



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Legal Complaints and Regulation Bill:
Law Society of Northern Ireland

30 September 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Ms Michaela Boyle
Mr Leslie Cree
Mr Paul Girvan
Mr John McCallister
Mr Ian McCrea
Mr Adrian McQuillan
Mr Máirtín Ó Muilleoir
Mr Jim Wells

Witnesses:

Mr James Cooper	Law Society Northern Ireland
Mr Alan Hunter	Law Society Northern Ireland
Mrs Moira Neeson	Law Society Northern Ireland

The Chairperson (Mr McKay): Before us are Alan Hunter, chief executive of the Law Society; Moira Neeson, director of solicitor client complaints; and Mr James Cooper, past president of the Law Society. I invite you to make an opening statement, after which we will go to questions.

Mr James Cooper (Law Society Northern Ireland): Thank you very much, Mr Chairman. We are pleased to be here to deal with this matter. As you said, I am a past president of the Law Society, and I chair the Law Society working group that is responsible for this matter. As the Committee knows, the background to this matter is that, following a review in England, which was called the Clementi report, quite a complex set of regulatory machinery was set up there. Indeed, the Government there have recently stated that that complex model requires review and simplification.

Following the Clementi report, a committee was set up by Sir George Bain in Northern Ireland which comprised a number of members of the legal profession, people representing consumer interests, economists and academics. They unanimously brought forward a report that projected a tailored model for Northern Ireland. One principle runs throughout all the reviews and reports on this topic, which is the issue of proportionality. It is important that, in the Northern Ireland context, we recognise that the English and Welsh changes were against a background where there are over 150,000 solicitors. There are over 12,000 solicitors in Scotland and over 10,000 in the Republic, whereas in Northern Ireland there are approximately 2,700 solicitors currently in practice, although these figures fluctuate and are affected by economic downturns.

Proportionality applies right across the piece in terms of structures, cost, oversight and audit. Whatever structure emerges in Northern Ireland, separation under the Bain report is guaranteed. In

other words, the complaints model is separated from the operation of the Law Society business. I say that against those who have a criticism of self-regulation remaining with the Law Society. Our position currently is that we are not a self-regulator but a co-regulator. The proposals in the Bill are core to that, in that they bring in a measure of independence which is sought by government and the public. That is being achieved by functional separation from the Law Society; particularly and, very importantly, the operation of a lay majority and a lay chair on the client complaints committee; and, crucially, the establishment of the office of Legal Services Oversight Commissioner.

Those are the foundations of the Bain report, and they achieve the outcome that more complex and expensive machinery has attempted to achieve elsewhere. Crucially, these models meet the tests of the Better Regulation Commission, which is a UK Government organisation. I urge upon you also that those foundations in the Bain report were set against a complaints regime which, by common consent, had operated very successfully. Statistically, however, the number of complaints has in fact improved since the Bain report, and therefore the rationale is even more persuasive.

The Law Society is keen to see the Bill enacted. We have been waiting since the Bain report for progress to be made on it, and we have asked the Administration repeatedly to enact it. That is not to say that we are completely enthusiastic about it. We have grave concerns, particularly about increasing costs and the establishment of a quango-type structure that, like quangos elsewhere, traditionally will mushroom as an administration and in terms of costs. We always have concerns to preserve the independence of the legal profession in Northern Ireland, which has been an issue throughout the peace process. In terms of a business model, if new structures involve increased costs, those are ultimately paid by the consumer. We want this legislation because our current model prevents us from giving compensation to complainants. We welcome the power to give dissatisfied clients proper redress. We cannot do that at the moment, because our legislation prevents it.

We wish to see greater separation of complaints against solicitors from the Law Society. That is correct in principle. Therefore, we welcome greater lay involvement, and we think that the balance set out in the report is the correct balance. We also want to see a proactive and dynamic consumer education attachment to this model, because it is important that the public have confidence in the complaints regime, the Legal Services Oversight Commissioner and the legal profession generally. We support that and are proactive in it. As we have been preparing for this for some time, we want to move forward. We have some issues that we would like added into the Bill but we want, certainly at an early stage, to engage with the Legal Services Oversight Commissioner on a number of matters, particularly the business model that will be enacted; proportionality and advice; and engendering public confidence, openness and transparency into the complaints regime.

Although I am well aware that the Committee is aware of it, in the consultative process after Bain and most recently there has been a general consensus that the proposals in the Bill are a proportionate, reasonable and effective tailored Northern Ireland solution. The consumer organisations have been supportive of it.

We are happy now, Chairman, to respond to your questions and have a dialogue with you.

The Chairperson (Mr McKay): Thank you, James. There are concerns that what is being proposed could lead to an overly bureaucratic system for both the public and the legal profession. Do you have any concerns about what is being put forward? Are there any provisions that are unnecessarily bureaucratic or complicated?

Mr Cooper: In the context of the user of this model, it is not that far away from how we handle complaints at the moment. We believe that our complaints handling is straightforward in that, in this model, the first port of call for a complainant is to go through the solicitor's in-house complaints system. That is common practice in every complaints regime across the piece, and certainly in Scotland and England. We will direct complainants to the first port of call. If a client makes a complaint directly to us under the Bill, that will be referred that back to the solicitor's in-house complaints regime. If that is unsuccessful, the operation of the system seems to be straightforward and proportionate, working through the complaints staff who will be subject to the direction of the clients complaint committee. In bureaucratic terms, I suppose that one of the dangers is that committees take upon themselves more and more powers and their remit almost widens as they go along, and we would be very concerned should that happen. However, if the oversight commissioner keeps the model simple and straightforward, we do not think that it is overly bureaucratic.

Mr Alan Hunter (Law Society Northern Ireland): The Bill as currently framed places all responsibilities on the committees, and I think that one thing that it would be useful to inject into the Bill, in terms of the efficiency of the process, would be a power to delegate decisions to an individual or a member of staff in certain areas, with the provision that they report to the full committee.

One of the things that I think that we need to be very careful about is that our current targets — which we are meeting, and which will stand up to examination anywhere internationally — are actually very good. The turnaround times for client complaints are actually very good, and we do not want to see that deteriorate. If you are constantly having to wait for meetings every four or six weeks, there is the potential for delay, so it would be useful if there was a power to delegate matters so that, for example, preliminary steps could be taken or a preliminary decision made, subject to ratification at a later date. That is just a slight concern that we have about being totally dependent on the committee structure. Obviously, it would be involved with a range of laypeople, who will have other commitments and will not always be available because of the usual kinds of things that naturally arise in the course of business, so we would be keen to see a power to delegate.

The Chairperson (Mr McKay): In terms of the independent Legal Services Oversight Commissioner, we have been looking at the other models in place in Scotland, the South and elsewhere, where they have opted for a more independent system. A concern for the Committee is whether the commissioner as proposed will have enough teeth. Do you feel that there is any room for improvement there? Also, can you comment on why those other models do not represent the best option for us here? Obviously, there was work carried out by Bain, but that was nearly 10 years ago now, so is there a risk that Bain may be out of date.

Mr Hunter: I am sure that Mr Cooper wants to come in, but the first thing that I would like to say is that I do not necessarily agree that the other models are more independent. What gives this model independence is the fact that you have a lay chair and a lay majority, and that the committee will be entirely functionally separate from the society. I do not necessarily agree that there is greater independence elsewhere. I think that that perhaps does not give due justice to the people who will form the committee. I am sure that Mr Cooper —

Mr Cooper: First of all, I have to come back to this issue of proportionality. The Committee is aware that statistics show that we had 76 complaints in 2014. As for the other models, the one in Scotland is dealing with between 1,000 and 1,500 complaints against a background of 11,000 solicitors. The projected Republic model will deal with a regime that has 2,000 to 3,000 complaints. The English model, of course, costs well over £80 million and deals with an enormous number of complaints. The need for a framework to cope with those levels of complaints is in an entirely different place from that which is operative in Northern Ireland. As I said, our record shows that the number of complaints is coming down.

In Scotland, for instance, it is transpiring now that there is a real problem with the cost of that new model. It costs, I think, about £4,500 to deal with the most simple complaint under its regime, and it can cost up to £30,000 where that is being appealed. In the short time that that system has been operative, it has already had real cost problems. We do not know, obviously, how the system in the Republic will work, but it comes back to the issue of proportionality. As I said to you a minute ago, one of the principal, core tenets of the Better Regulation Commission is:

"policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed – don't use a sledgehammer to crack a nut."

Frankly, we are convinced that to bring in something akin to the Scottish model or the projected Republic of Ireland model would in fact be entirely unjustified in the Northern Ireland context.

The other point I just want to make is that these models are creatures of the United Kingdom. In a European context, the complaints regimes of nearly all the legal professions are operated in-house within the legal profession. We acknowledge that we are departing from that, but these models that are being brought in are essentially unproven and, at the time, it was acknowledged that they were experimental. We talk about the Republic of Ireland model — it is not there yet. Whilst we see the shape of the Bill, it is essentially unproven.

So we are very strong that this is a model that has been endorsed as being entirely appropriate and tailored to the size of the Northern Ireland problem. It certainly is independent from our profession, where the only input we will have in complaints is the fact that we will be transporting our existing staff

to this new regime, which is not under our control. It will be under the control of a very powerful committee populated by laypeople, in which we are the minority, and will be under the control of a Legal Services Oversight Commissioner who is directly accountable then to DFP. That Commissioner, under clause 4 of the Bill, clearly has very important powers right across the regulatory spectrum of the legal profession.

Mr McCallister: If I have to leave before the end of your presentation, I apologise, but I have a funeral to attend. I was keen to be down here. I know that we had a brief discussion about it, even the day you were here with the NAMA inquiry. I suppose it follows on from that around creating this firewall. Do you feel that what is in place in the Bill meets what you would expect as the best standards in regulation, and that you have that firewall between your professional arm and your regulation arm, even though it is, as you say, one organisation — that there is enough of a firewall between those two parts for regulation, continued professional development and all of that that you would put in on that side and keep your professional arm separate? Is there enough of a firewall between the two?

Mr Cooper: I will ask Mr Hunter to come back to that. I have made the point about how this new regime is going to be independent, largely, from ourselves, apart from the involvement of solicitors on the client complaints committee. That is no concession. A client complaints committee in any profession, whether it be law, medicine, pharmaceuticals or whatever, has to have on it experts familiar with the issues. Every lay-dominated complaints system always turns to professionals for advice, but those professionals are in a minority. They are there in an advisory role. They are experts in what can be quite complex and very delicate issues. That is the only extent to which this complaints regime will be in any way influenced by the Northern Ireland Law Society. We will not be part of the operation. We will want to have a very powerful position in discussing with the Legal Services Oversight Commissioner how it works. For instance, we would have wanted and still would like to see in the Bill a statutory power of consultation over the business model as it goes forward. That is because, crucially, we are paying for it and our profession is paying for it.

In my opening remarks I made the point that costs in any profession work their way down to the consumer. That is another reason why we think this is a measured Bill; if the costs get out of line with the problem, unfortunately, the consumer ends up paying for it, and we cannot avoid that. We are strong that there is an appropriate firewall in this complaints regime. We are also strong that in terms of the Commissioner's regulatory oversight, because of article 4 and the powers that are available to the Department of Finance to direct any issue in terms of our regulations and because the Legal Services Oversight Commissioner and government always have to consult and ultimately agree on changes to regulations, that there are appropriate firewalls. When we look at the alternatives, we are absolutely clear that any alternative to that which involves bringing in an entirely separate regulatory system akin to what is in England is totally inappropriate for the size of this jurisdiction.

Mr Hunter: There are two issues: the structure and the operation of the structure. The Law Society is committed to the model set out in this legislation, and we have been working for some time to prepare for its implementation. There is that functional separation from the Law Society in that solicitor members who are members of the committee cannot be members of the council, so there is entire separation there. You have the lay majority, so it clearly has the gravity of opinion within the committee. You have a lay chairman who, again, is completely independent from the Law Society and runs the committee as an independent structure. There is the oversight of the lay Legal Services Oversight Commissioner, who has wide and extensive powers and with whom we expect to have a continuing dialogue, rather than a one-off dialogue, about the operation of the new system.

In our preparation, we have also been giving effect to the spirit and the model of this legislation by ensuring that the accommodation and the places where these issues will be dealt with are in a separate part of the building that will be entirely the preserve of the new solicitors' complaints committee. If any members of the Committee would like, you can view the preparations that we have put in place — I know that some of you have already seen them. It is on an entirely separate floor from the Law Society and has its own entrance and reception. It has its own telephone machinery at the moment, and it has its own meeting rooms and all its own facilities. We have made provision for this to be a function that is separate from the Law Society, not just in terms of how the legislation sets out what the expectations are in terms of the membership and so on but the geography. As we all know, in setting up new organisations and new cultures, part of that is the very physical framework. That is important in setting out a separation between the new solicitors' complaints committee and the Law Society. You are all welcome to come down to the Law Society and see the provision that we have made in respect of that. I know from previous work that I have done that in setting up new organisations and new structures the physical environment is key to the culture. We have been

aiming to ensure that the culture is very separate from the Law Society — as well as the guarantees that are in the legislation.

Mr McCallister: I agree with you, Alan, that the physical separation and the building up of the culture that these are separate and almost stand-alone bodies are very important, even for the legal profession, to give that confidence and reassurance to people who bring complaints in future to make sure that this is being taken seriously and that it is a very separate group. It is important to have that entire culture and physical regime and to get it right. I am keen to take up your offer and come down.

Mr Hunter: You are all very welcome to come down and view that.

Mr Cooper: That is what I meant about consumer education. It will be up to the lay chairman and the lay committee to publish and also to educate people that the complaints committee is accessible and that it is separated. You can come in the same door and go to other offices that have nothing to do with the Law Society and not be in any way influenced by the Law Society. These are shared objectives, and I am very confident that that can be achieved by the Legal Services Oversight Commissioner and the lay chairman in dialogue with us.

The Chairperson (Mr McKay): Schedule 3(1) deals with the solicitors complaints committee; it states that the committee is to consist of:

"(a) a chair appointed by the Law Society;

(b) such number of other members appointed by the Law Society as the Law Society thinks fit".

Schedule 3(2) says:

"The Law Society must consult the Legal Services Oversight Commissioner"

about those appointments. Of course, there is the provision that a majority of members of the committee be laypersons, but is it proper that the Law Society make those appointments rather than the Legal Services Oversight Commissioner?

Mr Cooper: I think that it is inconceivable that there would not be agreement with the Legal Services Oversight Commissioner at the end of the day. Consultation on this issue over members of this committee is very important, and one would have to say that we will be in immediate difficulties if there could not be agreement. I take the consultative arrangements in the forum to be consensus now. The other issue, of course, is that the appointments have to be under Nolan principles.

Mr Wells: You have ruined my morning. I presume that it is the other Nolan.

Mr Cooper: It depends which one you are talking about, indeed.

We are very clear that these will be properly and publicly advertised appointments, and there can be confidence that, as in all appointments that the Law Society has been engaged in, they are open and transparent and sustainable.

Mr Hunter: The appointments will be made by reference to job description, personal specification and an open and participatory selection process. It is our expectation that we will be in dialogue with the Legal Services Oversight Commissioner throughout the process.

The Chairperson (Mr McKay): Is there any reason why it would not be the other way round in that the commissioner would propose making appointments in consultation with the Law Society?

Mrs Moira Neeson (Law Society Northern Ireland): We made a submission in relation to that, and one of the points that we made was that it would be difficult for a Legal Services Oversight Commissioner to criticise the workings of people whom he appointed. The whole function is to be functionally separate in the context of reviewing the work being done for the solicitors complaints committee. That is why we asked that he have a consultative role rather than having to be sent to people whom the society had chosen to appoint following open recruitment.

Mr Cree: Good morning. I have a couple of basic points. As drafted, the Bill does not provide the definition of a complaint. Given that solicitors and barristers will be regulated under the Bill, what are your views on what the provision of a proper definition would be for consistency across both professions?

Mr Cooper: The definition of a complaint is a difficulty, and it is not yet evident that it is susceptible to a series of defined definitions. The Bill says that it is a complaint in relation to the service provided to the client. In our discussions with DFP, we have said that that is a very wide, all-encompassing description that brings into play issues of service, conduct and negligence.

It is then up to the client complaints committee to determine whether, in its view, any complaint falls outside that very wide definition, but, in fact, I think that the strength of that is that it provides a very wide array of areas that can be susceptible to a complaint. The danger, once you start being prescriptive, is that you exclude. Any difficulties with that description will evolve, I suggest, during the workings of the client complaints committee. We have not had a concern about that. I hope that that, to some extent, answers your question. Moira, do you have any comment?

Mrs Neeson: No, that is similar to the provisions in other jurisdictions. The Legal Services Act 2007 refers to legal services, and it has to try to define those and restricted legal services, which it defines as well. This is much more all-encompassing and of more benefit to a client. Part of the difficulty is not to define yourself by a negative.

Mr Cree: I understand why you would say that, but the expectation of a complainant might be quite different; they might have other expectations.

Mr Cooper: That relates to a service from a solicitor. The complainant has to be in a certain place; he has to be someone who got a service from the solicitor. There is obviously territory that excludes a complainant, in other words, third-party witnesses. People are dissatisfied often with their experience of the court system, but the complaints regime does not permit them to somehow attach that to a solicitor with whom they have no relationship. That is the purpose of that expression when it relates to service from a solicitor. There will eventually be people who fall outside that remit, but there must be some defined edges to this territory where you either qualify as a complainant or you do not.

Mr Cree: OK. The Law Society is happy with the way it is at the moment. The second point is to do with 5.1 of your submission. We are talking here about costs. What is the Law Society's view on DFP's opinion that the additional levy will be £100 per practitioner? Is that acceptable? Do you accept that as realistic?

Mr Cooper: If we talk about the additional costs for the Legal Services Oversight Commissioner's office, and you take 2,500 solicitors and multiply it by 100, that is assuming that it will cost a round figure of a quarter of a million pounds a year to set up a commissioner's office and staff it and get accommodation. That sort of figure probably would not surprise us, but we are very anxious to make sure that we have a consultative, powerful role in it because, at the end of the day, our members are paying. That is only the initial cost. Over and above that, there is the cost of running the client complaints operation, which will cost substantially more. It also depends on the number of complaints. So, we do not argue with the £100. We have postulated in certain commentaries that we could see the operation costing an individual practising solicitor £500 or the average-sized firm, which is three or four solicitors, £2,000 to £2,500. Once we start into those figures, you can appreciate that our membership will be concerned about increased cost and controlling the costs.

Mr Cree: That is how you got your £500 figure.

Mr Cooper: Yes.

Mr Cree: Would it be fair to say that the answer lies between £100 and £500?

Mr Cooper: Between £100 and approximately £400.

Mr Hunter: There is a deeper point that we have made previously and to which I might return for a moment: it is important that the Law Society should be a statutory consultee to the business plan of the Legal Services Oversight Commissioner. That will allow us and the commissioner to engage in a dialogue at an early stage and fix the costs for the year. I would have thought that it would be much

better to have that arrangement in place. I return to the point that the profession will pay for it. Having a consultation role in statute for the Law Society would ensure that that dialogue happens at an early stage and that continuing dialogue could be productive and fruitful.

One of the key things that we would like injected into the legislation is that the oversight commissioner should have a statutory duty to consult the society on its business plan and operation for the year. That will allow dialogue to take place.

The Chairperson (Mr McKay): The number of complaints is a key issue. We received correspondence from the Law Centre stating that the seemingly low number of complaints:

"may reflect high levels of satisfaction with ... solicitors, a lack of awareness of the complaints mechanisms or a lack of faith in a solicitors body investigating its own members."

The Committee has had some discussion about the reliability of information in respect of the numbers of complaints that do not enter the system. How can we be assured that all such complaints will be recorded to provide a reliable baseline of information so that we know that the number of complaints reflects the concerns that the public have about solicitors and that it is not about a lack of awareness or a lack of faith?

Mr Cooper: I think that you are referring to the initial complaints, as complaints that go through our complaints regime in the Law Society are very carefully recorded. A file is opened for every complaint and those statistics — it boiled down to 76 complaints in 2014 — are open to any audit or scrutiny, and we are very confident that they are correct. Those are recorded as complaints that are directly initiated through the Law Society. In other words, somebody rings up Moira and says that they want to make a complaint about their solicitor. Those are all recorded, a file is opened, and their destiny is known.

Before that, there is a regime with the consumer, whereby if somebody wants to complain about their solicitor, they read the terms of engagement letter that they get from the solicitor, which is compulsory, and they see in that that their first port of call if they have a complaint is with their solicitor, and they write to the solicitor to lodge a complaint. We have a compulsory regime where solicitors must log every complaint. Each firm must have a complaints book or register that is monitored by our monitoring officers who visit firms. In that way, we can establish that the complaints regime is working effectively. It is a regime that has received full persuasive endorsement from the Lay Observer, and we think that it works very well.

Nearly every profession, regardless of the structure that lies over it, operates that regime so that your first port of call about the complaint of any service that you are provided by a professional should be to go back to that professional and complain. Its merit is that it generally, or very often, deals entirely satisfactorily with the complaint. Many complaints arise through misunderstandings rather than through a patent and fundamental lack of service.

Mr Hunter: In addition, how do you prove a negative? I do not know what inspired the Law Centre to express that view, but if you look at our website you will see that there is a detailed section on how to make a complaint. It is open and transparent. You can download the forms. You can phone the Law Society and be given advice, and Mrs Neeson's team will send out forms and follow that up and so on. We are very proactive in pushing out information on how to make a complaint about your solicitor. I suppose that it is back to the point that Mr Cooper made: if a client has a complaint, they will have that discussion with the solicitor. The solicitor will say, "Well, I have my complaints machinery in place here". That then sets out the possibility of going to the Law Society thereafter. It should be well known to the individual that there is that opportunity.

Mr Cree: I am intrigued by that basic point. I wonder whether any of the practices would operate what might be called in other places a grievance procedure.

Mr Cooper: Essentially, it is a grievance procedure. We direct how complaints should be dealt with; we tell our profession, "Here is how you must deal with your complaints". A complaint is normally dealt with in large firms through a person appointed to deal with complaints. It is all done in writing. We ask the complainant to put it in writing, and we compel the solicitor to reply in writing so that it is open and transparent and on the record. The procedure is modelled on good grievance procedure principles.

Mr Cree: Yes, but it is very structured, James, whereas a grievance procedure in many industries, for example, would be really with the point of view of trying to settle with a client initially where, presumably, the complaint has arisen.

Mr Hunter: Practically speaking, no solicitor wants an aggrieved client. We live in small communities. We are very proud of the spread of solicitors' practices throughout the jurisdiction and the access to a solicitor of choice, which is fundamental to access to justice. There is no solicitor in a small town or even a city who wants an aggrieved client or a bad reputation. The experience is that people come to their solicitor and they raise any issues that they have. People are very forthright about that. That allows the solicitor to address those concerns in a very practical way that is meaningful to the client.

Mr Cree: You do not think that it is too regulated or too much of a straitjacket?

Mrs Neeson: Part of the original concern by Bain was that complaining to someone you know very well who lives in the same town as you would prove difficult for a client. That was why we made a written process a minimum. There is no reason why a firm cannot build in — most of them do — an interview process so that the client can come and have a chat. We also say to solicitors that the client does not have to go for the very reason that they might feel intimidated and might find that they are outmanoeuvred or may have a mindset like that. We have tried to cover both aspects, but we made it a minimum of a written process to take account of concerns that the Bain review committee expressed at the outset.

Mr Cooper: As a practising solicitor, the reality is that if you know that your client is unhappy you would generally have a conversation with them to try to address those concerns. If that conversation does not successfully resolve matters, you then say to the client, "If you are still dissatisfied, we have available a more formal in-house complaints system, and here's how it works". Generally, in most firms, it then gets onto paper in a more formal way, but the process, Leslie, that you referred to initially invariably happens because, as Mr Hunter says, no solicitor wants his reputation damaged or a client walking round the streets saying, "That solicitor Cooper was useless".

Mr Cree: I can imagine. *[Laughter.]*

The Chairperson (Mr McKay): One final point. We are looking at NAMA's Project Eagle sale, and in the terms of reference of that is the self-regulation of the legal profession. Something that we came across in the written submission from Cerberus was that it was provided with a copy of Tughans' account of the matter to the Law Society. I will ask you a general question first: would it be appropriate for a law firm that is under investigation by the Law Society to provide third parties with a copy of its report to the Law Society?

Mr Hunter: I do not think that we can comment on that.

The Chairperson (Mr McKay): In general terms.

Mr Hunter: Although what you said seems very general, we do not know what that correspondence was and what the nature of it was, so I do not think that it would be helpful if we spoke even in the abstract about the facts of the matter. In any event, as you know, we are limited in what we can say. Even in the abstract, each case would have to be looked at very much on the detail of its circumstances. That is probably as much as I can say.

The Chairperson (Mr McKay): In a circumstance where a third party was given a copy of the account from one of the firms being investigated, that may not be appropriate. It would not stop them giving it to other third parties. It is an important point to clarify, and I deliberately couched it in those terms so that you could answer the question.

Mr Cooper: It is up to a firm or any recipient of an investigatory process, whether it be by the Law Society, NCA, the police or anyone else, to deal with the documentation in whatever way it considers appropriate.

The Chairperson (Mr McKay): So it would not necessarily be confidential given that a serious claim —

Mr Cooper: I could not comment further because I have no idea what is in the document. In broad terms, that must be the position. We do not have reach in terms of people's strategic decisions and how they deal with problems when they are under investigation. It may not be appropriate and may be a mistake on their part or on any recipient's part, but that is not a matter for us.

The Chairperson (Mr McKay): It is a matter of concern for the Committee because it was Brown Rudnick that retained Tughans and not Cerberus, so we need to investigate how Cerberus got possession of that. However, I accept your answer.

OK, folks, thanks very much for providing evidence.

Mr Hunter: I will make one final point before I leave. We asked in our submission that the legislation should ensure that, where a solicitor gives an apology, that is separate from any subsequent legal proceedings. In other words, a solicitor can apologise to a client, but that cannot then be used in evidence against the solicitor should the client decide to sue at a later stage. The reason for that is that, quite often, as you know, in regulation generally, an apology is sometimes more important than any compensation. We referred to the health service provisions in England and Wales that specifically include such a provision in legislation. We pressed the Department for that, although I see that it has not picked it up. I invite you to consider the merits of it; we consider it to be very important.

The Chairperson (Mr McKay): It is a fair point. Alan, can you provide us with written correspondence on that and give us a couple of examples elsewhere where that is in place and the impact of it?

Mr Hunter: Yes, I shall do that, Chairman. Absolutely.