for 2015.
2. The Society welcomes the Lay Observer’s Report and has given all aspects of that Report detailed and careful consideration. The Society thanks the Lay Observer for his considered views.
3. Since the Law Society last responded to the Lay Observer’s 37th Report, the Legal Complaints and Regulation Act (Northern Ireland) 2016 (the Act), has received Royal Assent and is due to become operational within the next calendar year. The Act creates the new role of Legal Services Oversight Commissioner for Northern Ireland as well as providing for a new legislative structure for the managing and handling of complaints.
4. As a result of this new legislative framework the Committee is working towards the establishment of new complaints handling protocols as well as operational guides to help ensure the continued effective management of complaints. The Solicitors’ Complaints Department will be required to service the Solicitors’ Complaints Committee once the Act is operational and this will require significant time and resources to enable the Society to make the transition from the current arrangements to the new procedures as seamless as possible.
5. As indicated in his report, the Lay Observer’s role is in effect abolished by the Act. In the meantime

the Society is committed to working closely with the Lay Observer to maintain a high standard of complaint handling and management. The Society believes that the impact of complaint management on solicitors including the costs, inconvenience and implications for professional reputation should be explained albeit within the confines of the current legislative framework. The Society will endeavour to do this in a manner that is straightforward and user friendly as well as through CPD seminars and publications.

6. The Society also notes the Lay Observer’s observations at paragraph 3.20 of his Report that the level of complaints against solicitors to the Law Society of Northern Ireland remains very low. The Society is encouraged by this conclusion although is mindful that in those circumstances where complaints are raised, the systems in place at first tier level and within the Society at second tier are robust, open and responsive. The Society is committed to ensuring that any new complaints provisions introduced by the Act appropriately safeguard and protect the interests of the Complainant and the Solicitor equally. The Society thanks the Lay Observer for his constructive commentary and the part he continues to play in seeking improvements in this particular field.

Continuing Professional Development (CPD)

7. The CPD programme is used to feed the complaints experience back 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. All solicitors are obliged to do a minimum of ten hours group study overall and a further five hours of 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. The records are checked for compliance by the CPD Department.

8. The Law Society of Northern Ireland is committed to providing support to members on challenging issues and offering ideas and suggestions on how firms could maximise the opportunities available to them. We continue to do this by offering a free series of CPD sessions delivered across Northern Ireland on an annual basis. The sessions are themed and there is input from a range of professionals on relevant and topical issues. To increase accessibility the sessions take place in multiple locations around NI.
9. During the course of the year Client Care related seminars included: Anti-Money Laundering Update Course; Communicating with Clients; Dealing with Bereaved Clients; Drafting and Presenting Matrimonial Petitions; Handling, Processing and Dealing with Client Complaints; Practice Management – Setting Charge Out Rates and Recording Time; Secure Electronic Transmissions with CJSM; Statutory Charge and the allocation of proceedings; The Office – Strategies for Success; Costs – Non Contentious Costs; Contentious Costs – An overview; Legal Book keeping Course; People Management Skills; Unlocking Potential: Coaching and Mentoring Skills for Senior Staff;
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 attack, in terms of fraud. As part of ongoing advice the Risk Management course runs as an all-day series of seminars on risk related areas of practice over 4 venues. This year the topics covered included information on anti-money laundering, data protection, customer due diligence, cybercrime and fraud, accounting risk issues and Home charter compliance.
11. The Society recognises the need to identify and highlight the impact that good client care can have on reducing risk, both legal and reputational. The Society provided standalone and specific Risk Management seminars throughout Northern Ireland in 2015. The Society indicated to practitioners that it was expected that all firms would have at least one person in attendance. At the seminars the Society ensured that even when seminars are topic specific, that the client care element is identified and highlighted to the profession.
12. The Lay Observer records that the most frequently occurring complaints are in the areas of Conveyancing and Wills and Probate. The Society introduced from January 2014, a requirement for practitioners who do Conveyancing work to complete at least three hours of their group study on conveyancing. The Society will continue to amend Conveyancing Course topics to ensure that practitioner's skills and knowledge base are kept up to date and current.
13. The Society carried out a successful series of Client Complaint Seminars in December 2015.

The seminars focussed on complaints handling and management including dealing effectively with the complaint in-house. The advantages of dealing effectively with a first tier complaint at an early stage were emphasised. The impact of the new Legal Complaints and Regulation Bill was explored in depth. Speakers included a representative for the Scottish Legal Complaints Commission and other experts in client care and complaint handling issues.

14. As part of the Complaint's Departments ongoing commitment to reflective learning from the complaints that are received relating to Wills and Probate, a detailed seminar programme took place in March 2016 entitled 'Drafting Wills and Trusts'. It is anticipated that this series of seminars and other planned events will help ensure that some of the common areas of complaints relating to Probate are highlighted to practitioners and appropriately addressed.
15. Through an active CPD and Client Care programme, the quality of the speakers and the 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 and also highlight to solicitors the need to keep their clients fully engaged whilst carrying out their work. The CPD programme is designed to react and respond to issues and themes that may arise through registered complaints.
16. The Law Society and the Complaints Department, in particular, welcomes the Lay Observer's continued interest in and support for our CPD programme. The Society also welcomes the recognition from the Lay Observer that we

are ensuring that the profession knows clearly what the current legislation and regulation mean for them through our CPD programme and publications.

Comments on the Report and Recommendations

17. It is noted that the Lay Observer states in paragraphs 7.1 that he makes no specific recommendations in relation to changes to procedures now that the current arrangements will shortly be coming to an end. The Society will however review and respond to some of the general comments provided by the Lay Observer within his report to explain the ongoing work in place to improve complaint management, handling and response.
18. The Society notes that the Lay Observer, at paragraph 1.11, commends the Society for the very effective way that experiences from the Complaint Handling Process are fed into the Continuous Professional Development (CPD) programme. As outlined in detail above, the CPD programme offers an invaluable opportunity to directly engage with solicitors to share experiences, expertise and to reinforce the expectations of good complaint handling practice. The Society strongly believes that continuing to place client care and complaint management at the heart of CPD events will continue to have a direct impact on reducing overall complaints.
19. The Lay Observer at paragraph 3.19 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. The Lay Observer indicates that this can leave the complainant with a sense that the solicitor ‘gets off’ too lightly. The Society through its current procedures provides a lot of detailed information to the complainant copied from the solicitor. The level of detail that the Society requires the solicitor to provide, in our view, demonstrates the time, resources and staffing impact that an investigation has on a practitioner. The Society also provides significant information to complainants on the complaints procedures and it is evident from this literature that it is a thorough and serious matter for the solicitor to address.

20. The Society aims to appropriately inform the complainant, whilst managing expectations, and engages in open communication with both parties to the complaint to ensure that the time and resources impact is duly appreciated. 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 possibility of reputational damage.
21. The Lay Observer makes reference to the issue of apology as referred to at paragraph 3.18. This particular issue has been examined in detail in previous responses. There have been active concerns as to potential liability where apologies are proffered and this is an understandable position to adopt albeit it can sometimes be difficult for a complainant to appreciate the legal constraints. The landscape has changed somewhat with the publication of the Act where it is noted that Section 38(2)(a) of the Act provides for a specific power to require a solicitor to apologise. Whilst the new Solicitor

Complaints Committee may direct a solicitor to apologise the apology shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings. The Society will work within this legislative framework once operational.

22. The Lay Observer indicates that the powers of the Law Society in dealing with complaints are limited and the needs and the interests of the client are often not well served by the current system. The Lay Observer further advises that the priorities will be in better balance once the new Act comes fully into effect. 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*”. The Society aims to investigate complaints in a manner that is open and fair to all participants and ensures that decisions taken are grounded in the facts of a particular case. This approach seems to serve the system reasonably well and results in what the Observer calls ‘a high proportion’ of complainants having a degree of satisfaction in the way the Society disposed of their complaint.
23. The Lay Observer has indicated that the priorities of the complainant will be in better balance once the new Act comes fully into effect. The Society takes a view that whilst the new legislation will introduce new oversight there remains a responsibility to implement a complaints process that appropriately safeguards the needs and interests of the complainant as well as the solicitor equally. The Society approaches

complaint investigation in an objective manner and will ensure that this objectivity is maintained within any new procedures or protocols adopted once the Act becomes operational.

24. The Society notes the comments of the Lay Observer at paragraph 3.6 regarding 'solicitor to solicitor' complaints. The Society agrees that this is an area that should be kept under review to ascertain the appropriateness of the Complaints system for dealing with such complaints. The Society does encourage the resolution of complaints at the first tier earliest stage. This is highlighted and repeated at Client Care events and other CPD seminars. There will always be occasions where a solicitor may raise a complaint on behalf of a complainant and this may be entirely appropriate. The Society does however accept the general point raised by the Lay Observer and will review similar cases as they arise in the future.
25. The Lay Observer makes reference to the time taken to resolve or complete some complaint investigations and provides commentary on cases that have taken longer than the targeted 16 weeks to complete. The Observer does accept that there is evidence that the more complex investigations are becoming even more complicated. Invariably, as the Lay Observer determines, solicitors are therefore taking longer to gather information which in turn leads to lay complainants requiring sufficient time to respond to complex legal complaints.
26. The Society recognises that both complainants and solicitors are keen to see a conclusion to an investigation as quickly as possible. The Society is also aware that there is an onus on

any investigation, particularly of complex matters, to be sufficiently detailed and thorough. The Society contends that the timetable is a measurable target that should be adhered to where possible. The Society does agree with the Lay Observer that in complaints handling it is better to conclude a complicated complaint properly rather than chasing a conclusion to fit the timetable. The Society has a casework review system that aims to ensure that, on those occasions where targets are not met, the complainant is updated of progress and potential delay periodically. The Complaints Committee will also routinely refer solicitors to the Law Society Council where responses are outstanding in order to monitor the timely progress of Society investigations.

27. The Society website now contains detailed and user friendly information on how to make a complaint and each step of the process is outlined on the website. The Society encourages members of the public and potential complainants to review the documentation and literature available. The Client Complaints Department would routinely send out hard copy documents as requested to assist complainants at the first stage of their complaint. 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 have also aimed to assist complainants by providing a standardised form to its complaints documents on the website for clients to use when taking the matter forward with their solicitors first, under the solicitors' in-house complaints procedure. This helps to assist in structuring the complaint and assists the

complainant to focus on the particular headlines of complaint. The form became operative from the 2nd January 2015 and general feedback has been encouraging.

29. It has been noted within the Department that the form is being used more regularly and the Society will continue to monitor usage. The form while assisting complainants to focus on the headlines of the complaint also helps solicitors to address their minds to responding to the complaints. The form is straightforward and user friendly and acts as an important first step in the complaints journey. Ideally we would like solicitors to incorporate the form into their own documents. Encouraging their use by the firms will be the next stage of the process.
30. The Lay Observer notes that the Society classifies complaints according to their nature. Presently there are fifteen descriptors. The Lay Observer draws attention to the rise in one category namely 'Failure to consider Complaints properly under Regulations'. The Observer is correct in his assertion that the Law Society takes this matter seriously. The Society has emphasised the importance of dealing with complaints at first source. The impact of poor handling of complaints at this first tier can not be over emphasised. The Society insists on the adherence to the Solicitors(Client Communications) Regulations 2008 and the increase in this particular category demonstrates the importance that the Society places on the use of the Regulations as a good standard for in house complaint management.
31. 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.
32. The Lay Observer sets out within his report the detailed statistics behind the work that is undertaken by the Society. The area of complaint management and investigation faces a new era with the introduction of the Legal Complaints and Regulation Act (NI) 2016. We look forward to continuing to work with the Lay Observer to help maintain a strong complaint management process.

