

THE **LAW SOCIETY**
OF NORTHERN IRELAND



26 August 2015

From: The President

By email

Mr D McKay MLA
Chairperson
Committee for Finance and Personnel
Northern Ireland Assembly
Room 144
Parliament Buildings
BELFAST
BT4 3XX

Dear Mr McKay

RE: SALE OF NAMA ASSETS IN NORTHERN IRELAND

Further to your letter of 20 August 2015, the Law Society of Northern Ireland is pleased to set out the roles, function and practice of the Society in regulating the solicitors' branch of the legal profession in Northern Ireland.

The Committee will appreciate that, while the Society is constrained by what it may discuss during our on-going investigation and in light of the NCA investigation, we are keen to assist the Committee in its review.

By way of overview of the Law Society of Northern Ireland, and preamble:

1. Incorporated by Royal Charter in 1922, the Law Society of Northern Ireland is the regulatory body for solicitors in Northern Ireland. Regulation of the solicitors' branch of the legal profession in Northern Ireland is a statutory and delegated function conferred on the Law Society of Northern Ireland (principally) by the Solicitors (Northern Ireland) Order 1976 (as amended by the Solicitors (Northern Ireland) Order 1989 (the Order).
2. The Law Society of Northern Ireland through its governing Council (the Council) is responsible for regulating professional standards, the propriety of solicitors' professional conduct in general and handling of client funds in particular, professional indemnity insurance and client compensation requirements as well as the handling of complaints about solicitors made by their clients.
3. In both the framing of the Regulations within its delegated authority and the discharge of its statutory regulatory functions, the Law Society of Northern Ireland's overriding principle is to regulate in the public interest, with the aim of protecting the public, so that client money is safe, and that clients and the public have confidence that client money is held safely by firms.

We reply to your written questions following the format you set out and for ease of the Committee, have numbered each paragraph.

SOLICITORS' ACCOUNTS

1. How is the operation of solicitors' accounts regulated?

1. The operation of solicitors' accounts is regulated through a statutory framework. The Solicitors (Northern Ireland) Order 1976 as amended (the Order) provides for the regulation of accounts by solicitors.
2. Article 33 of the Order requires the Society to make regulations regarding
 - the opening and keeping of accounts by solicitors at banks and building societies for clients' money and money comprised in controlled trusts;
 - keeping accounts containing information and particulars as to money received, held or paid by them for or on behalf of their clients or trust;

and empowers the Society to take such action and collect such evidence as may be necessary to enable them to ascertain whether or not the regulations have been complied with.
3. Article 34 provides that regulations may be made to provide for the provision of interest on clients' money.
4. Article 35 provides that every solicitor must deliver to the Society an annual Accountant's report. The Society must make regulations to give effect to Article 35, which shall prescribe:
 - what qualification shall be held by an accountant by whom an accountant's report may be given;
 - the information to be contained in an accountant's report;
 - the nature and extent of the examination to be made by the accountant of the books and accounts of a solicitor or his firm and of any other relevant documents with a view to the signing of a report to be delivered by the solicitor;
 - the form of the accountant's report; and
 - the evidence (if any) which shall satisfy the Council that the delivery of an accountant's report is unnecessary and the cases in which such evidence is or is not required.
5. Insofar as the regulation of the operation of solicitors' accounts in particular is concerned (but not exclusively):
 - a. The Order specifically imposes a duty on the Society to make regulations as to the keeping of accounts;
 - b. the Order confers a positive obligation on every principal solicitor in private practice to deliver annually to the Society an Accountant's Report;
 - c. the Order makes express provision in respect of Accountants and their Reports.
6. To that end the Solicitors' Accounts Regulations give expression to the statutory duties and obligations imposed on the Law Society of Northern Ireland by the Order.
7. Both the Order and the Solicitors' Accounts Regulations 1998 as amended set out explicitly the regulatory framework within which solicitors' accounts must be operated by every solicitor qualified to practice in Northern Ireland who is in private practice, in

whatever capacity and impose regulatory obligations and controls in respect of accounts, audit and Accountants' Reports.

8. The Solicitors Practice Regulations 1987 (as amended) regulate professional conduct of solicitors who shall at all times carry out his/her work and conduct his/her business to the highest professional standards.
9. All Regulations are made with the concurrence of the Lord Chief Justice of Northern Ireland, to whom appeals are made in certain cases. Other appeals, applications for judicial review and injunctive relief against decisions made by the Law Society of Northern Ireland in the exercise of its regulatory function, reside with the Court of Judicature.
10. The Proceeds of Crime Act 2002 and Money Laundering Regulations 2007 apply to independent legal professionals and impose additional regulation as to how solicitors' accounts are operated. The Solicitors Money Laundering Compliance Regulations 2007 refer.
11. The operation of solicitors' accounts remains in any event subject to the operation of the general and criminal law.

2. Other than the Law Society, which if any organisations play a role in regulating the operation of solicitors' accounts?

1. The regulatory, disciplinary and compliance context (to include the supervisory and reporting obligations in respect of Anti Money Laundering/Counter Terrorist Financing (AML/CTF)) within which the LSNI operates is not self-determined. The main principles and parameters are in fact laid down by the legislature.
2. In the exercise of its functions and powers the Law Society of Northern Ireland is subject in various ways to the oversight and supervision of the Lord Chief Justice of Northern Ireland and the Court of Judicature.
3. The Lay Observer, in inspecting and considering individual client complaint files, may raise queries on any financial matters that arise on the face of the individual complaint. Under the provisions of Article 42(5)(A), the Lay Observer has power to refer a complaint to the independent Solicitors Disciplinary Tribunal where there is a question of both professional misconduct of a solicitor and as to the quality of the provision of any professional services by him.
4. The independent Solicitors Disciplinary Tribunal was set up under the Order, comprising practising solicitors and lay members appointed by the Lord Chief Justice. It has statutory power to adjudicate upon applications and complaints. The Society makes complaint to the Solicitors Disciplinary Tribunal in respect of issues such as professional misconduct, other conduct tending to bring the solicitors' profession into dispute, contravention of a provision of the Order or Regulations or where a solicitor has been convicted of a criminal offence tending to bring the solicitors' profession into disrepute.
5. Where the Tribunal holds an inquiry, they may make an order providing for one or more of the following:
 - a. the dismissal of the application or complaint;
 - b. the admonishment of the solicitor and imposition of a fine;

- c. the restriction of a solicitor from practising on his/her own account at all, in partnership or otherwise;
 - d. the removal of a restriction on the solicitor from practising on his/her own account, whether in partnership or otherwise;
 - e. the suspension of a solicitor from practice;
 - f. the termination of the solicitor from practice;
 - g. the striking off of the roll of the name of the solicitor;
 - h. the replacement on the roll of the name of a former solicitor whose name has been struck off the roll; and
 - i. the termination of the solicitor's exclusion from legal aid work.
6. The Tribunal may also make an order for costs and such restitution as the Tribunal think fit.
7. Additionally, the Law Society of Northern Ireland, as a supervisory body with reporting obligations, reports annually to HM Treasury on the activity of solicitors in Northern Ireland and their compliance with AML/CTF regulatory obligations. The Society participates at high strategic level with the Legal Sector Affinity Group, tied into HM Treasury, the Home Office, legal and other professional bodies, on issues of AML/CTF compliance.
8. The Order makes particular reference to reporting accountants and their statutory obligation to provide a signed Report to the Society. The Regulations impose statutory reporting obligations to the Society, on them: such report may trigger investigation by the Society. This provides an additional layer of client protection and regulation of the operation of the solicitors' accounts.
9. This structure of accountability, involving primary legislation, principles and functions laid down by Parliament, now the responsibility of the Assembly, reflects the position of solicitors as officers of the court and members of an independent profession within the justice system.
- 3. How does the Law Society ensure compliance with the relevant regulatory framework?**
1. The Order and Regulations set out the professional and ethical obligations with which solicitors as trusted advisers are required to comply as a matter of law. The Law Society of Northern Ireland requires its members to comply fully with their regulatory obligations. Our Regulations make this clear.
2. The Order puts in place a detailed regulatory framework, to protect client funds and the public. Thus the Law Society of Northern Ireland is provided with statutory powers and duties that includes power over solicitors':
- a. Qualification, admission, practising certificates;
 - b. Professional practice, conduct and discipline;
 - c. Their keeping of accounts;
 - d. The delivery of annual Accountants' Reports; and
 - e. The control of solicitors' property in certain cases which may include the solicitor's personal property.
3. The Society's Regulations set out the relevant regulatory framework with which members must ensure they comply: failure to do so may lead to the Society's referral of a solicitor to the independent Solicitors Disciplinary Tribunal.

4. The Society imposes in particular a regulatory duty to remedy breaches of the Solicitors Accounts Regulations, not only on the person causing the breach, but also on each principal. This duty extends to replacing promptly and without delay missing client money or controlled trust money, from the principal's own resources, even if the money has been misappropriated by an employee or fellow principal, and whether or not recovery is available from a third party.
5. Through a focussed, integrated programme of proportionate supervision, and enforcement, the Society employs a range of graduated supervisory tools: these include desk based inspection, written or telephone contact, proactive inspection and reactive inspection. Each case dictates the nature of the supervision.
6. Inspection may be satisfactory and no further action required. Otherwise, intensive investigation may be required, comprising an initial fact finding exercise, followed by investigations into accounts, office systems and business arrangements, and client files. Investigation is undertaken by correspondence, requests are made for additional information and explanation as matters arise, and the investigation may extend beyond the initial concern. Evidence is gathered to assist in the determination of the facts, and the nature, number and materiality of regulatory breach (if any) in each case. Investigations are necessarily searching and challenging.
7. The Society may be required to intervene formally in a practice during an investigation so that the Society takes control of a practice. In practice, the Society's powers to intervene provide strong incentive for solicitors to co-operate with investigation.
8. Failure to co-operate, fully or at all, purporting to co-operate with an investigation or lack of candour may have serious regulatory implications for solicitors where the Society's powers include applications to the High Court of Justice.
9. A solicitor's Practising Certificate may be suspended, or restrictions imposed on it. This provides added protection for the public in appropriate cases.
10. The Registrar has statutory discretion to refuse to renew a solicitor's Practising Certificate.
11. Where there is prima facie evidence of serious or recurrent regulatory breach, and it is considered to be in the public interest, a member may be referred to the independent Solicitors Disciplinary Tribunal.
12. The Law Society of Northern Ireland undertakes a comprehensive approach to compliance that includes education and on-going training. The Solicitors Training (Continuing Professional Development) Regulations 2004 require our members to undertake annual training; those seeking admission to the Roll of Solicitors in Northern Ireland will only be admitted if for example they comply with the Regulations regarding education and training. Guidance is issued with new Regulations. Solicitors who wish to become principals/directors must complete Practice Management Courses.
13. The Law Society of Northern Ireland engages in dialogue with our members to encourage good practice and regulatory compliance.
4. **What role does the Law Society have in ensuring that solicitors maintain proper accounting systems and control over these systems?**
 1. Solicitors are bound by a very clear set of personal obligations, based on the Order and our Regulations. Each is required to ensure that they maintain proper accounting

systems and controls over the systems. Compliance with the Solicitors Accounts Regulations is a matter of strict liability. The Law Society of Northern Ireland is the regulatory authority with power and ability to inspect solicitors for compliance with their regulatory obligations.

2. The Law Society of Northern Ireland does not promote any particular accounts package or system firms use in the maintenance of accounting systems.
3. It is the duty of each solicitor to whom the Regulations apply, to ensure that any system or package used in his/her practice, is fit for the purpose of effecting full and satisfactory compliance with the Solicitors Accounts Regulations.
4. Should it become apparent that a system is not compliant with the Regulations, the Law Society of Northern Ireland may require the solicitor to show that it is 'fit for purpose'.
5. The internal processes and systems of control within a firm provide fundamental intelligence about compliance, and how a practice identifies and manages risk. Solicitors are required to establish and maintain proper accounting systems and proper internal controls over those systems. Solicitors are required to bring to the notice of the Society any conduct on the part of another solicitor which appears to be a breach of regulations. This provides an additional layer of protection. A solicitor must produce any records, papers, client and controlled trust matter files, financial accounts and other documents, and such other information as may be required by the Society to assess compliance with the Regulations: see below.
6. There is a heavy burden on a firm's statutory Reporting Accountant to provide the Society with information about a solicitor and the Society's determination as to whether the solicitor is a fit and proper person to hold client money or controlled trust money, or to operate a client's own account. The Regulations require the solicitor to ensure that a letter of engagement incorporating core terms and conditions is issued at the commencement of each audit.

5. Are solicitors required to share accounting information with the Law Society? If so for what purpose is the information provided?

1. Solicitors are required as a matter of regulation to provide accounting information to the Law Society of Northern Ireland: see above. This is a statutory obligation, which fulfils an important regulatory function, designed to protect client money and ensure public confidence in the profession. That the Law Society of Northern Ireland is required, as a matter of law, to make regulations concerning the keeping of accounts by solicitors, shows the importance of this information, which may provide some early warning if solicitors are getting into difficulty or are misusing client funds.
2. Accounting information yields information on a firm's systems and processes, its management and (early) identification of risk. This assists the Law Society of Northern Ireland to assess knowledge within firms, and may help identify dysfunctional behaviour within the practice.

6. Are solicitors required to alert the Law Society immediately to any irregularities they become aware of regarding the operation of their accounts?

1. The Solicitors Accounts Regulations and Solicitors Practice Regulations 1987 as amended govern expressly the operation of solicitors' accounts.

2. A solicitor is required to bring to the notice of the Society any conduct on the part of another solicitor which appears to him to be a breach of the Solicitors Practice Regulations 1987 as amended and the Solicitor Accounts Regulations.
3. Any breach of these Regulations must be remedied promptly upon discovery. This places a positive obligation on solicitors to alert the Law Society promptly to any breach of the Solicitors Accounts Regulations
4. A solicitor must not do, directly or indirectly, any act or thing which may tend to bring the solicitor's profession into disrepute. Delay in alerting the Law Society of Northern Ireland to any irregularities of which they become aware regarding the operation of their accounts may bring the solicitor's profession into disrepute and be a regulatory breach per se.
5. Such delay is treated with the utmost seriousness and may result in a separate disciplinary referral of the solicitor to the independent Solicitors Disciplinary Tribunal, who will be subject to the full battery of statutory sanction available to the Tribunal.

7. In what circumstances would the Law Society initiate an inspection of solicitors' accounts?

1. The Law Society of Northern Ireland operates a proactive and reactive system of inspecting solicitors' accounts. Inspection may be routine, or triggered by other regulatory failure arising for example from our annual desk based review of solicitors.
2. Where matters relating to professional conduct arise during a client complaint, this is referred to the relevant regulatory committee for separate consideration and potential sanction.

8. What mechanisms are in place to identify breaches in this regulatory framework?

1. The Law Society has in place mechanisms to identify breaches in the regulatory framework. This includes intelligence gathering, systematic review of annual statutory Reporting Accountants' Reports and programme of routine annual inspection of solicitors.
2. Our systems include the use of Information and Communication Technology to collate, record and monitor the timely delivery of key information and intelligence.
3. The statutory Reporting Accountants' reports provide vital intelligence on solicitors' breach of the regulatory framework. Where a statutory Reporting Accountant fails to report breach, this may result in their referral to their professional body, and the Council may decide not to accept reports from them in future. Solicitors must instruct their statutory Reporting Accountants to report directly to the Society should for example they discover evidence of theft or fraud affecting client money, and information likely to be of material significance in determining whether any solicitor is a fit and proper person to hold client money.
4. Information is collated and cross checked at inspection by monitors who undertake an on-site detailed programme of inspection and audit of the firm's financial records and journals, documents and files. A solicitor must produce all information as may be required by the Society to assess compliance with the Regulations. This information may be used to raise enquiries as to the solicitor's overall professional conduct.

5. Upon conclusion of an inspection, the monitor provides the solicitor with a copy of the Inspection Report Audit Checklist, with commentary. The solicitor may be required to provide explanation or further documentation about breaches detected.
6. We factor into our inspection processes the requirement to undertake reactive inspection, urgently and outside our programme of annual inspection.
7. Subject to the nature, amount and materiality of the breach, the monitor may report formally to the relevant regulatory Committee which may direct further enquiry or investigation, or may lead to intervention.

9. In general terms, how are breaches of the regulations handled by the Law Society?

1. As part of the proportionate exercise of its regulatory power, the Law Society of Northern Ireland handles breach of the regulations through a graduated approach. The Professional Ethics and Guidance Committee is responsible for monitoring the regulatory compliance of solicitors. Breaches of the regulations are reported to the Committee.
2. Subject to the nature and extent of the breach, the Committee may consider it appropriate to deal with the matter through correspondence, or may direct further investigation. The Committee receives reports on the investigation, which may be complex. Where breaches are minor, the solicitor may be directed to rectify these and provide evidence of rectification. Further inspection may be directed.
3. Where breaches are sufficiently serious and it is considered to be in the public interest, the Council of the Law Society may refer a solicitor to the independent Solicitors Disciplinary Tribunal.
4. The Council may intervene in a practice where serious breaches are detected, and may suspend a solicitor's Practising Certificate: see above. This may be without notice.
5. Any breach of the Solicitors Accounts Regulations must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account. The duty to remedy breaches rests not only on the person causing the breach but also on each principal, and extends to replacing immediately and without delay missing client money or controlled trust money from the principal's own resources, even if the money has been misappropriated by an employee or fellow principal, regardless of recovery from a third party.
6. This applies equally to the directors of a recognised body which is a company, or the members of a body which is a limited liability partnership, and to the recognised body itself.
7. The Society exercises its statutory reporting duty under the Suspicious Activity Regime pursuant to the Proceeds of Crime Act 2002, and reports breach when there is evidence of criminality under the criminal law.

HANDLING CLIENT MONEY

10. For what purpose can client money be held in solicitors' accounts?

1. Client money must be kept in a bank or building solicitor account identifiable as a client account. Each client's money must be used for that client's matters only.

11. Who in a law firm is legally authorised to handle the firm's accounts, including but not limited to, making transfers from those accounts?

1. All principals (which include sole practitioners, partners or persons held out as partners, directors of a recognised body which is a company or member of a recognised limited liability partnership) must ensure compliance with the Solicitors Accounts Regulations. The Regulations set out Principles to which solicitors must adhere. Principals must:

- i. Not in any circumstances take any action which compromises or impairs or is likely to compromise or impair his integrity, his duty to act in the best interest of the client, the good repute of the solicitor or of solicitor in general and his proper standard of work;
- ii. Keep other people's money separate from money belonging to the principal;
- iii. Keep other people's money in a bank or building society account identifiable as a client account;
- iv. Use each client's money for that client's matters only;
- v. Used controlled trust money for the purposes of that trust only;
- vi. Establish and maintain proper accounting systems and proper internal controls over those systems, to ensure compliance;
- vii. Keep proper accounting records to show accurately the position with regard to the money held for each client and controlled trust;
- viii. Account for interest on other people's money;
- ix. Co-operate with the Society in checking compliance; and
- x. Deliver annual Accountant's reports.

2. Compliance with the Solicitors Accounts Regulations is a matter of strict liability. If there is a breach of the Solicitors Accounts Regulations, each principal is responsible.

3. It is the responsibility of each principal to manage his/her practice, in order to avoid regulatory risks so far as possible. The principal is held to account in the event of breach of the Solicitors Accounts Regulations. This personal accountability provides an important protection for clients. The solicitor cannot hide or ring-fence his own resources.

4. The Law Society does not regulate non-legally qualified employees in law firms who may handle the firm's accounts. We recognise that many competent non-legally qualified employees in firms handle accounts responsibly. However, as a matter of regulation and principle proper accounting systems must be established and maintained in each practice. Further, proper controls must be put in place to ensure the efficacy of those systems. The Society requires the solicitor to demonstrate that the system in place is 'fit for purpose' when assessing compliance.

5. The thrust of the Regulations is to prevent principals from turning a blind eye to breach, or ignoring (early) warning signs that there is a problem within. They must ensure that all books of account are at all times properly written up and show the true financial position of their practice at all times.

6. It is a matter for each principal to manage internally those who are entrusted to handle the firm's requests. Given the grave personal responsibility each principal bears in respect of the handling of the accounts, it is generally the case that principals put in

place layered systems of security to facilitate the professional and ethical operation of the accounts.

7. No money may be withdrawn from a client account otherwise than under the authorisation of at least one of the following: the principal, or an employee of the principal, having his employer's authority to do so.
8. The Order empowers the independent Solicitors Disciplinary Tribunal, upon application by the Society, to prohibit a solicitor employing or remunerating a person (not a solicitor) who has been found guilty of offences under the Theft Act (Northern Ireland) 1969 or of an offence involving dishonesty, or has been a party to the misconduct of a solicitor without the written consent of the Society. The Society may impose such terms and conditions as it thinks fit. Breach is a criminal offence. Any solicitor knowingly contravening the prohibition faces disciplinary action.

12. What methods can a solicitor use to make a withdrawal from a client bank account?

1. A solicitor may withdraw money from a client bank account in favour of the solicitor either by way of cheque or electronic transfer to the office bank account. The withdrawal must not be in cash, and must not go directly to the solicitor.
2. Where a withdrawal from a client account is made by way of a cheque in favour of a financial or other institution the name and or number of the relevant account should be added after the payee's name.
3. Every solicitor shall at all times keep properly written up such accounts as may be necessary to show all his dealings with client's money received, held or paid by him.
4. Where money has been withdrawn from the client bank account on foot of a cheque which has not been encashed within six months of being drawn, the original payment should be cancelled and the payment immediately reissued.
5. A solicitor may pay his client or a person on behalf of his client, properly authorised, by way of cheque or electronic transfer, and if the client requests payment in cash, may do so. In circumstances where a client request payment in cash, the solicitor must consider other regulatory obligations.

13. Are there limits on the purposes for which a solicitor can withdraw money from a client account?

1. The Solicitors Accounts Regulations impose limits on the purposes for which a solicitor may withdraw money from the client account. Client money may only be withdrawn from a client account when it is:
 - i. properly required for a payment to or on behalf of the client;
 - ii. properly required in full or partial reimbursement of money spent by the solicitor on behalf of the client;
 - iii. transferred to another client account;
 - iv. withdrawn on the client's instructions, given in writing, or given by other means and confirmed by the solicitor to the client in writing;
 - v. a refund to the solicitor of an advance no longer required to fund a payment on behalf of a client;
 - vi. money which has been paid into the account in breach of the Regulations;

- vii. when not covered by the above, withdrawn from the account on the authorisation of the Society (where the solicitor will be taken as having provided an indemnity against any legitimate claim subsequently made for the sum in question).
2. Money withdrawn in relation to a particular client from a general client account must not exceed the money held on behalf of that client in all the solicitor's general client accounts.
 3. Money held for a client must be used only for the purposes of that client.
 4. Client money may also be withdrawn from the client bank account:
 - i. Cash received and without delay paid over in cash in the ordinary course of the business to client or on the client's behalf to a third party;
 - ii. Cheque or draft received and endorsed over in the ordinary course of business to the client or a third party on the client's behalf;
 - iii. Unpaid professional disbursements included in a payment of costs;
 - iv. Money withdrawn from a client account on the written authorisation of the Society (again, where the solicitor will be taken as having provided an indemnity against any subsequent legitimate claims for the sum in question).

14. What happens to 'client money' which is being held in a client account when a reason for holding it no longer exists? Who would be responsible for identifying such 'client money'?

1. Client money must be returned to the client promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after a solicitor has already accounted to the client for example by way of a refund, must be paid to the client promptly. This is the principal's responsibility.
2. A solicitor must promptly inform a client in writing of the amount of any client money retained at the end of a matter or its substantial conclusion, and the reason for that retention. Otherwise money must be returned to the client promptly.
3. In no circumstances may money which does not relate to a current or ongoing matter or transaction be held in or transacted through any client account.
4. This information is contained in matter listings which reflect client balances which the principal must consider on an on-going basis. The statutory Reporting Accountants must consider these at annual inspection, draw this to the attention of principals and report this in their statutory Annual Accountant's Report. The Society's monitors check this at inspection.

UNQUALIFIED PERSON

15. Under the Solicitors (Northern Ireland) Order 1976 limitations are placed on solicitors acting as agents for or sharing profits with persons who are not qualified to act as solicitors ('unqualified person').

- a. In what circumstances are solicitors permitted to act as agents for unqualified persons?
 1. The Order provides restrictions on conduct of practice.

2. Article 27 of the Order provides that where a complaint is made and proved to satisfaction of the Lord Chief Justice that a solicitor has willingly and knowingly:
- acted as agent in any action, suit, matter or transaction for any unqualified person; or
 - permitted his name to be in any way made use of in any action, suit, matter or transaction upon the account or for the profit of any unqualified person; or
 - done any other act so as to enable an unqualified to appear, act or practise in any respect as a solicitor in any action, suit, matter or transaction;

the Lord Chief Justice may impose a fine on the solicitor, and in addition may suspend the solicitor from practising as a solicitor during such time as to the Lord Chief Justice seem fit, or order the name of the solicitor to be struck off the Roll.

3. The Order permits solicitors to act as agent for an unqualified person under Article 32 (where a solicitor is appointed by the personal representatives of a deceased solicitor, for the purpose of the beneficial winding up of the practice, for such reasonable period and on such terms including terms as to remuneration as may be fixed or approved by the Society).

b. In what circumstances are solicitors permitted to share profits or fees with unqualified persons?

1. Article 28 of the Order makes it a criminal offence for a solicitor to share fees with an unqualified person.
2. Any solicitor who knowingly shares any of his professional profits or fee with an unqualified person shall be guilty of an offence. There are exceptions under the Order, namely where:
 - a person who has ceased to practise as a solicitor receives from any solicitor a share of the profits or fees of the latter as a price or value of the practice which he has transferred to the latter, or receives a share or such profits as a voluntary or other allowance out of the profits or fees of a practice in which he has been a partner;
 - the widow(er), children or personal representatives of a deceased solicitor receive any share of the profits of his/her practice from any solicitor who purchased or succeeded to the practice of the deceased, his/her partners or under Article 32;
 - a solicitor employed by a government department, local authority, bank or trade union or statutory undertakers in respect of work done in the course of his duty, if he is in whole time or exclusive employment receives professional profits or fees;
 - there is an agreement for sharing fees between a solicitor in Northern Ireland and a person carrying on the practice or profession of law in some other part of the United Kingdom or Commonwealth or in the Republic of Ireland or in a foreign country;
 - for the purposes of making legal aid and advice more readily available to persons in need, the Council have directed in writing that this shall not apply in relation to a non-profit making organisation specified in the direction.

THE LAW SOCIETY INQUIRY

16. There have been a number of statements attributed to the Law Society regarding its inquiry. Can the Law Society:

a. Confirm which statements it has made:

1. The Law Society issued a substantive statement, on 7 July 2015 followed by a second statement that day.

b. Confirm when statements were made and by whom they were made?

1. Statements were made in relation to this matter on 7 July 2015. These were issued by Lanyon Communications on behalf of the Law Society of Northern Ireland and by the Society – see attached.
2. Society members participate regularly with the media to inform members of the public on matters of general legal interest. For example, these may concern issues such as apartments, Powers of Attorney, consumer credit.
3. These differ from statements issued from the Law Society concerning the business of the Law Society.

c. Provide a copy of all statements to the Committee.

Please see enclosed all statements.

17. Why did the Law Society wait until Tuesday 7 July 2015 to publicly comment on this matter?

The Law Society said that it 'does not comment on whether or not there is any investigation ongoing in relation to any particular matter or firm.'. Can the Society confirm in the past that it has not commented on any on-going investigation?

1. The Law Society does not ordinarily comment on whether an investigation is ongoing, to protect the integrity of the inquiry. This accords with the approach of other regulatory and investigatory bodies.
2. The Society issued its statements on 7 July 2015 after matters were raised in the Dail Eireann and reported in the media.
3. The Law Society is an evidenced based regulator. It would be irresponsible for the Society in any instance to issue premature statements without proper and sound evidence. Our statement sought to bring clarity to the practising status of Mr Coulter, so that the public was aware that he was not entitled to practice as a solicitor in this jurisdiction, and to assure the public that any funds in question were secure while our investigation continued.
4. The Society reserves the right where it is in the public interest to do so, to comment on investigations in appropriate circumstances.

18. The Irish News reported on the 6th July 2015 that Tughans have at times been unhappy with how the Law Society has dealt with the investigation

- a. Did Tughans communicate this to the Law Society?
- b. What if any concerns were raised by Tughans? And what was the Society's response?
 - 1. The Law Society cannot comment on the specific case.

19. When and how did the Law Society decide to carry out an inquiry?

- 1. The Law Society is unable to comment on this question.

20. It is reported that Tughans self-reported an issue to the Law Society

- a. Did Tughans communicate this to the Law Society?
- b. What if any concerns were raised were raised by Tughans? And what was the Law Society's response?
 - 1. The Law Society cannot comment on this question save to confirm that Tughans made a report to the Society on 27 January 2015.

21. The statements from the Law Society on 7th July 2015 contained the following comments:

'Mr Coulter did not renew his practising certificate in January 2015 and therefore is not practising as a solicitor in Northern Ireland

Mr Coulter remains on the roll of solicitors in Northern Ireland and therefore remains subject to the Regulations of the Law Society of Northern Ireland

How does the Law Society explain the apparent confusion that has arisen regarding the status of Mr Coulter and the remit of the Law Society in relation to actions?

- 1. The Law Society's statement was issued in the public interest, to inform the public that Mr Coulter was not entitled to practise as a solicitor in Northern Ireland at that time.
- 2. This was factually correct. To be qualified to practice as a solicitor in Northern Ireland, a person must fulfil three criteria:
 - i. They must be admitted as a solicitor;
 - ii. Their name must be on the roll of solicitors, and
 - iii. They must have in force a practising certificate.
- 3. Mr Coulter did not hold a Practising Certificate at that time. He still does not have a Practising Certificate.
- 4. The Society subsequently clarified the regulatory position by informing the public that Mr Coulter remained on the Roll of solicitors, and as such was subject to our regulatory regime.
- 5. Mr Coulter remains on the Roll of solicitors, but is not entitled to practise as a solicitor.
- 6. A solicitor on the Roll who does not hold a Practising Certificate is subject to our regulatory framework.

22. **To what extent does the remit of the Law Society differ in relation to solicitors who**
- a. **Are on the roll and hold a practising certificate and (b) are on the roll of solicitors but do not hold a practising certificate?**
1. Our previous response refers to the nuance between those solicitors on the roll who hold a practising certificate and those who do not. Both are amenable to the Order and Regulations.
 2. It is a matter for the Registrar to consent to applications from solicitors to have their name removed from the Roll.
23. **Where a solicitor is alleged to have acted inappropriately in the past whilst on the roll of solicitors in Northern Ireland but is no longer on that roll, to what extent are such allegations subject to investigation by the Law Society?**
1. The Law Society has no power to investigate allegations once a solicitor has been removed from the Roll.
 2. It will of course discharge its other statutory duties (report to other agencies), should its reporting obligations become engaged.
24. **The Law Society Statement made on 7th July stated that: The inquiry has been conducted in accordance with procedures designed to ensure the proper discharge of the Law Society's regulatory duties.**
- a. **Can the Law Society explain what these procedures are and who they involve?**
1. The discharge of the Law Society's regulatory duties is exercised by the Professional Ethics and Guidance Committee. The Committee comprises practising solicitors and a lay member. It makes decisions collectively, reports to Council and makes recommendations to Council for decision in serious cases. Our approach is agile, and considered on a case by case basis.
 2. Where an inquiry is launched, we conduct an immediate inspection of the solicitors' accounts. The Society initiates correspondence, gathers (initial) information, and asks for explanation. We seek third party information when appropriate. We ask for documents, gather, test and assess evidence, which may give rise to further investigation on further or emerging issues. Solicitors subject of the inquiry are given the opportunity to comment, explain and make disclosure. As officers of the Court, they are under a duty of candour to co-operate with the Society as their Regulator.
 3. Each step of the inquiry is adjudicated by the Committee, which meets monthly.
 4. The inquiry is conducted on the direction of the Committee by professional officers of the Society. This comprises a monitoring team of inspectors who report to the Head of Professional Conduct, who reports to the Committee for collective determination and decision on the evidence.

- b. When did the inquiry begin and under what particular authority has it been undertaken?
1. The Society is unable to comment on this matter, save to say that it exercises all its regulatory function, duty and power under the Order and Regulations, from which it derives authority.
- c. Is the inquiry completed?
1. Our inquiry is on-going.
- d. What are or were the terms of reference of the inquiry?
1. We cannot comment in respect of this on-going inquiry.
 2. As a matter of general principle, the Society cannot fetter its investigation. To attempt to constrain the remit of any investigation would be remiss and contrary to the duty imposed on the Society as a statutory regulator.
- e. Who specifically is or was undertaking it?
1. The Professional Ethics and Guidance Committee is responsible in the first instance for the inquiry, and reports to the Council of the Law Society of Northern Ireland.
- f. Have or were any conflicts of interest been declared or identified in relation to the involvement of any person(s) in the inquiry?
1. We are unable to comment on this particular matter.
 2. The core values of the profession are independence, confidentiality and avoidance of conflict of interest, to ensure the protection of the public. We expect no less from our Council and Committee members. It is standard that where Council or Committee members identify a conflict of interest, they do not participate in the adjudication of any particular matter.

The Society is pleased to have provided information to the Committee.

Yours sincerely

ARLEEN ELLIOTT
President

**Copy of statement issued by Lanyon Communications on behalf of
The Law Society of Northern Ireland**

7 JULY 2015

STATEMENT FROM THE LAW SOCIETY OF NORTHERN IRELAND

The Law Society of Northern Ireland (the “Law Society”) is the regulatory body for solicitors in Northern Ireland and the Law Society discharges this duty in the public interest.

The scope and powers of the Law Society to regulate solicitors is in accordance with the Solicitors (NI) Order 1976 and regulations made thereunder. The powers contained therein enable the Law Society to undertake investigations into financial matters within solicitors’ firms.

In January 2015, following a self-report made by Tughans, the Law Society commenced an inquiry into the circumstances which led to the resignation of Ian Coulter from Tughans. The Law Society has satisfied itself that any funds in question are secure whilst the investigation is on-going.

The inquiry has been conducted in accordance with procedures designed to ensure the proper discharge of the Law Society’s regulatory duties. These procedures are to safeguard the public interest. It is critical to protect the integrity of any investigation and fairness to all parties. The Law Society does not have a wider remit to investigate individuals who are not solicitors.

Mr Coulter did not renew his practising certificate in January 2015 and therefore is not practising as a solicitor in Northern Ireland.

The Law Society calls for independent TD, Mick Wallace or any other person with relevant information, to make available to the PSNI and Garda Síochána all information or evidence he has to substantiate the new and serious allegations made by him in the Dáil. Matters pertaining to the improper conduct of a solicitor or solicitors should also be provided to the Law Society.

The Law Society will co-operate with any police investigation into these new and serious allegations which are beyond the remit of the Law Society’s powers.

Upon conclusion of its inquiry, the Law Society shall take such action as is appropriate which may include referral to the independent Solicitors’ Disciplinary Tribunal empowered to impose financial penalties and/or striking off solicitors from the roll of solicitors.

The Law Society will make further comment when it is appropriate to do so.
ENDS

Clarification issued on 7th July 2015 on behalf of the Law Society of Northern Ireland

7 July 2015

Clarification from The Law Society of Northern Ireland

Mr Coulter remains on the roll of solicitors in Northern Ireland and therefore remains subject to the Regulations of the Law Society of Northern Ireland.

ENDS