



Northern Ireland  
Assembly

Committee for Finance and Personnel

# OFFICIAL REPORT (Hansard)

Legal Complaints and Regulation Bill:  
Formal Clause-by-clause Scrutiny

25 November 2015

# NORTHERN IRELAND ASSEMBLY

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Legal Complaints and Regulation Bill: Formal Clause-by-clause Scrutiny

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**Members present for all or part of the proceedings:**

Mr Daithí McKay (Chairperson)  
Ms Michaela Boyle  
Mr Leslie Cree  
Mr Gordon Lyons  
Mr Ian McCrea  
Mr Máirtín Ó Muilleoir  
Mr Jim Wells

**Witnesses:**

Ms Stephanie Mallon	Bill Office
Mr Michael Foster	Department of Finance and Personnel

**The Chairperson (Mr McKay):** The Bill Clerk is here to recap on the draft amendments that the Committee has commissioned. DFP official Michael Foster is available to speak on each of the amendments that the Department intends to table at Consideration Stage.

Stephanie, do you want to kick us off?

**Ms Stephanie Mallon (Bill Office):** Yes. To recap on last week, I presented two amendments to the Committee for consideration. The first was a review of the function contained in the Bill to measure its success and implementation. I briefed members at the time to say that this was the kind of review of the efficacy of an Act that you would see in others: for example, the Planning Act (NI) 2011, the Carrier Bags Act (NI) 2014 and the Commissioner for Older People Act (NI) 2011 etc. All of those Acts contain this kind of function.

The second of the two amendments aims to address the Committee's concerns around first-tier complaints. Those were the complaints that were reported and addressed at the point of service delivery. At that time, the Committee expressed satisfaction with the amendment that I had drafted, but that was pending the Department's coming forward with an alternative for consideration. I believe that that has happened today and that Mr Foster will want to address that.

**The Chairperson (Mr McKay):** Members, for your information, the Committee's proposed amendments are at page 28 of tabled papers, and the DFP amendments are at page 31.

Michael, do you want to give us some comments on this?

**Mr Michael Foster (Department of Finance and Personnel):** Do you want me to deal with the first-tier complaints issue first, Chair?

**The Chairperson (Mr McKay):** Yes.

**Mr M Foster:** OK. I refer the Committee to amendments 1, 5, 6, 7, 12 and 13. Those amendments are the Department's way of dealing with the issue of first-tier complaints. Some of them are consequential amendments, and there are really three substantive ones to consider. I know that this has been an issue of central importance for the Committee during the passage of this Bill, and we have obviously considered this carefully. Our proposed amendments are, we think, a neater and more comprehensive way of achieving the Committee's aim here in relation to gathering information on first-tier complaints. I will just briefly set out how the Department formed that analysis, Chair.

I will start by working backwards and looking at amendment 13 in the first instance, because it would effectively place a duty on the Legal Services Oversight Commissioner (LSOC) to report on the number of complaints received each year. The Committee's amendment proposed to deal with this by simply providing that:

*"The Commissioner shall prepare and publish a report annually on the number of all complaints made in that year."*

Our initial concern about that was that, on its own, the particular provision would not sit consistently with the general reporting provisions that are set out in schedule 1, paragraph 14, when reflecting on the general powers of the LSOC at clause 2. If you took either the Department's proposed amendment or the Committee's proposed amendment, our concern was that it could be argued that the LSOC already had the power to report on such matters. However, I know that the Committee has raised the point, through the Clerk, that the commissioner would not necessarily have to include such information in his or her report. Therefore, it is my understanding that the Committee would like to see the duty specifically addressed in the Bill.

I think it unlikely that an LSOC charged with the power to require professional bodies to provide information relating to complaints would not report on it during a year, but we have worked with the Office of the Legislative Counsel (OLC) on this point and come up with a form of words in an amendment that I hope will satisfy members. We feel that it will sit more consistently with the clauses in the Bill. Amendment 13 is designed to cater for the same. I place emphasis on the first few words here, where, importantly, it says:

*"Without prejudice to the generality of sub-paragraph (1), a report sent to the Department under that sub-paragraph must contain information on the number of complaints made in relation to the members of each professional body during the year to which the report relates."*

That dovetails in with the existing duty on the commissioner to report on all of his or her duties but also caters for the Committee's specific aim to have the commissioner report specifically on the number of complaints received each year.

I will read backwards from that to the Department's amendments 12 and 13. We are not 100% sure whether we will need to move amendment 12. We are considering whether we need to qualify the generality of paragraph 14 in another way. Amendment 13 on its own will probably sit OK, but we will consider that as we come to Consideration Stage. If you read back, you see that the key for the Committee is that a commissioner will report on the total number of complaints received each year at the first tier. Amendment 13 provides that duty, and we feel that the way that we have drafted it will do it in a neater way. Reading back to clause 2, our amendment 1 will insert a new provision into the powers of the commissioner that will:

*"require a professional body to provide the Commissioner with such information in relation to the number of complaints made against the members of that body as the Commissioner may specify."*

That is a slightly different slant to the amendment that the Committee has commissioned from the Bill Office, which simply states that the commissioner may:

*"require a professional body to provide information on the number of all complaints made about its members annually."*

The Department is of the view that —

**The Chairperson (Mr McKay):** This is the amendment to clause 2, Michael, is it?

**Mr M Foster:** Yes, it is.

The Department is of the view that its amendment provides more scope for the LSOC to obtain meaningful information from the professional bodies, including but not limited to simple statistics on complaints. The Department's amendment, to give an example, might allow the commissioner to require the professional bodies to categorise complaints at the first tier in a similar manner to the way that the Lay Observer currently presents information relating to complaints about the Law Society. The total number of complaints would still be captured, but the LSOC could ask for more than just that. I think that that satisfies entirely the Committee's aim and also provides a little bit more scope for the commissioner to explore those particular issues and get more information relating to those complaints.

In our view, on a stand-alone basis, this may not be enough to make it fully effective. The LSOC has a duty to report, and the professional members will be required to provide information, but what about the solicitors themselves? It is not really an issue in relation to the Bar because clause 11 already provides the basis for the Bar Council to gather information on the total number of complaints against its members. However, solicitors have their own in-house complaints-handling procedures, and we feel that it is important, set with the powers of the commissioner to get the information, that the Law Society also has the power to gather this information from its members and specifically from the in-house complaints-handling system that is run by it.

We consider it prudent, in conjunction with the powers of the commissioner, to give the Law Society the power to get that information from its members, and amendment 5 and then amendments 6 and 7, which are consequential, are designed to achieve that aim. Amendment 5 states:

*"The Law Society must make regulations requiring every solicitor to provide the Law Society with such information about the number of relevant complaints made in relation to that solicitor as may be specified".*

That effectively mirrors the powers of the commissioner and will allow the Law Society to provide the commissioner with all that he or she wants. I refer the Committee to the fact that "relevant complaints" includes everything at first tier and relates to the professional service provided by solicitors.

That is a brief run-through of the Department's analysis. The Committee's amendments are the same in spirit and achieve the same end result, but the Department's amendments, in our view, give it that bit of a neater sense in the Bill and also achieve a more rounded end result and provide more information, which we think will inform the process in the way that the Committee wants.

**The Chairperson (Mr McKay):** I welcome the fact that the Department has met the Committee halfway on the amendments. The aims that we set out through our amendments are met by much of what you propose. That is a step forward, because a number of officials whom we have had before us with regard to Bills would not give a single inch. This is quite welcome and quite progressive.

The question I have is about the review of the Act. The Committee said in its proposed first amendment:

*"The Department must not later than 3 years after the commencement of this Act appoint an independent person to review and publish a report".*

What is the Department's view on that?

**Mr M Foster:** We have obviously looked very carefully at the first-tier complaints. I had some initial concerns about how we would approach that, but I was happy to work with the Committee on that point. The statutory review causes the Department more difficulties.

**The Chairperson (Mr McKay):** Even though it is just one review; it is not a recurrent feature.

**Mr M Foster:** I will set out my thinking on it again. From looking at it in a broad way, the Department has sought and achieved considerable buy-in from the professional bodies on the reform. Both have publicly recorded their desire to see the system work in an effective way. From the outset, my concern is that having a statutory review that has to be published no later than three years after the Act comes into operation could send out a mixed message to the professional bodies. Some might argue that it could be a sword of Damocles.

I worry that we are effectively saying, "Here is a Bill, but in three years' time it is going to be reviewed. It had better be working well or there could be problems." I can understand why the Committee would like to see that, but my concern is that, at the practical level, it may not be possible at a stage of no longer than three years to gauge how the system is working effectively, because we do not really have an accurate understanding of how long it is going to take to bed in. There is going to be a period of overlap between the old system and the new system by their nature.

**The Chairperson (Mr McKay):** Leslie says five years, then.

**Mr Cree:** Done.

**Mr M Foster:** I will explain the rest of my analysis, and then the Committee can form judgements.

Set with that overall concern, the Department does not want to be sending out a message that this is destined to not work. All of the evidence suggests that there is a very good chance that it will work very well. Even taking that argument in the round, the Department already has — I have outlined this to the Committee on a number of occasions — the capacity to review the system by way of the provisions in clause 4.

Members have raised the point that the Legal Services Oversight Commissioner would carry out that review and have queried whether he or she would be a truly independent voice and provide a neutral review. My analysis of that is that the commissioner is most likely to be best placed to determine how well or otherwise the act is working. He or she will have the closest interface with the professional bodies, will understand and appreciate how they are handling complaints and will be in possession of all the relevant information in relation to the complaints, including the plans, the targets and the themes and issues arising under the new system. It is unlikely that an LSOC would provide an incomplete report on such matters on the basis, for example, of any issues of self-interest. Any report compiled by him would be subject to independent scrutiny by not only the Department and the Minister but the Assembly — all reports by the LSOC have to be laid before the Assembly — and, of course, the Committee. That is a sufficient check on the effectiveness or otherwise of the Act.

I also mentioned making a review time-bound in legislation. The Department and, probably more importantly, the LSOC will probably have a much clearer handle on when the time is right for a review of the legislation. It might bed in quite quickly, in which case the normal post-legislative review by the Department may take place and be repeated after a longer period. It might take longer to bed in, in which case the review may be a holding review, to be followed up later with a more comprehensive piece of work; or, as we hope, reports from the early evidence of this from the commissioner could point to a new system that operates effectively and efficiently and in a way that is beneficial to consumers, which, obviously, is what the aim of this is. In that case, I would ask whether there would be a tangible benefit in having the natural expense associated with a statutory independent review when we might have the flexibility, under clause 4 and the Department's general responsibility, to examine the process when we feel the time is right to do so. Clause 4 is in there to provide that flexibility over whether, how and when any review is undertaken, so an additional statutory review of the Act no longer than three years after it comes into operation will not automatically have the desired effect that the Committee is seeking. Our position is to resist an amendment of that nature, given the fact that we already have the broad powers in the Bill.

**Mr Wells:** I always get very suspicious. Even when we get a commitment to review, it does not happen. We get phrases like, "Time has moved on" or "There isn't the money to do it". What would be the damage in having a statutory review? Apart from the fact that you do not want it, you do not like it and you do not want to be bothered with it, what damage would having it do?

**Mr M Foster:** I would not say that I do not want it or that I could not be bothered with it —

**Mr Wells:** Not you personally — the Department.

**Mr M Foster:** I do not think that the Department is of that view, either. In fact, the Minister indicated at, I think, Second Stage that the system is there for the professional bodies to run and operate in the way in which it is intended. If the evidence down the line shows that it is not working that way, the Department has other powers at its disposal to progress something different.

**Mr Wells:** What is wrong with having an imperative to do it, then?

**Mr M Foster:** My point is that we have that power there already.

**Mr Wells:** If you do not want to bother to do it, you will not do it. There is nothing to force you to. Members can throw in questions left, right and centre, and you will say, "Well, it's not appropriate" or whatever. I have backed legislation in the House on the basis of a review, and the reviews never happened; they were just forgotten about. There was a change of Minister and a change of parties, and you were just told to go away. It is protesting too much.

A review forces you, as a Department, to make absolutely certain that it is working well and that the review will come out with glowing colours. I can argue with you about the timing of the review and whether it should be after three, five, seven years or whatever, but the principle is a good one to concentrate the minds of the Department. As you know, there are concerns about the legislation, and it would allay many people's concerns if they knew that at least there was going to be another chance to have an input. A review means that outside bodies can say how they feel the legislation is operating. I would not die in a ditch over it, but I am always very suspicious when Departments shy away from having their own standard of legislation being scrutinised.

**Mr M Foster:** I take those points on board. Clause 4, as I have repeated, is there to allow that review to take place. My concern is that, if we have an additional statutory review placed in it, it takes it away from the person whom the Department probably considers to be best placed.

Part of the rationale behind clause 4 was that we would have an automatic resource for a suitably experienced and competent person in the LSOC to review any matter relating to the regulation or organisation of the professional bodies. That power is not simply restricted to a review of the Act, although it has the scope to allow that to happen. It is also there for other matters. Say, for example, other issues relating to the regulation of the profession were raised in two, three or four years' time. Instead of having to set up, as the Department had to do about 10 years ago, an independent review group led by Professor Sir George Bain to examine the issues, there is a ready resource there. That resource is a commissioner who is, effectively, paid for by the legal profession, not the Department. We have a cost-neutral review system already in place.

I am happy to recommend to the Minister that she, again, goes on record and indicates at some of the later Stages of the Bill that she will commit to asking the commissioner to review the scheme under the powers in clause 4 within a period of time, whether that is three years —

**Mr Wells:** But the Minister may not be there for very much longer if the press is to be believed.

**Mr M Foster:** Well, I could not possibly comment on that. *[Laughter.]*

**Mr Wells:** Any commitment that the present Minister makes will be forgotten in the mists of time as she perhaps moves on to higher things and somebody else comes along.

**Mr M Foster:** I would imagine that a new Minister would probably be singing off a reasonably similar hymn sheet to the existing Minister on these issues. I have a concern that we are sending out the wrong message at the start, but we also have the facility there. I am happy to go back to the Minister and ask her —

**Mr Wells:** You had better be quick — very quick.

**Mr M Foster:** Our analysis at the moment is that it is not an amendment that we could support.

**The Chairperson (Mr McKay):** Stephanie, do you want to come in on the Committee amendments?

**Ms Mallon:** Only to say that, with regard to the Committee amendment for review of the Act, last week, we discussed that the time limit we had was to appoint an independent person as opposed to conducting the review within the three-year limit because we recognised what the Department had said, that three years may not be long enough and five years might be too long. It would obviously be the person who is conducting the review who would decide on the timing from there.

**The Chairperson (Mr McKay):** OK, members. Are there any other questions?

**Mr Wells:** I was too easy on you last week, so that is why I went hard on you this week.

**The Chairperson (Mr McKay):** Michael, do you wish to speak on the other amendments?

**Mr M Foster:** I am happy to run through them briefly. Amendment 2 relates to the privilege that is afforded to publications that are made by the commissioner. The original draft indicated that all publications should be absolutely privileged. The Committee heard evidence from the Law Society and the commission that the privilege should be qualified in the same way as it has been in the Scottish legislation. The Department has accepted that point and the amendment gives effect to it.

I will deal with amendments 3 and 8 together, if I may. Again, evidence from some parties during this process queried clause 17(4)(a) and (5)(a), their equivalents for solicitors at clause 36 and how those provisions sat together. It was recommended to the Department by the Committee that removal of the words "without consideration of its merits" at clauses 17(4) and 36(4) would remove any doubts relating to the interpretation of those provisions. The Department has agreed to that. Amendments 3 and 8 do exactly what the Committee has requested.

Amendments 10 and 11 are relatively technical in nature and address a specific point made by the Examiner of Statutory Rules in his report to the Committee on the delegated-powers memorandum. He indicated that a revised version of clause 51 should be considered by the Department. We have agreed with his points. The two amendments taken together give effect to those recommendations.

Finally, I turn to amendments 4 and 9. They relate to the issue of an apology in the Bill. Members will recall that the Bill provides scope for the relevant complaints committee to direct a respondent to issue an apology. The Law Society, in particular, was exercised about the potential ramifications of giving an apology and considered that the scheme would be more effective if practitioners could present an apology without fear of further consequences. It initially directed the Department to section 2 of the Compensation Act 2006, but the Department felt that that provision needed to be considered in the context of that Act. It then highlighted the proposed legislation in Scotland, which is the Apologies (Scotland) Bill, and asked that consideration be given to similar provision.

The Department has brought forward an amendment. I would just note to Members that it is still in draft form and the precise form of words is still under deliberation. We are conscious that we do not want to impact on other statutory regimes and therefore we are treating the amendment with a degree of diligence. We have worked through it. We are fairly sure that the form of words that you have in front of you at the moment will be the final form of words. However, we just want to make sure. We will come back to the Committee if there is any issue, but we hope that that will be the final draft and that that will be confirmed through the Clerk in due course.

That concludes the run-through of the Department's amendments. I am happy to take final questions.

**The Chairperson (Mr McKay):** Do members have any questions? No.

In relation to clause 2 and the proposal to add provision for the LSOC to gather information on first-tier complaints, do members wish to propose the draft amendment prepared by the Bill Office — amendment 2 on page 28 — or the alternative amendment from DFP, which is amendment 1 at appendix 2 on page 31?

**Mr I McCrea:** I am content with the Department's proposed amendment.

**The Chairperson (Mr McKay):** Are members agreed?

*Members indicated assent.*

**The Chairperson (Mr McKay):** In relation to clause 8 and the issue around absolute privilege that the Committee identified, are members content to propose the draft amendment prepared by DFP? That is amendment 2 on page 31.

*Members indicated assent.*

**The Chairperson (Mr McKay):** In relation to clause 17(4)(a) and the apparent conflict with clause 17(5)(a) that the Committee identified, are members content to propose the draft amendment prepared by DFP? That is amendment 3 at page 31.

*Members indicated assent.*

**The Chairperson (Mr McKay):** In relation to clause 19(2) and the issue around apologies that the Committee identified, are members content to propose the draft amendment prepared by DFP, which might be subject to slight changes, as Michael has outlined? That is amendment 4 at page 31.

*Members indicated assent.*

**The Chairperson (Mr McKay):** In relation to clause 29 and the proposal to gather information on first-tier complaints, are members content to propose the draft amendments prepared by DFP, which are amendments 5, 6 and 7 at page 31?

*Members indicated assent.*

**The Chairperson (Mr McKay):** In relation to clause 36(4)(a) and the apparent conflict with clause 36(5)(a) that the Committee identified, are members content to propose the draft amendment prepared by DFP, which is amendment 8?

*Members indicated assent.*

**The Chairperson (Mr McKay):** In relation to clause 38(2) and the issue around apologies that the Committee identified, are members content to propose the draft amendment prepared by DFP, which might be subject to slight changes? That is amendment 9.

*Members indicated assent.*

**The Chairperson (Mr McKay):** In relation to the proposed inclusion of an independent review mechanism at clause 50, the Committee agreed, in principle, last week, that it was content with the draft amendment prepared by the Bill Office. That is amendment 1 at appendix 1 on page 28. That requires that DFP appoints an independent person to review the implementation of the provisions in the Bill within a specified time frame of three years after commencement and that a report on the review is published. It also provides for the terms of the review to be set out in regulations. Are members content to propose that amendment?

**Mr Cree:** Is it three years, Chair?

**The Chairperson (Mr McKay):** Yes.

**Mr Cree:** I am happy with that.

**The Chairperson (Mr McKay):** Are members content?

*Members indicated assent.*

**The Chairperson (Mr McKay):** Are members content to propose the draft amendments to clause 51, prepared by the Department, which will address the issue identified from the Examiner of Statutory Rules' scrutiny of the delegated powers in the Bill? They are amendments 10 and 11 on page 32.

*Members indicated assent.*

**The Chairperson (Mr McKay):** Are members content to propose the draft amendments prepared by the Department in relation to schedule 1 and the proposal to gather information on first-tier complaints? They are amendments 12 and 13 on page 32.

*Members indicated assent.*

**Mr M Foster:** Chair, apologies; I should have mentioned that there is a very small typo in amendment 12, which I alerted the Clerk to. The word "department" should be capitalised. It is very minor.

**Mr Cree:** We are on a very low point there.

**The Chairperson (Mr McKay):** The Committee now needs to consider the Bill formally on a clause-by-clause basis and agree its position on each clause and on the schedules to the Bill. Members may



find it helpful to recap on the provisions of each clause and the issues that have arisen from the Committee Stage scrutiny before the Committee agrees its position on each clause.

### **Clause 1 (The Legal Services Oversight Commissioner for Northern Ireland)**

**The Chairperson (Mr McKay):** Clause 1 sets out the establishment of the LSOC. The Law Society and the Bar Council raised issues in respect of the clause to which DFP responded. Those responses are contained in the table of issues. The Committee also commissioned research on related issues.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 2 (General powers of the Commissioner)**

**The Chairperson (Mr McKay):** Clause 2 sets out the general powers of the commissioner relating to oversight of the complaints-handling processes of solicitors and barristers. The Committee, the Law Society and the Bar Council raised issues in respect of this clause to which DFP responded. The Department has provided clarification and assurance on a number of points, including a commitment to improve the narrative of the explanatory and financial memorandum (EFM). In light of the evidence from various stakeholders, including the Law Centre, the Scottish Legal Complaints Commission and Dr Hosier, the Committee agreed to propose amendments to ensure that information is collected on a number of complaints at the "first tier". The Department has accepted this proposal, which will require amendment to clause 2 and elsewhere in the Bill. The proposed amendment has been agreed with the Department.

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

### **Clause 3 (Duty of certain bodies to consult Commissioner)**

**The Chairperson (Mr McKay):** Clause 3 requires the various organs of the Bar and the Law Society to consult the commissioner before making certain rules or regulations. The Bar Council raised an issue in respect of the clause to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 4 (Duty of Commissioner to review certain matters)**

**The Chairperson (Mr McKay):** Clause 4 requires the commissioner to review and report on any matter relating to the regulation or organisation of the Law Society or the Bar that may be directed for consideration by DFP. The Law Society and the Bar Council raised an issue in respect of the clause to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 5 (The levy)**

**The Chairperson (Mr McKay):** Clause 5 sets out the requirement for a levy to be applied to the relevant professional bodies in order to fund the office of the LSOC. The Committee, the Law Society and the Bar Council raised issues in respect of the clause to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 6 (The levy: supplementary provisions)**

**The Chairperson (Mr McKay):** Clause 6 sets out conditions relating to the levy, which will be supplemented by regulations relating to the rate and when the levy is payable. The Committee raised an issue in respect of the clause to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 7 (Payments by Department)**

**The Chairperson (Mr McKay):** Clause 7 gives a power to the Department to pay to the commissioner such sums as it may determine, as appropriate, and gives the Department the power to determine those circumstances and the manner in which payment is made. No issues were raised in relation to the clause.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 8 (Privilege for certain publications)**

**The Chairperson (Mr McKay):** Clause 8 provides that any publication of the commissioner is considered to be absolutely privileged for the purposes of the law of defamation. The Committee raised an issue in respect of the clause, to which DFP responded, confirming that it would bring forward an amendment to take into account the Committee's view. The Committee is content with the wording of the amendment prepared by the Department.

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

#### **Clause 9 (Lay observer)**

**The Chairperson (Mr McKay):** Clause 9 abolishes the office of Lay Observer for NI and repeals article 42 of the Solicitors (NI) Order 1976. It transfers the existing powers of the Lay Observer to the LSOC. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 10 (Interpretation of Part 1)**

**The Chairperson (Mr McKay):** Clause 10 defines certain terms used in Part 1 of the Bill. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 11 (Complaints procedures for barristers)**

**The Chairperson (Mr McKay):** Clause 11 relates to the regulatory arrangements for the handling of complaints against barristers. The Committee and the Bar Council raised issues to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 12 (Bar Complaints Committee)**

**The Chairperson (Mr McKay):** Clause 12 provides that the benchers of the Inn of Court must establish and maintain a Bar Complaints Committee to deal with any complaint made in relation to the professional services provided by a barrister. The Committee raised issues to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 13 (Jurisdiction of the Bar Complaints Committee)**

**The Chairperson (Mr McKay):** Clause 13 broadly defines what types of person are eligible to bring complaints to the Bar Complaints Committee and who may be the subject of a complaint. The Committee raised issues to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 14 (Excluded complaints)**

**The Chairperson (Mr McKay):** Clause 14 provides that a complaint does not fall within the jurisdiction of the Bar Complaints Committee unless the complainant has first used the respondent's in-house complaints procedure. The Committee raised issues to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 15 (Complainants)**

**The Chairperson (Mr McKay):** Clause 15 sets out further conditions relating to the eligibility of a complainant to have a complaint handled by the Bar Complaints Committee. The Committee raised issues to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 16 (Orders under section 15)**

**The Chairperson (Mr McKay):** Clause 16 empowers the Department to make an order, on the recommendation of either the Bar Complaints Committee or the LSOC, the effect of which is for new categories of complainants to be included in or excluded from the scope of the Bar Complaints Committee. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 17 (Procedure for complaints)**

**The Chairperson (Mr McKay):** Clause 17 provides for the detailed framework for the Bar Complaints Committee scheme to be determined by rules to be made by the committee. It allows the committee the flexibility to adapt its procedures if required. The Committee and Dr Hosier raised the issue of an apparent conflict between the provisions in clause 17(4)(a) and clause 17(5)(a). The Department responded, confirming that it would bring forward an amendment along the lines outlined by the Committee. The Committee has agreed the draft amendment with the Department. The Committee raised other queries on which the Department provided clarification.

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

### **Clause 18 (Notification requirements)**

**The Chairperson (Mr McKay):** Clause 18 provides for the notification requirements to the Bar Complaints Committee where a complaint is excluded, dismissed, referred to another body, settled, withdrawn or abandoned and where the committee has determined a complaint. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 19 (Determination of complaints)**

**The Chairperson (Mr McKay):** Clause 19 makes provision for the Bar Complaints Committee powers in making a determination. The Committee, the Law Society and the Bar Council raised issues in respect of the clause to which DFP responded. In particular, an issue was identified regarding the need to facilitate bodies in making apologies. After confirming a willingness to consider an amendment, DFP provided a draft for consideration today that may be subject to slight changes. The Committee has agreed that it is content with the undertaking given by the Department to table the amendment to address the issue, and DFP can provide the final draft amendment for Committee consideration before Consideration Stage.

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

### **Clause 20 (Alteration of compensation limit)**

**The Chairperson (Mr McKay):** Clause 20 makes provision in respect of the Department amending the figures of £5,000 in clause 19. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 21 (Appeals)**

**The Chairperson (Mr McKay):** Clause 21 compels the Department to make regulations providing for appeals to the High Court against specified determinations of the Bar Complaints Committee. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 22 (Information and documents)**

**The Chairperson (Mr McKay):** Clause 22 empowers the Bar Complaints Committee to require parties to a complaint to produce information and/or documents. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 23 (Reporting failures to provide information or produce documents)**

**The Chairperson (Mr McKay):** Clause 23 provides for circumstances when a barrister has failed to cooperate with the Bar Complaints Committee as required by clause 22. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 24 (Enforcement of requirements to provide information or produce documents)**

**The Chairperson (Mr McKay):** Clause 24 provides for circumstances when a party other than a barrister has failed to cooperate with the Bar Complaints Committee as required by clause 22. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 25 (Reports of investigations)**

**The Chairperson (Mr McKay):** Clause 25 provides that the Bar Complaints Committee may publish a report about the investigation, consideration and determination of any case if it considers it appropriate. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 26 (Protection from defamation claims)**

**The Chairperson (Mr McKay):** Clause 26 makes provision placing Bar Complaints Committee proceedings and publications on a par with court proceedings for the purposes of the law of defamation. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 27 (Consultation requirements for Bar Complaints Committee rules)**

**The Chairperson (Mr McKay):** Clause 27 sets out the consultation requirements on the Bar Complaints Committee in relation to any rules it proposes to make. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 28 (Interpretation of Part 2)**

**The Chairperson (Mr McKay):** Clause 28 defines certain terms used in Part 2 of the Bill. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 29 (Complaints procedures for solicitors)**

**The Chairperson (Mr McKay):** Clause 29 relates to the regulatory arrangements for the handling of complaints against solicitors. The proposed amendments have been agreed with the Department.

*Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.*

### **Clause 30 (Solicitors Complaints Committee)**

**The Chairperson (Mr McKay):** Clause 30 provides that the Law Society must establish and maintain a Solicitors Complaints Committee to deal with any complaint made in relation to the professional services provided by a solicitor. The Committee and the Law Society raised issues to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 31 (Jurisdiction of the Solicitors Complaints Committee)**

**The Chairperson (Mr McKay):** Clause 31 broadly defines what types of person are eligible to bring complaints to the Solicitors Complaints Committee and who may be the subject of a complaint. In relation to a solicitor, the respondent may also be, where appropriate, his or her firm. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 32 (Excluded complaints)**

**The Chairperson (Mr McKay):** Clause 32 makes provision for complaints that fall within the jurisdiction of the Solicitors Complaints Committee. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 33 (Complainants)**

**The Chairperson (Mr McKay):** Clause 33 sets out further conditions as to the eligibility of a complainant to have a complaint handled by the Solicitors Complaints Committee. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 34 (Orders under section 33)**

**The Chairperson (Mr McKay):** Clause 34 empowers the Department to make an order for new categories of complainants to be included in or excluded from the scope of the Solicitors Complaints Committee. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 35 (Continuity of complaints)**

**The Chairperson (Mr McKay):** Clause 35 makes provision to ensure that a complaint does not fail simply because of change in membership of the partnership or body against which the complaint is made. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 36 (Procedure for complaints)**

**The Chairperson (Mr McKay):** Clause 36 provides for the detailed framework for the Solicitors Complaints Committee scheme to be determined by rules to be made by the committee. It allows the committee the flexibility to adapt its procedures if required. The Committee and Dr Hosier raised the issue of an apparent conflict between the provisions in clause 36(4)(a) and clause 36(5)(a), which is similar to the issue raised at clause 17. DFP responded, confirming that it would bring forward an amendment. The Committee has agreed the draft amendment with the Department.

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

### **Clause 37 (Notification requirements)**

**The Chairperson (Mr McKay):** Clause 37 provides for the notification requirements on the Solicitors Complaints Committee where a complaint is excluded, dismissed, referred to another body, settled, withdrawn or abandoned and where the committee has determined a complaint. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 38 (Determination of complaints)**

**The Chairperson (Mr McKay):** Clause 38 makes provision for the Solicitors Complaints Committee powers in making a determination. The Committee and the Law Society raised an issue in respect of the clause regarding the need to facilitate bodies in making apologies. The same issue was identified at clause 19. After confirming a willingness to consider an amendment, DFP provided a draft for consideration today — amendment 9 — that may be subject to slight changes. The Committee has agreed that it is content with the undertaking given by the Department to table this amendment to address the issue, and DFP can provide the final draft amendment for Committee consideration before Consideration Stage.

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

### **Clause 39 (Alteration of compensation limits)**

**The Chairperson (Mr McKay):** Clause 39 makes provision in respect of the Department amending the figures of £5,000 in clause 38. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 40 (Appeals)**

**The Chairperson (Mr McKay):** Clause 40 compels the Department to make regulations providing for appeals to the High Court against specified determinations of the Solicitors Complaints Committee. Such regulations must be agreed by the Lord Chief Justice and must be laid before and approved by resolution of the Assembly. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 41 (Information and documents)**

**The Chairperson (Mr McKay):** Clause 41 empowers the Solicitors Complaints Committee to require parties to a complaint to produce information and/or documents. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 42 (Reporting failures to provide information or produce documents)**

**The Chairperson (Mr McKay):** Clause 42 provides for circumstances where a solicitor has failed to cooperate with the Solicitors Complaints Committee as required by clause 41. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 43 (Enforcement of requirements to provide information or produce documents)**

**The Chairperson (Mr McKay):** Clause 43 provides for circumstances when a party other than a solicitor has failed to cooperate with the Solicitors Complaints Committee as required by clause 41. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 44 (Reports of investigation)**

**The Chairperson (Mr McKay):** Clause 44 provides that the Solicitors Complaints Committee may publish a report about the investigation, consideration and determination of any case if it considers it appropriate. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 45 (Protection from defamation claims)**

**The Chairperson (Mr McKay):** Clause 45 makes provision placing Solicitors Complaints Committee proceedings and publications on a par with court proceedings for the purposes of the law of defamation. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 46 (Consultation requirements for Solicitors Complaints Committee rules)**

**The Chairperson (Mr McKay):** Clause 46 sets out the consultation requirements on the Solicitors Complaints Committee in relation to any rules it proposes to make. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 47 (The Solicitors Disciplinary Tribunal)**

**The Chairperson (Mr McKay):** Clause 47 varies the membership of the Solicitors Disciplinary Tribunal. It is currently constituted with a professional chair and a professional majority. This provision changes the membership to a professional chair and a lay majority. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 48 (Recognised bodies)**

**The Chairperson (Mr McKay):** Clause 48 provides that a number of references to recognised bodies in the chapter relating to complaints procedures of solicitors are references to bodies corporate under article 26A of the Solicitors (NI) Order 1976. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 49 (Interpretation of Part 3)**

**The Chairperson (Mr McKay):** Clause 49 defines certain terms used in Part 3 of the Bill. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 50 (Interpretation)**

**The Chairperson (Mr McKay):** Clause 50 defines certain terms used throughout the Bill. The Committee raised a number of queries to which the Department responded. Also, in light of the evidence from Dr Hosier, the Committee commissioned the Bill Office to prepare a draft amendment to provide for an independent review of the implementation of the legislation, and that was detailed as proposed amendment 1 at appendix 1. The Committee has decided to pursue that amendment, which will be tabled by the Committee at Consideration Stage.

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

**Clause 51 (Further provision)**

**The Chairperson (Mr McKay):** Clause 51 provides for DFP to make transitional and savings provisions in connection with the coming into force of the Bill and sets out the order-making power of the Department and related Assembly control. The Committee raised an issue in respect of the clause to which DFP responded. Arising from the Examiner of Statutory Rules' scrutiny of the delegated powers in the Bill, the Department has indicated that it is content to table amendments to clause 51 to

take account of the Examiner's points. The Committee has agreed the draft amendments that have been provided.

*Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.*

#### **Clause 52 (Minor and consequential amendments)**

**The Chairperson (Mr McKay):** Clause 52 introduces schedule 4, which contains amendments to other legislation in consequence of the provisions of the Bill. The Committee raised an issue to which the Department responded.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 53 (Repeals)**

**The Chairperson (Mr McKay):** Clause 53 introduces schedule 5, which contains repeals of other legislation in consequence of the provisions of the Bill. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 54 (Commencement)**

**The Chairperson (Mr McKay):** Clause 54 outlines the commencement provisions relating to the Bill. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 55 (Short title)**

**The Chairperson (Mr McKay):** Clause 55 provides the short title for the legislation. No issues were raised.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Schedule 1 (The Legal Services Oversight Commissioner for Northern Ireland)**

**The Chairperson (Mr McKay):** Schedule 1 provides for the status, general powers, tenure of office and general staffing and procedural arrangements of the commissioner. The proposed amendments have been agreed with the Department.

*Question, That the Committee is content with the schedule, subject to the proposed amendments, put and agreed to.*

#### **Schedule 2 (The Bar Complaints Committee)**

**The Chairperson (Mr McKay):** Schedule 2 sets out the membership, terms of office, remuneration arrangements and procedural arrangements of the Bar Complaints Committee. The Bar Council raised an issue in respect of the schedule to which DFP responded.

*Question, That the Committee is content with schedule 2, put and agreed to.*

#### **Schedule 3 (The Solicitors Complaints Committee)**

**The Chairperson (Mr McKay):** Schedule 3 sets out the membership, terms of office, remuneration arrangements and procedural arrangements of the Solicitors Complaints Committee. The Committee and the Law Society raised issues in respect of the schedule to which DFP responded.

*Question, That the Committee is content with schedule 3, put and agreed to.*

#### **Schedule 4 (Minor and consequential amendments)**



**The Chairperson (Mr McKay):** Schedule 4 contains amendments to other statutory provisions that are consequential upon the Bill. No issues were raised.

*Question, That the Committee is content with schedule 4, put and agreed to.*

#### **Schedule 5 (Repeals)**

**The Chairperson (Mr McKay):** Schedule 5 contains repeals of various statutory provisions. No issues were raised.

*Question, That the Committee is content with schedule 5, put and agreed to.*

#### **Long Title**

**The Chairperson (Mr McKay):** The long title of the Bill is:

*"A Bill to make provision for the establishment of the office of the Legal Services Oversight Commissioner ... to make provision as regards complaints against members of the legal profession ... and for connected purposes."*

*Question, That the Committee is content with the long title, put and agreed to.*

**The Chairperson (Mr McKay):** As to the next steps, the initial draft of the Committee's report on the Bill to the Assembly will be considered at next week's meeting, with a view to agreeing the final draft report on 9 December, before the Committee Stage expires on 18 December. Members may wish to consider whether they have any recommendations or requests for assurance that they wish to see included in the report.

Consideration Stage is a matter for the Minister to bring forward in line with the requirements set out in Standing Orders. The Department has indicated that that will be scheduled for mid-January 2016. Any agreed Committee amendments will be required to be tabled in advance of Consideration Stage.

I thank Stephanie and Michael for their assistance.