

Awaiting Enactment

*Annual Report of
The Lay Observer
for Northern Ireland*

2014

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2014

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 I am the public official charged with overseeing the Complaints Handling System in place over the solicitors' profession in Northern Ireland. I investigate complaints from clients that solicitors and 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.
- 1.2 This is my eleventh Annual Report and the thirty seventh in the series. We now await the enactment of the Draft Legal Complaints and Regulation Bill (Northern Ireland) 2013, which is still in process in the Northern Ireland Assembly. This will, amongst other matters, reform the structure of and approach to handling complaints made by clients against solicitors **and** barristers in both branches of the legal profession. My appointment under current arrangements extends to the end of March 2016.
- 1.3 My Report deals with the work of the Lay Observer for Northern Ireland during the calendar year 2014. Under the present arrangements, this work continues to be directed by the current legislation until such times as the Draft Bill published in November 2013 can be enacted and put into practice.
- 1.4 My routine work is overseeing the Complaints Handling Process of the Law Society. This process has three tiers. The **first** tier is where the complaint originates; the client who has a complaint against his/her solicitor complains directly to that solicitor. If the solicitor fails to satisfy the complainant, the client can escalate his/her complaint to the **second** tier which is operated by the Law Society. If the client remains dissatisfied, he/she can escalate the matter to the Lay Observer at the **third** tier.
- 1.5 The third tier has two main elements. **One** concentrates on investigating individual complaints taken against the Law Society by clients of solicitors against whom client complaints have been taken, and where the Society has been unable to satisfy those clients at the second tier of the Complaints Handling Process. My formal remit here is to determine whether or not the Law Society investigated the complaint correctly under the legislation and the regulations in force at any given time.
- 1.6 The **other** main element of my work is concerned with the overall effective operation of the Complaints Handling Process by the Law Society. I am pleased to report that the Law Society gives the due attention that is appropriate to complaints from the aspect of regulating the solicitors' profession. Their detailed work is recounted in Appendix Two to this Report, and is the formal response by the Law Society to my last Annual Report published in 2013.
- 1.7 The Law Society and the Lay Observer work together to clear goals in the regulation of solicitors. But there are other aspects and in particular that of solicitors providing a good service to clients. Fundamentally, the focus of the current legislation is heavy on regulating solicitors, but in my opinion is too light on assisting the client who has a complaint. The resolution of some complaints for clients can be convoluted, and the powers of the Law Society in dealing with this aspect of

Complaints Handling are limited by the legislation and so the needs and interests of the client are not well served by the current system.

- 1.8 All are agreed that the legislation is outdated, and needs to be changed. **In my opinion, this is largely due to the fact that the current legislation is pointed toward regulating the work of solicitors; resolving complaints brought by clients appears incidental and merely a by-product of complaint handling.**

I am keen to see the new legislation enacted as this will tilt the balance more evenly in achieving these aims.

- 1.9 Handling complaints has another 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, which may need to be better understood and promulgated, in an effort to prevent the causes of complaints from re-occurring.

- 1.10 In dealing with complaints, the Lay Observer focuses only on the truth as it may be established within the limitations of powers 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. From this, I make suggestions for resolution, make observations and provide recommendations. While my powers are very

limited, an independent view can help de-fuse and diffuse the emotional and factual impact on complainants; this effect should not be under-estimated. More widely, I can help and encourage service improvements and provide pointers for learning which may help reduce the incidence and impact of future complaints. While I do have the power to send a solicitor to the Solicitors' Disciplinary Tribunal in certain circumstances, I take the view that this is the role of the Law Society – it should not be a matter for the public purse to have to fund. Logic suggests that if I believe that a solicitor should be referred to the Tribunal, then the Law Society should be expected to action such a reference. And this is indeed what they do; in 2014, they referred three solicitors to the Tribunal arising from complaints taken by clients.

- 1.11 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 incidences where complainants feel that the Law Society is simply representing the solicitors in the Complaints Handling System, and not those of the client. This is scarcely surprising in that the Law Society is in existence to regulate and represent the solicitors' profession (see The Law Society of Northern Ireland website). So the Law Society is also responsible under the law to regulate the solicitors' profession. Under the current legislation, what the Law Society can do to assist a complainant is often expressed in terms of what they cannot do for the aggrieved client.

- 1.12 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 who has brought to the Society a complaint for attention. This places on the Law Society a significant responsibility to ensure that the language used to the client is appropriate to counter such perceptions. It is disturbing to me that so often my role in dealing with complainants is explaining to complainants what the Law Society seems to have been unable to communicate clearly when they have attempted to resolve a complaint.

- 1.13 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 her Team give profile to these needs, and the experience also feeds back via a range of ways of informing the profession, and to those in training. All this contributes to better performance in the profession. It is noteworthy in this context that the Law Society experienced a reduction in the incidence of the number of clients complaining at the second tier in 2014 – this is encouraging in relation to comparisons with what is happening in many other professions, where complaints proliferate.
- 1.14 The Client Complaints Committee (CCC) of the Law Society handles this sensitive work within the Law Society. It is therefore of value for the Lay Observer to maintain contact with the Chair of the CCC and its staff, so that I may understand more fully the challenges the CCC faces in carrying out its work. I value

this contact highly, and am unhappy if the relationship is not appropriate. I note that under the provisions of the Draft Bill, the role and structural nature of the CCC will change very significantly.

- 1.15 During the year I have had valuable meetings with the President and her Team, and with the Chief Executive of the Law Society, representing the Council. I am grateful for these meetings, and for their generally most constructive nature. I value this contact as it enables both parties to consider strategic matters, and provide an exchange of views and information appropriate to that level.
- 1.16 My day to day links are with the Director of Client (Solicitors) Complaints and her staff. I am happy to report that in 2014 these have been functional and professionally appropriate. The difficulties I reported in 2013, I am pleased to note, have been rectified; these should never have arisen in the first place. I am now provided with a proper office with necessary equipment in which to carry out my investigatory work when I am in the Law Society. The unnecessary inconvenience and remoteness of the previous arrangements are I hope something of the past.
- 1.17 I maintain helpful and excellent contact with the Department of Finance & Personnel at all levels. This is my sponsoring Government Department, and appropriate personnel provide support for my function in a number of ways. In particular I am provided with a virtual address through which complainants can access me, as well as a website, which technical persons in the Department

maintain on my behalf. I would wish to thank the Permanent Secretary for making all this possible.

- 1.18 For day to day matters, I link with Mr Martin Monaghan, and I receive additional help from Ms Sarah Jones and Ms Helen Frazer. I thank them and their colleagues for their very willing and invaluable facilitation, which is often proactive, and always imaginative, in providing advice and helping solve any problem I may encounter. I would have to say that in the normal course of events, my need to involve the Department staff is minimal.
- 1.19 The Lord Chief Justice has taken an interest in my work. His role over the Justice System in the Province provides a distinctive overview of my work, and I value any comments he may care to make. He is, of course, in any case a formal recipient of my Annual Report under the legislation.
- 1.20 I am encouraged by the interest in my work expressed by the First and the Deputy First Ministers, the Minister for Finance & Personnel and the Minister for Justice in the Northern Ireland Government. As well, the Attorney General and the Advocate General have noted my work.
- 1.21 I continue to enjoy helpful contacts with my counterparts in the other Jurisdictions of the United Kingdom and Ireland. I meet and share such contacts through the Ombudsman Association. It is to the professional and operating standards laid down by the Ombudsman Association that I operate and thus maintain my membership,

and my work standards; these are laid out on my website (www.layobserverni.com). I also meet under their auspices 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, who effectively act as mentors. I am grateful to the Department for facilitating and supporting me in my participation in these ways.

Chapter 2

Work of the Lay Observer in 2014

2.1 During 2014, I investigated complaints from a total of 45 complainants compared with 48 in 2013, 43 in 2012 and 38 in 2011.

2.2 When the Law Society receives a complaint, in most cases that complaint can be analysed under several different categories of types of complaints. In 2014, the Law Society received a total of 214 categorised complaints from 76 complainants. Comparative figures are:

	No. of Categorised Complaints	No. of Complainants
2014	214	76
2013	217	103
2012	183	90
2011	201	122
2010	218	110

2.3 This indicates that the level of cases being received both at the Law Society and the Lay Observer remains fairly steady year on year, but with a downward trend in the number of complainants. However, the degree of complexity of the cases received has reached a new level, after a period when they have been becoming more complex. This suggests that the Regulations brought in during 2008 and amended in 2012 have helped to sort out the more straight-forward cases before they reach the second tier (Law Society) or the third tier (Lay Observer).

2.4 In 2014, the complexity of the cases I received did not increase compared with 2013; last year I had 21 very complex cases compared with 24 in 2013, I had 9 complex cases in

2014 compared with 8 in 2013, and 15 other cases in 2014 compared with 16 in 2013.

Complexity derives from the amount of time I spend on an investigation. In highly 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 a 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 for that matter. They nevertheless **are** complaints from the point of view of the complainant. There are sometimes files on these cases at the Law Society, and I am allowed to access these so that I can ascertain that the Law Society was correct in not entering the matter into the Complaints Handling Processes under the legislation. Where such persons can be helped with explanations as to why their concerns were not entered into the System, I can explain the reasons, and I can also give other advice as to where the person may be able to obtain some assistance; however, as I am not permitted to be legally qualified in my post, such advice from me has no legal standing. Such persons have an item or items of business with legal advisors where they are dissatisfied; as such I regard it as within my role to attempt to help them, even though they cannot enter the Complaint Handling System. There were three such cases in 2014.

2.6 **Secondly**, there are those complaints which are clearly within my formal remit – the complainants have had their complaints dealt with by the Law Society, then remain

dissatisfied, and so bring their complaints to me. I dealt with 37 of these cases out of 45 cases in 2014.

- 2.7 **Thirdly**, there are complainants whose complaints have already been dealt with by me, but where for a variety of reasons, complainants wish me to re-consider the 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 five such cases in 2014, one less than in 2013.

- 2.8 I also report that I dealt with one case in another jurisdiction – this is not counted in my caseload for the year 2014. This was where a conflict of interest arose in connection with the complaint handler in that other jurisdiction. Such a task arises under a protocol agreed years ago where complaints handlers assist each other in such instances. An example is where a complaint is brought against a solicitor, who may be known personally by the complaint handler. No such cases arose within Northern Ireland in 2014.

- 2.9 My post as the Lay Observer for Northern Ireland is part-time. I employ no staff and all administrative tasks and secretarial work

are carried out by me directly, in addition to investigations and auditing. A proportion of my work is carried out unpaid for the benefit of the public. I believe that I continue to provide a low cost, efficient and effective service on behalf of society and the Government within the current arrangements. I note that my daily fee has remained unchanged since I first took up the post in 2004 – eleven years ago. However, the formula of application was adjusted some years ago to reflect increasing complexity of my work, and so reduce to a more reasonable level the *pro bono public* element of my work.

Chapter 3

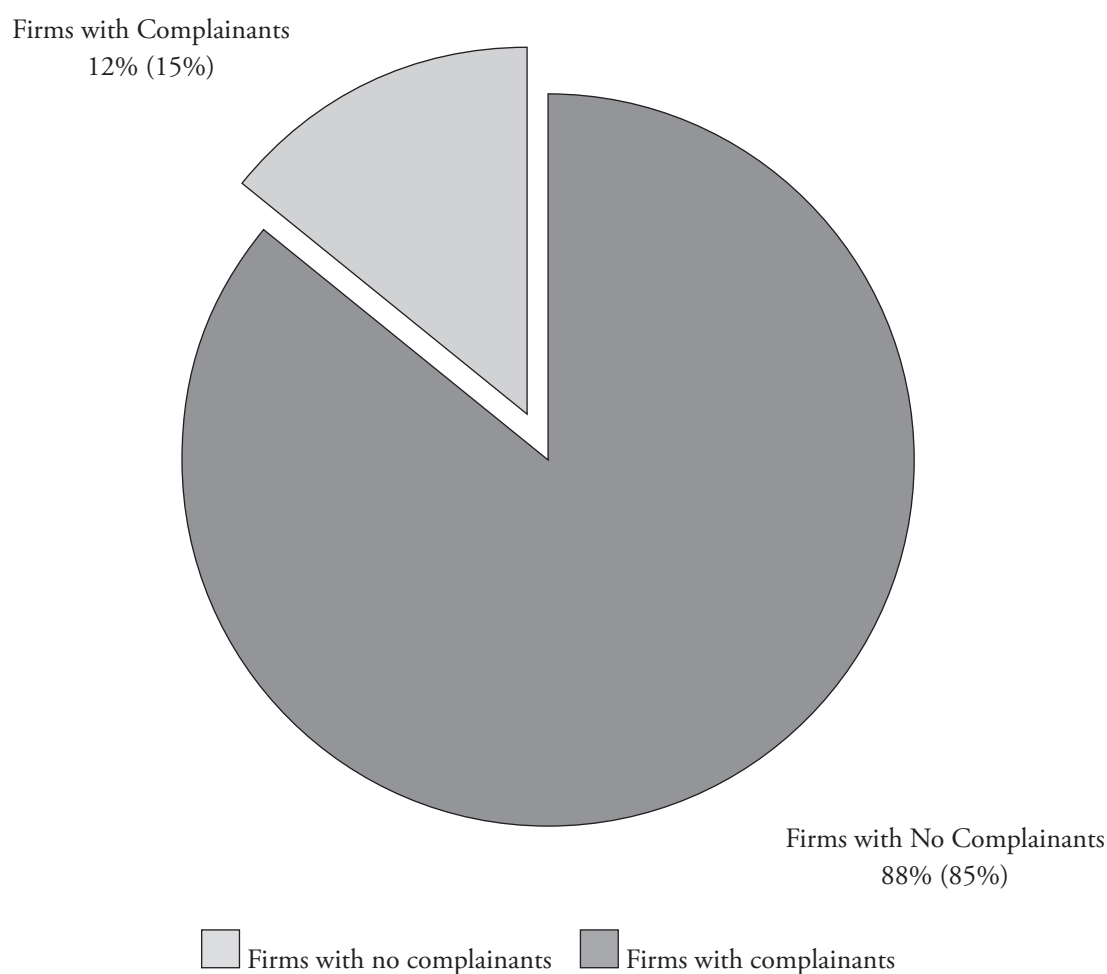
Final Outcomes 2014

Solicitors attract a very small incidence of client complaints that need to go to the Law Society; 88% of solicitors' firms attracted no such complaints in 2014.

Note: the complaints referred to in Chapter 3 are those which achieved a final outcome in the year 2014 at the second tier.

Chart A

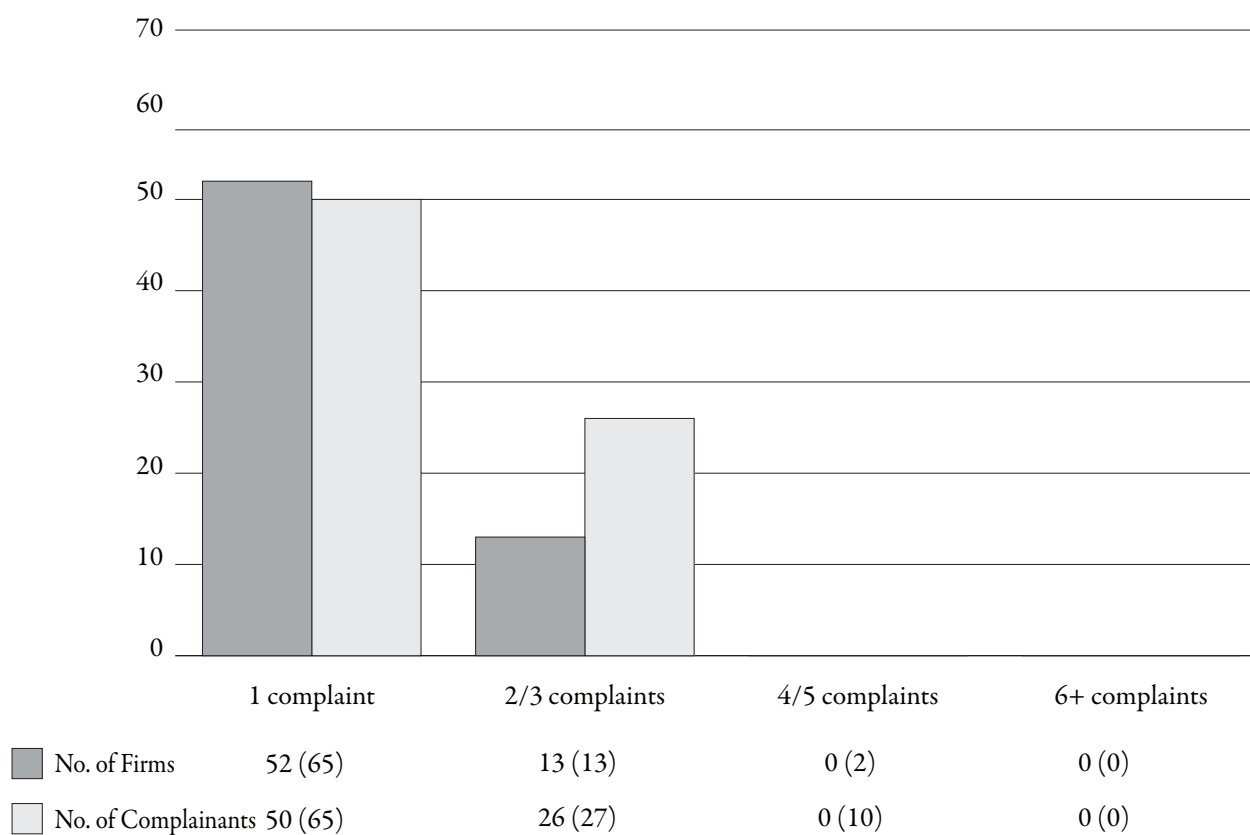
% of Solicitor Firms with **Complainants** and % of Solicitor Firms with **No Complainants** to the Law Society in 2014 (figures in brackets are for 2013).



The total number of firms 'on the register' in 2014 at the Law Society is 525 (531 in 2013). Of these 460 (451) attracted no complaints that were referred to the second tier. 65 solicitor firms attracted complainants that were referred to the second tier; these represent 12% of the total.

Chart B

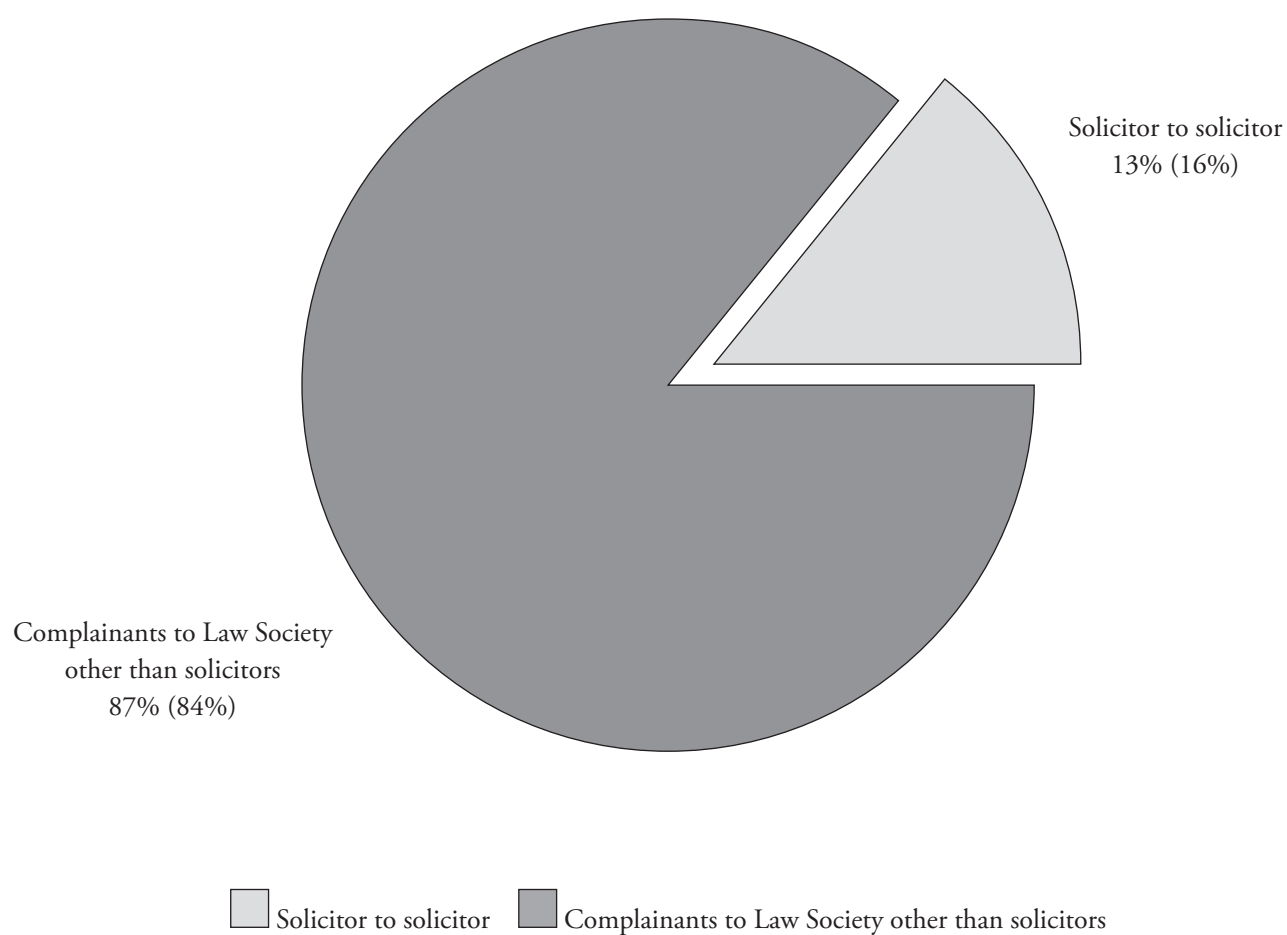
Number of Complainants / Number of Firms with complainants to the Law Society in 2014



Note: The figures in brackets refer to 2013.

Chart C

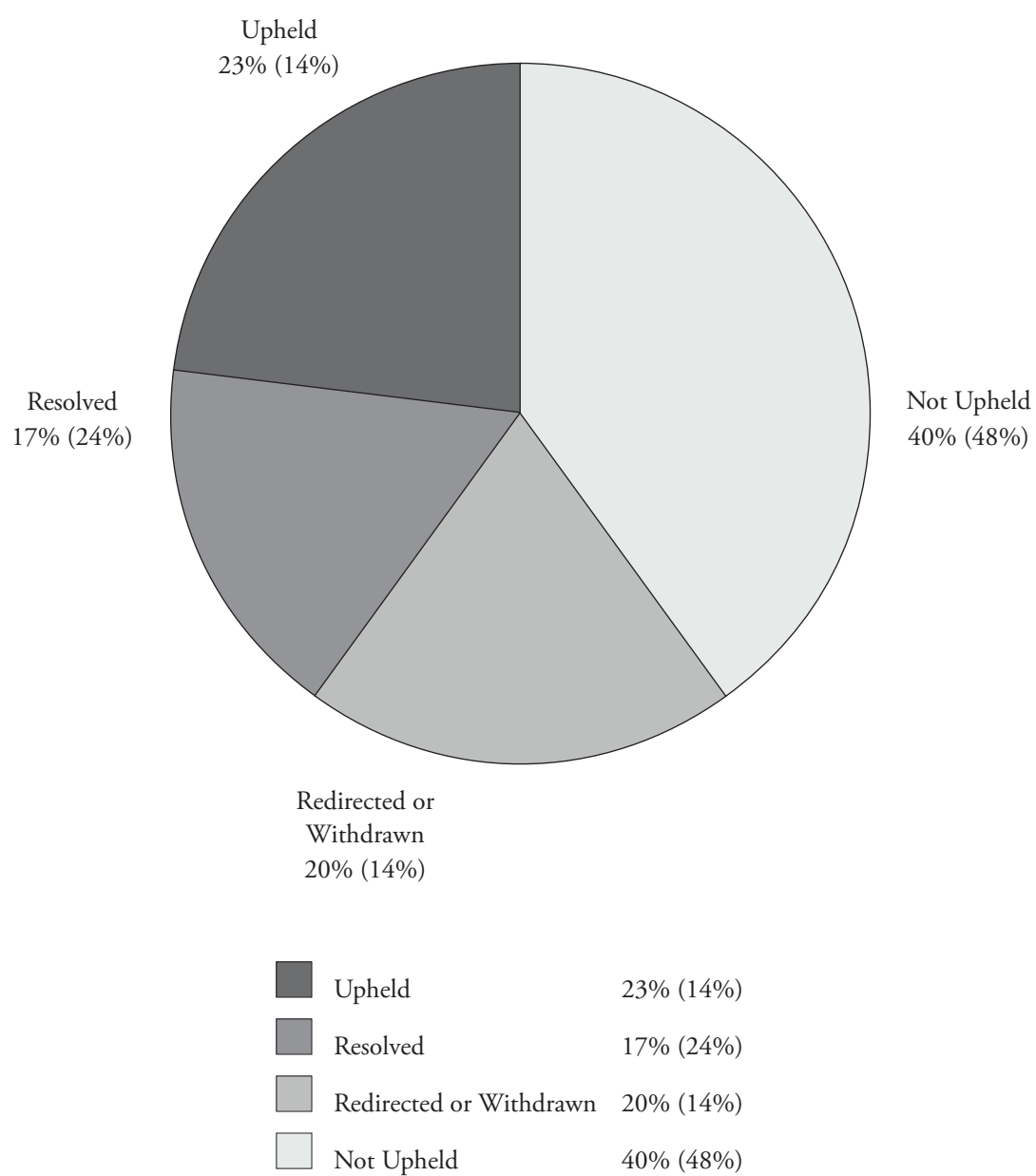
Solicitor to Solicitor as % of total complainants to the Law Society in 2014.



Solicitor to solicitor complainants to the Law Society in 2014 amounted to 10 (16) out of a total number of 76 (103). Figures for 2013 are shown in brackets.

Chart D

Summary of final outcomes for complainants to the Law Society registered and completed in 2014.
(figures in brackets relate to 2013)



Chapter 4

Comment on Final Outcomes 2014

“Every complaint should be seen as a gift to the Regulators of a profession”

4.1 The number of solicitors firms ‘on the register’ at the Law Society for the period concerned, namely the calendar year 2014, was 525 (531 in 2013). Complaints were recorded against 65 solicitor firms. This means that 88% of solicitor firms attracted no complainants at the second tier in 2014, compared with 85% in 2013, 86% in 2012, and 84% in 2011. This picture is depicted at Chart A in the previous Chapter. I believe that this should be seen as a healthy and improving situation.

4.2 Chart B shows the relationship between the number of complainants forwarding complaints to the Law Society, and the number of solicitors firms involved – this relates again to the second tier in the Complaints Handling Process. The number of multiple complaints to individual firms (ie two or more complainants to one individual firm of solicitors) in 2014 was 13; this compares with 15 in 2013, 11 in 2012, and 21 in 2011. This suggests a trend away from multiple complaints to individual firms of solicitors.

4.3 Closer inspection indicates that:

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

4.4 Thus the majority of firms had only one complainant whose complaint was elevated to the second tier. Also, as can be seen, the trends would suggest that the incidence of multiple complaints to individual solicitors firms is reducing. This if continued should reduce the costs of dealing with complaints on the Law Society and the profession. I have emphasised over the years that it is not appropriate to measure the performance of solicitors against multiple complaints, and the same reasoning that I have applied in previous years applies, namely that solicitors firms do specialise, and certain types of work attract complaints more than others.

4.5 Chart C is about complainants ‘solicitor to solicitor’. These arise where a solicitor – usually on behalf of a client – brings a complaint against another solicitor. While legitimate, it is really not appropriate to use the Complaints Handling System as a means for managing activities between solicitors. It should be used in those circumstances where direct assistance to and/or a result for the client is to be obtained.

- 4.6 There was a welcome decrease in this activity where 13% of complaints at the second tier were of this category. This compares with 16% in 2013, 14% in 2012 and 12% in 2011.
- 4.7 I would again urge the Law Society to keep an eye to the incidence of such complaints to ensure that they are totally appropriate, as suggested. Almost all of these types of complaint appear to have been resolved **during** the process of investigation, leading me to enquire why they should have been brought forward in the first place by the solicitors if the profession is working efficiently.
- 4.8 Chart D shows the proportion of final outcomes for complainants who registered complaints with the Law Society and had these concluded in the proper time frame. The proportion of complaints **upheld** in favour of the client/complainant in 2014 was 23% - a much higher proportion than in 2013 with 14%, 2012 with 13% and 14% in 2011. This is not inconsistent with a steadily improving level of quality of complaints handling by solicitors firms at the first tier of the Complaints Handling Process. This figure also underlines just how important this is to complainants. It is yet another indicator that complaints are so often justified in the view of the client who feels 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 that complaints are so often justified in being taken forward. Their resolution contributes to

under-pinning good quality service within the profession.

- 4.9 Alongside complaints upheld should be placed the 17% of complaints that were **resolved** in 2014. Together these show that 40% of complaints to the Law Society at the second tier had substance and justification. A further 20% were redirected or withdrawn. This leaves 40% which were **not upheld** in favour of the client/complainant. These proportions – namely 60% upheld, redirected or resolved and 40% not upheld (compared with 52% and 48% respectively in 2013) – have an important significance in recognising that the Complaints Handling System of the Law Society is not simply – as is sometimes the perception of politicians and press – used to screen and protect the solicitors’ profession. Rather, it is part, under the current legislation as well as in that planned for enactment, of the Regulation of the profession. **I think that the Law Society should make more of this reality in their publicity and information about the Complaints Handling System. I am dismayed that the Law Society furthermore does not actually thank complainants for taking the trouble to bring forward complaints, particularly in the light of the high proportion – 60% - 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.

- 4.10 The times taken for concluding investigations into complaints by the Law Society shows a further significant and commendable improvement over previous years. They are as follows:

Times	2014		2013		2012	
	Propn	Cum	Propn	Cum	Propn	Cum
Within 3 months	58%	58%	47%	47%	55%	55%
3-6 Months	38%	96%	51%	98%	42%	97%
6 plus months	4%	100%	2%	100%	3%	100%
To Disciplinary Tribunal	5%		3%		2.5%	

- 4.11 It is significant that almost 60% of the complaints received were concluded within 12 weeks of being registered into the Complaints Handling System. This shows another important improvement in timetabling. While there is a small but not significant increase in the proportion of cases that took longer than six months to conclude, the complexity of the complaints received is continuing to increase as commented earlier, so this is not unexpected. It is in my view far better to conclude a complicated complaint properly rather than chasing an unrealistic timetable.

- 4.12 **But most importantly, the proportion of complaints concluded within sixteen weeks was 87% in 2014** (it was 85% in 2013).

This is a very commendable result given the projected timetable for concluding complaints which the Law Society states to complainants at the beginning of the process. This should give the Client Complaints Committee considerable satisfaction in achieving further improvement.

- 4.13 Many complainants still feel that where a complaint is upheld in favour of a client, the offending solicitors 'get off' far too lightly let

alone that the complainant receives no redress.

It is an unfortunate fact in many of the cases received at the third tier by the Lay Observer, that it is the lack of a sufficient explanation of what a solicitor has had to go through by way of the process of a complaints investigation – including the considerable costs involved - and why the Law Society cannot apply redress for the complainant, that is the reason for bringing the complaint to the Lay Observer.

- 4.14 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 as well, was dealt with in my Report for 2013. In their Response to that Report the Law Society commented on this, and what they say speaks for itself – see Appendix 2 to this Report. It would seem that it will take the introduction of the planned new legislation for these matters to be properly considered. Clearly there will be no further movement until the Northern Ireland Assembly enacts the new legislation, and implementation has been achieved, and where they will likely be required to take note of and apply these tenets of good complaints handling.

4.15 Thus, it will be noted that complainants have been allowed by the Law Society to underestimate the internal inconvenience, costs, upheaval, and professional embarrassment attaching to a solicitor when an investigation by the Law Society for any reason becomes necessary. And they go normally without any apology where it seems to me to be appropriate to provide one from either the Law Society or the solicitors. While I do recognise that solicitors cannot always be **required** to take action under the present legislation, that is not an argument in my view for failing to **suggest** how a solicitor might improve performance by taking certain action which the Law Society should surely, as the Regulators of the profession, feel free to dispense.

4.16 Finally, it is most important to note that in the solicitors' profession in Northern Ireland – unlike elsewhere in the legal professions in United Kingdom, and as well as in relation to many other fields of professional activity – the incidence of complaints remains very low. This should be seen in the light of the enormous volume of transactions that solicitors undertake for clients every year in the Province. No-one knows how many this must be, but given that there are over 500 firms of solicitors with almost 2,500 solicitors practising, there must be many hundreds of thousands of transactions, and tens of thousands of clients. It is noteworthy that only 76 clients (representing 214 complaint categories) found it necessary to take their complaints to the second tier of the Complaints Handling Process. Also, only 65 solicitor firms received complaints out of the 500 plus firms registered. These figures are very much lower than popular opinion particularly amongst politicians, public and press seem to perceive.

Chapter 5

Complaints Statistics 2014

“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 2014

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	9			2	11	1	1	1		2	9	1	2					3			5	47
2. Failure to keep client properly informed	10			2	8	3	1			1	5		1					2			5	38
3. Delay/Failure to respond to reasonable enquiries	4		1	2	8		1				4							1			5	26
4. Withholding/loss of documents	6		1		5		1			3								1			3	20
5. Disclosing confidential information	2												1									3
6. Acting in a conflict of interest situation	1										1										1	3
7. Acting contrary to client's instructions	1			2	3					1	4	1	2						1		2	17
8. Breach of undertakings	1																					1
9. Failure to provide bills of costs/cash/statements; incurring expense without client's authority	1		1		4			1		2											4	13
10. Failure to deal with legal aid issues properly	1																					1
11. Failure to provide proper client care information or not complying with agreed client care arrangements				1				1													2	4

Nature of Complaints	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
12. Failure to provide proper costs information including Legal Aid Rules at the outset of the transaction or not adhering to arrangements made	3			1			2	1		1	2		1									11
13. Failure to properly consider client's complaints under solicitor's own in-house complaints procedure	4		1	3	4	1		1		1	6							1			1	23
14. Other factors	1			2	2		1														1	7
15. All factors (total 1 - 14)	44		4	15	45	5	7	5		9	33	2	7					8	1		29	214

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 6

Comments on Complaints Statistics 2014

“First, put the simple things right”

- 6.1 In 2014 there were 214 categories of complaint from 76 complainants to 65 solicitor firms.
- 6.2 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.
- 6.3 The most frequently occurring **nature of complaints** in recent years have been:

Nature of Complaints	2011	2012	2013	2014
Undue delay/inaction	26%	21%	17%	21%
Failure to keep client informed	15%	20%	21%	18%
Delay/failure to respond – enquiries	11%	13%	15%	12%
Acting contrary to client instructions	9%	8%	7%	8%
Withholding or loss of documents	12%	13%	7%	9%
Failure to consider complaints under Regns	5%	7%	12%	11%

- 6.4 Together these six descriptors accounted for 79% of total complaints received in 2014, and 79% in 2013, 82% in 2012 and 78% in 2011. The category **Failure to consider complaints properly under Regulations** is rising possibly due directly to a greater degree of stringency on those who offend by the Law Society.
- 6.5 It will be noted that all these relate to complaints as they are presented and registered at the beginning of the process. Outcomes - which are analysed in Chapter 4 above – describe how each complaint ended up after the process of complaints handling has been concluded by the Law Society at tier two.
- 6.6 The table which is contained in Chapter 5, 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**.
- 6.7 The four most frequently occurring circumstances of complaints in recent years were:-

Nature of Complaints	2011	2012	2013	2014
Conveyancing	12%	22%	13%	21%
Family Law – General	22%	16%	21%	15%

Nature of Complaints	2011	2012	2013	2014
Accidents (incl personal injuries)	9%	15%	12%	21%
Wills & Probate	15%	24%	13%	13%

6.8 Together these four **circumstances of complaint** accounted for 70% of the complaints received in 2014 when classified in this way. The Law Society uses these incidences along with other data collected to help to guide the content of the Continuous Professional Development (CDP) process.

6.9 It will be noted that the incidence of complaints arising in **Conveyancing** is on the rise. It is a common cause for complaint, and the constantly changing nature and characteristics of the property markets clearly have an important bearing on giving rise to these types of complaints. **Family Law** has been changing in recent years, with a greater emphasis on mediation; in such cases compromise seems to be the principal feature, and this can result in conflict with the professional attempting to obtain agreement with opposing parties. Complaints relating to **Accidents** form a greater proportion in the total than in the previous year – 21% as against 12% in 2013.

6.10 Once again, 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

to me that the Law Society is ensuring that within the limitations of the legislation, they hold to account solicitors who fail to follow regulations. I particularly highlight that those solicitors who do not use or use correctly, their in-house complaint handling procedures, which under the regulations they are required to do, are held to account by the Law Society, where it is discovered in a complaints investigation that they have failed to do so. Offending solicitors are liable to be reported to the Council of the Law Society, and may be referred to the Solicitors Disciplinary Tribunal for further action to be taken against them.

6.11 A further detailed analysis of the nature and circumstances of complaints while illuminating will not have much practical purpose, so the focus should be on the major contributors for best practical effect. The plain fact is that the analysis shows clearly that 80% of the complaints involved fundamentally inefficient service. The straightforward difficulties that arise in any business too frequently are the main causes of complaints 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

To avoid and prevent precisely these events from happening and recurring is what good and efficient business is all about.

Chapter 7

Law Society Response to 2013 Report

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

- 7.1 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 from publication date on my website:- www.layobserverni.com
- 7.2 The Law Society has the right to comment on my Report, and they do so at the end of November after publication. Their Response is then made public when my next Annual Report is published the following May. Once again this year, as for the past number of years, their Response dated end November 2014 is thoughtful, detailed and generally supportive of what I have recommended. Where I think the Law Society could do more, I have indicated in this and previous Reports. I do however particularly commend their work of trying to front load on the profession the responsibility for dealing properly with complaints in the first place.
- 7.3 There is clear evidence that this is bearing fruit, not least in the numbers and nature of complaints coming through the system. For example, it is evident that there is a reduction in multiple complaints being taken against solicitors, and there is 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 – although the caution is that no-one actually knows how many complaints are being received at the first tier.
- 7.4 There has been a suggestion by a number of politicians that measures should be put in place to count these at the first tier; in my opinion this would be a pointless exercise which merely introduces extra costs, and a level of bureaucracy which is of no value. The plain fact remains that there are very few complaints being brought by clients when compared with the enormous number of transactions that the profession has to deal with year on year that need to be brought beyond the first tier. I would urge that it is quite sufficient to be aware of the numbers of complaints coming forward to the second and third tiers.
- 7.5 In this context I again commend the Law Society for its work in ensuring that the profession and individual solicitors know clearly what the current legislation and regulations mean for them by the Continuing Professional Development programme, publications and other contacts. This leaves the individual solicitor in no doubt as to what he/she must do, but also what the penalties are for failing to deal with complaints properly.

- 7.6 In fact, I think that the Law Society should make more of describing these penalties when dealing with complainants and relating to politicians and the public. Also the implications for professional reputation in responding properly to the second tier are very significant. Complainants need to have these implications for a solicitor spelt out clearly to them, particularly as there is seldom a direct alleviation of the difficulties in the complaint for the complainant available through the Complaints Handling System.
- 7.7 Once again, I note that the Law Society should make it plain to complainants that they appreciate the trouble clients have taken – particularly where there is no redress for the complainant – in bringing forward their complaint as the Complaints Handling System is 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 the complainant, which so many of them – rightly in my view – think is so often absent. The absence of this 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 that the Law Society represents. The application of any fresh set-up under proposed legislation is likely to require a new type of thinking. In any event, this is precisely the sort of thinking which is already being adopted in other professions and occupations with up to date and modern Complaints Handling Processes.
- 7.8 I am aware that the Law Society is as anxious as am I that any new legislation is enacted as soon as may be. The Law Society, as is evident from their detailed response to my 2013 Annual Report, have made as many of the changes as are possible under the existing legislation and regulations in preparing for the likely changes. When ‘under starters orders’ for so long (the Review took place in 2007 and the Draft Bill was published in November 2013) it is natural for all to be impatient to move forward and to put in place the plans that have been laid.

Chapter 8

Concluding Comment

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

8.1 This year I have made no specific Recommendations. In essence the Complaints Handling System of the Law Society continues to operate reasonably well under the current legislation. In fact there is no option other than to do so for both the Law Society of Northern Ireland and the Lay Observer for Northern Ireland. 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.

8.2 The work of the Lay Observer is governed by a set of principles clearly laid out on my website, and in my leaflets. It is to be noted that I also operate my role to the standards laid down by the Ombudsman Association of which I am a member. It is from these standards and my operating to them that in part I derive my legitimacy as a complaints handler. All these principles and standards are published on my website, so there is no need to repeat them in this publication.

8.3 Meantime, the Law Society and the Lay Observer must simply maintain the Complaints Handling System under the present legislation until the Draft Bill of 2013 is enacted by the Northern Ireland Assembly.

8.4 This Report is available primarily in electronic format. It is accessible from 31st May 2015 on my website at **www.layobserverni.com**.

8.5 My contact details are:-

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8.6 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. Steps are also taken to ensure that every solicitor on the register in the Province receives an electronic copy. **I hope that solicitors will make it their business to review the content of the Report to determine its relevance to the work of their own practices.**

Alasdair MacLaughlin
31st May 2015

Appendix 1

Who is the Lay Observer?

Photo © Neville Latham



Alasdair MacLaughlin has been the Lay Observer since 2004

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

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. In addition he is a Trustee of the Belfast Association for the Blind.

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

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

Appendix 2

Law Society Response to 36th Report

Response of the Law Society of Northern Ireland to the 36th Annual Report of the Lay Observer for Northern Ireland Entitled “Draft Bill Out to Consultation”

Introduction

1. This is the Law Society of Northern Ireland’s formal response to the Lay Observer’s Report for 2013.
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 35th Report, the Legal Complaints and Regulation Bill (Northern Ireland) 2013 (the Bill) was published in November 2013. The Bill is the Government’s outworkings of the recommendations of Sir George Bain in relation to changes to complaints handling by the Law Society and the Bar Council to provide for enhanced redress for solicitors’ and barristers’ clients.
4. The Society notes the detailed comments and summaries of the Bill that the Lay Observer has included in Chapter 2 of his Report outlining the powers and changes contained therein. The Society would agree with the Lay Observer where he says at paragraph 2.12 that co-operation and accommodation between the Legal Services Oversight Commissioner and the regulatory bodies and also their respective Client Complaints Committees will be key to the successful implementation and operation of the proposed statutory provisions and that an adversarial approach would not be appropriate.
5. Prior to the publication of the Bill, the Society had taken significant steps towards making provision for the implementation of the Bain proposals, including independent office space for the new Department and the development of online records for transfer of data. Further infrastructure will be provided as and when required to ensure the Society can deliver on its responsibilities for the new system. In the meantime the Society continues to improve the current system where possible.
6. The Society agrees with the Lay Observer at paragraph 1.6 of his Report that until there are legislative changes there is little further development work of a structural nature which can now be tackled. Any further work is, as the Lay Observer noted, *“fine tuning details that can improve the current processes”*.

Nevertheless it is important to operate the current system with continuing commitment and effectiveness until new legislation is in place.
7. An automatic telephone system was introduced in 2013 providing direct and independent access to the Client Complaints Department wherein clients are able to request complaint forms directly or are referred to the Society’s website to access forms and information on complaints or access information about the Solicitors Remuneration Certificate process, (a statutory provision for the assessment of non-contentious costs).
8. The Society’s website plays an important role in providing information to anyone wishing to make a complaint about their solicitor. The website is now being re-built and will be accessible and user friendly. In the meantime

all the complaints documents continue to be downloadable.

9. Our documents and publications are under review with a view to improvements for the benefit of all those using the process.
10. The Governance Sub-Committee of the Client Complaints Committee has continued to monitor all aspects of the complaints process. Following the Society attending before the Department of Finance Committee sitting at Law Society House on 20th February 2014 at which the Society gave evidence to the Committee in relation to the Bill, the Society indicated that it was developing a form which it would publish on its website and with its documents for a client to use under the solicitors' in-house complaints procedure, to assist clients in structuring their complaint. The Society has notified the profession through the Continual Professional Development (CPD) Seminar on Risk and also through the E-Informer that the form will be added to the complaints documents for the benefit of the public from the 2nd January 2015. It is hoped that with the assistance of the form clients can make detailed and comprehensive complaints identifying all relevant issues so that solicitors are given the proper opportunity to address those concerns in a comprehensive way, which hopefully will reduce any requirement for a further complaint to the Law Society or to the Lay Observer.
11. Having changed the requirements on solicitors to produce evidence in support of their responses on 1st September 2012, the Society is receiving 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 will be taken into account when the Client Complaints Committee decides the outcome of the complaint.

12. Feeding the complaints experience back to the profession is part of good complaints handling, as recommended by the Lay Observer. The Society's main vehicle for so doing is its CDP programme. During the course of the year Client Care related seminars included: Anti-Money Laundering & Mortgage Fraud, Building Strong Client Relationships, Client Care: Dealing with Bereaved Clients, Comprehending Conveyancing, Conveyancing Conference, Costs – Non Contentious Costs, Costs – 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.
13. The Risk Management CPD days organised by the Society took place on 7th, 8th, 14th and 17th October 2014. The four venues were Limavady, Ballygawley, Newry and Belfast. The format is a full day with solicitors being able to attend all day or one session, either morning or

afternoon. Many solicitors elected to attend the all day event. Client Complaints issues were a significant part of the event.

14. The Director of Client (Solicitors) Complaints, who has been appointed to take forward the necessary work to develop the relevant practices and procedures and supporting documents required for the future Complaints Department on implementation of the Bill, updated the profession in relation to the provisions of the Bill and the consequences for the Society and the profession, the importance of in-house complaints procedures, the requirement for a written procedure and the pursuance of a complaint under the in-house complaints procedure before it is referred to the Society. The essential factors to be taken into account when considering an in-house complaint particularly with a view to maintaining good relations and securing repeat work were outlined, namely:-
 1. Accessible
 2. Timely
 3. User orientated
 4. Resolution focussed
 5. Objective
 6. Continuous improvement
15. 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.
16. Purchasing a house is recognised as a significant stressful experience in people's lives. From January 2014 practitioners who do conveyancing

work are required to use three hours of their group study, i.e. attending seminars, on conveyancing. It is worth stating again that 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.

17. Through the active CPD programme list and 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.
18. At paragraph 1.14 the Lay Observer reported a change to the administrative arrangements whereby he was no longer physically placed within the Client Complaints Department when carrying out his periodic inspections. The arrangements were due to accommodation requirements within the Society which temporarily made the room used by the Lay Observer unavailable because it was required as an office for a temporary member of Senior Staff. The room is now available again and the Lay Observer has had access to the room with a security pass as required. The Society's Director

of Client (Solicitor) Complaints is available to meet with the Lay Observer at any time, at his request and there is a protocol between the Lay Observer and the Law Society which provides for the Lay Observer to seek written comments from the Society in relation to any individual complaint as and when he deems it necessary to do so. The Society has dealt with any such enquiries promptly. The Chief Executive also meets with the Lay Observer regularly.

19. At paragraph 3.7 the Lay Observer records that he dealt with 37 cases which were within his remit in the context of complaints that had already been made to the Law Society in 2013 being a third of complaints received. The Society would first of all record that the Lay Observer's role, function and contact details are included on the Law Society's website and in its general complaints documentation. Further the concluding letter to the complainant in relation to any decision by the Client Complaints Committee refers the complainant to the Lay Observer as a matter of routine whether the complaint is upheld or not. The Society regards this as entirely appropriate so that the complaints process is open and transparent and complainants at all times are aware of any other options they may have in addition to the Society's role.

Recommendations

20. It is noted that the Lay Observer in paragraphs 9.1 – 9.8 makes no specific further recommendations in relation to changes to procedures which would assist the complaints investigation process. The Society welcomes the Lay Observer's Report in reinforcing the value

of resolving the complaint directly between the solicitor and the client as only they know precisely what gave rise to the problem and how best to resolve it. The Legal Ombudsman's Office say that over eighty percent of business conducted by a solicitor is repeat business. Some solicitors would say that figure is even higher here, and therefore it is in every solicitor's interest to resolve a client complaint directly with a client to ensure ongoing and future business. This has been emphasised to solicitors through our Seminar programme.

21. With regard to paragraph 9.2 the Society confirms that where solicitors do not co-operate with it in the investigation of complaints they are referred to the Solicitors Disciplinary Tribunal for failure to reply to correspondence and, where substantive issues appear on the papers which have been received charges are also brought based on those papers. The Society however, like the Lay Observer, recognises that such procedures do not assist the complainant, being entirely penal; the Society's preference is for all solicitors to co-operate at the earliest opportunity to ensure the client gets a full explanation and access to all relevant documents and through its processes tries to ensure this is achieved.
22. The Lay Observer at paragraph 9.3 states it is essential that the aims of the complaints handling are made clear to everyone. The Society values its self-regulatory functions and strives at every level to operate those functions transparently, effectively and fairly and, through its documents and website, explains the complaints procedures.

23. In paragraph 9.4 the Lay Observer refers to the standards which have been developed elsewhere with other complaints processes and points to the guidance criteria issued by Her Majesty's Government Cabinet Office. The Society strives to comply with that criteria. With regard to one of those standards relating to the complaints process being regularly monitored and audited to make sure that it is effective and improved, the Society would highlight the fact that it has ISO 9001 approval. It must, on an ongoing basis, review documentation and procedures to make improvements and to identify whether there have been any breaches in its current processes. Re-accreditation of the Society took place on 11th September 2013.
24. The Society would advise that following the development of the in-house complaints form as referred to at paragraph 10 in order to assist clients thinking of making a complaint, the current documents will be revised to take account of the form and simplified where necessary and will fully explain how the form is to be used, and in so doing will take account of the Lay Observer's comments in relation to explaining the current effect of the complaints process upon an individual firm.
25. In paragraph 9.5 the Lay Observer refers to the Law Society needing to consider *"thoroughly and soon the change in mindset that will be required to carry the complaints system forward to meet the likely client complaints orientated requirements of the Draft Bill"*. The Society is fully aware of its responsibilities in that regard. Measures are in place to develop the necessary procedures and documents which will form the basis of the new organisation to give effect to the intentions of the legislature. The significance of the issue is addressed in the appointment at a very Senior level of Director of Client (Solicitor) Complaints with the additional role of developing the relevant practice and procedures and supporting documents. In the meantime the Society is constrained by the terms of the Solicitors (N.I.) Order 1976 as amended. The Society would draw the Lay Observer's attention to the provisions of 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 believes 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 to allow them to determine what further action they need to take if they are not happy with the Society's outcome. At all times any conclusions reached by the Society must be based on facts as shown in the papers as findings can cause reputational damage. Given that the process is penal, the principles of sentencing apply and the Society has to decide if any action needs to be taken and at what level.
26. In paragraph 9.6 the Lay Observer suggested that the Society continue and develop contacts with the Scottish Legal Services Commission and the Legal Ombudsman's Office for England & Wales. The Society, through its office bearers and staff are in regular contact with the organisations in other jurisdictions to share experiences and to learn from each other. The Society has previously been in touch with the Scottish Legal Complaints Commission and the Legal Ombudsman's Office for England & Wales when it appeared that the Bill might be published some

time ago. However, the delay in publication and the increased experience of those offices in the intervening years will mean that further in-depth discussions with those organisations will be necessary to advance the Society's knowledge and assist it in drafting the necessary practise and procedures in anticipation of setting up the Solicitors Complaints Committee and supporting Department.

27. With regards to paragraph 9.7 the Society, through its CPD programme to the profession, through the Writ and its E-informer, seeks to inform all solicitors of all pertinent issues and encourage them to take the necessary action to maintain standards and to protect themselves from any adverse risks. Risk avoidance is of benefit to the client and such measures are to be encouraged. In individual cases, as appropriate, the Society points out to solicitors where it expects specific action to be taken to avoid any repetition of conduct or errors. A complaint however is currently 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 has 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".

28. In paragraph 9.8 the Society welcomes the Lay Observer's offer of assistance in taking forward its work in providing for the necessary structures to support the new Department. The Society will also maintain ongoing working relationships with the Lay Observer in relation to the current system until such times as the new legislation is implemented. The Society seeks the implementation of the new legislation as a matter of urgency.



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