



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Sale of National Asset Management Agency
Assets in Northern Ireland: Law Society

27 August 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr John McCallister
Mr Ian McCrea
Mr Máirtín Ó Muilleoir
Mr Jim Wells

Witnesses:

Mr James Cooper	Law Society of Northern Ireland
Miss Arleen Elliott	Law Society of Northern Ireland
Ms Catherine McKay	Law Society of Northern Ireland
Mrs Moira Neeson	Law Society of Northern Ireland

The Chairperson (Mr McKay): OK, folks. You are all very welcome. For members' benefit, we have before us Miss Arleen Elliott, the president of the Law Society; Ms Catherine McKay, the deputy chief executive; Mr James Cooper, council member of the Law Society; and Mrs Moira Neeson, director of client solicitors' complaints for the Law Society.

We will go straight to questions. Obviously, this has been a high-profile case with regard to the sale of the Project Eagle portfolio. We are certainly conscious of the National Crime Agency (NCA) investigation and do not wish to compromise that in any shape or form. I will just put it on the record that the NCA has not raised any concerns about how we have conducted our inquiry to date.

I suppose that the first thing that jumped out at me in terms of the Law Society and this case was the statement that was issued on 7 July. There was a correction. The first statement said that Mr Coulter did not renew his practising certificate and that therefore the Law Society could not investigate him. A corrected version was then put out in which it was said that the Law Society could investigate Mr Coulter. My concern, strictly in terms of process, is that this complaint had been made in January and the statement almost implies that, by July, you were not clear as to whether Mr Coulter could be investigated as a solicitor.

Miss Arleen Elliott (Law Society of Northern Ireland): Firstly, if I may, I thank the Committee for giving us the opportunity to respond to the written questions. The Committee obviously appreciates our difficulties in giving any particular details in relation to our ongoing investigation. It is very much appreciated that the Committee understands the difficulty that we are in, in respect of giving any detail.

With regard to the first statement that was made on 7 July, it is factually correct that Mr Coulter remains on the roll of solicitors; it is also factually correct that Mr Coulter is not a practising solicitor. I suppose that those are terms that are very familiar to me, as a lawyer, but maybe not to the general public. Essentially, to be a solicitor, one must be admitted to the roll of solicitors, must be placed on the roll of solicitors and must be in receipt of a practising certificate, which is issued annually by the society. In order to practise as a solicitor with the public, you have to be in receipt of a practising certificate. To practise without one would be a very serious breach of regulation. I suppose, to reiterate, Mr Coulter, as he is on the roll of solicitors, is, like any person who is on the roll of solicitors, still subject to the regulatory powers of the society. It is simply a differentiation between whether Mr Coulter is allowed or entitled to act as a practising solicitor.

The Chairperson (Mr McKay): From January, February and all the way through to July, the Law Society was always in a position to investigate Ian Coulter. That is my reading of this. Why did that statement come out in July saying that it was not?

Miss Elliott: No, it should always be clear that when the matter was brought to our attention in January, we commenced a vigorous investigation. That included all the issues that were reported to us and our subsequent investigation into those issues. The statement was to confirm to the public that it is a matter of fact that Mr Coulter is not in receipt of a practising certificate. He is not entitled to deliver his services to the public as a solicitor. It was not to give any impression in any shape or form that Mr Coulter is not subject to the regulatory framework of the society — he is. Any person who is on the roll of solicitors can be regulated by the society.

The Chairperson (Mr McKay): Was this a mistake by the PR company? Who made the mistake?

Miss Elliott: I approved it, so, if a mistake has been made, it is mine. The statement is not inaccurate: it basically states that Mr Coulter is not a practising solicitor, and, when it was read by some members of the media as a statement that we had no regulatory powers to investigate him, that was clarified in a second statement on the same day. The fifth paragraph states:

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

That is correct.

The Chairperson (Mr McKay): Yes, but you also said that Mr Coulter did not renew his practising certificate and, therefore, you could not investigate him.

Miss Elliott: No. We are not able to investigate those who are non-solicitors. We cannot regulate non-solicitors. We can regulate anybody who is on the roll of solicitors, but we cannot regulate non-solicitors.

The Chairperson (Mr McKay): OK. Just to clear up any confusion, was Mr Coulter being investigated prior to 7 July?

Miss Elliott: The issues that were reported to us from January were immediately investigated by the society. That includes all persons who are on the roll of solicitors.

The Chairperson (Mr McKay): When exactly did the Law Society decide to carry out an inquiry?

Miss Elliott: I am somewhat limited in what I can respond with on this case. What I can say is that the society will carry out a reactive inquiry, if you like, whereby it receives intelligence — I make this point in a general fashion — that can come in from a number of sources. Most commonly, it is from other solicitors, but it can come in from other enforcement agencies, our reporting insurers, the reporting accountants and a variety of sources. When we receive any intelligence into the society on conduct, queries or accounts, that is immediately investigated by the society.

The Chairperson (Mr McKay): I do not see what the issue is with that, because you stated that Tughans made a report to the society on 27 January. Yes, there is an NCA investigation ongoing, but I do not think that stating when the Law Society then decided to proceed with an investigation will compromise the investigation. It is important that we know when the Law Society decided to act on that complaint.

Miss Elliott: It is absolutely the case that Tughans made a report on 27 January, and it is absolutely the case that the following day the society commenced further inquiries on that.

Mr Ó Muilleoir: In fairness to you, you said that you were limited in what you could say about the investigation. Maybe you want to tell us why that is; it might be helpful. We want to be patient and understanding, but we have only a certain amount of patience, so maybe you want to tell us why you find it difficult to answer questions about the investigation. That might be helpful as a preamble.

Miss Elliott: I suppose, by and large, the Committee will appreciate that I do not believe that, when an investigation is ongoing, there are any regulatory bodies or investigative bodies that would normally comment on the contents of an ongoing investigation. They would not do so because it may very well compromise that investigation, and, for those purposes, we do not comment on the content of an investigation. We very much consider that to be in the public interest, primarily because, to fulfil our role, we have to ensure the integrity of an investigation, ensure due process, gather as much evidence as we can and make our decisions thereon. If those matters are particularly serious, they will be referred to the Solicitors Disciplinary Tribunal. When there is a referral to the Solicitors Disciplinary Tribunal, we will prosecute. We have to ensure that, ultimately, from the commencement of an investigation to perhaps the conclusion of a hearing by the Solicitors Disciplinary Tribunal, we do not do anything that would compromise that progress.

Mr Ó Muilleoir: I understand that. It is a good foundation on which to build, but you will accept that we might be better judges of the public interest than the Law Society.

Miss Elliott: The Committee, I suppose, has a different role in terms of fulfilling expectations of the public interest. I assume that the Committee's role is to check the performance of the Department and review how bodies such as us perform, but I would not say that it is the role of the Committee to become involved in the details of an investigation. If it is of any assurance, I can say that when this matter is concluded in whatever way it is concluded, I am more than happy to come back before the Committee to give greater details, but I am somewhat hamstrung in —

Mr Ó Muilleoir: Just to go back to the question, do you think that you are a better judge of what is in the public interest than we are?

Miss Elliott: Well, we —

Mr Ó Muilleoir: It is just a yes or no, thank you. I have already asked you. You have had two preambles. It is just a yes or no: are you or are you not?

Miss Elliott: No, I do not think —

Mr Ó Muilleoir: You are not. Well, if you are not, we will decide, then.

Miss Elliott: If —

Mr Ó Muilleoir: We will decide, if you do not mind, in this Committee, what is in the public interest, and we will ask the questions. You should decide what is in the interests of the Law Society. The feeling is that it is in the Law Society's interest to obfuscate, delay and hide behind an inquiry. We respect the integrity of your inquiry, but do not block our inquiry. I think —

Mr James Cooper (Law Society of Northern Ireland): Could I just add —

Mr Ó Muilleoir: Let me finish. There will be plenty of time for everyone. There is space for the Law Society to do its work and for us to do ours. We will get on better today if we are allowed to ask questions and get some answers, but if you are not going to answer any questions at all we would be better going home.

I will finish on this: we are here because we believe that there were things that happened in relation to a dirty deal involving the National Asset Management Agency (NAMA). A solicitor is alleged to have been at the centre of it. Things happened that I find absolutely bewildering, including solicitors' offices being involved in setting up bank accounts on the Isle of Man with millions of pounds in them. We are here to investigate not only the Law Society and solicitors and speculators but politicians. Sadly, the

spotlight falls on this institution. We are determined not to allow any of us to hide behind obfuscation, delays or any other excuses. When I say that we want to get to the truth of this, believe me that it may not reflect well on this institution. We are up for that, and we would like the Law Society to cooperate, please.

Mr Cooper: I reassure you that the society is extremely anxious to be as open and transparent as possible in these issues and to assist your Committee. It has always been thus. The issue is that we are constrained, just like any other regulatory body that carries out an investigation: during that investigation, we cannot prejudice the investigation or whatever it leads to. That is well recognised right across the piece in regulation, not only by the Law Society but by all sorts of other regulators and, in my view, by the PSNI. Any investigation of a private individual or company has to be subject legally to due process. That due process, in legal terms, does not allow the investigator to disclose matters that would prejudice the people who are investigated during the investigation. That is the rule of law throughout the land. We are constrained by it. It is unfortunate that, apparently, we are subject to some criticism because of that constraint. There are other regulatory agencies involved in this that have made it very clear to us that we are constrained in that manner. That has imposed on us these limitations. We entirely appreciate that your Committee finds that frustrating and uncomfortable, but that, unfortunately, is the legal position.

The Chairperson (Mr McKay): On that point, Mr Cooper, obviously, you have made great note of the fact that you are carrying out your inquiry and do not wish to comment on anything that may prejudice a trial. What I asked was when and how the Law Society decided to carry out an inquiry. That is not going to prejudice any case. The Law Society, acting in the public interest, reserves the right, where it is in the public interest to do so, to comment on investigations in appropriate circumstances. I think that these are appropriate circumstances, given the magnitude of this case. The Law Society has spoken in detail about Mr Coulter and the renewal of his practising certificate. I do not see why the Law Society cannot state when it decided to carry out an inquiry, unless it received the complaint in January and did not act until Mick Wallace made his statement in the Dáil at the start of the summer.

Miss Elliott: I want to make it absolutely clear to the Committee that we were looking at this well in advance of Mr Wallace making his comments in the Dáil. When the report was made to us on 27 January we immediately — the following day — commenced further investigation of it.

The Chairperson (Mr McKay): When did you decide to carry out an inquiry?

Miss Elliott: Our inquiry commenced the following day.

Mr Ó Muilleoir: Can I ask when you alerted the police?

Miss Elliott: I will give a general outline of our obligations under the law —

Mr Ó Muilleoir: Just answer the question, please. When did you alert the police?

Miss Elliott: If you would allow me to answer, you may understand what difficulties I have in explaining my position. Essentially, the society, in conjunction with all solicitors, has obligations under the Proceeds of Crime Act 2002 to make what is called a suspicious activity report if there is any suspicion of an economic crime. If there is a suspicion or, indeed, knowledge of an economic crime, that report is made to the NCA. The NCA acts as a gatekeeper in respect of how that report may be progressed should it go to the police, Revenue and Customs or any other appropriate authority. If a report is made by the society or any solicitor, it is a tipping-off crime to advise whether that report has been made. I am hamstrung in what I can say that will allow me to keep within the confines of the law.

Mr Ó Muilleoir: The Law Society, lawyer, layman, prince and pauper are all obliged to report it if they know that the law has been broken. When did the Law Society inform the authorities — the police — that it believed that the law had been broken? We are talking about 27 January.

Mr McCallister: 28 January.

Mr Ó Muilleoir: Did you do it on 28 January, or was it on 29 January? Was it in July?

Miss Elliott: For starters, please do not make any assumptions about what precisely was reported to us on 27 January. When any report is made to us, we immediately investigate, and, when we investigate, we have to gather all the appropriate evidence. It is a matter of protocol that we, obviously, report to the police if we have sufficient evidence that would give evidence in respect of a potential crime or otherwise. That is our protocol, and we always abide by it.

Mr McCallister: So, you reported it to either the police or the NCA.

Miss Elliott: I cannot confirm that without committing the offence of tipping off.

Mr McCallister: Did you not say that the offence was that you could not give us the time when you did that? Did you actually report it?

Miss Elliott: No. It is actually an offence to report or advise at all whether a report has been made.

Mr Ó Muilleoir: We may need to suspend this, Chair. This is Alice in Wonderland stuff. If representatives of the Law Society cannot tell us that they alerted the police to what the general public believe and what we now know are the allegations of lawbreaking that are being investigated, we need some legal advice. My feeling is that there is not a police officer in the land who would say that the Law Society would be in trouble for saying to a Committee of this Parliament, which is acting in the public interest, that it alerted the police to what it thought was lawbreaking.

Mr McCallister: When everyone now knows that the NCA has been investigating this.

Mr Ó Muilleoir: It is a disgrace.

Mr McCallister: Putting it another way, did you follow your protocol?

Miss Elliott: We followed a protocol. We have been in contact with the NCA, and we have sought consent to disclose to the Committee whether or not we abided by our reporting obligations.

The Chairperson (Mr McKay): Just clarify that again, in terms of consent from the NCA.

Miss Elliott: We have approached the NCA and requested confirmation that we can provide information to the Committee on whether or not we have abided by our reporting obligations. If the Committee has further questions on that, it should raise them with the NCA.

The Chairperson (Mr McKay): So the NCA has effectively vetoed you speaking to this Committee.

Miss Elliott: Well, the NCA has not given us confirmation of whether or not —

The Chairperson (Mr McKay): So it has not vetoed you. We can play games with words all day.

Miss Elliott: I know, but you appreciate the difficulty.

The Chairperson (Mr McKay): At the end of the day, the issues of the dates and whether you spoke to the police or the NCA are not going to compromise any prosecution. The man and woman in the street know that.

You are all from a legal background and may think that you can come in here and pull the wool over our eyes. We require answers, and the public need answers on this. These are reasonable questions. They do not go into the minutiae of the case, and it will intrigue the public that there seems to be stonewalling from all directions in regard to this case. We are all aware of the rumours that a number of sources want this inquiry to be shut down, so the Law Society needs to be more upfront and honest, lest there be suspicion placed on the Law Society as well.

Miss Elliott: Absolutely. I absolutely make it clear that, as far as we are concerned, we have abided by our legal obligations in respect of reporting. That should be absolutely clear and understood by the Committee and the general public. That is absolutely the case, but it is also the case that, under the proceeds of crime legislation, you cannot reveal whether or not a suspicious activity report has been made. I am a lawyer, and I must abide by the law. I am more than happy to furnish the Committee

with a copy of the legislation. The Committee may look for further advice in respect of that, but that is the position.

Mr McCallister: I am not very hopeful. You are confident that you have followed your protocol. Who is investigating the complaint?

Miss Elliott: The NCA is investigating it, and we continue to investigate.

Mr McCallister: Is the identity of the person who is investigating on behalf of the Law Society available, or is that a secret?

Miss Elliott: Within the Law Society structures, we have a regulatory team. I will give a fuller explanation. The society is operated by a council of 30 people. Those 30 people are elected, and they are members of the profession. The business of the society is split into our regulatory committees on home charter, professional ethics and guidance, financial services, professional indemnity insurance (PII) and client complaints. Council members sit on those respective committees, and we have other co-optees who also sit on them.

The committee that ordinarily deals with conduct matters is the professional ethics and guidance committee. That committee oversees an investigation and makes decisions thereon. If the committee considers that there has been defalcation or a very serious matter —

Mr Wells: Sorry, there was a word used there that I have never heard in my life before.

Miss Elliott: If there has been embezzlement, in essence.

Mr Wells: English would be helpful. I do not want to annoy another Arlene, because all the Arlenes in my life are very powerful women. *[Laughter.]*

Miss Elliott: I do not know if I am one of them.

Mr Cooper: You are correct in that assessment. I have some experience of it.

Miss Elliott: If there has been embezzlement or something of a very serious nature, ultimately the committee will refer the matter to the council, which will make the decision on the exercise of the regulatory powers under the Solicitors (Northern Ireland) Order 1976. An investigation does not rest on the head of one person; it is directed by the professional ethics and guidance committee.

Mr McCallister: You said that you had followed your protocol. Would that have been during the entirety of this process or when it came into the public domain?

Miss Elliott: During the entirety of this process. When a report of any nature comes in — again, I am talking generally about how we deal with all conduct matters — an investigation is commenced by a regulatory team. That is overseen by the professional ethics and guidance committee and monitored throughout.

Mr McCallister: So, that continues to be investigated, in line with other regulators, as Mr Cooper pointed out. The crucial matter is at which stage you referred it either to the police or to the NCA. Presumably, there would be no difficulty if it had been a straight referral to the police rather than to the NCA. I assume that it was referred to the NCA at some point, in line with your protocol, but whether that happened before or after the matter came into the public domain will be of note to the Committee. That goes to the very heart of whether this Committee or, more importantly, the public should have any confidence in the Law Society as a regulator. The Chair has made the point that we currently have a legal complaints Bill before us. What we have been presented with so far signals that it will be very light-touch regulation. This suggests that you would have to make a strong case to restore public confidence in the Law Society.

Miss Elliott: As I have said, I think that it is unfair to jump to conclusions at this stage while an investigation is ongoing. I am more than happy to come back to the Committee when the matter is concluded. I am more than happy to do that.

Mr Cooper: If I may, I will comment on your remark about the draft Bill being "light-touch". In fact, it is not light-touch. Clause 4 of the draft Bill contains powers to direct the oversight commissioner to make a report to your Department on any issue that the Department directs. That insertion in the Bill is extremely powerful, because it enables any concern about the ongoing operation of the Law Society as the in-house regulator to be subject to scrutiny and accountability, straight back to your Department. It also contains powers to direct, in the medium or long term, any regulations that government feels are appropriate in the light of poor performance as a regulator.

The Bain report, having been very satisfied with the history of regulation by the Law Society and given the nature of this very small jurisdiction in comparison with, for instance, England and Wales, was very comfortable with the Law Society being a regulator. That was a very broadly based committee, with economists, those who deal with consumer rights and all sorts of people on it. They concluded that to put in that power satisfied the requirement to have oversight and independence governing how the Law Society operates as a regulator. So I have to disagree with you: it is not "light-touch" regulation; it is, in fact, extremely powerful.

Mr McCallister: I think, Chair, that the concern is about being both the regulator and, effectively, in charge of registration. The point that I am making goes to the heart of this entire thing, and you are unable to shed any light on it. I suspect that the Chair and other members are not exactly feeling a huge amount of accountability and scrutiny coming towards us from your evidence so far. The point on this entire case seems to be whether there was some sort of quid pro quo with the Law Society as to whether this was reported to the NCA or not or if the money was returned. The timing of all that will be of incredible interest when it all comes out into the public domain. It goes to the very heart of whether anyone can have confidence in the job that the Law Society is doing, myself included as a member of the Assembly and, indeed, as a member of the public. That goes to the very heart of whether the Law Society has been involved in this.

Mr Cooper: First, we are very confident that, when the facts emerge and our investigations and those of the NCA are open to public scrutiny, our role will be vindicated and we will be found to have regulated appropriately and robustly in the matter. We are in the unfortunate position that we cannot give you any more substantive evidence to back that up, but that is our position. We are also very aware that, under the powers proposed in the Bill, if it were concluded that we were unsatisfactory in our regulation of this matter or generally, there are very wide powers open to government moving forward to regulate us. We are alive to that issue, and the powers in the Bill are there to deal with any factual conclusion that the Law Society is a bad regulator. Nevertheless, we are in a very difficult position today, and we can put it no stronger than that.

Mr McCallister: Can you at least confirm that it would not be appropriate for someone to pay £7 million for professional fees under the Solicitors (Northern Ireland) Order 1976 if that was going to a non-lawyer? Would that be wrong?

Miss Elliott: Again, we cannot comment on this particular matter, but it is —

Mr McCallister: Hypothetically.

Miss Elliott: Hypothetically, a solicitor cannot share fees with an unqualified person. That is a breach of the Order and constitutes a crime. That is absolute. We have provided details on the relevant section in our response. It details article 28 of the Order and it being a criminal offence for a solicitor to share fees with an unqualified person. As you will also see, there are certain exceptions such as where a solicitor is effectively buying out the interest of a retired solicitor or is working in-house in a Department or something of that nature, but, by and large, it is absolute that you cannot fee-share with an unqualified person.

Mrs Cochrane: I have a quick point on that. You are saying that you cannot share, provided it is professional fees. Am I right —

Miss Elliott: Sorry, come again?

Mrs Cochrane: They cannot share if it has been deemed professional fees. Am I right in assuming —

Miss Elliott: You cannot share a professional fee.

Mrs Cochrane: Am I right in assuming that, in a matter like this, the sort of thing that would be looked into is whether there was a specific invoice that detailed what the professional fees were for and whether that was paid on the full amount, to determine whether or not money could have been shared if it was not all related to one invoice?

Miss Elliott: Absolutely.

Mr McCallister: Has the Law Society seen those invoices?

Miss Elliott: I cannot comment on this particular case.

Mr McCallister: Hypothetically, have you seen them? *[Laughter.]*

Mr Cree: Good morning. It does not seem that long ago that we were round at your place talking about another issue that has been touched on this morning. A lot of this conversation rings a bell. I have some sympathy with your position. Can I ask you to explore the position of someone on the roll? Can they remove themselves from that roll?

Miss Elliott: You can only come off the roll if you die —

Mr Cree: That is irrefutable.

Miss Elliott: — which does happen, or you can make an application to the registrar to be removed from the roll. The registrar has discretion to grant that. The sort of issue that the registrar looks at is whether there is any ongoing regulatory investigation, for example. If there were an ongoing regulatory investigation and somebody applied to come off the roll, that application would be refused.

Mr Cree: You have anticipated my second question.

Miss Elliott: It is common sense. We are not going to allow —

Mr Cree: It is, but sense is not a very common thing, let me tell you.

Miss Elliott: As Mr Cooper has already stated, we are in a very difficult position. I want to assure the Committee as much as I can that we have been looking at these issues very persistently and vigorously. We are really hamstrung in what we can say over and above that.

Mr Cree: I have sympathy with your position. Thank you.

The Chairperson (Mr McKay): Are the funds that were referred to earlier secure?

Miss Elliott: They are secured.

The Chairperson (Mr McKay): How are they secured?

Miss Elliott: For legal reasons, I cannot say.

The Chairperson (Mr McKay): In general terms and hypothetically, how do you usually secure funds?

Miss Elliott: It depends. Absolutely hypothetically, ordinarily, if there are client moneys at risk or in jeopardy where there has been dishonesty of some nature, it is likely that the professional ethics and guidance committee would come to the view that the society should intervene in a practice. It will refer that for decision by the council. The council then has powers to pass resolutions under article 36 of our Order so that we can effectively intervene in a practice to essentially ensure that client funds are kept safe and not jeopardised.

The Chairperson (Mr McKay): The complaint that was made was a self-referral by Tughans. When you investigate a case like that, is it a case of going into the firm and doing a blanket audit or is it more restricted?

Miss Elliott: It depends. As I said, we get different reports. We can get self-reports and reports from other sources. Reports can range from being on minor matters to much more serious matters. If it is something that is serious and of concern, our powers include inspection and going into a practice and uplifting deeds and documents. There will, essentially, be a full audit carried out upon an inspection to test the veracity of what has been advised to us. Evidence is gathered. Sometimes a report of some nature may come in that leads in a different direction. That is not uncommon, but we will fully investigate that.

We have a very heavy regulatory obligation under the Solicitors (Northern Ireland) Order 1976. I always remember that date because it was the year I was born. The society was set up in 1922, and it was not until 1976 that a regulatory regime was put in place. When that regulatory regime was put in place, it placed a heavy onus on the society to effectively regulate our members. Part and parcel of that assurance to the public was that a master policy would be in place so that every member of the public who goes into a practising solicitor has the assurance that, if that solicitor acts in a negligent fashion or whatever it may be, there is an appropriate insurance policy in place. We have to regulate that that is in place. We also hold a compensation fund. It is of deep interest to the members of the profession and the society that we are a good and effective regulator because, if we fail in our job, it has serious financial repercussions for our members and causes reputational damage.

The Chairperson (Mr McKay): Would any such audit that you may carry out of a law firm include any tapes that that law firm has?

Miss Elliott: Ordinarily, when we carry out an audit, it is of the accounts and files etc —

The Chairperson (Mr McKay): — which would include tapes.

Miss Elliott: You are asking me a very pointed question in relation to this particular matter. We have powers to uplift deeds and documents and, I suppose, other materials that may be relevant too.

The Chairperson (Mr McKay): Other materials, including tapes.

Mr Ó Muilleoir: Thanks very much. I think we may have exhausted some of our avenues, but thanks for coming in. Mr Cooper, I did not get to thank you earlier for your comments.

Just so that you understand where we are coming from, we are trying to investigate a deal in which we believe there were kickbacks, sweetheart deals, embezzlement and fraud — a dirty scheme. We are investigating it because it has been alleged that at the heart of it were politicians benefiting at huge personal gain. There are mammoth sums involved in it. That is why we are here, but, of course, also in the middle of that dirty deal to sell public assets at less than public value to the loss of the public purse and to defraud people to commit what may have been a crime is someone who is at the heart of your association — a colleague of yours. That is our interest. We have some sympathy for the Law Society, but, in my view, the public interest outweighs the Law Society's interest in it. Therefore, I think we have to say that we are dissatisfied when the Law Society will not answer questions. It is a rigorous and vigorous investigation. It is still not finished. It is August, and it is still not finished. It does not seem that rigorous to me if it has not been finished by August. Will it be finished this year?

Miss Elliott: I cannot —

Mr Ó Muilleoir: You cannot say. I know that lawyers charge by the hour, but not being able to say that it will be finished this year beggars belief.

Mr I McCrea: We cannot say whether ours will be —

Mr Ó Muilleoir: Excuse me —

Mr I McCrea: — so I think it is unfair to have —

Mr Ó Muilleoir: Chair, I hope that you will give Ian all the rope that he wants with which to hang himself later in the meeting.

Mr I McCrea: I am not hanging myself in any way, you can be sure of it.

The Chairperson (Mr McKay): Order.

Mr Ó Muilleoir: Chair, in this vigorous and rigorous investigation, which is being carried out by the professional ethics and guidance committee — I presume that that is a trusted body of senior, veteran professionals in your association — we need to ask this: was Ian Coulter a member of that committee?

Miss Elliott: No.

Mr Ó Muilleoir: That is the first straight answer we have got all day.

Miss Elliott: I think I have given a few other straight answers.

Mr Ó Muilleoir: We wish that professional ethics and guidance committee well. We bless it with alacrity so that perhaps it can get to the core of this quickly and we can get the answers that we need. I think that, in the non-answers, we may have got more examples of the wagons being circled and the failure to let the public know what happened. Let us get to the truth of this. We are determined to find out what happened in this deal. I do not care how many people come here and say, "I can't answer the questions". We will do our part in finding that out, along with the police and the NCA.

Ian, the floor is yours.

Mr I McCrea: Thank you very much. I assure you, Chair and others, that I will not be hanging myself, nor will anybody else.

Nonetheless, from my perspective, I thank you for coming today. I know that it is a bit frustrating for all the members when we get responses from people saying that, for different reasons, they cannot come. At least you have come and have done your best to answer some questions, those that you can. But for me, this Committee cannot say that it will be finished in two weeks, three weeks, three months or three years. We might not even be here at that point.

Mr Ó Muilleoir: Three weeks.

Mr I McCrea: Nonetheless, I think that it is important that every effort is made and that it is seen, in the public interest, that you are doing what you can to ensure that the outcome is satisfactory and that you have gone through this in as rigorous a way as possible. I welcome that you have committed to coming back to the Committee to inform us of your findings. It is important that we welcome that, but I think it is unfair of others to suggest that, just because you cannot give a timescale, you are not going through the rigours that you are.

From my perspective, I have no doubt that most members of the Committee, if not all, want to see this come to a conclusion. It is important that people are given the time but understand the urgencies and the public interest that there is in this. I am content to take your word that you are investigating this in as quick a fashion as you can, but I understand the difficulties that you are in, given the ongoing investigations outside of your own body. Thank you, and I hope we can get a resolution sooner rather than later.

Miss Elliott: Thank you. Certainly, I similarly wish the Committee every success in its inquiry. Similarly, there is not a member of the profession or indeed the public who would not look to have revealed any improper conduct by either politicians or solicitors. If there has been improper conduct by solicitors, it will be dealt with by us.

Mr Cooper: It is worth reiterating that it is very much in our interest to make sure that the public are satisfied at the end of the day that we have been vigorous. Our profession has a reputation and that reputation has to be maintained. We, as the representative body of the profession, are fixed with that responsibility. In any conduct that we carry out, we do not want to suffer reputational damage as a regulator or representative body. It is very much in our interest that, when this matter concludes, the public and, obviously, politicians are fully satisfied that we have discharged our responsibilities properly and in the public interest. We are on common ground when many of you talk about the public interest; we have that as our primary objective as well.

Mr McCallister: You were talking about reputation. I think that politicians, solicitors and estate agents are all fairly harshly done by at times.

To follow on from one of the Chair's points around the involvement of Tughans, if A&L Goodbody were the solicitors handling the actual legal work for the sale, what actually was Tughans doing?

Miss Elliott: I cannot answer that.

Mr McCallister: But everybody is being —

Miss Elliott: I cannot answer that. I cannot answer questions to do with an ongoing investigation.

Mr McCallister: It is just that —

Mr Cree: How many times do you need to be told? *[Laughter.]*

Miss Elliott: Can I say that I do not like saying that? I genuinely do not. I believe that, where possible, you should be upfront about things, but that is just the position we are in, unfortunately.

Mr McCallister: Well, I had hoped, probably like other members, that we would have made slightly more progress. I hope, to go back to Mr Cooper's point, that when all this comes out in the wash at some stage, everybody can look back and hold their heads high. I think that it will have a major impact on the Committee in looking at the level of regulation that we need and whether we need a tougher model, probably like in England, rather than what we may have opted for. I think that it will have an impact on that Bill. You may get lucky and this place could be gone in a week. If you had maybe held out longer for a different date, you might have got a lucky break.

Mr Cooper: I think that we are due back. *[Laughter.]* We are due back in three or four weeks.

Mr Ó Muilleoir: You might be lonely.

Mr Cooper: Let me reassure you that we are not wishing your early demise in respect of our future appearance on the Bill. We are very content to defend the shape of the Bill as it has emerged and to convince you that it is entirely appropriate, notwithstanding this issue that has arisen in the meantime.

The Chairperson (Mr McKay): I think that it would be of benefit to the public to ask — we have asked this in written form as well — who in a law firm is legally authorised to handle the firm's accounts, including making transfers from those accounts.

Miss Elliott: As a matter of law under the Solicitors (Northern Ireland) Order 1976, all principals are responsible for client accounts regardless of whether the partners in a practice have control over those accounts. It is a matter of strict liability. For example, if client moneys went missing as a result of the activities of one partner, all partners would be responsible regardless of whether they had anything to do with it. All those partners would be requested by the society to immediately reimburse the client moneys with absolutely immediate effect. If the firm was unable to reimburse those moneys immediately, the society would then intervene without hesitation. Those are essentially the strict legal parameters upon which every firm must operate. A firm will have its own internal controls to ensure that there are checks and balances when money is utilised from client accounts.

Mr Ó Muilleoir: Since you brought up money — and it is a shame to leave without discussing money — the fee paid by Cerberus to Tughans or Ian Coulter or whoever was around £7.1 million. That is not in an account controlled by the police; that is in an account controlled by the Law Society. Am I correct about that?

Miss Elliott: I cannot answer that question.

Mr Ó Muilleoir: OK. I think you answered that earlier. You said that —

Miss Elliott: I said that it is secured. The moneys are secured.

Mr Ó Muilleoir: So you do not know where it is, or you do know where it is?

Miss Elliott: We know where they are.

Mr Ó Muilleoir: Is it gathering interest?

Miss Elliott: I cannot answer any further questions in respect of that.

Mr Ó Muilleoir: Do you have any idea of what the value of the money is now?

Miss Elliott: I cannot answer that question.

Mr Ó Muilleoir: It is probably the most interesting point in all this. There is £7.1 million sitting out there. Is it possible that that may go back to Tughans?

Miss Elliott: I cannot comment on that.

Mr Ó Muilleoir: Is it possible that some of it may go back?

Miss Elliott: I cannot comment on that. We got a telephone call this morning, before attending here, from the deputy senior investigating officer in the NCA reiterating that we should not answer any questions in relation to this matter.

Mr Ó Muilleoir: We understand that. In fact, our criteria —

The Chairperson (Mr McKay): What matter in particular?

Miss Elliott: In relation to the ongoing investigation.

The Chairperson (Mr McKay): Which is?

Miss Elliott: In respect of Tughans and Ian Coulter's departure from Tughans.

Mr Ó Muilleoir: Can you tell us again who called you, just to get a note of it?

Miss Elliott: The deputy senior investigating officer in the NCA.

Mr Ó Muilleoir: What is his or her name?

Miss Elliott: Mr Birmingham.

Mr Ó Muilleoir: Surely that is a made-up name. What time did Mr Birmingham ring?

Miss Elliott: Give me a second.

Mr Ó Muilleoir: It is like courtships. Just when you are going out the door, you ask if you can marry the daughter. This is the most interesting thing that we have heard today. At 9.30 am, or are you going to tell us — sorry, what time?

Miss Elliott: At 10.45 am.

Mr Ó Muilleoir: OK. We sat at 10.00 am.

Miss Elliott: That is when we received a message.

Ms Catherine McKay (Law Society of Northern Ireland): I asked for a message to confirm the telephone conversation.

Mr Ó Muilleoir: Thank you. Will you read out the message?

Ms C McKay: It says:

"Hi Catherine, Richard here. It was good to talk earlier. Around our correspondence, we would be happy for you to say, should you wish, that LSNI is cooperating with NCA in this matter, and we are mutually keen to ensure that the integrity of the criminal investigation is protected."

Mr Ó Muilleoir: OK. That, in itself, is very interesting. I know that the Chair and Deputy Chair are in touch with the NCA, but that is not what we were told. You told us that the NCA said that you should not answer any questions relating to the investigation, which is not what the text message said, but that may be understandable. Maybe the text message does not go into it. However, it is very interesting. Why was the NCA making calls in relation to the investigation moments before we sat?

Mr Cree: It might be in response to a call.

Miss Elliott: We have been cooperating with the NCA since its involvement. That cooperation has been ongoing. It was a concern for the NCA that we protect the integrity of this investigation by not revealing any particular details in relation to it.

Mr Ó Muilleoir: We are at one with you. We are doing the same: we are cooperating with the NCA. If there is any criminality, we wish that those who are involved in criminality are brought to book. We are on exactly the same page on that, but that has nothing to do with where the £7 million payment is, because whether there was wrongdoing or whether it was as pure as the driven snow, where is the £7 million? How much interest is it accruing? Can it go back? In my view, it should be given back to Cerberus. In my view, it was a payment that had nothing to do with a transaction. That has nothing to do with it; it does not matter. The money is there. Is it under the control of the Law Society or under the control of the police? What does that have to do with the investigation?

Miss Elliott: Again, I cannot confirm the details in relation to this investigation, but it is a matter of course that any interest that accrues on client moneys, for example, is the client's; it belongs to the client.

The Chairperson (Mr McKay): Obviously, you are in regular contact with the NCA. The approach of a number of witnesses is, "There's an NCA investigation ongoing. We can't say anything". There are questions here that could be answered and would not compromise the investigation or any future prosecutions, so I think that a conversation needs to take place — the Deputy Chair and I will meet the NCA shortly — between you and the NCA about what detail you could release in the public interest that would not compromise the case. Obviously, the Law Society's reputation is being affected by all this —

Miss Elliott: Absolutely.

The Chairperson (Mr McKay): I believe that there is information that the public would be interested in that would not compromise this case, so, after you go away from this meeting today, it would be worthwhile for you to relay that message to the NCA —

Miss Elliott: I have absolutely no difficulties with that.

The Chairperson (Mr McKay): We will reiterate that in our Committee's message to the NCA. We do not want to compromise an investigation, but we do not want to see a blanket shutdown either. There is huge public interest in this. This is the biggest financial scandal that we have seen in the North, so there is a big public interest. The public want answers and accountability through the appropriate mechanisms, but there is a balance to be struck. I think that the NCA and you need to have a conversation about that.

Mr Ó Muilleoir: I do not understand why the NCA is not ringing you, Chair, before the meetings. If it wants to call everyone, why is it not calling us all before meetings? It is extraordinary that it has been making calls before meetings, telling people what they should and should not answer. Maybe there is a need to come back after the NCA answers some questions. It beggars belief that £7 million, gathering interest, could go back to Tughans. How many thousand hours would even our most expensive company have to bill out to earn £7 million? It would probably be 1,000 years. To suggest that that £7 million, which, whatever happened here — criminality or not — we know was a dirty scheme of some type, may go back to a firm of solicitors in Belfast, with interest, when this is finished, is staggering. I will leave it at that. Thank you.

The Chairperson (Mr McKay): OK, members? There are no other questions. Thank you all very much.

Miss Elliott: I thank the Committee members for their time and patience this morning.

Mr Cree: Some of us. *[Laughter.]*

The Chairperson (Mr McKay): Thank you.