



*Annual Report of The Lay Observer*

# 2005



# *Annual Report of The Lay Observer*

# 2005

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 was appointed The Lay Observer for Northern Ireland in April 2004, and is also The Independent Assessor for the Public Prosecution Service since June 2005. 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 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 Probation Board Northern Ireland, and is a trustee of Relate and of the Belfast Association for the Blind.

The Lay Observer can be contacted:

The Lay Observer for Northern Ireland  
Londonderry House  
21 Chichester Street  
BELFAST BT1 4JJ  
Tel: 028 9024 5028

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 3rd October 1989.

© Crown copyright 2006  
First published 2006  
Applications for reproduction should be made to  
The Copyright Unit  
St. Clements House  
2-16 Colegate  
Norwich  
NR3 1BQ

# *Annual Report of The Lay Observer*

# 2005

SOLICITORS (NORTHERN IRELAND) ORDER 1976

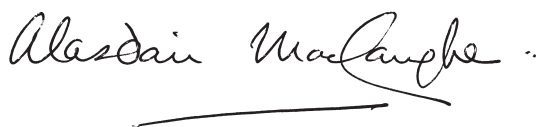
SOLICITORS (AMENDMENT) (NORTHERN IRELAND) ORDER 1989

To: The Right Honourable Sir Brian Kerr QC, 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-eighth Annual Report of The Lay Observer for Northern Ireland covering the year to 31st December 2005.



Alasdair MacLaughlin  
May 2006



# *Contents*

	SECTION	PAGE
OPENING COMMENTS	1	6
PREAMBLE	2	8
WHAT THE LAY OBSERVER DOES	3	10
THE WORK OF THE LAY OBSERVER IN 2005	4	11
FINAL OUTCOMES OF COMPLAINTS FORMS TO THE LAW SOCIETY	5	15
COMPLAINTS STATISTICS	6	21
COMMENTS ON COMPLAINTS STATISTICS 2005	7	24
CONTINUOUS PROFESSIONAL DEVELOPMENT CONVEYANCING	8	29
REGULATION OF LEGAL SERVICES IN NORTHERN IRELAND	9	31
RECOMMENDATIONS	10	33
CONCLUDING COMMENTS	11	36
APPENDIX A	CONTENT OF LEAFLET	37
APPENDIX B	REGULATION OF LEGAL SERVICES IN NORTHERN IRELAND (SUBMISSION)	40
APPENDIX C	REGULATION OF LEGAL SERVICES IN NORTHERN IRELAND (SUPPLEMENTARY SUBMISSION)	44
APPENDIX D	RESPONSE FROM THE LAW SOCIETY TO 2004 ANNUAL REPORT	47

# Section 1

## Opening Comments

1.1 This is my second Annual Report. I was appointed The Lay Observer for Northern Ireland from 1st April 2004. This appointment was for two years and came to an end on 31st March 2006. I have since been appointed for a further two years until 31st March 2008. The reason for the short tenure has to do with the Review in Northern Ireland of the Regulation of Legal Services which began in September 2005. I shall return to the Review later in my Annual Report.

1.2 This Annual Report deals with the activity and work of The Lay Observer during the calendar year 2005. In addition to my normal work of auditing and investigating complaints, there has been much dialogue with the Law Society and additional work associated with making submission to the Review Group. I shall comment on all these matters later in my Annual Report.

1.3 The Law Society now has a new President succeeding Mrs Attracta Wilson. Mr Rory McShane brings to his high office a strong knowledge and experience of complaints handling. For some years he was, until made President, the Chairman of the Clients Complaints Committee of the Law Society. This means that he is particularly well placed to guide the Law Society through the Review of the Regulation of Legal Services. He is succeeded as the Chairman of the Clients Complaints Committee by Mr Norville Connolly; he is also a person of strong knowledge and experience of complaints handling, having been a member of the Committee for several years. I thank them both, together with other Office Bearers and the Chief Executive of the Law Society, Mr John Bailie, for their co-operation with me and their responsiveness to the issues I raise.

1.4 On a day to day basis I could not operate effectively without the assistance, and co-operation of Mrs Moira Neeson, Assistant Secretary, and her assistant Ms Priscilla Flavelle. I thank them for their help. More recently, the Law Society has appointed Ms Eleanor

McCabe as Co-ordinator of the mandatory Continuous Professional Development Programme (CPD). I am also grateful to her for her ready assistance.

1.5 Mr Norman Taylor is the Assistant Secretary at the Department of Finance and Personnel with whom I relate. He and his support staff have at all times been most helpful in support of my office, and I thank them. During the year, The Lay Observer was again on the move. This time the office has moved to Londonderry House, in Chichester Street, Belfast. This has brought with it logistical challenges of many types, which seem inevitably to imprint themselves on my day to day work load. I also thank the Permanent Secretary Mr John Hunter and the Deputy Secretary Mr Chris Thompson for their interest in my work and above all for their assiduous approach to ensuring my independence.

1.6 To the Lord Chief Justice of Northern, the Rt Hon Sir Brian Kerr QC I owe a particular debt of gratitude. He has gone out of his way to ensure that he knows precisely what is going on, meeting me on a regular basis and challenging and debating with me my thinking. I much welcome his encouragement of my work.

1.7 During the year I have met, as part of a regular dialogue, with the Legal Services Ombudsman for England and Wales (who is also the Legal Services Commissioner), Dr Zahida Manzoor CBE and the Scottish Legal Services Ombudsman, Mrs Linda Costelloe Baker. I have also met with Ms Ann Abraham, the UK Parliamentary Ombudsman, Mrs Jodi Berg, the Independent Examiner and Mr John MacQuarrie, the Deputy Ombudsman in Northern Ireland. These contacts together with my involvement with the British Irish Ombudsman Association provides a basis for ensuring the approach I use as The Lay Observer is informed by best practice.

1.8 Once again, I have had useful dialogue with Mrs Patricia Montgomery, the Registrar Land Registers

Northern Ireland. I pay tribute to Mrs Montgomery and her staff and to the Law Society for the joint work they have undertaken. This is aimed at improving the service to the community in the conveyancing of property.

1.9 I have made reference already to the Review of the Regulation of Legal Services in Northern Ireland, which began with the publication by the Government of A Consultative Paper in September 2005. A Review Group under the Chairmanship of Sir George Bain was also established. I have provided written submissions for the Review Group and have met with the Chairman and the Secretary for further discussions. Their work still progresses as this Annual Report is written and the report of the Review Group is due to be published late in 2006.

1.10 The period on which I now report has therefore been lively and stimulating. The Regulation of Legal Services, of which complaints handling is an increasingly visible component, will in due course be brought up to 21st Century standards. In the meantime, the role of The Lay Observer continues. It is however important to have an eye to the future, so that those improvements that can be put in place now should also have in mind the possible future shape of the Regulation of Legal Services.



# Section 2

## Preamble

2.1 I have taken as my theme for my second Annual Report **ACTION – Squaring the Circle**.

2.2 Many regard the role of The Lay Observer as one ‘without teeth’. Indeed, I have referred to this in my submissions to the Review Group on Regulation of Legal Services – I believe that teeth are needed and that they be kept sharp. However, the current situation does not mean that The Lay Observer cannot be a catalyst for action. My theme in my Annual Report 2004 was **ACTION – Prevention and Cure**. I commend the Law Society whose Complaints Handling Procedures I oversee in that the Society generally took seriously my Recommendations of 2004.

2.3 However it is a central feature of good practice in the 21st Century in relation to complaints handling that individual complaints are not simply dealt with on a piecemeal basis. Rather, the consolidation of a number of complaints and the ways in which they are dealt with, become parts of patterns and trends with valuable learning for those who are involved in complaints handling. Almost every complaint, in addition, contains one or more important elements of value in attempting continuous improvement. My second Annual Report therefore focuses particularly, but not exclusively, on closing the link. Handling individual complaints but also ensuring that points of learning from those individual complaints together with patterns that can be detected from the overall mass of complaints, will ensure that overall performance of complaints handling in the Law Society is continuously improved. This becomes the basis for a sustained approach to continuous improvement and development. It is also the stuff of a learning organisation.

2.4 So for example, there are lessons in many complaints for updating the skills of solicitors and their support staff, or for improving systems and protocols in dealing with complainants and their complaints, or for the way in which complaints can be prevented. Indeed,

the methodologies of complaints handling of the Law Society **and** even of The Lay Observer can be and are constantly under review and improvement informed by such lessons.

2.5 It is in this way that development takes place. Performance rises and changes to meet new demands from complainants. But, most importantly from the point of view of the Law Society, the resources required can be kept under control.

2.6 My Recommendations this year focus once again on a modest number of ‘functional’ actions which are consistent with the overall objectives of the Law Society, and which can be implemented if there is the will to do so. The actions I suggest, are concerned with strengthening the link between complaints handling and achieving central professional and other objectives of the Law Society on behalf of the solicitors profession.

2.7 It should not of course end at this point. If the actions I recommend, based on my experience in 2005, are implemented, the effect will be to reduce the incidence of certain types of complaints. This in turn enables the limited resource available for complaints handling to be focussed on new and emerging problems and related complaints. An eventual outcome could well be that many potential types of complaints can be predicted and dealt with before they arise.

2.8 For these reasons I am keen, as is the Law Society, to work continuously and more closely together to establish what can be done in a targeted and effective manner. My approach is to encourage the Law Society to ‘find a way’. An alternative and not very productive approach is to find the flaws in my recommendations, thus seeking (and finding) ways to postpone or eventually cast aside what should be or needs to be done. It is for this reason that the Chief Executive and I have been meeting regularly on an informal basis to discuss emerging ideas and how they might be put into practice for the benefit of everyone. It is in this way that

what I recommend can be made more effective. By the time I have written them in my Annual Report, the actions may well have already been taken, or preparations made in a prospect of implementation.

2.9 There are some who would say that this is not a sufficiently radical or robust approach. It is however, the most productive approach, in my opinion, where the powers of The Lay Observer are so limited. I would remind those concerned that the Regulation of Legal Services is currently being reviewed under the independent chairmanship of Professor Sir George Bain. The more radical approach is therefore for another day. I have reached agreement with the Law Society that within the current parameters any improvements achievable now are of the utmost importance in keeping the present system up to date as far as is practicable. This is the best way, it seems to me, to prepare for the changes which will inevitably arise from the Review.

# Section 3

## *What The Lay Observer does*

3.1 The Lay Observer for Northern Ireland 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 nor is it intended to be; and this is quite intentional. Nevertheless, a clear distinction should be drawn between ensuring that the office is accessible, available for business and visible to those who need help when they believe they have been wronged, and 'touting for business'. In my view, visibility is essential for anyone wishing to know how they can have their complaint further investigated, and therefore sensible profile in the appropriate places is to be encouraged.

discussed for implementing this important way of communicating with those who have complaints to make.

3.2 The leaflet written in plain English which was made available in 2004 has been found by complainants to be most helpful to them in orientating their expectations of what I can do for them. This convinces me of the value of a simply written accessible document. This has now been published in a more attractive and colourful format, which has, like its very functional predecessor, been made available in the appropriate places. I record my appreciation for the assistance of the Department of Finance and Personnel for making this possible. The content of the leaflet is at Appendix A to this Annual Report.

3.3 Every person who contacts me about a complaint, whether or not I can help them under my remit receives a copy of the leaflet; to date it has been found to be of value to these persons in taking forward their issues. Copies of the leaflet can be found in every office operated by the Citizens Advice Bureaux around the Province. I thank Mr Derek Alcorn of CAB Central Office and his colleagues for their help.

3.4 In my Annual Report for 2004, I referred to the need for a website for The Lay Observer for Northern Ireland. This is a necessity for any 21st Century operation on behalf of the public. I have determined the content for the site, and arrangements now need to be

# Section 4

## *The Work of The Lay Observer in 2005*

4.1 The Lay Observer's role is fundamentally to oversee the complaints 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 the 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, during 2005, I investigated complaints from 38 complainants. The Law Society received 301 complaints relating to solicitors by their clients in the year ending September 2005. During the twelve months ending September 2005, I had audited 80 complainant files.

4.3 It is not my role to show the complaints handling processes of the Law Society in other than factual terms. **There has been, however, over several Annual Reports an inadequate explanation of complaints statistics. This has served to provide, to a degree, misleading figures.** I now wish to clarify the record. The statistical description has in effect appeared to inflate the number of dissatisfied complainants against the Law Society in any one year.

4.4 In paragraph 4.2 above, it states that the Law Society received 301 complaints in the year ending September 2005. This is an accurate statement, but amplification is needed for clear understanding. In fact, the number of complainants in this period was 165. The reason why there is a greater number of complaints is that for statistical reasons, the classification of complaints is actually to do with TYPES of complaint. This means for instance that one complainant may describe a situation in which there has been 'undue delay', a 'lost document' and an allegation of 'disclosing

confidential information'. This translates into three complaints but emanating from only one complainant.

4.5 In terms of dissatisfied complainants therefore, the number is considerably less than complaints figures over the years might seem to suggest. It may be that a degree of misinterpretation has crept in due to this difference not having been highlighted sufficiently in previous years. For this reason, I have modified some of the wording used in the statistical sections and elsewhere in this Report to ensure that ambiguities are reduced and that the figures reflect greater accuracy in interpretation, and yet which do not destroy comparability over the 'statistical runs'.

4.6 It is perhaps relevant to note that the figures for the investigations carried out by The Lay Observer need to relate to a proper like for like comparison. The 38 cases I investigated during 2005 are not categorised by types of complaint. Accordingly the related figure in the Law Society statistics are the number of complainants in a twelve month period. This was 165 during the twelve-month period ending in September 2005. It will be readily recognised that in order to make very precise comparisons, additional analysis will be required. It is my intention that this will be achieved in my Annual Report for 2006.

4.7 It is appropriate for me to point out to the Law Society that it is important always to be aware of complainant perceptions. What the complainant sees as relevant and logical to complain about from his/her viewpoint may not be capable under the legislation, the regulations and the protocols of being even recognised as a complaint, let alone that it can be resolved under the complaints handling system by the Law Society. This needs careful explanation to a dissatisfied would be complainant. One type of complaint arose on several occasions during 2005, and there will almost certainly be more of them. This centres around the alleged mis-selling some 15 years ago of endowment life insurance policies by solicitors. It has been established in law that

compensation in such cases cannot be provided under the complaints handling procedures of the Law Society. It follows therefore that there is no complaint within that context. However, it does not follow that the 'complaint' cannot be dealt with; it simply cannot be investigated under the complaints handling procedures of the Law Society. There has been a good deal of uncertainty about the way in which this particular matter should be handled. I believe that those who complain under this particular heading need careful explanation in simple English of why this has arisen and what they should do about it in broad terms. I deal with this again in Section 10 under my Recommendations, but I do believe that a straightforward leaflet, explaining everything and issued in these particular cases would be most helpful.

4.8 I am of course fully aware that such cases do not fall within my remit – if there is no complaint, I cannot investigate. I do however have such persons seeking my assistance, and they feel particularly strongly about these issues. I do respond to each such complainant by attempting to clarify for them what they have been told by the Law Society.

4.9 It is my strong impression that the proportion of complaints being handled by the Law Society and by me that are complex is growing. I see this in my auditing work as well as in my own investigation, and there is a subjective confirmatory observation at the Law Society that this may indeed be the case. However, a more objective methodology is required, and has yet to be developed. I plan to discuss this with the Law Society and to explore cost effective ways of doing so. My own analysis of the cases I investigated in 2005 shows the following:

- There were 38 cases investigated by me
- There were 11 complex cases during the year; these took two days work each to complete
- There were 4 very complex cases; each of these took three days or more to complete

- The remaining 23 cases took a day or less to complete

I intend to carry out a similar analysis in my 2006 Annual Report.

4.10 There are other difficulties than complexity in the complaints handling processes which for a variety of reasons elongate or make difficult the processes and therefore delays the conclusion of a complaint. Some complainants feel it necessary to present voluminous amounts of information and yet do not trouble to tease out the main issues they wish to have addressed. One such would be complainant produced so much material to the Law Society that it actually took eight hours simply to read it. Another complainant found it necessary to hire a courier van to transport a very large box of papers from another agency. In the former example, it has emerged that the individual had yet to actually make his complaint to the Law Society, while the latter turned out to be a review of an already concluded case. In neither instance were these factors obvious when the investigations began; thus it was essential in both cases, that the material was in fact studied very carefully.

4.11 In all cases it is my view that help should be given; but it has to be proportionate to the service that can be provided. I commend the Law Society for its efforts to help people in distress, but there are cases where lines must be drawn, and in my opinion the persons complaining in the above cases went across those lines. In the former case, the Law Society said it was ready to receive his complaint, but that he really needed to identify the issues that he wished to have addressed. The Law Society gave him some pointers. Instead of doing the work himself, this person turned to The Lay Observer for help!

4.12 On the other hand there are cases where there turn out to be arguments as to whether a complaint actually exists. I have already referred to the financial services

complaint in paragraph 4.7 above. Another type of case is where the beneficiary of a will is dissatisfied with the work of the solicitor involved with the estate. Where the person complaining is not the client of the solicitor, there can be no complaint under the complaints handling procedures of the Law Society. Also, different systems exist for having solicitors' fees examined and assessed. These are all matters which require careful explanation to would be complainants in language that is couched in terms they understand rather than using complex terms not designed for communicating with lay persons.

4.13 Another reason for delay in dealing with a complaint arises where solicitors do not respond to the timetable which is laid down by the Law Society. When a complaint is raised, the Law Society require to have a full version of how the solicitor complained about sees the matter. In each case, the solicitor is given a period of time in which to respond. Complaints are serious matters, and the solicitor should be required to take very seriously a request for such information from what is in fact his/her regulatory body. I believe that the Law Society should use minimal leniency in this matter and in effect tighten up the handling of this vital element in the process. At the very least, solicitors must be required to acknowledge the request and have a valid reason clearly stated for not meeting the timetable laid down by the Law Society. In one case in 2005, a solicitor had to be asked three times for the information that the Clients Complaints Committee required. I further believe that where a solicitor is lax in this context, in the concluding letter to the solicitor, the fact should be specifically mentioned by the Law Society. In the instance above, the solicitor was simply informed that the complaint was upheld in favour of the complainant.

4.14 As a matter of course under the legislation, my Annual Report is made available to the Government, The Lord Chief Justice and the Council of the Law Society. Copies are also sent to a range of related and interested bodies, and to all MPs and MLAs in

Northern Ireland. For the past few years, with the help of the Department of Finance and Personnel, a copy has been sent to the principal solicitor in every solicitor firm in Northern Ireland. There was also a covering letter from me encouraging the principal solicitor to circulate and encourage relevant personnel to examine the document. I also asked for any relevant feedback. This was acknowledged to me by two solicitors.

4.15 What is rather more disturbing to me is the fact that the Law Society has lost at least one opportunity to influence its members. The Law Society publishes a monthly journal called *The Writ*. An examination of the library index for the period January – December 2005 discloses that there is not a single mention of Complaints, *The Lay Observer*, or his Annual Report. This strikes me as being a lost opportunity. In no sense do I want to seek profile for me, but I do believe it is important at the least for solicitors – including those solicitors who do not have any complaints made against them, which is the vast bulk of the profession – to be made aware that the matter is taken seriously. It also seems to me that it is important for the profession in general to know the extent of the incidence of complaints, and that the situation is being dealt with. It may well be stated that the pressure on space in *The Writ* is too great. In that case, the Law Society will have to decide its priorities; even a brisk mention to expect and take note of the Annual Report of *The Lay Observer* would be a positive step. This is an example of what I have called in my theme 'squaring the circle'. Mentioning the Report and urging people to read it, is a method of reinforcement which takes little effort, but may enhance effect. A suitable quote from the President or the Chairman of the Client Complaints Committee would lend an extra dimension. Last year, in a letter in August to the Law Society, when I published my 2004 Annual Report, I suggested that this be done; it was not done.

4.16 The work of *The Lay Observer* is not confined of course to the matters of complaint handling. There are

other tasks to be performed, which go to support my organisation. It will be recognised that mine is a part-time appointment, and that substantial proportions of the time I spend as The Lay Observer is actually at the Law Society or in other venues. During 2005, I decided to dispense with a regular secretarial support service. This has considerably reduced the cost of operating the Office. In the past this has been provided via a dedicated person from an agency. I am grateful to Mrs Carol McClure who has been most helpful in fielding calls from clients and ensuring a rapid response from me. I believe this provides a much better service to clients than the part-time basis of the previous arrangements. This way also gives, during office hours, access to a human voice, as opposed to a recording machine message for substantial parts of each day under the previous arrangements.

4.17 I am also involved in extensive reading and research on best practice in relation to complaints handling. In this, I find my involvement with the British Irish Ombudsman Association of very great value. I have attended several best practice seminars and workshops as well as maintaining contact with a number of other Ombudsmen who operate in similar contexts and in other jurisdictions. In addition there continue to be a number of governance issues to be attended to including such matters as Freedom of Information legislation, office systems of one sort and another, requests for information and opinions, the maintenance of transparency and independence of role. I record my thanks to all those in Londonderry House from the premises officer to security and messenger staff for helping me to carry out my duties.



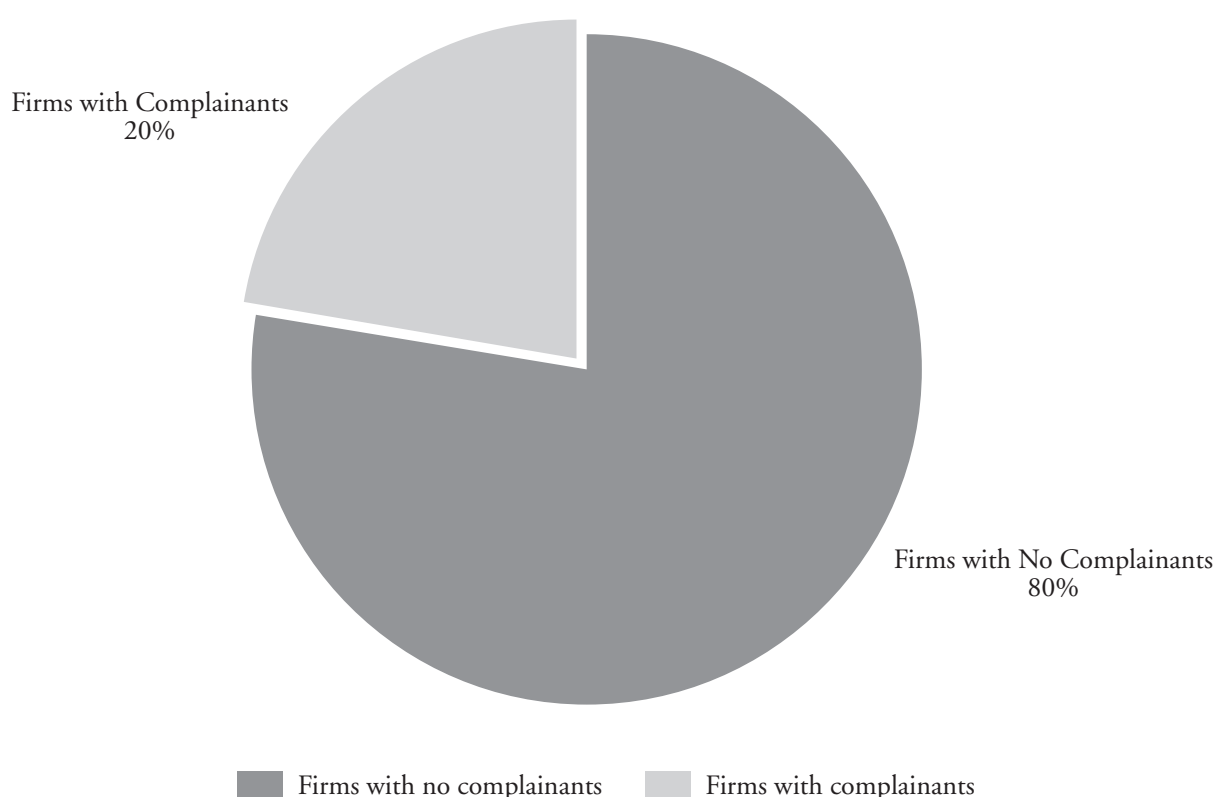
# Section 5

## *Final Outcomes of Complaints Forms to the Law Society*

*Note: The complainants referred to in Section 5 are those which achieved a final outcome in the year 2005.*

Chart A

% Number of Firms with Complainants and % Number of Firms with No Complainants in 2005



The total number of firms “on the register” at the Law Society is 521. Of these 420 (80%) have attracted no complainants. 101 solicitors firms have attracted complainants; this is 20%. These proportions have improved from 2004 levels of 23% of solicitors firms attracting complainants and 77% attracting no complainants.



Chart B

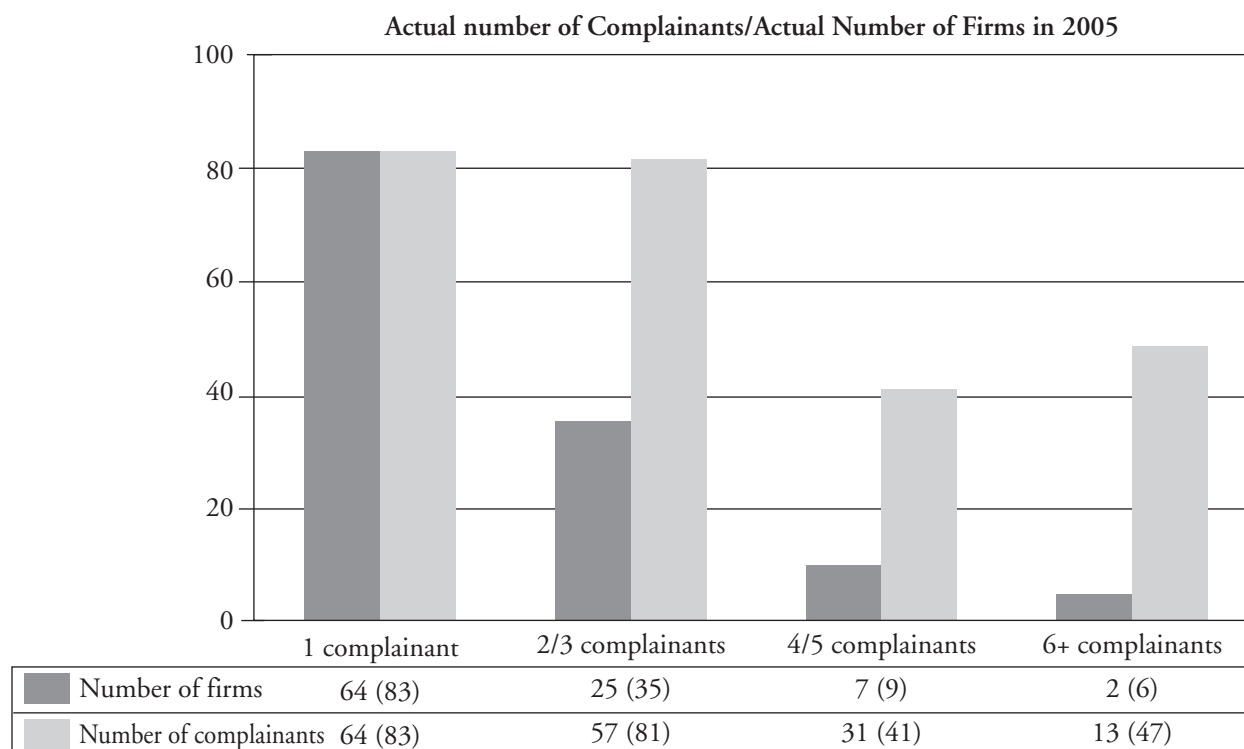
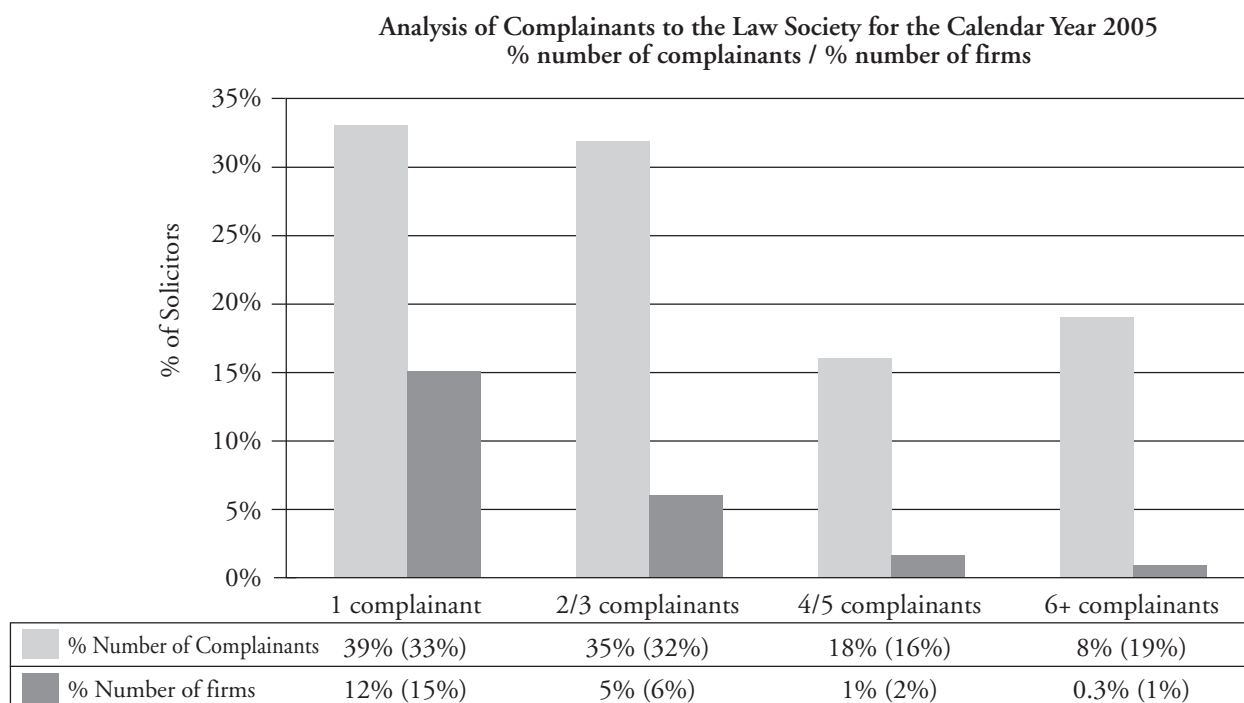


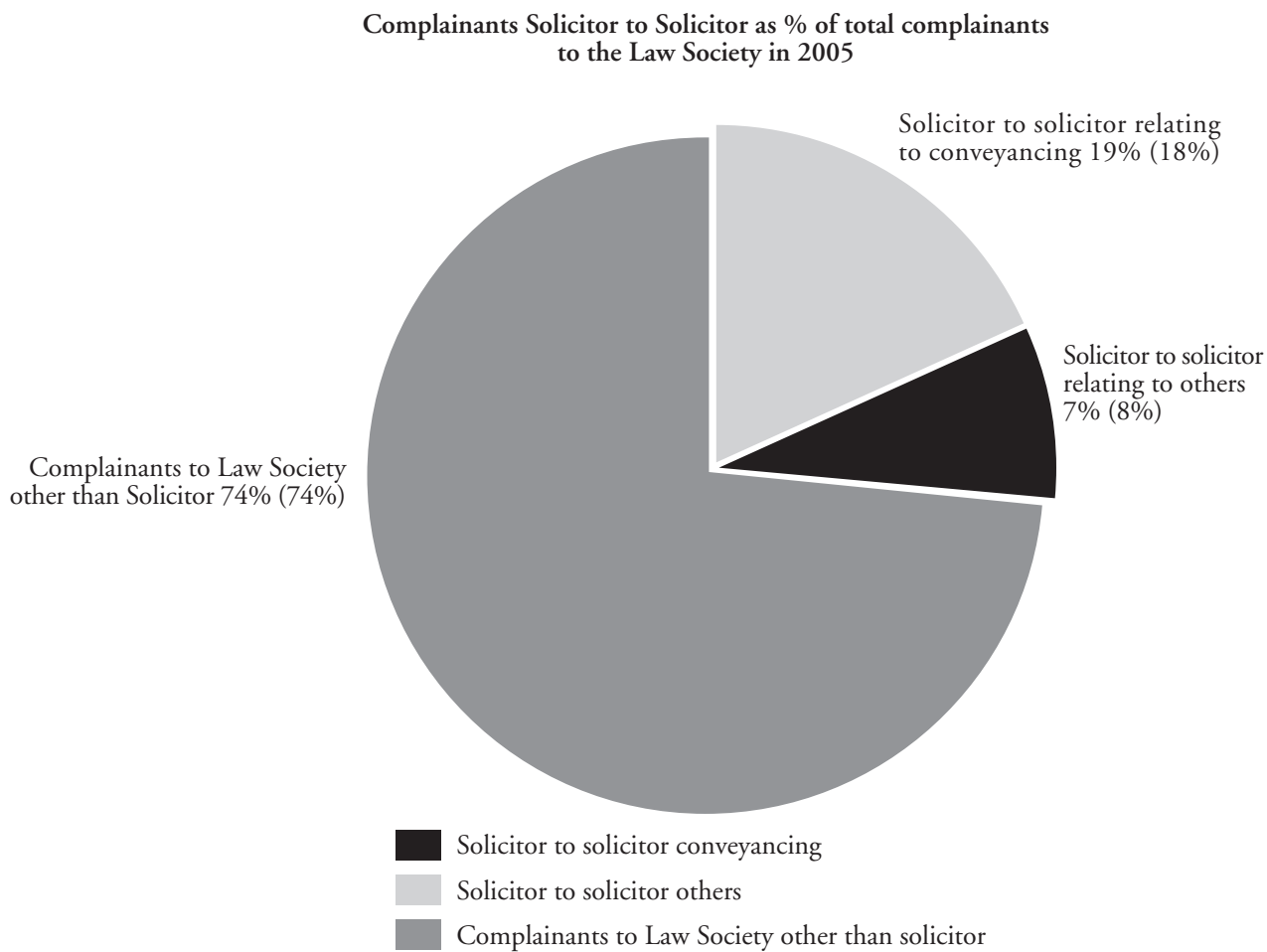
Chart B presents the actual numbers (and not the comparative percentages which are shown in Chart C) and reflects the same statistical pattern. The equivalent figures for 2004 are shown in brackets.

Chart C



Figures for 2004 are shown in brackets.

Chart D

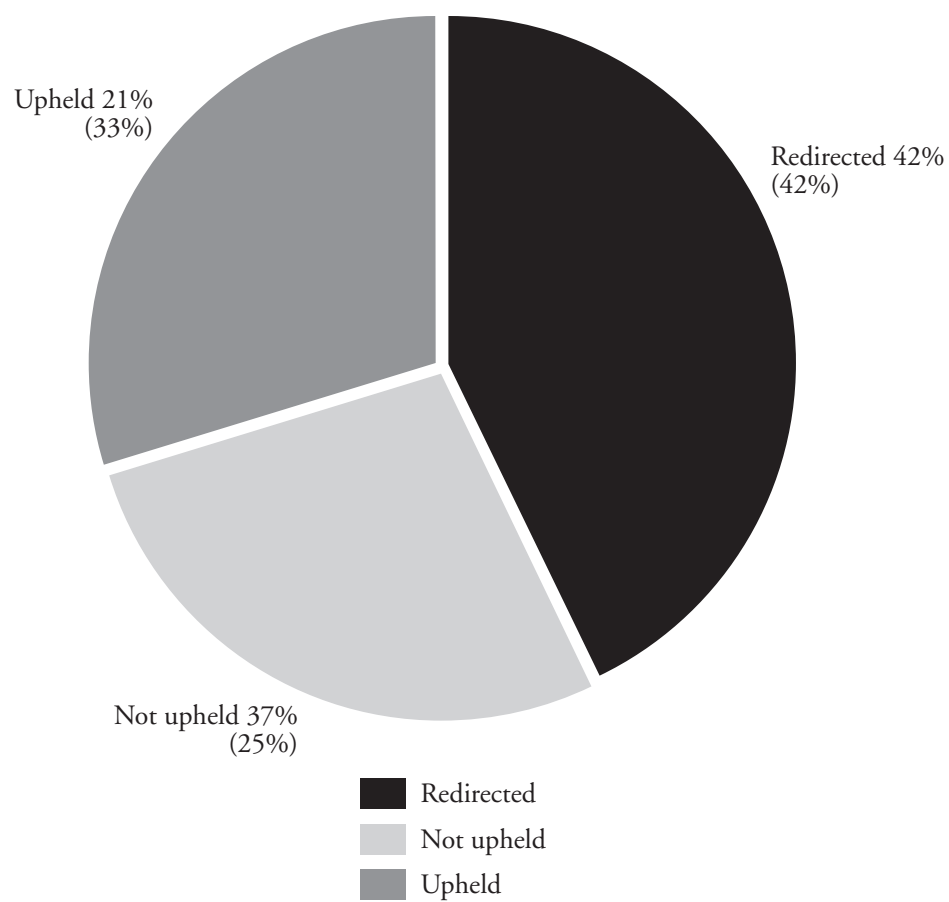


Solicitor to solicitor complainants amounted to 42 (65) out of a total number of complainants of 165 (250). 31 (45) out of the 42 (65) or 74% (69%) were conveyancing complaints.

Figures for 2004 are shown in brackets.

Chart E

Summary of final outcome on complaints registered and completed in 2005



Figures relating to 2004 are shown in brackets.

## Comment

- 5.1 The number of solicitors firms have reduced from 570 in 2004 to 521 in 2005. Chart A indicates that a lower proportion of this total had complaints brought against them. The figure has dropped from 23% in 2004 to 20% in 2005. This is encouraging not least in that the proportion in 2003 was, as in 2004, 77% of firms with no complaints. Thus the proportion of firms without any complaints has risen to 80% in 2005.
- 5.2 Chart B indicates the relationship between the number of complainants forwarded and the actual number of firms involved. This year the number of multiple complainants to individual firms (ie two or more complainants) was 34; last year the corresponding number of firms was 50. In 2003, it was 37.
- 5.3 Deeper examination shows that in 2005 the number of firms with 6 or more complainants had dropped to 2 compared with 6 in 2004. The figures for 4 or more complainants in 2005 is 9 firms; in 2004, this number was 15 firms, and again in 2003 there were 9 firms. The firm with the most had 7 complainants against them in 2005, compared with one firm in 2004 which had 12 complainants during the year. This is overall a rather happier picture than in 2004, although there is an overlap once again in the small number of specific firms attracting larger numbers of complaints in each of the years 2003, 2004, and 2005. I am very much re-assured that the Law Society is focussing in very powerful and effective ways to ensure that such firms, where appropriate, receive particular attention. This, I am in no doubt will lead to a reduction in 'frequent offenders'.
- 5.4 Chart C is concerned with proportions rather than raw numbers. This shows that the tendency to skew away from single complainants towards

multiple complainants has been reversed. Furthermore, there is a useful reduction in the number of firms and the proportion of firms attracting 1 or 2/3 complainants. This hopefully is also the beginning of a useful trend.

- 5.5 Chart D deals with complaints solicitor to solicitor. It is widely agreed that the complaints handling process is not the best place for such complaints. Basically these arise and are placed by solicitors on behalf of their clients because the solicitor for the 'other party' is slow about dealing with matters for whatever reason. The Law Society now takes the view – and I heartily concur – that such complaints, if indicative of a pattern with particular firms, should be considered by the Ethics Committee of the Law Society. In future years, this may lead to a reduction of such cases within the complaints handling processes. Of course this is not the same as suggesting that these types of complaints will cease, and I am left in no doubt that the Law Society will continue to monitor the incidence of such complaints however they are concluded. It is important to note in this context that there will inevitably be a performance lag in the realisation of the effects of actions taken by the Law Society before improved performance in the profession results.
- 5.6 The figures for complaints solicitor to solicitor show only a small change – admittedly in the 'wrong direction' in the proportions. In overall terms, the proportion of the whole in these types of complaint remains unaltered at 26% while the proportion of these types of complaint that relate to Conveyancing has risen 1% to 19%.
- 5.7 Chart E shows proportionate final outcomes on complaints registered and completed in 2005. The proportion of complaints **upheld** (ie in favour of the client) has reduced from 33% in 2004 to 21% in 2005, having been 23% in 2003. The proportion **not upheld** (ie against the

client) has grown to 37% in 2005 compared with 25% in 2004 and 34% in 2003. The proportion of complaints **redirected** is 42%, exactly the same as in 2004. I attach no particular significance to these figures.

#### Time taken to conduct complainant referrals

5.8 The figures for the calendar year 2005 are as follows:

Year 2005	Incidence	Cumulative	Months
In 3 months	32% (26%)	32% (26%)	up to 3
In 6 months	30% (22%)	62% (48%)	4 – 6
In 9 months	7% (24%)	69% (72%)	7 – 9
In 12 months	3% (8%)	72% (80%)	10 – 12
In 12+ Months	6% (0%)	78% (80%)	12+
Total Cumulative		78% (80%)	
Disciplinary Tribunal		2% (3%)	
*Ongoing		20% (17%)	
Total		100%	

\*Note: This figure is accurate overall: it relates however to cases extending into 2006 but not concluded before 31st March 2006.

5.9 In general terms these figures indicate a continuing overall improvement over the previous two years in the timetables for concluding complaints. In examining the detail, it will be noted that two thirds of the complaints are concluded within 9 months. The categorisation fails to show up that the 7% of the total complaints that fall in the 'In 9 months' bracket are concluded within just over 6 months, while 62% of complaints are concluded within 6 months or less. This compares with 48% of all cases being concluded within 6 months in 2004.

5.10 However there is a significant proportion, at 6% of these complaints, which took more than 12 months to conclude. This is a similar proportion to 2003 although up from zero in 2004. These cases are complex, or pose particular difficulties for example in gathering information. I believe it will be worthwhile to discuss with the Law Society the possibility of developing a methodology to determine some more objective measure of the proportions and changes in the complexity of complainants cases.

5.10 Finally, these figures which relate to the conclusion times for complaints cases need to be seen in a different context. While the statistics in the Charts describe an improving picture, it must be recalled that the target time for the Law Society to conclude a complaint is now up to 15 weeks. This equates approximately to 4 months. The figures above indicate that 62% of all complaints were concluded within 6 months in 2005. This puts this particular Section into some degree of perspective. Every individual compliant has, of course, to be seen within its own context. Nevertheless, the fact remains that almost 40% of all complaint cases take over six months to conclude.

# Section 6 Complaints Statistical Tables

Table 1 COMPLAINTS EXAMINED BY THE LAW SOCIETY FOR THE 12 MONTHS ENDING SEPTEMBER 2005

Nature of Complaints	Circumstances of Complaints										
	Criminal Proceedings	Matrimonial Proceedings	Admin. of Estates	Conveyancing	Property Disputes	Contract Disputes	Personal Injury	Criminal Injury	Employment	Professional Negligence	Other
1. Undue delay	1	21	9	68	0	2	20	2	2	0	3
2. Withholding or loss of documents	0	5	1	8	0	0	12	0	0	0	2
3. Presentation of bills and accounts, lack of information, fees charged	0	4	1	8	0	1	3	3	0	0	1
4. Disclosing confidential information	0	0	0	2	0	0	0	0	0	0	0
5. Dissatisfaction with advice given	1	2	0	1	0	2	2	0	0	0	0
6. Acting contrary to clients instructions	0	1	2	3	0	1	0	1	1	0	0
7. Ethics or behaviour	3	10	5	49	0	1	17	2	1	0	5
8. Solicitors action caused loss	0	0	0	1	0	0	0	0	0	0	0
9. Legal aid	0	2	0	0	1	3	5	0	0	0	0
10. Other factors	0	0	0	0	0	0	0	0	0	0	0
11. All factors (total 1-10)	5	45	18	140	1	10	59	8	4	0	11
											301

Table 2 FIVE YEAR SUMMARY OF 'GUIDE TO CIRCUMSTANCES' 2000/2001 - 2004/2005 - 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	
2000/01 - Year 1	6	42	15	146	4	25	60	11	3	0	29	341
2001/02 - Year 2	12	28	19	115	1	19	51	13	1	0	27	286
2002/03 - Year 3	11	30	20	107	5	13	48	6	1	0	33	274
2003/04 - Year 4	4	52	32	148	7	7	49	13	4	0	23	339
2004/05 - Year 5	5	45	18	140	1	10	59	8	4	0	11	301

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	
2000/01 - Year 1	8	42	19	106	7	25	65	10	3	1	47	331
2001/02 - Year 2	9	39	19	108	5	24	62	10	3	1	43	322
2002/03 - Year 3	9	35	17	110	5	20	58	8	2	1	43	307
2003/04 - Year 4	8	38	21	124	5	17	54	10	2	0	30	310
2004/05 - Year 5	8	39	21	131	4	15	53	10	3	1	25	308

Table 4 FURTHER ANALYSIS OF 'GUIDE TO CIRCUMSTANCES' SUMMARY 2000/2001 TO 2004/05

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 2000/2001 to 2004/05	-1	3	3	-6	-3	-15	-1	-3	1	0	18	-40
% Change, Year 1 to 5	-16%	7%	20%	-4%	-75%	-60%	-2%	-27%	200%	0%	-62%	-12%
% of Total complaints in Year 1 2000/2001	2%	12%	4%	43%	1%	7%	18%	4%	1%	0%	8%	100%
% of Total complaints in Year 5 2004/2005	2%	13%	7%	43%	1%	5%	17%	3%	1%	0%	8%	100%



Table 5 FIVE YEAR SUMMARY OF 'NATURE OF COMPLAINTS' (1-10) 2000/2001 TO 2004/2005 - 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	
2000/01 - Year 1	163	37	12	1	29	14	79	0	6	0	341
2001/02 - Year 2	153	29	10	1	14	4	68	1	6	0	286
2002/03 - Year 3	129	26	6	1	14	7	81	0	10	0	274
2003/04 - Year 4	150	29	13	1	10	36	91	0	9	0	339
2004/05 - Year 5	128	28	21	2	8	9	93	1	11	0	301

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	
2000/01 - Year 1	132	34	20	2	24	14	88	1	18	0	333
2001/02 - Year 2	136	33	18	1	22	12	84	1	15	0	322
2002/03 - Year 3	136	31	16	2	18	10	80	1	15	0	309
2003/04 - Year 4	141	33	13	2	18	15	79	1	10	0	311
2004/05 - Year 5	123	33	18	2	21	13	84	1	16	0	321

Table 7 FURTHER ANALYSIS OF 'NATURE OF COMPLAINTS' (1-10) SUMMARY 2000/2001 TO 2004/2005

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 2000/2001 to 2004/2005	-35	-9	9	1	21	-5	-14	1	5	0	-40
% Change, Year 1 to 5	-21%	-24%	75%	100%	72%	-36%	18%	100%	83%	0%	12%
% of Total complaints in Year 1 2000/2001	48%	11%	4%	0%	9%	3%	23%	0%	2%	0%	100%
% of Total complaints in Year 5 2004/2005	41%	10%	6%	1%	7%	4%	26%	0%	5%	0%	100%

# Section 7

## Comments on Complaints Statistics

- 7.1 This statistical section has become an important part of the 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. Also, it gives a statistical shape to 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.
- 7.2 The source of the material in this section derives from the types of complaints made to the Law Society in the twelve months ending 30th September 2005. These are categorised by *Circumstances of Complaint* and by *Nature of Complaint*.

### GUIDE TO CIRCUMSTANCES

#### General Comment

- 7.3 Overall, the total number of types of complaints dealt with by the Law Society in the period ending 30th September fell from 339 in the previous year 2004 to 301 in 2005. These figures compare to 274 in the equivalent period in 2003.
- 7.4 In every Circumstance, except for Personal Injury (from 49 in 2004 to 59 in 2005), the figures have fallen or are more or less stable. Conveyancing is a heading which has received much attention in previous Annual Reports and there is a small fall from 148 in 2004 to 140 in 2005. This is not necessarily a significant shift, given that the total number of complaint types fell between 2004 and 2005. Nevertheless, reductions are encouraging. It will be significant when the overall proportions in the total shift from year to year.

#### Detailed Comment

- 7.5 In this section, comments on 'Guide to Circumstance' 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

- 7.6 The actual number of complaints under this heading has risen from 4 in 2004 to 5 in 2005. This is a very small element in the total of 301.

#### Matrimonial Proceedings

- 7.7 These cases have fallen from 52 in 2004 to 45 in 2005. In 2003 there were 30 and 28 in 2002. So these remain higher than we would all like despite the fall from 2004. These remain very upsetting cases for all concerned. More attention to mediation, as is the intention of the Family Courts and also as the Law Society is advocating should over the years lead to a reduction in these types of complaint.

#### Administration of Estates

- 7.8 These cases have reduced from 32 in 2004 to 18 in 2005, but the trend line is not falling; it remains stable.

#### Conveyancing

- 7.9 The reductions from 115 cases in 2002 to 107 in 2003 were not sustained in 2004 when there was steep rise to 148 such complaints. In 2005, there was a slight fall but only back to 140. The proportion of these complaint types remains stubbornly stable in the proportion of the total at 43% (44% in 2004) and remains above the trend line.

### Property Disputes

7.10 Complaints in this category have fallen from 7 cases in 2004 to 1 case in 2005.

### Contract Disputes

7.11 The complaints under this heading have risen to 10 in 2005 from 7 in 2004, but having been 13 in 2003.

### Personal Injury

7.12 These cases have risen again from 49 cases in 2004 to 59 in 2005, continuing the rise from 2003.

### Criminal Injury

7.13 These cases have fallen from 13 in 2004 to 8 in 2005.

### Employment

7.14 The number of cases in 2005 is the same, at 4, as in 2004.

### Professional Negligence

7.15 This heading as in 2004 generated no complaint cases.

### Other

7.16 The trend line continues downward and there were 11 cases in 2005 from 23 cases in 2004.

### Nature of Complaints

7.17 In this section, comments on the 'Nature of Complaints' are presented in sequence of classification and not in any other order of significance. This is intended to facilitate the reader in analysing the figures and making comparisons from year to year.

### Undue delay

7.18 *Undue Delay* represents in 2005 a smaller proportion but a large one nevertheless in the total. In 2005 there were 128 out of a total of 301 (41%) compared with 150 out of 339 in 2004 (44%). In 2003, the proportion was 47% of the total. Principal Circumstances were as follows:

Circumstance	2005	2004
● Conveyancing	68	72
● Personal Injuries	20	21
● Administration of Estates	9	13
● Matrimonial Proceedings	21	23
● Contracts	2	3
● Other	3	8

### Withholding or Loss of documents

7.19 Complaints have fallen by 1 from 29 in 2004 to 28 in 2005.

### Bills and Accounts

7.20 This category has shown an increase from 13 in 2004 to 21 in 2005.

### Disclosing Confidential Information

7.21 This remains an insignificant problem even though there were 2 cases in 2005 compared with only 1 in 2004.

### Dissatisfaction with Advice given

7.22 The number of cases has fallen from 10 in 2004 to 8 in 2005.

### Acting against Client Instructions

7.23 There has been a major fall from 36 cases in 2004 to 9 in 2005. This represents a return to

the proportions experienced prior to 2004 suggesting that the figure for 2004 represented a random 'blip' in the incidence of this kind of complaint.

#### **Ethics or Behaviour**

7.24 This rose very slightly from 91 in 2004 to 93 in 2005. It is a significant proportion of the whole, and therefore needs careful monitoring.

#### **Legal Aid**

7.25 The number of complaints under this heading rose from 9 in 2004 to 11 in 2005.

#### **Overall Picture**

7.26 The actual number of complaints by 'Nature of Complaint' is:

<b>Nature of Complaint</b>	<b>2004</b>	<b>2005</b>	<b>variance</b>
Undue delay	150	128	-22
Withholding/loss of documents	29	28	-1
Presentation of Bills/Accounts	13	21	+8
Disclosing Information	1	2	+ 1
Acting contrary to client instructions	36	9	- 27
Ethics or Behaviour	91	93	+ 2
Solicitor action caused loss	0	1	+ 1
Legal Aid	9	11	+ 2
Others	0	0	—
<b>Totals</b>	<b>339</b>	<b>301</b>	<b>-38</b>

#### **Trends**

7.27 The picture resulting from Trends ( as suggested by the 5 year moving average) shows a remarkable stability – or a stubbornness to fall – particularly over the past three years, despite the overall falls for 2005.

# Section 8

## *Continuous Professional Development and Conveyancing*

8.1 In this section I deal with two specific issues of importance. **Continuous Professional Development** has become an important focus of attention in the Law Society during the past two years or so. It seems to me to be an initiative where my theme of **ACTION – Squaring the Circle** is of particular significance. **Conveyancing** has been a topic of particular mention in the past few years in The Lay Observer's Annual Report. Very important developments have taken place in the past year which are most relevant in this issue; both the Law Society and the Land Registers Northern Ireland (LRNI), working together, are worthy of particular commendation in this matter.

### Continuous Professional Development (CPD)

8.2 A mandatory CPD scheme has been introduced within the Law Society in the past five years. This is a powerful tool in enhancing competence, which has been introduced in many professions in the past decade and more. Every solicitor is required to undertake and register 15 hours of CPD every year. 10 hours of this is in group study, and of which, 3 hours must be on Client Care & Practice Management. There would appear not to be a syllabus as such, and the approach seems not to have been based on a training needs analysis.

8.3 The Law Society also provides a framework for delivering Training. Within this framework, the Society provides some training directly or in conjunction with a range of other bodies. These include the Institute of Professional Legal Studies (IPLS), SLS (Serving the Legal System) the Court Service, Land Registers, Northern Ireland (LRNI) and the University of Ulster. In addition, a number of private contractors provide training opportunities.

8.4 An important part is also played by local Solicitors Associations. They energise, stimulate

and provide locally based training sessions and in turn the Law Society encourages and facilitates the Associations in this work.

8.5 The Law Society has appointed a CPD Co-ordinator at senior level to energise and oversee the Programme in all its aspects. What has been achieved already in a very few months is impressive. Major initiatives are under way in financial topics, family law practice, on-line legal services and land registration. In addition, specific events are planned for solicitors on the subject of running an effective practice and client care. A further and exciting initiative in train is for support staff in legal practices for training in land registration.

8.6 Particular emphasis is to be given to Conveyancing and Land Registry. Suffice to state at this stage that an initiative was launched seriously on the 1st January 2006, although much planning took place prior to this date. Much has already been achieved.

8.7 Closer examination of the various offerings on the supply side tends to suggest that for the moment, and not surprisingly, the real focus of interest is currently on attractive and 'new' topics such as financial matters, e-commerce, family law and similar subjects. I would of course wish to see a more specific focus on client care and complaints handling and the reduction of complaints, and training that focuses on prevention, cure and learning from experience in the next phases of development of CPD implementation. I look forward with anticipation to future fine tuning of CPD in the years ahead.

8.8 It is noteworthy that there are also other competence based programmes which some solicitor firms have availed of, which have client care and complaints handling elements in their

syllabuses; these include LEXCEL, ISO 9000, and Investors in People.

### Conveyancing

- 8.9 In previous Annual Reports, there has been much attention given to the question of complaints being generated in the context of Conveyancing and Land Registration. Complaints from these sources have remained stubbornly high, and have shown increasing proportions in the statistics. Different perceptions of how such complaints have arisen which have not matched have been evident to The Lay Observer from the respective perspectives of the Law Society and LRNI. It is much to the credit of both organisations that they are now embarked on a joint activity to deal with these problems, which in the past and currently lead to much anguish and cost to society in general.
- 8.10 Accordingly, LRNI and the Law Society are now meeting regularly at staff and other levels and have already launched an impressive programme of joint activities aimed at squeezing out the causes from which so many conveyance complaints arose. Many of these are administrative in nature.
- 8.11 In conjunction with the CPD action in the Law Society, there is an intention to extend attention to cover the need in this area in a three pronged approach. There will be:
- Training for students attending the IPLS on lodgement dealings
  - Training for the staff in solicitors firms who prepare dealings for lodgement with LRNI
  - Training for conveyancing solicitors
- Many sessions have been planned already, and there will likely be 18 events from January to June 2006. The programme for the Autumn is now beginning to take shape. In addition

guidance notes relating to Compulsory First Registration (CFR) are being prepared, and an extensive programme for raising awareness of the need will be mounted around the Province.

- 8.12 These major initiatives which have been put in place with such expedition strike me as being indicative of a very serious focus on a subject which if it is successful, should significantly reduce an entire category of problems over a period. Quite apart from this, the costs to solicitors, their clients and to society in general will have been reduced significantly, and efficiency will have been enhanced. It is another example of 'squaring the circle'.
- 8.13 Discussions with Mrs Patricia Montgomery, Chief Executive and Registrar of Titles in LRNI indicate that the two organisations are now working well together and both believe that the benefits will be significant. In addition, the introduction soon of IT measures will further diminish the chances of erroneous registration attempts, particularly in the light of the training involved in which LRNI are also engaged heavily with the Law Society.
- 8.14 The Registrar also reports information which confirms progress in terms of error reduction in registration and also an increase in productivity. She also reports a further reduction in the backlogs which were reported in previous years. A further development arises on the roll-out of e-based systems for compulsory first registrations in support of document imaging.
- 8.15 It is my firm hope and belief that these developments over the next few years will begin to bring about a reduction in complaints to do with Conveyancing. This in turn means that I will be able to retreat from focussing quite so much attention on this issue in future years in my Annual Reports.

# *Section 9*

## *Regulation of Legal Services in Northern Ireland*

- 9.1 Somewhat later than the commencement of similar reviews in other jurisdictions of the UK and in the Republic of Ireland, the Government here has initiated a Review of the Regulation of Legal Services in Northern Ireland. The Government issued in September 2005, a Consultative Paper and this established a Review Group under the Chairmanship of Professor Sir George Bain. Some weeks later, the membership of the Review Group was established and its work began.
- 9.2 In my Annual Report for 2003, I outlined many of the general issues involved in such a Review and in the Appendices, I summarised the issues as identified by Sir David Clementi in his work reviewing the Regulatory Regime for England and Wales.
- 9.3 The Government in 'A Consultative Paper – September 2005' began the debate in earnest in Northern Ireland. Several elements of the Legal Services regulation regime in the Province, it seems to me, received less than complete attention in this paper. I cite two examples. One is the role of the Lord Chief Justice for Northern Ireland in overseeing the overall regulation of the legal professions in the Province, while another is the role, nature and relationship of The Lay Observer with the Solicitors Disciplinary Tribunal.
- 9.4 My response to 'A Consultative Paper – September 2005' was made available to the Review Group on 6th January 2006. Subsequent to this I had extensive discussion with the Chairman of the Review and its Secretary. In the light of those discussions, I presented a supplementary submission which was sent early in March 2006. These papers will in due course be published by the Review Group but they are meantime attached as Appendices B and C to this Annual Report.
- 9.5 In general terms, it is my belief that what is needed is an up to date system for the Regulation of Legal Services in Northern Ireland; one which meets standards for the 21st Century. It must also, of course be proportionate to need. My views can be summarised as follows:
- The framework of legislation needs to be strengthened
  - The professional bodies concerned need to be required to regulate the affairs of their respective professions in a challenging way which ensures the highest possible professional standards, with the maximum of consumer involvement and orientation, and with the highest degrees of openness and accountability
  - There needs to be a high degree of lay involvement in the regulatory process
  - The public oversight of the regulatory process, with particular reference to complaints handling needs to be independent, robust, transparent and open, with a facility to enforce and ensure a degree of compensation to those who have been harmed
  - The new arrangements should be proportionate to the need and should incorporate the regulation of all the relevant professions.
- From this it will be seen that I am advocating much higher standards that are robustly overseen and enforced within a system that is fundamentally shaped as at present. I do not advocate a separate and new Legal Services Regulatory organisation.
- 9.6 I can readily recognise that these ideas may not accord with a strong view, which pre-existed the Review, and which has been articulated to me by several people that regulation must be taken away from the professional bodies. I believe that to do



so simply lets the professional bodies 'off the hook'. They must be held to account in my opinion and not simply encouraged to believe that the Regulation of the professions concerned is the business of another entity. Apart from any other consideration, the process of regulation and dealing with those members of the professions who prove recalcitrant and who generate departure from high standards informs the whole professional development for which the professional bodies will wish to continue to be responsible.

- 9.7 Nevertheless, it is evident to me that the politics of the issue cannot be ignored by me. Should the Government decide to take the main burden of regulation, with perhaps particular emphasis on complaints handling, away from the Law Society, then the principles I have outlined above must still be incorporated in any new scheme. The same applies to the question of public oversight, where a degree of compulsion and of compensation needs to be applied alongside openness and a substantial degree of lay involvement.

# Section 10

## Recommendations

10.1 It cannot be repeated often enough that complaints bring a bad name to any profession where they are badly handled. I am convinced that the Law Society fully accepts and understands this. In this section, I revert to the Recommendations of my Annual Report in 2004 and I make Recommendations for 2005.

10.2 This year, I intend to focus my Recommendations mainly but not exclusively on 'squaring the circle'. I use this term in the context of viewing complaints handling in a wider perspective than simply concluding the case for each individual complainant. This means a concern for using complaints handling as an appropriate input for quality control, training and better administrative procedures; in essence then, we are dealing with a learning organisation. This idea is far from new; indeed my predecessor referred to the importance of feedback for learning. Every complaint has something to teach the organisation against which complaints have been made. This process is what drives improvement/reduction in complaints and in the longer run prevention and cost reduction.

10.3 So I am looking for every opportunity for this to take place and I look to the Law Society to have this continually in mind as an established overlay covering its complaints handling processes.

### Action – Prevention and Cure

#### My Recommendations for 2004

10.4 In 2004, I offered five functional Recommendations. I received in a timely perspective a response from the Law Society at the end of 2005. The detailed response is contained at Appendix E. This I regard as responsive, positive and generally encouraging. The only issue where it is unclear to me whether action has been taken is in relation to Recommendation 4.

10.5 This Recommendation concerned the management of complainant expectations. I would strongly urge the Law Society to re-visit this matter and to identifying appropriate actions it might take. I make some suggestions below. I am pleased that at least the Law Society has '*no objections in principle to providing information regarding the procedures followed in pursuance of a complaint so that the seriousness with which it is being taken by the Society and the significance of the outcome for the solicitor is made clear*'. I do not believe it is necessary for the Law Society to consult The Lay Observer unless value can be added by so doing, or unless the Law Society is disinclined to actually implement the Recommendation. I therefore look for action.

10.6 As for the other Recommendations in my Annual Report 2004, I perceive that all have been put into action, and we all hope that the actions will bear fruit in the years to come.

### Action – Squaring the Circle

#### My Recommendations for 2005

10.7 My **first Recommendation** relates to the learning organisation. I urge the Law Society to take every opportunity afforded by the complaints handling processes and by The Lay Observer oversight to feed back into the organisation and to the profession where it sees improvements that can be made and in particular where prevention and support measures can be taken. I recommend that The Writ is used to profile complaints handling and in particular what the Annual Report of the Lay Observer is saying, and other matters. Comments from the Chairman of the Clients Complaints Committee and/or the President would be of additional value to make Law Society members more aware in a straightforward way. It would also indicate to members that the Society takes complaints handling seriously and wants to see

improvements, and a reduction in the incidence of complaints.

10.8 My **second Recommendation** concerns 'complaints' which under the legislation cannot be registered by the Society as complaints. I refer particularly to those complaints relating to alleged mis-selling of endowment life insurance, to complaints against solicitors by complainants who are not their clients and contests over fees. I have found that these consistently arise as complaints to me, even though under the legislation, the regulations and the protocols, I usually may not investigate them. In most cases my reading of the problem is that the complainants simply do not understand why the Law Society cannot deal with what they perceive as their complaints or they cannot comprehend what the Law Society is attempting to convey. I believe that the Law Society, as a means of securing better client alignment, could well reduce the frustration and animosity in these cases if they could provide well prepared and simple leaflets in clear everyday English explaining why they cannot deal with the matter. This does not need to be elaborate, and indeed a typed sheet of A4 paper would suffice for most instances. Too often language is used to communicate with complainants which is designed for communication between professionals. This is not helpful to persons who are not legally qualified. More generally, I shall be looking for a reduction in the use of such language in all communications with complainants in the coming year.

10.9 My **third Recommendation** relates to the timetables of dealing with investigations both within the Law Society and between The Lay Observer and the Law Society. It is important that the timetables that have been developed are adhered to when possible. Where they cannot, which is perhaps becoming more frequent, a

communication should be sent immediately a delay is recognised, warning the complainant that the timetable referred to originally cannot be kept. It is an unfortunate fact that in both my complaints handling work and my auditing of files that there is too frequent an elongation of process without informing the complainant and also sometimes in informing The Lay Observer. I also note that the TONE of correspondence is important; the wrong tone will often create an antagonism which is not necessary and eventually attracts complaints to The Lay Observer. I urge the Society to re-visit these facets of complaints handling with a view to achieving some improvement in managing complainant expectations and perceptions in complaints handling.

10.10 My **fourth Recommendation** has to do with the question of whether complaints handling processes have become more elongated and complex by virtue of more complexity and complainants who are more focussed and aware of their rights. I recommend that the Law Society pursues the feasibility of methodologies by which this could be more objectively measured. For my part, I have already sought to categorise the complaints that reach me (see paragraph 4.9 above), and I will therefore be able to review this on an on-going basis qualitatively and quantitatively.

10.11 My **fifth Recommendation** reverts back to my fourth Recommendation in my Annual Report of 2004. This related to explaining to complainants how solicitors have been exposed and made to feel a measure of disapproval from their colleagues as a result of having a complaint taken against them to the Law Society. I suggest that the Law Society also look further. In many instances where the solicitor is found to be at fault but where no penalty applies, I would suggest that the Law Society should at least

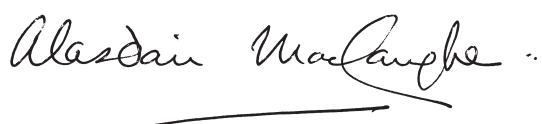
comment appropriately to the solicitor involved and in strong enough terms to weigh against the offending behaviour. The response to a solicitor should in my opinion be treated as a learning opportunity, if for no other reason than to express the disapproval of the Law Society, and to make clear that the Law Society does not wish to see a repetition of a misdemeanour. Examples include ignoring deadlines set by the Society, poor communication with clients and incomplete responses to issues put for comment. Complainants quite frequently express outrage to me that for example their comments will be ignored if they do not provide them to the Law Society within the timetable promulgated, whereas the solicitor will get away sometimes without even an excuse with delays which the Law Society should not find acceptable. Also, I was astounded to learn in 2005 that the Law Society did not feel it was their business to inform a solicitor of the views of The Lay Observer when he expressed disapproval of the way the solicitor treated the Law Society. This is nonsense given that it is not for The Lay Observer to deal directly with solicitors. I suggest that the Law Society should also reconsider this methodology.

- 10.12 Once again, I urge the Law Society to consider these Recommendations, action them, and continue its work towards improving further in a continuous and dynamic manner. In this way its performance and that of the solicitors profession in relation to complaints handling will be improved.

# Section 11

## Concluding Comments

- 11.1 In concluding my Annual Report for 2005, I make additional points. Firstly, it is important to recognise that improvements in the complaints handling processes at the Law Society and in conjunction with other stakeholders, represent their work, and not that of The Lay Observer. In respect of my Recommendations, these largely relate to things that might be done by the Law Society alone or acting in conjunction with other stakeholders. Any commendation due, therefore, for action taken is for the Law Society and those stakeholders with whom the Society relates.
- 11.2 Secondly, I believe that it is appropriate that the way The Lay Observer operates needs to be governed by a clear set of principles, and that these need to be transparent and accessible. It is my intention in the coming year to make these principles transparently available in written code, which will also be clear and accessible, and eventually available to all on the website.
- 11.3 Finally, while it is important to recognise that a Review of the Regulation of Legal Services is under way, the current complaints handling processes must be kept going, constantly being improved and being brought fully up to date. When a new regime is eventually implemented for Regulation of Legal Services, it would be appropriate that that part which relates to complaints handling is in good shape within the limitations of the current framework and remits. Above all, progress must be maintained for the benefit of all stakeholders and the public.



Alasdair MacLaughlin  
31st May 2006

# 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



# Appendix B

## REGULATION of LEGAL SERVICES in NORTHERN IRELAND

Response by The Lay Observer for Northern Ireland

to

A Consultation Paper

published by

The Department of Finance and Personnel

in

September 2005

1. I am The Lay Observer for Northern Ireland. My appointment commenced on 1st April 2004. I succeeded Professor Vincent Mageean OBE, who had been The Lay Observer for six years prior to my appointment.

2. In preparing this response, I have drawn on my experience as The Lay Observer as well as in other contexts within which I have dealt with regulation, complaints handling and working with consumers. This includes the regulation of auditors in the Accountancy Profession in Ireland and in Education and Training throughout the British Isles and in Europe. I am currently the Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland and an Assessor for the CCEA – The Curriculum Authority in the Province. I am a member of the British Irish Ombudsmans' Association.

3. I intend in this response to focus particularly, but not exclusively, on complaints handling. This is, of course my major concern as The Lay Observer.

4. The legislation under which The Lay Observer operates is The Solicitors (Northern Ireland) Order 1976, as amended in The Solicitors (Amendment) (Northern Ireland) Order 1989. The increasing

transparency of regulation processes, the emphasis on the consumer bringing complaints forward, and the role of independent assessment in complaints handling and regulation have all developed significantly in the past thirty years in many professions. It is therefore evident that the legislation in relation to Legal Services is overdue for review.

5. It is tempting in this response to rehearse the many ways in which the operation of the regulation of Legal Services in Northern Ireland has developed in the period of time since this legislation was enacted. It is also tempting to list all those matters which successive Lay Observers have proposed in their Annual Reports, and the difficulties facing complainants which have been addressed in the Reports. These are all matters of record and therefore I do not intend to attempt a summary. In this context, it might be helpful however for the Review if I append a copy of my Annual Report for 2004 which was published six months ago.

6. Rather, I would urge the Review to focus on the principles and from these, but informed by experience both here and elsewhere, to reconstruct an approach to and operation of Legal Services Regulation. These should take account of the aims and objectives of the other parts of the Justice System in Northern Ireland. The context of this includes the major reviews under which the entire Justice System – particularly Criminal Justice – in the Province is being reformed.

7. Fundamentally, the legislation under which solicitors operate, and as it relates to regulation of the profession, is concerned with the behaviour of the solicitor. It is not specifically or directly concerned with the interests of the client nor of the consumer in general, except the very obvious context that a well regulated profession is beneficial for all. The Law Society, as the representative body for the solicitors' profession, is also given the responsibility of regulation.



8. Accordingly, it will be clearly seen that the client and the consumer are not in direct target under the current legislation. In relation to complaints handling by the Law Society, therefore, there is no direct satisfaction for a complainant beyond that of knowing that a solicitor has been investigated. There is therefore no redress for the complainant via regulation and complaint handling.

9. It will also be evident how this basic focus on the behaviour of the solicitor and on the role of the Law Society in regulating the profession in that context, has led to a perception outside the profession that the solicitors are 'only looking after their own'. In my experience this is an unfair perception, but there is no question in my mind that the requirements of the legislation ensure that the complainant is virtually incidental to the complaints handling process. For example, in many cases where, following an investigation of a complaint raised by a client of a solicitor, the Law Society, through its Clients' Complaints Committee, finds against the solicitor, the solicitor is 'simply' admonished. The Law Society has not attempted to explain to the outside world whether or if such a 'punishment' provides any hardship for the solicitor (which in terms of professional esteem it probably does). Accordingly, complainants perceive that while there is no redress for them, nor is there a punishment for the solicitor. This encourages, not surprisingly, an external perception that complaints handling, and also regulation, under present arrangements are rather empty gestures. Again, in reality this is an incomplete and unfair perception. But, even where a solicitor is referred to the Solicitors Disciplinary Tribunal – a very serious and more public matter for the solicitor – there is no redress for the complainant.

10. Regulation as a whole, is perceived as being essentially an internal matter and therefore not subject to public scrutiny. I make much of the perceptions of the complainant, the client and the public. Experience of successive Lay Observers indicates that the

expectations of complainants and clients must be carefully understood by the Legal Services Professions, and then skillfully managed to ensure that those perceptions about the professions and their integrity and operations are appropriate. It must be the business of any great profession to manage such things both at the independent professional's level and the collective level. My predecessor has made much of this, and I wholeheartedly concur.

11. It is therefore important that any future legislative approach should have at its heart the twin and balanced objectives of regulating Legal Services in Northern Ireland AND providing rigorous independent public scrutiny in appropriate matters, with a measure of redress for anyone wronged by the system.

12. At present, given the limitations, such public scrutiny of complaints handling processes for solicitors as exists is provided by The Lay Observer. There is no such public scrutiny in relation to complaints handling for barristers. Public scrutiny for all parts of the Legal Profession should be brought into line and should be formulated bearing in mind the objectives noted in paragraph 11 above.

13. The role of The Lay Observer is sometimes seen as essentially one 'without teeth'. In relation to an individual complaint, The Lay Observer is remitted to investigate only the processes of dealing with the complaint by the Law Society. In specific and very exceptional cases, he has the power to refer a complaint back to the Clients Complaints Committee and he can refer a solicitor to the Solicitors Disciplinary Tribunal (see also paragraph 19 of this response). He has the power – unique amongst Legal Services Ombudsmen – to audit complaints which have not been referred to him. The Lay Observer's Annual Report, which is prepared for the Lord Chief Justice, the Council of the Law Society and the Government, is also a place where recommendations to and responses by the Law Society are discussed and made public. These combined do give

The Lay Observer scope for considerable influence, but of course this must be managed very carefully and with careful judgement; after all, it is only the voluntary principle that applies!

14. The future role of independent scrutiny must include all these powers, but should be supplemented by a greater intensity of oversight, thus ensuring greater transparency, a limited power of awarding/providing redress for the complainant and a greater and firmer role in bringing about improved processes.

15. It seems to me that the fundamental task of great professions is to provide a rigorous and effective, as well as a transparent, regulation of its affairs. This should incorporate a public educational function to provide extra transparency. I therefore take the view that the Law Society and the Bar Council be required to provide such regulation. I further take the view that independent scrutiny is essential and that this too be rigorous and effective.

16. The complaints system within the professional bodies must be separated carefully from the representative functions, and I believe that this can be achieved by much enhanced involvement by lay people, including the responsibility of chairmanship of the complaints body. As stated above, public scrutiny should contain an element of limited redress for the complainant who has been wronged by the system, as well as a role aimed at improving complaints handling processes.

17. Processes for complaints handling and regulation should be made very much more transparent than is currently the case. There are at least two aspects of this. Firstly, the definition of a complaint entering the complaints handling process is currently very tightly drawn. It is confined to the client of a solicitor and only to certain types of complaint. Consideration should be given to widening these filters. Secondly, there is the matter of an enhanced consumer/complainant

orientation; as already noted these interests are not the target of the current legislation.

18. Much has been made of comparative statistics in relation to complaints around the British Isles as indicators of the nature of the effectiveness of complaints handling procedures. Great care I believe must be taken with these figures. I am far from convinced that the comparison, for example, of complaints received is valid. For example, in measuring the number of complaints in Northern Ireland, what is actually measured I believe is the category of complaint. So, for example, someone may bring a complaint against a solicitor which involves undue delay and a loss of documents; such a complaint is therefore seen as two complaints in the statistics, whereas only one complainant has been involved. Care needs to be taken that equivalent figures are from the same basis in other jurisdictions if comparisons are to be made. Another example by way of illustration might be given. It is actually quite difficult in Northern Ireland to have a complaint classified as such; the question must be asked if this is the case for other jurisdictions. If not, (which I believe to be the case) then statistical comparisons between the figures arising from different jurisdictions must be treated with circumspection.

19. In the Consultation document at paragraph 3.8, it states that – ‘The Lay Observer can also refer cases to the Disciplinary Tribunal of the Law Society.’ It should be emphasised that the Disciplinary Tribunal referred to is in fact that referred to in paragraph 3.12 of the Consultation document, where it is noted that the Tribunal is set up by Parliament as part of the High Court and is independent of the Law Society.

20. In conclusion, I recognise that at this stage, my response has been one concerned with the general principles of what I believe should be considered. I have been invited to discuss further my views and experiences with the Chairman and the Secretary of the Review. It may well be that there will be requests for additional

views and material as the Review progresses. I simply note that I stand ready and willing to respond in any way in which the Review might find appropriate.

Alasdair MacLaughlin  
The Lay Observer for Northern Ireland  
6th January 2006

# Appendix C

## REGULATION of LEGAL SERVICES in NORTHERN IRELAND

Supplementary Comment by  
The Lay Observer for Northern Ireland

to

The Legal Services Review Group

### Introductory

1. This paper is furnished to the Legal Services Regulation Review Group by me, Alasdair MacLaughlin, The Lay Observer for Northern Ireland; it supplements an earlier response submitted on 6th January 2006. This paper follows a meeting with Sir George Bain, the Chairman of the Review Group, and Michael Foster, its Secretary.

2. There are two key issues upon which the Review Group has asked for specific comment. These are:

- The concept of removing Complaints Handling out-with the Law Society of Northern Ireland
- The need for oversight of the Regulation of Legal Services in Northern Ireland

3. In addition I wish to make further comment about the features of what I believe to be the appropriate approach to Regulation of Legal Services in Northern Ireland with a particular emphasis on Complaints Handling. I will begin with these comments, as they inform my opinion on the two issues noted in paragraph 2 above.

### Further Comment

4. It has been and remains my personal view that great professions should be required in the first instance to provide Regulation of their members at individual and collegiate/collective levels. This must be within a challenging, dynamic and encouraging regime, with an

essential measure of accountability. The Regulatory regime should be framed around two equally central aims:

- the requirement to take into consideration the needs and expectations of clients, the consumer and the general good of the public
- the rigorous regulation of all professional aspects of Legal Services in the relevant professions to achieve the highest possible standards.

5. In relation to the professions which go to form the Legal Services Sector in Northern Ireland – namely solicitors and barristers – the regime for Regulation should involve consideration of the proportionality principle. Good Regulation will also have the features of openness, transparency, and external supervision together with a focus, on the one hand, of high professional standards and, on the other, of justice for the client/consumer.

6. Regulation should be overseen in a thorough, challenging and rigorous manner via a function which is truly independent, and seen to be so.

7. Solicitors, and barristers also, must be subject to Regulation with these features. The professions must be encouraged and required to co-ordinate their efforts, particularly as it is likely that there will be a continuing and developing overlap of the respective roles of solicitors and barristers.

8. There are several models that have been developed for other regimes and some of these are dealt with in the Consultation Paper published by the Government through DFP. While consideration should be given to such models, I would prefer that the approach to selecting and designing the future regime for Northern Ireland should relate to need, to what is already in place and its effectiveness, and to proportionality. In particular it is vital in the final analysis to ensure that the rigour of the proposed regime includes

consideration of how Regulation can best be understood by the public. I also recognise that there is a need to consider the politics of the matter in deciding any preferred approach.

9. There seems to be a tendency when reviewing and reforming structures to suppose that new structures of themselves provide functionality. In my experience, there is an equal need to focus on whether, how and if existing structures may be made to perform better. It is my view that in the matter of Regulation of Legal Services in Northern Ireland some re-structuring is indeed needed, but that it is even more important that attention is given to ways in which the structures can be made effective, and continue to work, including ensuring that they have the flexibility to be adjusted as needs change and develop.

10. An effective Regulatory regime which meets the various criteria spelt out in preceding paragraphs has to be truly transparent. It will be essential that there is a duty at every stage of any new regime to ensure that there is effective public accountability. The mere existence of a regime is not enough; proper and well targeted communication with all stakeholders must be a mandatory feature of the new regime, and the nature of this should be of at least equal importance to any restructuring recommended. At present, this feature is arguably the least effective in the current arrangements.

### Complaints Handling

11. The Review Group has asked for my views on the concept that Complaints Handling be out-with the Law Society. My opinion is quite clearly that the Law Society should be made responsible, and fully accountable for the regulation of its own profession. The same in my opinion goes for the Bar Council. This in my view should **not** exclude Complaints Handling.

12. However, the way Complaints Handling is undertaken within the Law Society needs adjustment. The separation of Complaints Handling from the

educational and representational roles of the professional body needs to be made more specifically marked and this separation and the Complaints Handling processes made very much better understood. Furthermore the accessibility of the procedures needs to be very much more open than is now, and is perceived to be the case. This will require greater laicity within the structures to the extent of lay chairmanship for the function, additional and appropriate resources, more open access and a very much enhanced public accountability. The same standards and criteria should be applied to the Complaints Handling processes in the Bar Council.

13. At present, external public oversight of the Complaints Handling function in relation to the Law Society is from The Lay Observer for Northern Ireland. The Lay Observer reports formally and annually to The Lord Chief Justice, the Government and the Council of the Law Society. The role is often seen as one with no teeth. While this role needs to be much strengthened, with the potential for the award of penalty, the important power of audit of the overall function should be retained and further enhanced. Proper resources and true independence need to be secured. Accountability via the Annual Report and on-going work should be retained and further developed. It is noted that there is no similar such role in relation to the Bar Council. External oversight should be of the same nature and standard in relation to the barristers profession.

14. The external oversight function for both professions should be in the hands of an Ombudsman, who is and is seen to be truly independent.

15. I recognise that there is a view that the problems that are around complaints handling at present can only be solved by having complaints handling out-with the Law Society (and presumably by extension, the Bar Council). I do not believe that this is appropriate. However, should the Review Group decide that this is the necessary way to go, it seems very evident to me that

there will be a strong need to ensure that technical, professional and legal expertise is central to the processes of concluding complaints in any effective and comprehensive way. The best sources I believe for such expertise are the Law Society and the Bar Council.

### **The need for oversight of the Regulation of Legal Services in Northern Ireland**

16. External oversight is envisaged for England and Wales in relation to Legal Services Regulation. In Northern Ireland, the arrangements that exist as of now need to be considered carefully, and thought given as to whether these can be strengthened. In relation to the Law Society, the oversight of the Regulation of the solicitors profession is largely, if not totally, in the hands of The Lord Chief Justice of Northern Ireland. The way in which this operates is outlined in Appendix A of the Response of the Law Society of Northern Ireland to the 'Regulation of Legal Services in Northern Ireland'. This document deals with the 'Summary of LSNI Regulatory Framework'. This document is a most important contribution at this stage for several reasons:

- these aspects of oversight of the regulation of solicitors are not discussed in the Government Consultation Paper September 2005
- there is, in my experience, insufficient knowledge of these arrangements in the profession and amongst stakeholders
- they form a basis from which professional oversight can be further developed.

17. It is my opinion that the oversight by The Lord Chief Justice should be considered as the proportionate and correct way forward. This does not mean however that the various *modus operandi* cannot be strengthened taking into account for example structures, modes of communication with the professional bodies and stakeholders, and plans for action. However, such matters are for The Lord Chief Justice to consider and to determine. Due consideration

should also be given to the other structures and mechanisms described in the Law Society's Appendix A, against the degree to which they are accessible and understood as appropriate by clients and the public. I note that in my opinion, similar comments and considerations are applicable to the Bar Council and the barristers profession.

18. For all these reasons, I do not believe that there is a need for any additional separate organisation to oversee the Regulation of Legal Services in Northern Ireland. Such an initiative would be unnecessarily costly, and would not be proportionate to need in the Province. However, much work is needed in my opinion to ensure much greater openness, awareness and accessibility. Successful and effective communication will ensure that these improvements will be seen to be better and that they will prove to be much better and more widely understood in the Province.

### **In conclusion**

19. I trust that these additional comments are of assistance to the Review Group. As stated in my previous contribution dated 6th January 2006, I remain available to the Review Group should they wish any additional assistance.

Alasdair MacLaughlin  
The Lay Observer for Northern Ireland  
8th March 2006



# Appendix D

Law Society Responses to Lay Observer's Annual Report for 2004

## Action : Prevention and Cure

The Law Society of Northern Ireland welcomes Mr Alasdair MacLaughlin's first report as Lay Observer for Northern Ireland. The Society appreciates and endorses his practical approach in continuing to address those matters which are statutorily within his and the Society's remit at this point with a view to improving the current process, notwithstanding that the regulation of legal services in Northern Ireland is presently the subject of government review.

The Lay Observer has made five recommendations for 2004 and the Society will deal with each of these in turn.

*1. '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 discusses 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.'*

## Response:

The Society agrees with the Lay Observers assessment that the minimisation of avoidable errors in documentation submitted to the LRNI is an important objective. This is so to the extent that this factor can

contribute to complaints about conveyancing delays and also, as the Lay Observer has pointed out, improvements in this respect can clearly work only to the benefit of clients, the LRNI and the profession. To that end the Society has been in contact with the Chief Executive of LRNI and with the Institute of Professional Legal Studies; the issue has been highlighted by the President [Writ, September 2005 edition]; and (given that many mistakes tend to be administrative) consideration is being given, in conjunction with the LRNI, to the provision of training for both solicitors and relevant staff.

The Society has also decided to propose a re-structured and more formal arrangement for liaison with the LRNI. This is designed to allow attention to be focussed [as a priority] on all identified difficulties with applications to register title, and also to provide a regular mechanism whereby common problems and issues of mutual interest can be examined and resolved more effectively.

*2. '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 on 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 had twelve complaints). An informal*

*comparison with an earlier year suggests that a number of particular firms feature in the list of those firms which 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’.*

**Response:**

These recommendations are welcomed by the Society. This year [2005] has seen a further important development in CPD with the appointment by the Society of a full-time CPD Co-ordinator. An important part of this function is to help to ensure that CPD provision to, and undertaken by, the profession is relevant to the practical aspects of solicitors work. As part of the planned programme for the incoming year, the CPD Co-ordinator has been tasked to liaise with the Clients Complaints Committee in relation to the types of problem areas of practice which come to attention through the complaints – handling process. There is already a specific and discrete emphasis within the mandatory CPD Scheme on client care. In addition the Society will continue to address through regular Writ articles and seminars, workshops and lectures the risk factors which typically can contribute to both complaints and claims. The Society will continue to promote efficient business practice and standards of client service, for example by way of Lexcel or ISO accreditation.

The Lay Observer has correctly identified and drawn attention to the significance of multiple or serial complaints against a relatively small number of firms. His views on this accord very much with those of the Society which has been acutely aware and has been concerned to monitor these complaints, has directed attention to working with the firms concerned to address the underlying causes of complaints, has intervened in the practices and/or taken disciplinary proceedings as appropriate.

*3. This leads 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 has introduced a Dispute Resolution Service. This is an impressive scheme. I recommend that the Client 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 the complainants in feeling that their complaints have been taken seriously, even though the Law Society is not empowered to deal with those complaints’.*

**Response:**

The Society welcomes the positive comments and approach of the Lay Observer as to its development of mediation as a tool for solicitors to assist their clients. In relation to complaints against the profession, the Society will be evaluating constructively the potential scope and value of mediation/dispute resolution procedures in the context of its contribution to the Review of the Regulation of Legal Services.

*4. ‘My **fourth Recommendation** concerns a specific matter of complainant’s 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 the 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’.*



**Response:**

The Society has no objection in principle to providing information regarding the procedures followed in pursuance of a complaint so that the seriousness with which it is taken by the Society and the significance of the outcome for the solicitor is made clear. In practical terms the Society proposes to examine the means by which this can best be achieved as part of a more general exercise to review and revise the various means by which information about the complaints process is communicated, and about which the Lay Observer will be consulted.

*5. 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 predecessors 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 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.'*

**Response:**

The recommendation is agreed in principle, notwithstanding that in this particular period, for reasons which have been explained to the Lay Observer, it has not been possible for the Society to meet (precisely) the accepted timescale.

LAW SOCIETY OF NORTHERN IRELAND  
December 2005

[Note from the Lay Observer: The paragraphs in italics are direct quotations from my Annual Report 2004.]



Published by **TSO Ireland** and available from:

**The Stationery Office**

(mail, telephone and fax orders only)

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 6005522

Fax orders: 0870 6005533

You can now order books online at **[www.tso.co.uk](http://www.tso.co.uk)**

**The Stationery Office Bookshops**

123 Kingsway, London, WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

The Stationery Office Oriel Bookshop

18-19 High Street, Cardiff CF10 1PT

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 6065588

The Stationery Office's Accredited Agents

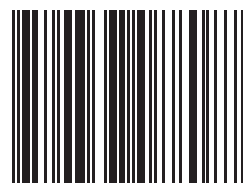
(see Yellow Pages)

*and through good booksellers*

Printed in Northern Ireland by The Stationery Office Limited

**£10.00**

ISBN 0-337-08808-X



9 780337 088087