

**REGULATION of LEGAL SERVICES in NORTHERN  
IRELAND**

**Response by The Lay Observer for Northern Ireland**

**to**

**A Consultation Paper**

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in  
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**6<sup>th</sup> January 2006**

1. I am The Lay Observer for Northern Ireland. My appointment commenced on 1<sup>st</sup> 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.

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