

—————→ *Action: Prevention and Cure* ←————

Annual Report of The Lay Observer

2004

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2004

SOLICITORS (NORTHERN IRELAND) ORDER 1976

SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989

Presented to the Lord Chief Justice of Northern Ireland, the Department of Finance and Personnel and the Council of the Law Society Northern Ireland pursuant to Article 42 of the Solicitors (Northern Ireland) Order 1976 and Article 17 of the Solicitors (Amendment) (Northern Ireland) Order 1989.



The Lay Observer for Northern Ireland

Alasdair MacLaughlin took up appointment as The Lay Observer for Northern Ireland on 1st April 2004. He has extensive experience in the private, public and voluntary sectors. Following 15 years in industry, he was the Director NI of the Confederation of British Industry for 10 years followed by a further 10 years as a Director General of the Ulster Farmers' Union. He is Chairman of CfA Ltd which is the custodian company for National Vocational Qualifications, standards and frameworks in Administration throughout the UK. He is also a member of the NI Probation Board, and of the EU Monitoring Committee for Structural Funds in Northern Ireland. He is a trustee of Relate and of the Belfast Association for the Blind.

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His appointment is made according to Article 42(1) of the Solicitors (Northern Ireland) Order 1976.

Amendments to The Lay Observer's duties are made in Article 17 of the Solicitors (Amendment) Northern Ireland Order 1989, which came into effect on 3 October 1989.

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To: The Right Honourable Sir Brian Kerr, The Lord Chief Justice of Northern Ireland

The Department of Finance and Personnel

The Council of the Law Society of Northern Ireland

I have the honour to present the Twenty-seventh Annual Report of The Lay Observer for Northern Ireland covering the year to 31st December 2004.

Alasdair MacLaughlin

Alasdair MacLaughlin
June 2005

Section 1

Opening Comments

1.1 This is my first Annual Report, having been appointed The Lay Observer for Northern Ireland from 1st April 2004. My predecessor, to whom I pay tribute, Professor Vincent Mageean OBE, was most helpful in getting me started in appropriate fashion when I was appointed in a “shadow” capacity from 15th February 2004. I am very grateful to him. I fully recognise that his is a challenging incumbency to follow. His six years as The Lay Observer have witnessed a series of developments in both practical and conceptual approaches to the role. His legacy is amongst other factors, the development of a most valuable set of diagnostic concepts in relation to complaints, how they arise and how best to deal with them.

1.2 When I first became involved, it was very evident that there was good will and interest towards the role of The Lay Observer in the Law Society of Northern Ireland and in the Department of Finance and Personnel. If this was tinged with a degree of concern about how the “new recruit” might tackle the role it was rather less evident! I am grateful to the Office Bearers and the Staff of the Law Society for their forbearance and their ready willingness to assist. I particularly note the interest of the current President, Mrs Attracta Wilson, the Chairman of the Clients Complaints Committee, Mr Rory McShane and the Chief Executive of the Law Society, Mr John Bailie. It is, of course, Mrs Moira Neeson, Assistant Secretary and her assistant, Ms Priscilla Flavelle to whom I relate most frequently. I thank them for their ready help and response.

1.3 Shortly after I took up office, in June 2004, Miss Adrienne Brown, Assistant Secretary at the Department of Finance and Personnel retired. Her help to me directly and through her staff at the time and since has been invaluable. I wish her well in retirement. Some time later, in the autumn of 2004, Mr Norman Taylor took over her role and I value his ready assistance and advice, for which I thank him. I also thank the Permanent Secretary Mr John Hunter and Deputy Secretary Mr Chris Thompson for their commitment to

and interest in underpinning the high expectations Government has of the remit of The Lay Observer. They have also made me aware of their recognition of my independence.

1.4 I particularly wish to record my thanks to the Lord Chief Justice of Northern Ireland, the Right Honourable Sir Brian Kerr. He has been willing to conduct and continue a dialogue with me and I am grateful for his wise counsel and anticipatory interest in what I now report.

1.5 During the year I have had reason also to be grateful to the Legal Services Ombudsman for England and Wales, and the Scottish Legal Services Ombudsman. I would also thank Mrs Jodi Berg, the Independent Examiner. Most helpful too have been Mr Tom McGrath OBE of Marsh & Company and Judge Donal McFerran, the Secretary of the Solicitors Disciplinary Tribunal.

1.6 I have had most useful dialogue with the Registrar Land Registers for Northern Ireland, Mrs Patricia Montgomery. I deal with the particular matters in which we were in discussion in Section 8 of this Report. I have also had useful discussion with the Legal Services Commission’s Chief Executive and staff.

1.7 I am grateful also to the Department of Social Development within whose premises my office was situated. Lastly I pay tribute to my own PA Ms Victoria Chups for her work day by day and in preparing this Report.

Alasdair MacLange

Section 2

Preamble

2.1 I have taken as the theme for my first Annual Report ACTION - PREVENTION and CURE.

2.2 While I recognise that there are Government reviews of Legal Services provision throughout the UK, including a review for Northern Ireland under the direction of the Department of Finance and Personnel, the ongoing work of The Lay Observer must continue. Over the period 1998-2003, my predecessor in his Annual Reports has developed an elegant and valuable framework and practical proposals for dealing with complaints. Some of these have been incorporated into the complaints handling system of the Law Society of Northern Ireland. The general tenor of this work has been a focus on the complainant as a CLIENT. Complainants have perceptions and expectations which require skilled management by the profession - solicitors and Law Society alike - to create an alignment, and therefore satisfaction, with what actually happens. If this can be achieved, there will be more satisfied clients of solicitors and fewer inefficiencies arising from misalignments. It is an imbalance which creates so many of the complaints received.

2.3 Alignment is far from simple, not least because the Solicitors' Complaints Handling system is concerned with testing whether the solicitor has erred from the professional path, and if so, how best to deal with the solicitor. It is not concerned (or if it is, it is only incidental or indirect) with providing any form of redress for the complainant.

Redress

- v. set right (something unfair or wrong)
- n. payment or action to make amends for a wrong

2.4 I have found that the interpretation by complainants of the redress they want is quite subtle. If they read carefully the guidance leaflets issued by the Law Society - as most appear to do - they recognise that there is no monetary redress available to them (except in perhaps a very few very specific ways). It is reasonable to ask in

these circumstances why complainants would persist with their complaints if monetary redress were what they were seeking - which seems to be a common perception that obtains in those who have to operate the system. My experience suggests that often all complainants want is a simple apology, their "day in court" so to speak, to know that there is an independent view, and what that view may be - particularly if that view coincides with their own. Some clearly want retribution which is normally not available; some want to "witness the look of shame", and some wish to see financial or other restraint applied. There seems to be a strong view that to apologise for even a simple mistake will provide admission of responsibility and so open the way for unpleasant consequences.

2.5 Given that this is the case, and further given that the current rules and legislation limit the methodology of complaint handling, it is scarcely fruitful currently to dwell on solutions which are "outside the box". I also believe that mediation has a strong role in complaints handling. Indeed without some form of mediation, there is likely to be only one winner and there can be no happy all round settlement. In so many areas of life today, the idea is beginning to be accepted that both or all parties can be seen, in a dispute, to be winners. Mediation tries to find a way.

2.6 Mediation is a matter which is occupying much attention in the Law Society at present. It is also an area where, particularly in the Family Courts, there is plenty of scope and the Judiciary in Northern Ireland have the topic under active consideration, there and more generally.

2.7 My first Annual Report tries to identify a small number of important actions that can be put into effect with immediate effect, without further ado and also actions which continue on-going processes.

Section 3

What the Lay Observer for Northern Ireland does

3.1 A common question is “What does The Lay Observer for Northern Ireland do?”.

3.2 The Lay Observer operates under the SOLICITORS (NORTHERN IRELAND) ORDER 1976 and the SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989. The profile of The Lay Observer is not high; and this is intentional. Nevertheless, a clear distinction must be drawn between ensuring that the Office is accessible and visible for those who need it on the one hand, and on the other “touting for business”. In my view, visibility is essential for anyone wishing to invoke the complaints handling process and it must be encouraged in whatever way possible.

3.3 This is why a simple leaflet in plain English has been published for those who need and want information. It is made available by me to everyone who makes an enquiry about how to complain. The content of the leaflet is contained in Appendix A.

3.4 Increasing use of the internet is also recognised. Consistent with this and with advice from the Information Commissioner, the question of a website for The Lay Observer is being considered at present. It is planned that the website, when launched, will contain the leaflet, successive Annual Reports (for up to five years), contact advice and a clear articulation of expectations that are reasonable from the role of The Lay Observer for Northern Ireland.

Section 4

The work of The Lay Observer for Northern Ireland in 2004

4.1 The Lay Observer's role is fundamentally to oversee the client complaint handling function of the Law Society of Northern Ireland. The law, and protocols developed over the years with the Law Society, empower me to:

- *investigate* complaints brought against the clients complaints handling processes of the Law Society by clients of solicitors.
- *audit* a significant proportion (25% - 30%) of those cases which are concluded by the Law Society but which are not subsequently referred to me.

4.2 To put this into perspective, I dealt with 40 investigations during the calendar year 2004 and the Law Society received 339 complaints relating to solicitors by their clients in the year ending September 2004. Between my predecessor and me, 100 complaints were audited during the twelve months ending September 2004.

4.3 The overall impression both activities provide is of a well ordered and generally efficient complaints process. Comments have been made by my predecessor about the use of language by the Law Society in dealing with complainants. He quoted a large number of examples in his last Annual Report for 2003, and I do not intend to comment further on this. However, it must be noted that under the law, the Law Society conducts a process which is solicitor centred. That is to say, the outcomes of the complaints are concerned with whether or not complaints against solicitors are upheld. If they are upheld, the outcomes include the suitable action, if any, to be taken against the solicitors concerned.

4.4 It is worthy of note that the complaints process is not concerned with giving the complainant any satisfaction beyond that of knowing that a complaint against a solicitor has been considered, and if thought appropriate, that action has been taken.

4.5 It is quite evident to me that complainants are not always aware that when the Client Complaints Committee of the Law Society finds against a solicitor, that solicitor has already been through an arduous process. This poses a very real potential threat (of for example being taken to the independent Solicitors Disciplinary Tribunal) as well as an unpleasant procedure of being judged by one's peers and by lay people who are considering information about the complaint. I believe that the Law Society should redraft their leaflets and other means of communication to make this more explicit and clear for complainants.

4.6 In this context - that the complaints process is focused primarily on the solicitor, rather than the complainant - it is not easy to provide the complainant with any degree of satisfaction. The question of *redress* is a concept which has developed in many if not most other regulatory regimes, but not in the complaints processes of the Law Society of Northern Ireland, chiefly because of the legislation in place (see 4.3 and 4.3 above). The Law Society may feel that this is self-evident; in my experience with complainants it is not - they are often surprised that action taken or not taken against a solicitor is not balanced by action to provide *redress for complainants* (see comments in paragraphs 2.3 and 2.4 above).

4.7 It is for this reason that I have commented to a number of complainants in a way in which the Law Society may not always approve. However, as my predecessor so clearly pointed out, "the fact that complainants may have unrealistic expectations of the processes of the Law Society means that their expectations need to be managed. It is not enough to say that such unrealistic expectations are simply a reality and therefore are not to be addressed on behalf of the complainant". I believe that it is as much the role of the Law Society to manage well these expectations, as it is to deal with the complaint within the Law. For my part, where I believe that I can help perceptions and at least give a measure of greater understanding, and from time to time, of comfort to the complainant, I will continue to do so. I recognise

however, very clearly that under the legislation I may give no legal advice and The Lay Observer for Northern Ireland may not be legally qualified.

4.8 As already stated, I investigated 40 complaints brought against the complaints processes of the Law Society in the calendar year 2004. This compares with 29 cases in 2003 and 26 in 2002. I define a *complaint* to The Lay Observer as one which involves access to the files of the complainants at the Law Society. There were a small number of complaints brought, which were not complaints in terms of the regulations; these usually involved a complaint **against a solicitor of whom the complainant was not a client**. Nevertheless, the complainants were raising the matter formally, and the Law Society were most helpful in these cases in giving me access, on a voluntary basis, to the files. This was despite the fact that under the Law, the regulations or the protocol they were not required to do so. I commend the Law Society for this assistance.

4.9 I have not found any instance where the Law Society has not handled the complaint according to the protocols. However, there have been a number of cases where the Law Society in my opinion could have managed client alignment rather more effectively. In each of these cases, I have made it clear to the complainant and to the Law Society why I took this view and how it might have been otherwise tackled. I have referred one case back to the Client Complaints Committee where I took the view that the Committee had been too lenient. In this case, the Committee were not disposed to accept my recommendations.

4.10 I have not provided a further statistical classification of complaints brought to me. However, there is one type of case which I believe I should highlight. I received several of these and found them, at a personal level, disturbing and distressing. These cases involved the break up of families. Such cases, from a purely subjective point of view, generate so much emotion for the complainants involved that they face great difficulty in seeing rationally their problems. It is common in such cases that the complainant has, at best, inordinate expectations of the solicitor which he/she cannot fulfil, and at worst irreconcilable opinions and feelings about the role of the solicitor. In my view marriage difficulties of one sort or another place the greatest pressures of all on solicitors in managing client expectations. The saddest of these cases for me involves the whole question of access to children. The words of The Rt Hon Lady Justice Butler-Sloss seems to me to sum it all up:

“The longer I sit as a judge the more I feel I have to learn. A judge must never think he or she knows it all. I have learnt that legal judgement is not the best arbiter in a marriage dispute. Everything is best resolved by settlement, by mediation, by the commonsense of parties”.

Dame Elizabeth Butler-Sloss

The Family Law Committee of the Law Society has an excellent paper on this matter entitled “Client Care Guidance for Practice”. It should be made more widely available in my opinion.

4.11 These types of complaints and others emphasise the need on occasion for *mediation*. This concept is being gradually assimilated into the formal setting of the Law, particularly in the Family Court. I am well aware that the Law Society (along with the Institute of Legal Studies) has a major interest in this matter, has incorporated it into the mandatory Continuous Professional Development Programme and is actively promoting it as an important element within the professional work of the solicitor. By the same token, it may well be a useful concept in complaint handling processes. In the light of the current Review of Legal Services in Northern Ireland by Government and the fact that *mediation* is resource hungry, I do not intend to further pursue the matter in this Report. However, I do recognise that it is a very real issue at present in the profession.

4.12 The work of The Lay Observer is not simply and solely within the context of the complaints handling processes of the Law Society. Like any other independent endeavour, there are activities which support and inform that work. This includes extensive reading and research; of very great value in this is continuing contact with the British & Irish Ombudsmans Association (BIOA), of which The Lay Observer is a member. BIOA has in its membership most if not all Ombudsmen and persons with equivalent roles in complaint handling in the British & Irish jurisdictions. Membership confers value which is immeasurable in terms of shared expertise, experience and developmental thinking. The work of The Lay Observer also includes maintaining contact with the Legal Services Sector throughout the UK and in Ireland and with those who are involved in its oversight and supervision of the complaints handling systems. Finally, the work includes a number of governance issues including Freedom of Information, requests for opinions, the maintenance of transparency and independence of role as well as good administration of services, communication and office requirements.

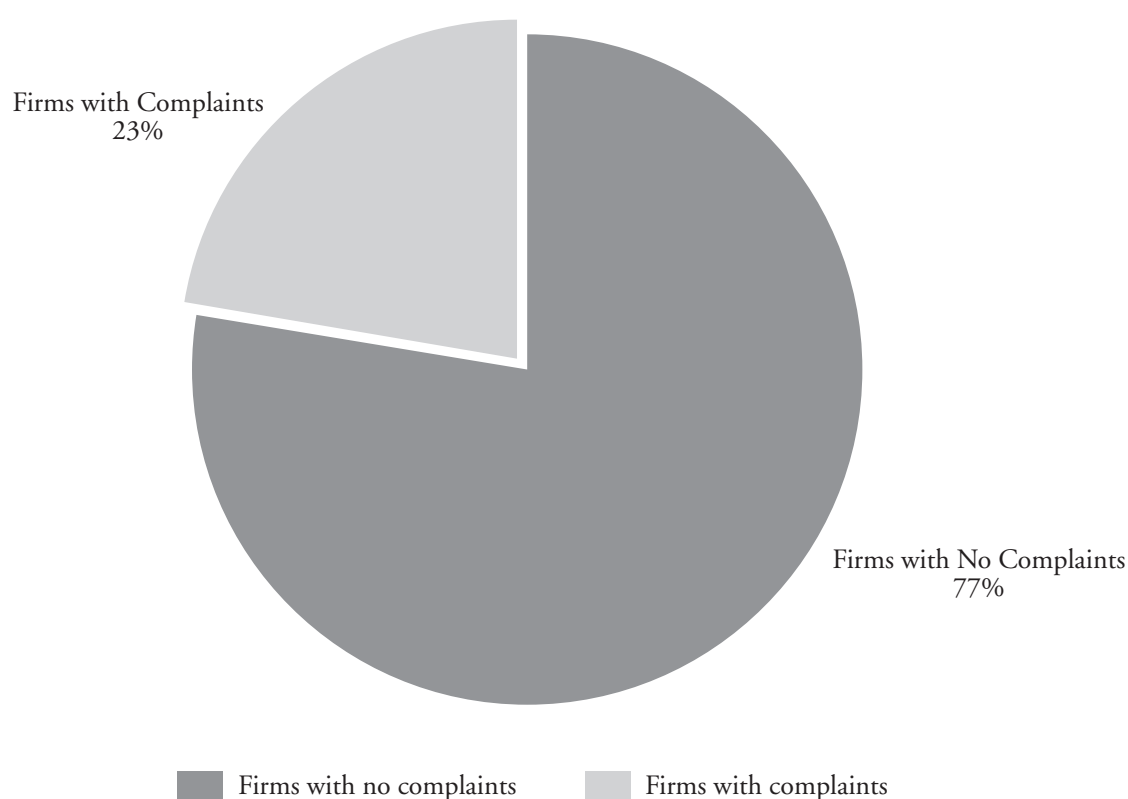
Section 5

Final Outcomes of Complaints made to the Law Society

Note: The complaints referred to in Section 5 are those which achieved a final outcome in the year 2004.

Chart A

% Number of Firms with Complaints and % Number of Firms with No Complaints in 2004



437 firms (77% of total number of firms) have had no complaints made against them to the Law Society. 133 (23%) have had complaints forwarded to the Society. These proportions are precisely as they were for 2003. An analysis of the 250 complaints is given in the following two charts.

Chart B

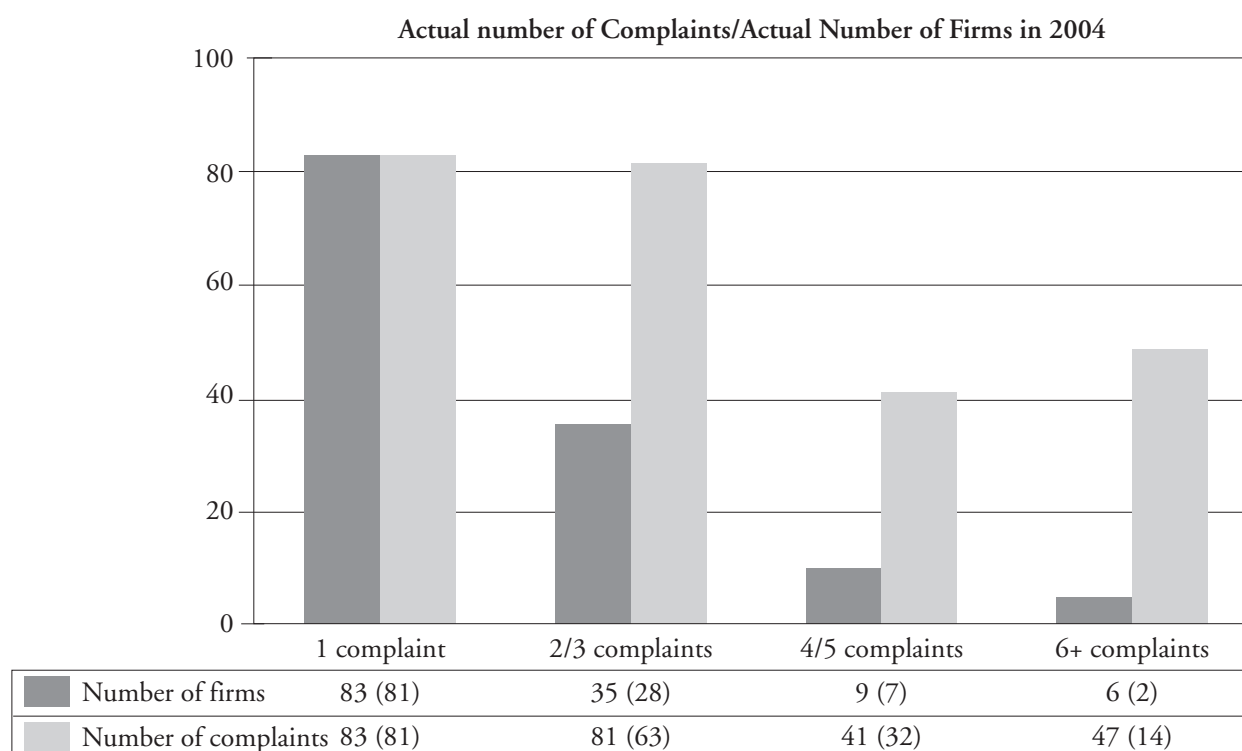
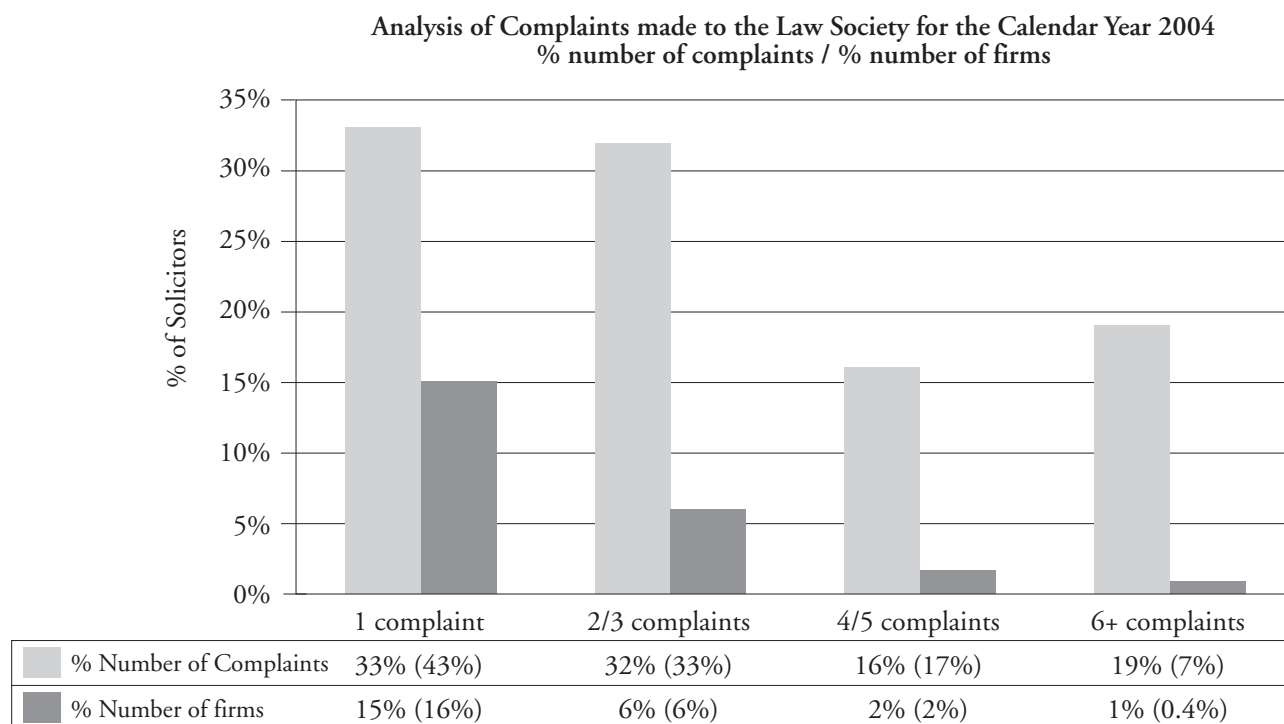


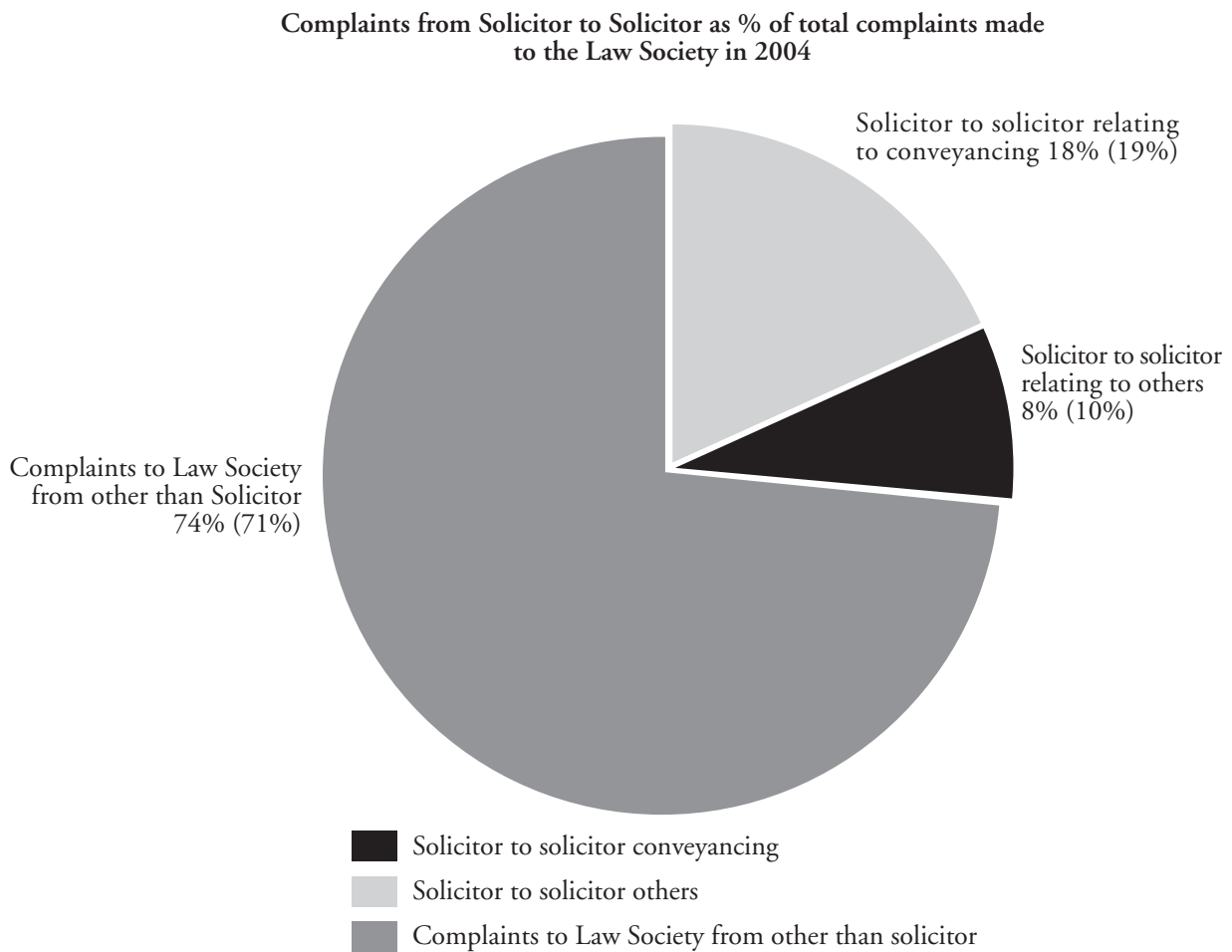
Chart B presents the actual numbers (and not the comparative percentages which are shown in Chart C) and reflects the same statistical pattern. The equivalent figures for 2003 are shown in brackets.

Chart C



Figures for 2003 are shown in brackets.

Chart D

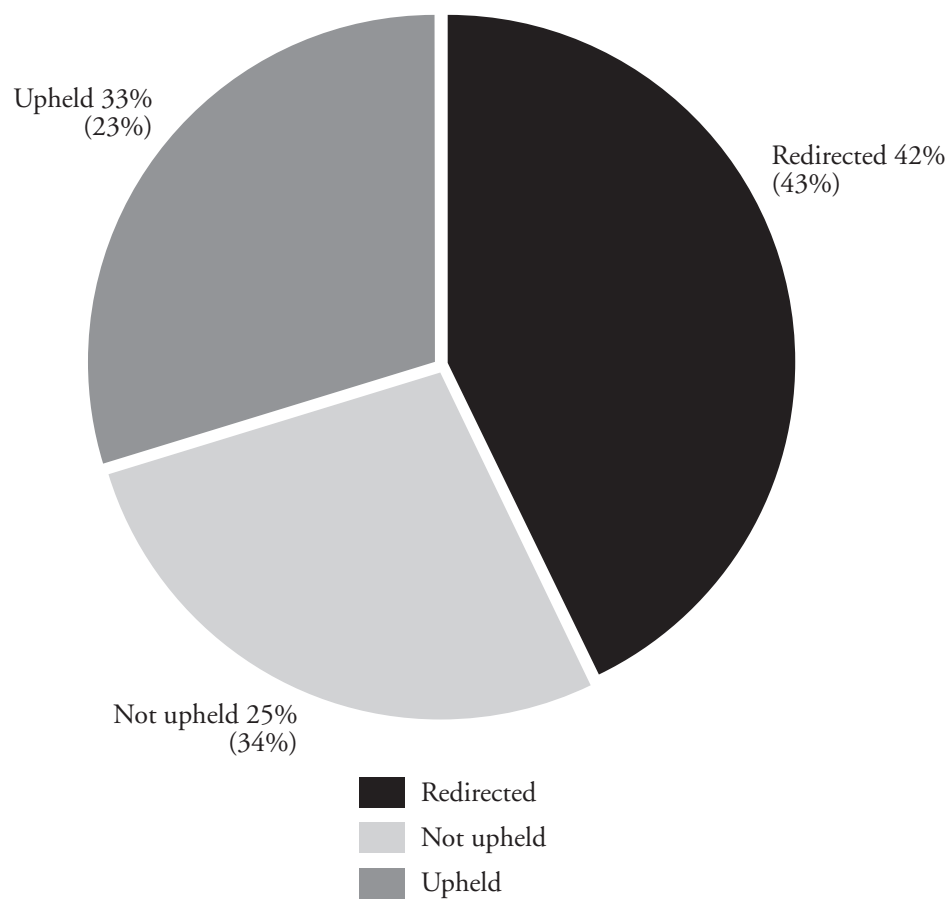


Solicitor to solicitor complaints amounted to 65 (54) out of a total number of complaints of 250 (190). 45 (36) out of the 65 (54) or 69% (67%) were conveyancing complaints.

Figures for 2003 are shown in brackets.

Chart E

Summary of final outcome on complaints registered and completed in 2004



Figures relating to 2003 are shown in brackets.

Comment

5.1 The number of solicitors firms have increased since 2003 from 514 to 570 in 2004. Chart A indicates that exactly the same proportion, 77% (437) had no complaints made about them to the Law Society.

5.2 Chart B deals with the relationship between the number of complaints brought and the actual number of firms. So this year, the number of multiple complaints (i.e. more than 1) brought against firms has increased. In 2003, 37 firms had more than 2 complaints brought against them to the Law Society; in 2004, 50 firms had more than 2 complaints brought against them to the Law Society.

5.3 Deeper examination shows that the number of firms with 6 or more complaints had increased, from 2 in 2003 to 6 in 2004. If the figure of 4 or more complaints is taken in 2003 there were 9 firms on the list; in 2004 this number had grown to 15 firms. The firm with the most complaints had 12 taken against them to the Law Society in 2004.

5.4 A further informal probe suggests that it may very well be a high proportion of the same firms which appear on the list of multiple complaints to the Law Society each year. This is indeed perturbing if found following further analysis to be accurate.

5.5 Chart C is concerned with proportions rather than raw numbers. This gives a clear indication, when compared with 2003 that the tendency to skew away from single complaints towards multiple complaints against firms of solicitors is growing.

5.6 Chart D deals with solicitor to solicitor complaints as against other complaints. As my predecessor pointed out the complaints handling process should be more appropriately targetted towards the complaints brought by clients against their solicitors. The figures show that there is a modest proportionate drop in complaints to the Law Society from clients - which must be welcome. However, in view of the increased number of complaints, the raw numbers are up in all categories, and the proportion of solicitor to solicitor complaints relating to conveyancing is up from 67% to 69%.

5.7 Finally, chart E shows proportionate final outcomes on complaints registered and completed in 2004. The proportion of cases **upheld** has grown from 23% in 2003 to 33% in 2004, the proportion **redirected** is almost the same while the proportion **not upheld** is down from 34% in 2003 to 25% in 2004.

Times taken to Conclude Complaints

5.8 In the Annual Report for 2003, my predecessor prepared figures to indicate the time taken for the Law Society to conclude complaints brought against solicitors by their clients. He referred to the likelihood that the figures he quoted at that time for the years 2002/2003 suggested a lesser performance in the time taken to conclude complaints than was justified. This fact had to do with the procedures used by the Law Society to record closure dates.

This situation has now been rationalised and the figures for the calendar year 2004 are as follows:

Year 2004	Incidence	Cumulative	Months
In 3 months	26% (14%)	26% (14%)	Up to 3
In 6 months	22% (28%)	48% (42%)	4 - 6
In 9 months	24% (23%)	72% (65%)	7 - 9
In 12 months	8% (8%)	80% (73%)	10 - 12
In 12 + months	0% (7%)	80% (80%)	12+
Total cumulative	– 80% (80%)		
Disciplinary Tribunal	– 3% (10%)		
* Ongoing	– 17% (10%)		
Total	– 100%		

*Note – this figure is accurate overall; it relates however to cases extending into 2005 but not concluded before March 2005.

5.9 These performance figures suggest to me that there is no overall problem with delays in the complaint handling processes at the Law Society. Almost three quarters of the complaints received are concluded within nine months; indeed the vast majority of the cases concluded in the 7 – 9 months period from receipt of complaints actually fall at just beyond the 6 months point.

5.10 It will be noted, taking this into account, that there is a substantial proportionate rise in the “less than 3 months” category. There is also a notable fall in the 10 – 12 months and 12 + months categories in 2004 compared with the 2003 figures. This comparison is not statistically valid, but does give a broadly comparative picture. In future years it will be possible to provide exact comparisons year on year given the rationalisation of the recording of closing dates for complaints handling at the Law Society.

5.11 It must be pointed out that although this picture points to no major problem, some complaints do take 12 months to conclude. Many of these are complex, or pose particular difficulties, in gathering information. I encourage the Law Society therefore to keep its performance in concluding cases under constant review.

Section 6

Comments on Complaints Statistics

6.1 This statistical section has become an important part of The Lay Observer's Annual Report, not least in that it provides the reader with a commentary on a statistical run that has been in place for some years. Furthermore, it gives a statistical shape to the complaints that are taken to the Law Society. The comments in this section are intended to facilitate those readers who may wish to analyse and examine the information for the year concerned and how it relates to that of previous years.

6.2 The source of the material in this section is the Complaints made to the Law Society in the twelve months ending 30 September 2004. They are categorised by *Circumstances of Complaints* and by *Nature of Complaints*.

GUIDE TO CIRCUMSTANCES

General Comment

6.3 Overall, the total number of complaints dealt with by the Law Society in the period concerned has risen to 339 from 274 in the year ending September 2003; these in turn had fallen from 286 in the year ending September 2002. This represents a 23% rise for 2004 over 2003 when related to the respective totals. There have been high actual and proportionate changes in the number of complaints in relation to Matrimonial Proceedings (from 30 to 52 in 2004), in Administration of Estates (20 to 32 in 2004), Conveyancing (107 to 148 in 2004), Criminal Injury (6 to 13 in 2004), and Employment (1 to 4 in 2004). The most significant movement numerically is in the category of Conveyancing.

Reductions are overall few and affect only three headings, Criminal Proceedings (from 11 to 4 in 2004), Contractual Disputes (13 to 7 in 2004) and Other (from 33 to 23 in 2004).

Hopes therefore that the Conveyancing heading might be showing a continuing trend downwards have not been realised. The reduction from 115 complaints

under this heading in 2002 to 107 in 2003 has not been sustained with a rise to 149 in 2004. In fact this represents a return almost to figures experienced in 2001 under this heading (146 complaints).

Detailed Comment

6.4 In this section, comments on "Guide to Circumstances" are presented in sequence of classification and not in any other order of significance. Arising as it does for historic reasons, this form of presentation is intended to assist the reader in perusing, examining and comparing statistics from this and previous years.

Criminal Proceedings

6.5 The actual number of complaints under this heading has fallen from 11 in 2003 to 4 in 2004. The total number of complaints concerned is, of course, very small in the total.

Matrimonial Proceedings

6.6 These cases have risen from 30 in 2003 to 52 in 2004. In 2002, there were 28 cases, so stabilisation is not confirmed. These cases, I find, generate amongst complainants possibly the greatest degree of emotional distress, particularly where access to children is an issue. This poses major challenges for the solicitors concerned and for the Law Society, as well as for me for those cases that reach my office. Over the previous five years, the trend is however reasonably stable.

Administration of Estates

6.7 These cases have risen from 20 in 2003 to 32 in 2004 with a slight rise also in the trend line.

Conveyancing

6.8 The reduction last year (from 115 in 2002 to 107 in 2003) has most unfortunately not continued in 2004

when the number of complaints rose to 148. Also, the proportion of these types of complaints has grown from 40% in 2002 (and 39% in 2003) to 44% (see comment in Section 8).

Property Disputes

6.9 Complaints under this heading have shown another increase from 5 cases in 2003 to 7 cases in 2004.

Contract Disputes

6.10 The complaints under this heading have fallen from 13 in 2003 to 7 in 2004.

Personal Injury

6.11 A small increase by one from 48 complaints in 2003 to 49 in 2004, representing a proportionate fall from 18% to 14% of the total (because of the increase in total cases) is recorded.

Criminal Injury

6.12 These cases have more than doubled since 2003 when there were 6 complaints compared to 13 in 2004.

Employment

6.13 The numbers have increased from 1 in 2003 to 4 in 2004, although the proportion of such complaints in the total is unaltered.

Professional Negligence

6.14 This heading, as in 2003, has generated no complaints.

Other

6.15 Complaints in the “Other” category, having risen from 27 to 33 between 2002 and 2003, have fallen to 23, and the trend line continues downwards.

NATURE OF COMPLAINTS

6.16 In this section, comments on “Nature of Complaints” are presented in sequence of classification and not in any other order of significance. This is intended solely to facilitate the reader in the examination of these figures.

Undue Delay

6.17 Undue Delay Complaints once again represent in 2004 almost half of the complaints lodged (47% in 2003, 44% in 2004). Principal circumstances of these complaints are:-

Circumstance	2004 Cases	2003 Cases
Conveyancing	72	53
Personal Injuries	21	20
Administration of Estates	13	11
Matrimonial Proceedings	23	11
Contracts	3	6
Other	8	17

The major growth areas are Conveyancing and Matrimonial Proceedings.

Withholding or Loss of Documents

6.18 Complaints have again risen from (26 in 2003 to 29 in 2004) but the proportion of the total remains the same under this heading.

Bills and Accounts

6.19 This type of complaint has risen from 6 in 2003 to 13 in 2004.

Disclosing confidential Information

6.20 This is not a problem with one complaint in 2004, the same as in 2003.

Dissatisfaction with Advice Given

6.21 The number of complaints has fallen from 14 in 2003 to 10 in 2004.

Acting Contrary to Client's Instruction

6.22 The number of cases in 2004 was up from 7 in 2003 to 36 in 2004. This represents around 10% of all cases compared with only 3% in 2003.

Ethics or Behaviour

6.23 This rose from 68 cases in 2002 to 81 in 2003. In 2004, the figure has gone up a further 10 to 91.

Of the total, Conveyancing accounts for nearly 60% as in 2003. And this type of complaint has risen from 46 to 53.

Overall Comments on Nature of Complaints

6.24 The actual number of complaints by "Nature of Complaint" in 2004, compared to previous years, is analysed:-

Nature of Complaint	2004	2003	Variance from 2004 Perspective
Undue Delay	150	129	+21
Withholding / Loss Documents	29	26	+3
Presentation of Bills and Accounts	13	6	+7
Disclosing Information	1	1	-
Dissatisfaction with Advice	10	14	-4
Acting Contrary to Instruction	36	7	+29
Ethics or Behaviour	91	81	+10
Solicitor's action caused Loss	0	0	-
Legal Aid	9	10	-1
Others	0	0	-
Totals	339	274	+65

Trends

6.25 The picture on "Trends" (observed on a 5-year moving average) requires careful analysis. However, it is correct to say that apart from Undue Delay and Acting Contrary to Instruction, all complaints categorised by "Nature of Complaint" are downwards or stable. This includes the total number of complaints, despite the rise on 2004 over 2003 (see Table 6 for further elaboration).

Section 7 Complaints Statistical Tables

Table 1 COMPLAINTS EXAMINED BY THE LAW SOCIETY FOR THE 12 MONTHS ENDING SEPTEMBER 2004

Nature of Complaints	Circumstances of Complaints										Total
	Criminal Proceedings	Matrimonial Proceedings	Admin. of Estates	Conveyancing	Property Disputes	Contract Disputes	Personal Injury	Criminal Injury	Employment	Professional Negligence	Other
1. Undue delay	0	23	13	72	3	3	21	5	2	0	8 150
2. Withholding or loss of documents	2	2	2	8	0	0	11	2	0	0	2 29
3. Presentation of bills and accounts, lack of information, fees charged	0	1	3	2	0	0	3	1	0	0	3 13
4. Disclosing confidential information	0	0	0	0	0	0	0	0	1	0	0 1
5. Dissatisfaction with advice given	0	2	1	2	1	0	1	1	0	0	2 10
6. Acting contrary to clients instructions	1	7	5	11	1	0	6	2	0	0	3 36
7. Ethics or behaviour	0	13	8	53	2	4	5	2	1	0	3 91
8. Solicitors action caused loss	0	0	0	0	0	0	0	0	0	0	0 0
9. Legal aid	1	4	0	0	0	0	2	0	0	0	2 9
10. Other factors	0	0	0	0	0	0	0	0	0	0	0 0
11. All factors (total 1-10)	4	52	32	148	7	7	49	13	4	0	23 339

Table 2 FIVE YEAR SUMMARY OF 'GUIDE TO CIRCUMSTANCES' 1999/2000 - 2003/2004 - ACTUAL NUMBER OF COMPLAINTS

YEARS	Circumstances of Complaints											Total
	Criminal Proceedings	Matrimonial Proceedings	Admin.of Estates	Conveyancing	Property Disputes	Contract Disputes	Personal Injury	Criminal Injury	Employment	Professional Negligence	Other	
1999/00 - Year 1	8	36	21	103	9	22	62	9	2	0	37	309
2000/01 - Year 2	6	42	15	146	4	25	60	11	3	0	29	341
2001/02 - Year 3	12	28	19	115	1	19	51	13	1	0	27	286
2002/03 - Year 4	11	30	20	107	5	13	48	6	1	0	33	274
2003/04 - Year 5	4	52	32	148	7	7	49	13	4	0	23	339

Table 3 MEAN STATISTICS i.e. MOVING ANNUAL AVERAGE OF ACTUAL NUMBER OF COMPLAINTS

YEARS	Circumstances of Complaints											Total
	Criminal Proceedings	Matrimonial Proceedings	Admin.of Estates	Conveyancing	Property Disputes	Contract Disputes	Personal Injury	Criminal Injury	Employment	Professional Negligence	Other	
1999/00 - Year 1	9	42	20	92	7	25	67	9	3	1	53	328
2000/01 - Year 2	8	42	19	106	7	25	65	10	3	1	47	331
2001/02 - Year 3	9	39	19	108	5	24	62	10	3	1	43	322
2002/03 - Year 4	9	35	17	110	5	20	58	8	2	1	43	307
2003/04 - Year 5	8	38	21	124	5	17	54	10	2	0	30	310

Table 4 FURTHER ANALYSIS OF 'GUIDE TO CIRCUMSTANCES' SUMMARY 1999/2000 TO 2003/04

YEARS	Circumstances of Complaints											
	Criminal Proceedings	Matrimonial Proceedings	Admin.of Estates	Conveyancing	Property Disputes	Contract Disputes	Personal Injury	Criminal Injury	Employment	Professional Negligence	Other	Total
“Change in actual numbers, Year 1 to 5” 1999/2000 to 2003/04	-4	16	11	45	-2	-15	-13	4	2	0	-14	30
“% Change, Year 1 to 5”	-50%	44%	52%	44%	-22%	-68%	-21%	44%	100%	0%	-38%	10%
% of Total complaints in Year 1 1999/2000	3%	12%	7%	33%	3%	7%	20%	3%	1%	0%	12%	100%
% of Total complaints in Year 5 2003/2004	1%	15%	9%	44%	2%	2%	14%	4%	1%	0%	7%	100%

Table 5 FIVE YEAR SUMMARY OF 'NATURE OF COMPLAINTS' (1-10) 1999/2000 TO 2003/2004 - ACTUAL NUMBER

YEARS	Circumstances of Complaints										Total
	Undue Delay	W/H or loss of Documents	Bills and Accounts	Disclosing Information	Dissatisfac. with advice	Acting Contrary	Ethics or Behaviour	Solicitor's Action	Legal Aid	Other Factors	
1999/00 - Year 1	112	42	23	4	21	15	75	2	15	0	309
2000/01 - Year 2	163	37	12	1	29	14	79	0	6	0	341
2001/02 - Year 3	153	29	10	1	14	4	68	1	6	0	286
2002/03 - Year 4	129	26	6	1	14	7	81	0	10	0	274
2003/04 - Year 5	150	29	13	1	10	36	91	0	9	0	339

Table 6 MEAN STATISTICS - i.e. MOVING ANNUAL AVERAGE OF ACTUAL NUMBER OF COMPLAINTS

YEARS	Circumstances of Complaints										Total
	Undue Delay	W/H or loss of Documents	Bills and Accounts	Disclosing Information	Dissatisfac. with advice	Acting Contrary	Ethics or Behaviour	Solicitor's Action	Legal Aid	Other Factors	
1999/00 - Year 1	121	33	23	2	22	14	91	2	21	0	329
2000/01 - Year 2	132	34	20	2	24	14	88	1	18	0	333
2001/02 - Year 3	136	33	18	1	22	12	84	1	15	0	322
2002/03 - Year 4	136	31	16	2	18	10	80	1	15	0	309
2003/04 - Year 5	141	33	13	2	18	15	79	1	10	0	311

Table 7 FURTHER ANALYSIS OF 'NATURE OF COMPLAINTS' (1-10) SUMMARY 1999/2000 TO 2003/2004

YEARS	Circumstances of Complaints										
	Undue Delay	W/H or loss of Documents	Bills and Accounts	Disclosing Information	Dissatisfac. with advice	Acting Contrary	Ethics or Behaviour	Solicitor's Action	Legal Aid	Other Factors	Total
“Change in actual numbers, Year 1 to 5” 1999/2000 to 2003/2004	38	-12	-10	-3	-11	21	16	-2	-2	0	-62
“% Change, Year 1 to 5”	34%	-29%	-43%	-75%	-52%	140%	21%	-100%	-13%	0%	-18%
% of Total complaints in Year 1 1999/2000	36%	14%	7%	1%	7%	5%	24%	1%	5%	0%	100%
% of Total complaints in Year 5 2003/2004	44%	9%	4%	0%	3%	10%	26%	0%	4%	0%	100%

Section 8

Conveyancing

8.1 My predecessor has in earlier Annual Reports focussed on Complaints relating to Conveyancing. I do not propose to reiterate the history of this as it is very thoroughly dealt with in previous Reports. Suffice to say that for a number of reasons, the backlog of the work at Land Registers of Northern Ireland (LRNI) had been growing. Some but not all of the reasons related to factors outside LRNI control. In his 2003 Report, my predecessor said "I look to LRNI to continue their efforts to reduce the backlog. It is evident that the assistance of the Trade Unions is required if this is to be comprehensively tackled. In addition, action aimed at improving the standard and quality of impact made to LRNI will require substantial input from the legal and other professions".

8.2 In discussion with Mrs Patricia Montgomery, the Chief Executive of Land Registers and Registrar of Titles, it is now clear that many of the internal actions taken within LRNI (as listed in my predecessor's last Annual Report) have begun to bear fruit. Mrs Montgomery now reports "At the end of March 2004, there had been a 25% reduction in the backlog of cases within LRNI and I am pleased to report that this trend has continued with a further reduction of 20% in 2004/5. This is a tremendous achievement as once again our intake of work has been increasing month on month by approximately 30%". The Chief Executive goes on to report that productivity has increased by 36.5% over the twelve months period ending 31 March 2005, despite the fact that the number of transactions in Registrations (at over 100,000) at Land Registry is more than 10% above the figures expected and budgeted.

8.3 In achieving improvements despite rising numbers of registrations, Mrs Montgomery points to work and progress under a number of headings including:

- new working agreements
- a new training regime within LRNI
- improved communications within LRNI
- training provided for the Legal Profession; and
- Document Image Process Information Systems (DIPIS) being introduced.

Momentum seems now to have been achieved in tackling the backlogs that had developed. No doubt there will be those interested in watching for further progress.

8.4 However it is also clear from the statistical information provided by LRNI that there are still too many errors being created prior to first registration. This means that when completed forms are received at LRNI for the first time too many erroneous applications are lodged. Mrs Montgomery says "LRNI have reintroduced the policy of rejecting erroneous applications at intake. Papers are rejected for a variety of reasons (and these) are returned to lodging solicitors. All applications which are accepted at intake are subject to a further scrutiny by caseworkers and again erroneous applications are returned at this point. The present cost to the Agency of dealing with rejections is in excess of £100,000. If the number of erroneous applications could be reduced there is no doubt that LRNI could make further inroads into the remaining backlog/work stocks and turn around time for applications could be reduced making our service more efficient. I have no doubt that if LRNI and the Law Society could work together to improve the standards of work lodged then the service provided to the public would be greatly improved".

8.5 LRNI has provided me with statistical information on Compulsory First Registrations (CFR) which indicate that there is scope for everyone to benefit. In

the year to end March 2005 there were 10,163 CFRs. Some common reasons for rejecting an application (and an application can be rejected for more than one reason) are:

	% Total Registered
Application not lodged within 3 months of acquisition	15.7%
Maps incomplete or not as required by specification	15.8%
Original deed not lodged or certified as a true copy	14.2%
Incorrect (or no) fee lodged	8%

These figures speak for themselves, but it is reasonable to point out that the common reasons listed are not in general requiring of complex skills. They are in fact simple business routines which any profession or business requires to be able to handle effectively. One common reason, *Incorrect or no fee lodged* exemplifies the size of the task - this reason alone approximates to over 900 instances where CFRs must be returned.

8.6 Such routines are much more related to attitudes towards good management and efficiency than they are in my opinion, related to professional legal training. LRNI and the Law Society might work together to give profile and simple information about the importance of having routines which work in eliminating many of these erroneous CFRs. The benefit would be for everyone - the public, solicitors, LRNI and indeed the Law Society itself - if this problem could be reduced. In turn it is problems like this that can elongate the conveyancing process unnecessarily.

8.7 While there are complaints made to the Law Society about such issues, this is not to infer that there is or is not a strong correlation between backlogs at LRNI and complaints received by the Law Society. The fact is that the number of complaints received by the Law Society relating to Conveyancing rose from 107 in 2003 to 148

in 2004. The five year moving average also is on a rising trend. Undue delay gave rise to a total of 72 of these complaints. It is in the general interest therefore that this problem be tackled systematically. I simply point to a sensible starting point to further improve the situation I urge The Law Society and LRNI together to take the necessary action; and having done so then move on to reduce or eliminate systematically other reasons for inefficiencies in the conveyancing process where either LRNI, The Law Society or both can make an impact.

Section 9

Legal Services Review

9.1 At the present time, reviews of Legal Services Provision including regulation and complaints handling are taking place in each of the jurisdictions of the United Kingdom and in Ireland. These Reviews are all at various stages of progress. In England and Wales, Sir David Clementi has recently (December 2004) completed his Recommendations to Government having conducted a major consultation exercise on behalf of the Department of Constitutional Affairs. The Scottish Executive has also published proposals for future legislation. In Northern Ireland, a similar process is under way.

9.2 My remit as The Lay Observer for Northern Ireland, as already emphasised, is defined in legislation, regulations and protocols and it is not for me to point to the future regime. There seems however no good reason why one cannot comment on the process. It is certain that the role of The Lay Observer will be reviewed and highly likely that it will be radically changed.

9.3 In England and Wales, Sir David Clementi was appointed by the Government in July 2003 to review "The Regulatory Framework for Legal Services in England and Wales". His terms of reference were:

- "to consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector"
- "to recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent and no more restrictive or burdensome than is clearly justified"
- "to make recommendations by 31 December 2004".

9.4 In March 2004, guided by an earlier Report published by the Department of Constitutional Affairs

in July 2003 entitled "Competition and Regulation in the Legal Services Market", and his terms of reference, Sir David Clementi published a consultation paper. This contained a list of fundamental questions that needed to be addressed by his Review. Subsequently, having received a large body of responses and guided by an Advisory Panel, he published "Report of the Review" in December 2004.

9.5 I have listened to many local references to the Clementi Review in the Northern Ireland context. The general tenor of these references is that Clementi is not relevant for Northern Ireland. However that may be, and I have some sympathy with these views, it is for the Government to decide the process, terms of reference and eventual outcomes of the process for Northern Ireland. Having carefully studied the Clementi Review, however, it is my opinion that the questions he poses are in the main as relevant in the Northern Ireland context as in England and Wales, whatever may be the responses to those questions.

9.6 A fundamental point seems to me to be the definition that is given to the Regulator. At present this role is fundamentally in the hands of the Law Society of Northern Ireland and it is clear that an assessment of what the Law Society does and how it does it is an important area for consideration. As Clementi sees it, there are six possible key objectives for a "Regulator of Legal Services":

1. Maintaining the Rule of Law.
2. Access to Justice for all.
3. Protection and promotion of consumer interests.
4. Promotion of competition.
5. Encouragement of a confident, strong and effective legal profession.
6. Promoting public understanding of the citizens' legal rights.

9.7 The phrase "regulatory maze" has been used in the context of England and Wales in relation to Legal

Services. My understanding of the role of the Law Society in Northern Ireland in relation to solicitors, what solicitors do and the structure of other parts of the Legal Services Sector in Northern Ireland confirms for me that the phrase “the regulatory maze” is not appropriate as a descriptor for Northern Ireland. Accordingly, clarification of the ways in which the Clementi objectives are modified or developed to relate to the Northern Ireland context and the definition of the regulator for Legal Services in Northern Ireland will be crucial.

9.8 I believe in this discussion that the questions posed by Clementi, suitably modified to meet specific conditions in Northern Ireland are entirely relevant for consideration in any Review. Accordingly, I list the questions Clementi poses at Appendix B2, although I emphasise that these questions were pointed at the specificities of Legal Services Provision in England and Wales.

Section 10

Recommendations and Concluding Comments

10.1 Complaints bring a bad name to any profession and this is, I believe, fully understood by the Law Society of Northern Ireland. In this Section of my Annual Report, I intend to look back to the Recommendations of the 2003 Annual Report made by my predecessor, make clear the comment and response by the Law Society, make Recommendations relating to 2004 and conclude my report.

10.2 I intend to limit my 2004 Recommendations to those that aim at early and immediate action. It is quite natural, if unfortunate, that when a Review is under way, there should be an element of inertia. I do not wish this, and I am sure the Law Society agrees, to stand in the way of continuing improvement. It does however mean that there is little point at this time in dwelling on Recommendations which require legislative changes, major structural alteration or significant cost to implement.

10.3 It is evident, however, that there has been a rise in the number of complaints in the past year and possibly in the complexity of complaints. These are costly to deal with for the Law Society quite apart from the expense falling on other stakeholders. It is therefore in the interests of the Law Society, as well as others, for me to focus on Recommendations which are “do-able” in the very near future. For these reasons, I have focussed on ACTION- and on PREVENTION and CURE. First, it might be thought appropriate to focus on the previous Report for 2003 Recommendations.

2003 RECOMMENDATIONS – CLIENT ALIGNMENT

10.4 My predecessor in his Annual Report of 2003, made four Recommendations. These are articulated in Appendix C in full together with the response by the Law Society. The **first** of these related to determining in advance of dealing with the complaint, a complainant’s expectations of the complaints handling process. More specifically, this suggested that “Law Society complaint forms and relevant information brochures should be

reviewed accordingly and where needed some assistance should be given to the complainant in this regard, as it could be a crucial step in aligning understanding”. In their response (received by me on 11th May 2005), the “Society has no objection to reviewing and re-drafting where necessary the relevant forms and information leaflet with a view to achieving additional clarity in the complainants’ objective in complaining to the Society”. I hope that this also means that action will quickly follow.

10.5 The **second** Recommendation calls for more flexible approaches and where necessary appropriate changes in legislation/procedures. These include the definition of a “client”, of “special circumstances”, the “treatment of new issues”, definition of “complainant”, dealing with minor negligence and “classification of complaints between those of conduct and those of inadequate professional service”. The response by the Law Society accepts the principle of flexibility, but in the main sees legislative and procedural change, as being necessary to implement most of the changes. In relation to “special circumstances”, the Society “is not entirely sure what The Lay Observer means in this context and clarification is requested before a further response can be made”.

10.6 The **third** Recommendation relates to ensuring that the statistical information in relation to final outcomes, including handling times, reflects the proper and generally excellent performance of the Law Society. The intention was to ensure that the true picture which is better than in the rest of the UK, and is probably better than actually recorded by the Law Society, emerges. He pointed to the substantial improvement in the relevant statistics. The Law Society in its Response appreciates the work of The Lay Observer in this context. They go on to say “This is a matter which is under review and will be discussed with The Lay Observer before any changes or additional mechanisms are put in place”. I understand that the statistical base has been altered to reflect the intention of The Lay Observer.

10.7 The **fourth** Recommendation relates to the concentration of complaints in a small number of solicitors firms and a focus on “opportunities for feedback learning and perhaps negative reinforcement steps by the Law Society to reduce this inordinate concentration”. The Law Society in its Response shares the concern and confirms that the matter has been considered by the Client Complaints Committee, by the Office Bearers and the Committee of the Society. “They are happy to share experience to date” on action they have taken so far in this matter with The Lay Observer and to discuss what might be done to address the common concern and shared objective. The Law Society has had this discussion with The Lay Observer, and I commend the Law Society for the action it is taking on this matter.

10.8 In the interest of continuing improvement, I would simply urge the Law Society to take action where it can with urgency on these 2003 Recommendations. In the light of the higher figures for complaints recorded for 2004, this will be likely to be a worthwhile exercise with benefit for all.

2004 RECOMMENDATIONS – ACTION, PREVENTION AND CURE

10.9 I stated above that my Recommendations for 2004 are focussed on early and immediate action. They are also, it seems to me, matters which are “do-able” and requiring of limited resource.

10.10 My **first recommendation** is in relation to Conveyancing, with particular reference to the efficiency of filling in the necessary forms and providing the correct and appropriate information at first registration. The incidence of erroneous application in relation to first registrations at the Land Registers of Northern Ireland (LRNI) is far too high and this no doubt contributes to the raised number of complaints related to Conveyancing in 2004. I suggest that the Law Society discuss this specific issue with LRNI with a view

to early and drastic reduction in errors. The Law Society might further emphasise this issue in their Office Bearer profile, in the Writ (the publication of the Law Society) and in their mandatory Continuous Professional Development programme. LRNI might continue to find ways of streamlining and clarifying their methodologies. As a result of working closely together, there will be a benefit to both parties.

10.11 My **second Recommendation** is linked to the Law Society’s programme of mandatory Continuous Professional Development (CPD). The introduction of this programme is a most welcome development which now mirrors current best practice in many other professions. CPD is a very powerful tool when based on achievement criteria in improving quality of service, with particular emphasis on matters to do with conducting business effectively quite apart from professional/legal performance. I am aware that the Law Society is highly committed to effective CPD operation within the profession. I recommend that the Client Complaints Committee examine the potential for raising the emphasis on handling and preventing complaints, good business practices and possibly finding ways of focussing further on those firms of solicitors which bring a bad name to the profession. The statistical analysis in Section 5 on Final Outcomes of Complaints made to the Law Society in 2004 shows that 6 firms had 6 or more complaints made against them (indeed one firm had 12 complaints). An informal comparison with an earlier year suggests that a number of particular firms feature in the list of those firms who had multiple complaints made against them in both years. I encourage the Law Society to continue its work in identifying and taking action with these firms of solicitors.

10.12 This leads on to my **third Recommendation** which relates to the concept of **mediation**. The Law Society has embraced this matter with a great deal of commitment and have introduced a Dispute Resolution Service. This is an impressive scheme. I recommend that

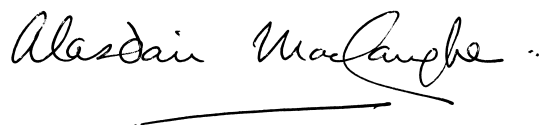
the Clients Complaints Committee of the Law Society consider how the principle of this Service might extend further to complaints handling. The Law Society is to be commended in that in concluding many client complaints, signposting is provided to complainants as to other action they might take in those circumstances where the Law Society cannot deal with their complaints for legal and/or regulatory reasons. In many cases, where I have audited complaints, this practice has clearly been helpful to complainants in feeling that their complaints have been taken seriously, even though the Law Society is not empowered to deal with those complaints.

10.13 My **fourth Recommendation** concerns a specific matter of complainants' expectations and how these might be managed. I refer particularly to the point I make in 4.5 above in relation to the process through which a solicitor has already gone when a complaint is concluded and when the Client Complaints Committee takes no further action. I recommend that the Law Society take whatever steps may be appropriate to ensure that complainants are made aware of the discomfiture placed on a solicitor and his principal/partners who have been put through this process. This is all part of the management of client expectations, an endeavour which should result, if effective, in good client alignment. This is as much a duty for the Law Society as it is for the solicitor. If achieved, complainants will have a clearer view of this discomfiture for solicitors as contributing to redress.

10.14 My **fifth and final Recommendation** has to do with the overall timetable of The Annual Report, The Law Society response and the next Annual Report. My predecessor's Annual Report for 2003 was not published until August 2004. In normal circumstances this would have been published in April or May, but the publication of his 2003 Annual Report was delayed because he was engaged in preparing his paper "A Review of Legal Services Provision in Northern Ireland". Normally, the Law Society responds to the Lay

Observer's Annual Report in November of the year in which it is published. The response by the Law Society to The Lay Observer's Annual Report of 2003 came in May 2005. Clearly this overall process has become elongated. I therefore recommend that the "normal" timetable be restored. Therefore, I recommend that the Law Society respond to the Annual Report for 2004 in November 2005. This was discussed with and agreed to by the Law Society in 2002. In turn, I will endeavour to publish my Annual Report for 2005 in April/May 2006.

10.15 In conclusion, I reiterate that my concern as The Lay Observer is to oversee the Client Complaints Handling function of the Law Society of Northern Ireland. It is my hope that the context of this Annual Report for 2004 will contribute to the improvement of this function. In the end, the focus has to be, as my predecessor has so effectively pointed out, on good Client Alignment. The greater achievement of this ideal will lead to fewer complaints and less distress and cost for everyone. However good things may currently be, action is needed. All involved with complaints handling must recognise that "the good is always the enemy of the better."



Alasdair MacLaughlin
June 2005

Appendix A

CONTENT OF LEAFLET

There follows the content of a leaflet which is aimed at making clear, in simple English, what The Lay Observer may and may not do, and the remit under the legislation:

The Lay Observer for Northern Ireland

The remit of The Lay Observer for Northern Ireland is defined in law. He receives and examines complaints about the complaints process operated by the Law Society of Northern Ireland and about the way the Client Complaints Committee in the Law Society handles complaints about solicitors. The Lay Observer can comment on the process used by the Law Society and on the quality of the service provided.

The Lay Observer can also examine individual allegations about the way the Society has treated a particular complaint from a member of the public.

The Lay Observer reports each year on a formal basis to the Lord Chief Justice, the Government and the Council of the Law Society on the nature of complaints made to the Law Society and the manner in which the Society deals with such complaints.

Complaints about legal services providers in England and Wales are dealt with by the Legal Services Ombudsman and in Scotland by the Scottish Legal Services Ombudsman.

Advantages of the Lay Observer's Service

- It is private for individual complainants.
- It is independent of the Law Society.
- It is free.
- It can result in the complaint being further investigated.
- It can lead to improvements in complaint-handling procedures within the professional bodies.

Disadvantages of The Lay Observer's Service

- It is not binding; The Lay Observer can give guidance only.
- It provides no redress.
- It is the final rung in a complaint's process.

The Lay Observer will not act as an advocate or enforce complainants' rights. The aim of the scheme is to determine whether a complaint has been handled fairly, thoroughly and impartially by the Law Society and also to influence good practice in complaints handling both by the Law Society and ultimately, by solicitors. When The Lay Observer disagrees with the Law Society, he can ask the Client Complaints Committee to reassess the complaint. The Lay Observer can also refer cases to the Disciplinary Tribunal, which is appointed by the Lord Chief Justice.

To put The Lay Observer's role in perspective, he considers around 30-40 complaints each year. Almost all are centred around issues of clients' perceptions and expectations of their solicitor.

In addition, however, The Lay Observer reviews one third of the complaints made to the Law Society. The purpose of a review of the complaints made to the Law Society is to identify patterns and to obtain a more complete picture of what complaints are being raised. This is part of The Lay Observer's audit role, and his ability to access complaints (and not only complaints about complaint handling) is unique among the Legal Services Ombudsmen. In effect, The Lay Observer audits around 100 cases each year and co-ordinates statistics analysed by type of complaint for all complaints received and dealt with by the Law Society.

Which complaints are eligible?

The Lay Observer oversees the complaint-handling function of the Law Society of Northern Ireland. Types of complaints dealt with the Law Society include:

- undue delay (or inaction)
- withholding or loss of documents
- bills and accounts, including fees charged
- disclosure of confidential information
- dissatisfaction with advice given
- acting contrary to clients' instructions
- ethics or behaviour
- action resulting in loss
- legal aid

The Lay Observer cannot accept direct complaints about a solicitor's negligence. Nor can he investigate the merits or legal aspects of a complaint against a legal practitioner. He looks only at complaint handling by the Law Society. However, The Lay Observer can refer directly to the Solicitors Disciplinary Tribunal where there is a question as to the quality of any professional service provided by the solicitor.

If a complainant remains dissatisfied with the way the Law Society has handled the complaint, he or she can then ask The Lay Observer to investigate.

There is no time limit for making a complaint to The Lay Observer. Complainants should first have obtained a letter from the Law Society stating its conclusions before making a complaint to The Lay Observer.

Cost

The scheme is free to complainants.

Parties do not need independent advice when making a complaint to The Lay Observer.

The Lay Observer cannot award costs or compensation.

Timescale

The time taken by The Lay Observer to decide on a complaint is normally six to eight weeks.

Procedure

Complaints must be submitted in writing. This might simply be a letter stating that the complainant is dissatisfied with the way the Law Society handled the complaint.

Once The Lay Observer has received and accepted the complaint, he will call for the file from the Law Society.

The Lay Observer has discretion to interview complainants where necessary. He may also accept complaints in other formats e.g. by tape, braille, other media or in another language than English.

After completing his investigation, The Lay Observer sends his conclusions to the parties. Copies are sent to the complainant, the Law Society, and where thought appropriate to the Client Complaints Committee.

Outcomes

Remedies are limited under the scheme. The Lay Observer cannot award compensation. He can, however, decide to send a case to the Client Complaints Committee or to the Disciplinary Tribunal if appropriate. He might also ask the Law Society to give an explanation or more information to the complainant.

Related information:

Other types of problem
Legal Services Ombudsman
Scottish Legal Services Ombudsman

Contact:

The Lay Observer for Northern Ireland
Brookmount Buildings
42 Fountain Street
Belfast BT1 5EE
Tel: 028 9024 5028
Fax: 028 9025 1944

Appendix B.1

CLEMENTI SUMMARY

In this Appendix I summarize my understanding of the “Consultative Paper” published by Sir David Clementi in March 2004 as follows:

1. In March 2004, Sir David Clementi published his “Consultative Paper on the Review of the Regulatory Framework for Legal Services in England and Wales”. This was his response to the task assigned to him following the Department of Constitutional Affairs’ (DCA) paper of July 2003 entitled “Competition and Regulation in the Legal Services Market”. In this paper the DCA concluded that the current regulatory framework in England and Wales was “outdated, inflexible, over complex and insufficiently accountable or transparent”. Clementi adds that the word “inconsistent” might have been added.

In my view, the words “incomplete” and “over focussed” might also have been added in the Northern Ireland context.

2. Arising out of their Report, the DCA listed a number of issues that strongly affect the regulation of legal services. On the basis of these issues, Clementi focussed his Review on five regulatory matters:

- issues relating to the current institutional structures (including the “regulatory maze”;
- issues relating to the level of self-regulation and professionalism within the legal services industry;
- issues relating to the handling of complaints against lawyers and disciplinary matters
- issues relating to unregulated providers and “regulatory gaps”; and
- issues relating to new business structures, including employed lawyers, legal disciplinary practices and multidisciplinary practices.

3. In conceptual terms, Clementi suggests a number of models relating to regulation which can be summarised under two headings:

- regulation which is totally independent
- self-regulation with a degree of oversight.

He articulates the five principles of good regulation set out by the Better Regulation Task Force (BRTF):

- proportionate
- accountable
- consistent
- transparent
- targeted

and expands on this using the good practice guidelines on self-regulation advanced by the National Consumer Council:

- clear objectives
- ingredients of regulation (rules; monitoring and enforcement including the imposition of sanctions and a redress mechanism)
- wide consultation
- dedicated structure
- independent representation
- monitoring compliance
- public accountability
- good publicity
- adequate resources
- well-published complaints procedures
- effective sanctions
- regular indicators
- regular review

4. He then lists the essential precepts for the legal profession, namely:

- independence
- integrity
- acting in the best interests of the client
- confidentiality

In my view he might have added the importance of the vital duty to the Court.

5. He lists the core functions of a Regulator, as:

- defining and maintaining entry standards
- rule making
- monitoring and enforcement
- dealing with complaints
- discipline.

6. An amalgam of all this then prompts Clementi to identify two key models for Regulation.

Model A: - regulation vested by Statute and exercising independent powers over individuals; and
 - regulation that is removed from representation activities.

Model B: - regulation in the hands of existing professional bodies but with central oversight of these professions.

7. Finally, Clementi poses some key questions. The questions Clementi poses are listed at Appendix B.2.

I take the view that although solutions from other regimes are not necessarily suitable for Northern Ireland, careful attention should be given to Clementi and the same or similar questions should be posed for consideration in Northern Ireland.

Appendix B.2

CLEMENTI QUESTIONS

This is a list of the questions posed by Sir David Clementi in his Consultative Paper for England and Wales published in March 2004:

Chapter A

Question A1. There are a number of important possible objectives for a regulatory system covering the provision of legal services. What objectives do you believe should form the cornerstone of a regulatory system for legal services?

Question A2. What aspects of professional ethics, or legal precepts, do you feel are essential to a properly functioning legal services industry and in what way should they be reflected in the regulatory system?

Question A3. Do you consider that risks to the regulatory objectives should be a central consideration in determining how regulatory powers and resources should be used?

Chapter B

Question B1. What do you see as the broad advantages and disadvantages of Model A in comparison with Model B? In particular, what do you see as the strengths and weaknesses of (i) combination and (ii) separation of regulatory from representative functions?

Question B2. Which model best meets the criteria of the terms of reference?

Question B3. If it were felt appropriate to separate regulatory and representative functions within professional bodies as is envisaged under Model B+, how might it best be achieved?

Question B4. What powers would you wish to see delegated from the Government to the Regulator?

Question B5. What powers to instruct the Regulator would you wish to see Government retain?

Question B6. What international considerations should influence the design of appropriate regulatory arrangement of legal services within (England and Wales)?

Chapter C

Question C1. Should service complaints (which are consumer centred) be operationally split from professional conduct and disciplinary issues (which are centred around the practitioners and their professional bodies)?

Question C2. In connection with complaints, what are the advantages and disadvantages of a) having a uniform complaints organisation, independent of the bodies, similar to the FOS or b) each body remaining responsible for its own complaints? Is the New South Wales example a useful model?

Question C3. If you believe that each body should remain responsible for its own complaints, what form of regulatory oversight would you wish to see?

Question C4. How do you think that disciplinary arrangements should relate to the underlying practitioner bodies? Is there a case for one single uniform disciplinary body for all lawyers?

Question C5. What should be the mechanism for funding the handling of complaints?

Question C6. What should be the mechanism for funding the handling of disciplinary processes?

Chapter D

Question D1. Should the Regulator be a board or an individual?

Question D2. What sort of Board should the Regulator have and how should it be constituted? What would be an appropriate split between practitioner involvement and lay content in the Board? As regards the practitioner content, would you favour the inclusion of individuals on their merits, or formal representatives from different parts of the industry?

Question D3. Who should appoint the leadership of the Regulator? With whom should that person consult? How should the appointments of the other directors of the Board be made?

Question D4. What period should the appointments be for? In what circumstances and by whom could directors be removed?

Question D5. Having regard to the need for independence both from Government and providers of legal services, what qualities and background would you wish the leadership of the Regulator to possess? Is there anything you believe it would be important for the leadership of the Regulator not to be?

Question D6. What mechanisms would you propose to ensure the accountability of the Regulator: (1) to Parliament; (2) to Ministers; (3) to public interest groups? Is there anyone else to whom a Regulator for legal services should be accountable and how?

Question D7. What consultation arrangements would you wish to see the Regulator follow before exercising its powers?

Question D8. To where should the right of appeal against decisions made by the Regulator lie? On what matters should appeal be permitted?

Question D9. This section refers to the funding issues arising from different models. What would be your suggested mechanism for dealing with these issues?

Question D10. What relationship should there be between the Law Officers, the Regulator and professional bodies with advocacy rights?

Chapter E

Question E1. Should the Government have power to determine which legal services should be included in, or removed from, the regulatory framework? What consultation with the Regulator, with the providers of legal services, and with public interest groups, should there be in reaching these decisions?

Question E2. What are the main factors one should consider in determining whether a service requires regulation?

Question E3. What characteristics of the regulatory framework would facilitate the inclusion of new services within the regulatory net, or the exclusion of a service presently included?

Chapter F

Question F1. Is there potential demand, from users and providers, for Legal Disciplinary Practices (LDPs)?

Question F2. How do you see the advantages and disadvantages of LDPs? Can the current restrictions (by professional bodies) preventing the development of these practices still be justified?

Question F3. What restrictions, if any, would you wish to see imposed on LDPs in the area of management? What restrictions, if any, would you wish to see imposed on LDPs in the area of ownership (i.e. moving from the top left hand box of the matrix in paragraph 9 to the top right)?

Question F4. Is there any reason why the regulatory system should distinguish between practices in the commercial and the not-for-profit sector?

Question F5. What body would you expect to regulate LDPs? What, if any, additional safeguards do you believe need to be put in place to protect the consumer?

Question F6. Is there potential demand, from users and providers, for MDPs?

Question F7. How do you see the advantages and disadvantages of MDPs? Can the current restrictions (by professional bodies) preventing the development of these practices still be justified?

Question F8. What restrictions, if any, would you wish to see imposed on MDPs in the area of management? What restrictions, if any, would you wish to see imposed on MDPs in the area of ownership.

Question F9. What body would you expect to regulate MDPs? Would your answer be different if lawyers were not in a majority? What, if any, additional safeguards do you believe need to be put in place to protect the consumer, and to ensure respect for independence and integrity in the exercise of professional judgment?

Question F10. What are the international implications for the legal professions in (England and Wales) if legal services were allowed to be delivered through alternative business structures?

Appendix C

RESPONSE FROM THE LAW SOCIETY TO 2003 ANNUAL REPORT

My predecessor Professor Vincent Mageean OBE published the 2003 Annual Report of The Lay Observer. He made four main Recommendations to the Law Society; these are highlighted in the following paragraphs. The response to each from the Law Society is given in full.

1. From my work as Lay Observer I have found it difficult at times to determine what the purpose of the complainant was in making his/her complaint. In the context of trying to manage expectations I recommend the Law Society (and where appropriate The Lay Observer) should attempt to determine with complainants what are their expectations re the results which may arise from making the complaint. Absence of redress opportunities is I believe at times strongly related to expectation problems. The Law Society complaint forms and relevant information brochures should be reviewed accordingly in this regard, as it could be a crucial step in aligning understanding.

Response

The Law Society notes the Lay Observer's recommendation and the context in which it is made. The Society has no objection to reviewing and re-drafting where necessary the relevant forms and information leaflet with a view to achieving additional clarity in the complainants objectives in complaining to the Society.

2. The Law Society should attempt where possible to alleviate/assuage non-alignment in such perceptions and expectations. This alleviation could take place through the adoption of more flexible approaches and where necessary appropriate changes in legislation/procedures, for example:

- i. Definition of a "client" in client/solicitor relationship and clarification of "special circumstances" in which the Law Society may or may not investigate complaints.
- ii. Clarification of "treatment of issues" arising from original complaints which are raised at a later date in responses to the Law Society during the processing of the complaint.
- iii. Definition of a "complainant" along the lines suggested in i) above.
- iv. Possible alternatives to the current approaches to minor negligence such as the procedures adopted by the Law Society of England and Wales.
- v. Complainants/the public are somewhat baffled by the classification of complaints between those of conduct and those of inadequate professional service. The definition of a complaint against a solicitor should be comprehensive but simple. The complaint dichotomy I believe has its roots in the "grafting on" of the rise of consumer complaints paradigm to the traditional disciplinary paradigm (ref. Previous Lay Observer's Annual Reports).

Responses

The Law Society notes the recommendation that the Society adopts more flexible approaches and procedures and is willing to effect improvement where it can. However, obviously it cannot resolve any perceived legislative deficit. The Lay Observer gives five examples most of which the Society cannot directly address.

With reference to examples i. and ii. "client" is defined by Article 3(1) of the Solicitors (NI) Order 1976 as amended and all statutory powers to deal with

complaints are specifically in the context of duties which the solicitor owes his client. Therefore the definition of “complainant” and “client” must be the same otherwise the Society would be acting outside its statutory authority.

The Lay Observer refers at example i. to “special circumstances” in which the Law Society may or may not investigate a complaint seeking clarification of these circumstances. The Society is not entirely sure what the Lay Observer means in this context and clarification is requested before a fuller response can be made.

At example ii. “clarification of the treatment of new issues” raised in the course of an existing investigation is sought. The Law Society is not aware from the Lay Observer of any specific problems with current policy and procedures. It might be beneficial to re-state these; when the Society receives an intimation that someone wants to make a complaint the appropriate information leaflet, complaints form and other helpful information is sent out. That information pack makes clear that all issues which concern the client should be included in the complaints form. The Society does not accept new allegations about the same matter which were known to the client and could have been included at the time the complaint is first made. The purpose of this is to create certainty and fairness in the process so that complaints cannot remain open-ended or be pursued incrementally. Where, however, the complainant becomes aware of new information either from the investigation itself or from other sources, then that may form the basis of a new complaint.

Example v. is noted. The Law Society is not aware of any public difficulty or concern about the classification of complaints between those of conduct and those of inadequate service. Under current procedures complainants to the Law Society are not expected to make this distinction themselves. They are simply asked to recite the facts of their case and give reasons for dissatisfaction, examples of such issues are contained in

the leaflet. The examples themselves may be regarded by the Society either as service or conduct issues depending on the seriousness of the particular case. Where the Society upholds a complaint the Society indicates whether the basis of the decision is inadequate service or professional misconduct or other conduct which brings the profession into disrepute.

The Lay Observer’s recommendations at example iv. are noted but require legislative change. The Society will respond to such a recommendation in the context of any such legislative proposals, if made.

3. From the extensive analysis of final outcomes carried out over the last two years and the detailed analysis of time taken by the Law Society in handling each complaint the performance of the Law Society of Northern Ireland in these areas is well ahead of its counterparts in the rest of the UK. Also, I am convinced that the performance has been better than that actually recorded by the Law Society. Since the time recording of closure dates have been revisited by the Law Society, the relevant statistics have substantially improved.

This area should be reviewed closely by the Client Complaints Committee and the better performance appropriately propagated to all concerned.

Response

The Society appreciates the analysis carried out by the Lay Observer, and welcomes his confirmation that the performance of the Society in turn around of complaints is ahead of UK counterparts. The Society welcomes also his recommendation for performance monitoring and the constructive spirit in which this recommendation has been made. As noted by the Lay Observer, the revised statistical base should provide a useful and reliable reference point for systematic monitoring and reporting of processing times. This is a matter which is under review and will be discussed

further with the Lay Observer before any changes or additional mechanisms are put in place.

4. In the Lay Observer's Report for 2002 I highlighted the fact that 33% of the number of complaints related to 3% of firms. This year I report that 24% of the number of complaints related to less than 2% of firms. It is appreciated that there is a need for further analysis of such concentrations e.g. the nature of the complaints, the location and clientele of the firm but I believe that the Law Society should investigate ways of addressing the issues involved and arrange solutions. For example, on a positive note there are opportunities for feedback learning and perhaps negative reinforcement steps by the Law Society to reduce this inordinate concentration.

Response

The Society welcomes and shares the concerns of the Lay Observer about the extent to which client complaints are made serially against a comparatively small number of firms. This is a matter which has been considered not only by the Client Complaints Committee, but by the office-bearers and the Council of the Society. Over the past eighteen months the Client Complaints Committee has made a particular and sustained effort to identify firms which come to attention frequently. There have been several examples of pro-active intervention by the Committee in line with the powers currently available to the Society to seek to ensure that the causes of an adverse client complaints record are addressed effectively. The Society confirms that it would be happy to share experience to date with the Lay Observer, and to discuss further what might be done to address this common concern and shared objective.

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