

These notes refer to the Legal Complaints and Regulation Act (Northern Ireland) 2016 (c.14) which received Royal Assent on 11th April 2016

Legal Complaints and Regulation Act (Northern Ireland) 2016

EXPLANATORY NOTES

BACKGROUND AND POLICY OBJECTIVES

3. In November 2006, a Legal Services Review Group (“The Review Group”) chaired by Professor Sir George Bain, issued a report to Government entitled “Legal Services in Northern Ireland: Complaints, Regulation, Competition”. The Report contained 42 recommendations aimed at improving the existing system, primarily in the context of complaints handling by professional bodies. The Group reached its conclusions following a lengthy investigation which involved consultation with interested parties and taking evidence. The report was submitted to the then Minister of Finance and Personnel, David Hanson MP, and has since been considered by subsequent devolved Ministers.
4. The existing law relating to the regulation of solicitors is contained in the Solicitors (NI) Order 1976, as amended. In general terms, the Law Society is the regulatory body for solicitors, although its actions are subject to a certain level of oversight from the Department of Finance and Personnel, the Lord Chief Justice, and the Lay Observer for Northern Ireland. The Bar is not subject to any statutory framework or oversight. Rules and regulations are made by various organs of the Bar. The regulatory body is the Honourable Society of the Inn of Court of Northern Ireland, with responsibility for various aspects of regulation divided between the Executive Council of the Inn, the Benchers of the Inn, and the General Council of the Bar of Northern Ireland, which is autonomous from the Inn.
5. In terms of complaints, the existing framework features complaints against solicitors being considered by client complaints committees within the Law Society which are made up of professional majorities, with a solicitor in the chair. A complainant who is unhappy with how a complaint has been handled can refer their case to the Lay Observer, but the postholder has limited powers. Complaints against barristers are dealt with by a panel appointed by the Bar Council, again with limited lay involvement. The Bar is not subject to any oversight from the Lay Observer.
6. The Review Group found that in general terms the existing system of regulation of lawyers had worked reasonably well, and that problems and solutions identified and implemented in other jurisdictions were not appropriate

for Northern Ireland. However, it did identify certain areas, principally relating to complaints handling, where change could assist the consumer and improve the existing regulatory framework. It therefore made a number of recommendations on complaints handling designed to move the procedures away from professionally-led consideration to a system where functionally separate and lay-led complaints committees would determine cases. Such committees would have greater powers, including the power to award compensation. The Review Group also recommended enhanced oversight of the system by way of a Legal Services Oversight Commissioner (“LSOC”) and recommended tougher powers for such an office holder.

7. The general policy recommendations outlined by the Group have been translated into concrete legislative provisions in the Act. The policy of the Act is to create the position of LSOC as recommended, and the Act sets out the powers that office holder should have. Those powers are strategic – the LSOC will not have operational responsibilities in terms of specific complaints – and will be concentrated on oversight of the complaints-handling systems of the Law Society and, for the first time, the Bar. Those powers include the power to investigate how complaints are handled by the relevant professional body, the power to set targets in relation to complaints handling, the power to require a professional body to submit plans relating to complaints handling, and the power to penalise the professional body in certain circumstances. The LSOC will also have the power to gather information relating to complaints at the first tier – those complaints that are made to individual solicitors’ practices, or about individual barristers through the scheme administered on behalf of barristers by the Bar Council. The postholder must include statistical information on first tier complaints in the Annual Report, in order to help inform the overall complaints-handling process.
8. As well as the specific powers relating to oversight of the complaints systems of solicitors and barristers, there is also broader provision included for the LSOC to have a consultative role in relation to other aspects of regulation. All new rules or regulations made by the Law Society or the various organs of the Bar will now be subject to additional transparency by way of consultation with the LSOC. In addition, the Department may request the LSOC to examine any matter relating to the regulation or organisation of the professions, and this could include matters relating to general regulation, such as entry to the profession, training, and codes of conduct.
9. It is intended that the office will be funded by way of a levy on the professional bodies, as envisaged by the Review Group, and the Act makes provision accordingly. The precise nature of the levy will be a matter for secondary legislation and protocols.
10. New complaints-handling systems are provided for in the Act. The Review Group recommended that Complaints Committees should be administered and maintained by the relevant professional bodies, and be constituted of a majority of lay people, with a lay person in the Chair.

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11. It is envisaged that in the majority of cases, a complaint made against a lawyer will be dealt with in-house in order to attempt a speedy and satisfactory resolution. For solicitors, this will mean the complaints being considered by the firm's in-house process first. For barristers, it will mean the complaint being dealt with by the body set up by the Bar to assist with early resolution of complaints. Irrespective of the model for formal resolution in other jurisdictions, this first step is common throughout all jurisdictions that examine complaints.
12. Should this step not prove successful, or be deemed unsatisfactory by the complainant, the complaint will, providing it meets the statutory criteria, be eligible for formal consideration by the relevant Complaints Committee. This Committee will be armed with enhanced powers and will be able to consider a broader range of cases. As per the recommendation of Bain, this will include the power to consider negligence cases with a maximum value of £5,000. Appeals to the High Court will be available against determinations of the Complaints Committee in specified cases, such cases to be outlined in regulations.