



**Committee for Finance and Personnel**

# **Report on the Legal Complaints and Regulation Bill**

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<sup>1</sup> [Legal Complaints and Regulation Bill \(as introduced\)](#)

<sup>2</sup> [Explanatory and Financial Memorandum](#)

## List of Abbreviations and Acronyms used in the Report

LSOC/the Commissioner	Legal Services Oversight Commissioner
the Committee	Committee for Finance and Personnel
DFP	Department of Finance and Personnel
EFM	Explanatory and Financial Memorandum
GB	Great Britain
NI	Northern Ireland
RoI	Republic of Ireland
SLCC	Scottish Legal Complaints Commission

## Executive Summary

The Legal Complaints and Regulation Bill will bring about a significant and long-awaited reform of the existing system for handling complaints against solicitors and barristers in Northern Ireland. This proposed change will not result in the type of ‘root and branch’ reform, leading to independent structures for legal complaints and regulation, which has been legislated for in England and Wales and in Scotland and which is planned in the Republic of Ireland. However, the Bill will provide for a ‘*copper-bottoming*’ of the present complaints-handling arrangements in Northern Ireland with, amongst other things, a shift to layperson-led control with enhanced powers and oversight, including through the establishment of the post of Legal Services Oversight Commissioner.

The policy objectives of the Bill have been informed by the work of the Legal Services Review Group, chaired by Professor Sir George Bain, which reported its recommendations to the then Minister of Finance and Personnel in November 2006. The Review Group noted that the legal profession in Northern Ireland is largely self-regulating, with the Bar of Northern Ireland not being subject to any statutory oversight and only the Law Society of Northern Ireland, as the regulatory body for solicitors, being subject to the limited oversight powers of the Lay Observer for Northern Ireland in relation to complaints. The Review Group, and subsequently the Department of Finance and Personnel (DFP), concluded that a different approach to that taken in Great Britain is required in Northern Ireland, one which is measured and proportionate to the particular circumstances pertaining here.

This report sets out the Committee for Finance and Personnel’s consideration of the Bill, which comprises 55 clauses and 5 schedules. During its pre-introductory and

Committee Stage scrutiny of the Bill, the Committee received written and oral evidence from a range of stakeholders, including DFP, the bodies representing the legal profession, expert witnesses, consumer groups and other interested parties. In addition, comparative research and evidence was collected on the arrangements for handling legal complaints and regulation in other jurisdictions. As well as scrutinising the policy intention of the reforms, members examined the Bill in terms of the operational aspects of the provisions and the technical drafting.

The detailed scrutiny by the Committee has resulted in a range of issues being raised with the Department and upon which some helpful clarification, explanation and assurances have been received. Moreover, the Committee has identified a number of issues requiring to be addressed by way of amendments at Consideration Stage in order to provide additional assurances and to strengthen and improve the legislative provisions. Foremost amongst these issues is the need to provide visibility as to the true level of legal complaints in Northern Ireland. The Department has helpfully agreed to table amendments to address this and other concerns raised by the Committee. Also of significance is the need to provide for an independent review to gauge delivery of the projected benefits of the proposed new system, given that successful implementation will help prove the case made against 'root and branch' reform in Northern Ireland. The Committee will table an amendment to provide for this further assurance measure.

Finally, the Committee wishes to record its appreciation for the stakeholder contributions, including the constructive engagement with the Department, which have helped to shape the conclusions and recommendations contained in this report. It is intended that this work will inform the contributions of Assembly Members to the Consideration Stage debate.

## Key Conclusions and Recommendations

1. In terms of the general policy objectives of the Bill, the Committee acknowledges DFP's argument that the Northern Ireland context does not warrant the type of 'root and branch' reform, leading to independent structures for legal complaints and regulation, witnessed in other jurisdictions. That said, as a result of its pre-introductory and Committee Stage scrutiny, the Committee has identified a number of proposed amendments to the Bill, which aim to provide additional assurances and to strengthen and improve the legislative provisions.
2. A fundamental concern of the Committee throughout its scrutiny of the Bill has been around the need to capture information on 'first tier' complaints against solicitors, in order to establish a more complete picture of the amount of legal complaints in Northern Ireland than that presented in the figures published to date. While the Committee was prepared to bring forward amendments to address this gap in the information, it commends the Department for agreeing to table the necessary amendments at Consideration Stage, which will apply to clauses 2 and 29 and at paragraph 14 of Schedule 1. The Committee therefore agreed that it was content with the following amendments prepared by the Department and recommends that they are agreed by the Assembly:
  - Clause 2, page 1, line 17  
  
At end insert –  
  
'(aa) 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;'
  - Clause 29, Page 15, Line 26  
  
At end insert –

‘(1A) 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 in the regulations.’

- Clause 29, Page 15, Line 28

At end insert ‘and (1A)’

- Clause 29, Page 15, Line 29

After ‘(1)’ insert ‘and (1A)’

- Schedule 1, Page 31, Line 29

After ‘report’ insert ‘, in such form as the Department may require,’

- Schedule 1, Page 31, Line 30

At end insert –

‘(1A) 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.’

3. In considering clause 8, the Committee highlighted a number of points in respect of privilege and asked DFP to clarify the extent of ‘absolute privilege’, including whether it also protects the information originator, and to provide an assurance that it does not give privilege to bad faith or gross incompetence. The Committee therefore agreed that it was content with the following amendment prepared by the Department and recommends that it is agreed by the Assembly:

- Clause 8, page 5, Line 4

After ‘privileged’ insert ‘unless the publication is proved to be made with malice’

4. During its scrutiny the Committee identified a conflict in meaning in clause 17, between 17(4)(a) and 17(5)(a) and also at clause 36, between 36(4)(a) and 36(5)(a), whereby these provisions, as drafted, would suggest that a case could be dismissed by the respective complaints committees as being without merit when the merit was not considered. The Committee therefore agreed that it was content with the following amendments prepared by the Department and recommends that they are agreed by the Assembly:

- Clause 17, Page 8, Line 12  
Leave out ‘, without consideration of its merits’
- Clause 36, Page 18, Line 12  
Leave out ‘, without consideration of its merits’

5. Arising from the evidence from the Law Society, the Committee pursued amendments to clauses 19(2)(a) and 38(2)(a) to facilitate the legal profession in providing apologies to complainants; and the Department subsequently confirmed that it was content to bring forward an amendment to cater for the concern raised. The Committee therefore agreed that it was content with the following amendments prepared by the Department (which members were advised may be subject to slight change) and recommends that they are agreed by the Assembly:

- Clause 19, Page 10, Line 18  
After ‘apology’ insert ‘(which shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings)’
- Clause 38, Page 20, Line 18  
After ‘apology’ insert ‘(which shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings)’

6. In light of the concerns raised in the evidence and the need to gauge delivery of the projected benefits of the proposed new complaints-handling system, the



Committee agreed to commission the Assembly Bill Office to prepare a draft amendment to include a review mechanism on the face of the Bill. This would require that, within a specified timeframe (3 years) after commencement of the legislation, DFP appoints an independent person to review the implementation of the provisions in the Bill and that a report on the review is published. The amendment also provides for the terms of the review to be set out in Regulations.

7. While noting the Department's position on this proposal, the Committee would point out that clause 4 does not provide for a fully independent review, not least because the LSOC will be a key participant in the new system. Committee members have emphasised that a statutory review provision would 'concentrate minds' and act as an incentive to successful implementation of the new system. Moreover, the Committee's amendment has been drafted in such a way as to provide flexibility on when the review, which will be a one-off exercise, is concluded. The Committee will therefore propose the following amendment prepared by the Assembly Bill Office and recommends that it is agreed by the Assembly:

- Clause 50, Page 26, Line 22, at end insert-  
'50A—(1) The Department must not later than 3 years after the commencement of this Act appoint an independent person to review and publish a report on the implementation of this Act.

(2) Regulations under this section shall set out the terms of the review.'

8. While accepting the Department's advice that a definition of a complaint is not required on the face of the Bill, the Committee believes that the issues which have been raised in this regard, including the need for consistency of approach in recording complaints by the professional bodies, is an area that should be

examined in future by the LSOC and/or as part of the proposed independent review of the implementation of the legislation.

9. The Committee welcomes the assurances from the Department that there are sufficient protections in the Bill to safeguard against the notion that the laypersons on the Solicitors Complaints Committee could potentially be hand-picked by the Law Society. While recognising that the Society will wish to ensure that it acts appropriately in this regard, members believe that it was important that the Department highlights these safeguards in the legislation given the perceptions that could arise.
10. The Committee welcomes the Department's willingness to re-examine the Explanatory and Financial Memorandum (EFM) with a view to adding more detail where the need for this has been identified by the Committee. The Committee looks forward to receiving a revised EFM once the amendments to the Bill have been taken into account and agreed.
11. Members agreed that they were content with the following amendments prepared by the Department to address issues identified by the Examiner of Statutory Rules; and the Committee recommends that they are agreed by the Assembly:
  - Clause 51, Page 26, Line 32  
Leave out 'and' and insert 'but'
  - Clause 51, Page 26, Line 33  
Leave out 'does so' and insert 'modifies an Act of Parliament or Northern Ireland legislation'
12. In summary, the Committee is content with the provisions of the Bill as drafted aside from the aforementioned amendments to clauses 2, 8, 17, 19, 29, 36, 38,

51 and Schedule 1, which will be tabled by DFP, and the amendment to clause 50, which will be tabled by the Committee at Consideration Stage.

13. The Committee thanks the various stakeholders who have provided oral and written evidence to inform this report and also acknowledges the constructive engagement by the Department during the scrutiny of this Bill.

# Introduction

## Background to the Bill

1. In 2005, the Legal Services Review Group, chaired by Professor Sir George Bain was established to make recommendations to the Minister of Finance and Personnel on possible reforms to the regulation of legal services in Northern Ireland. This initiative followed moves towards legislative reform in England and Wales, which resulted in the Legal Services Act 2007, and in Scotland, which resulted in the Legal Profession and Legal Aid (Scotland) Act 2007.
2. In its subsequent report, published in 2006, the Review Group noted that the legal profession in Northern Ireland is largely self-regulating and made recommendations in the areas of regulation, complaints handling, oversight and competition.<sup>3</sup> Currently, only the solicitors' profession is subject to oversight from the Lay Observer for Northern Ireland in relation to complaints. The Lay Observer reports on the nature of complaints made to the Law Society of Northern Ireland but does not have powers to investigate. The Bar of Northern Ireland is not subject to any statutory oversight.
3. The Review Group also considered comparisons with other jurisdictions and examined recommendations contained in Sir David Clementi's report on the comparative review of the regulation of legal services in England and Wales. In noting that regulatory failures in England and Wales had not occurred in Northern Ireland, the Review Group recommended that, given the relatively few complaints, the professional bodies should continue to discharge their regulatory responsibilities but that this should be subject to enhanced oversight arrangements.

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<sup>3</sup> [Legal Services in Northern Ireland - Complaints, Regulation, Competition](#)

4. In identifying '*a number of areas where the system required to be strengthened in the public and consumer interest*' the Review Group's recommendations on complaints handling included:
- greater lay participation with oversight of both solicitors and barristers by a Legal Services Oversight Commissioner ('the Commissioner' or 'LSOC');
  - the LSOC having powers in relation to complaints handling, including powers for auditing, target setting and monitoring, which should be supported by enforcement powers, including the power to impose financial penalties;
  - the LSOC also having a role in other aspects of regulation, such as ensuring targeted consultation is undertaken by the professional bodies in discharging their responsibilities;
  - the LSOC being funded by the profession;
  - the complaints committees being functionally separate from the professional bodies;
  - eligibility to make a complaint to be considerably widened;
  - a simplified process for pursuing a claim for professional negligence in lower value cases; and
  - that the limits for compensation awards should be set lower than proposed elsewhere, in order to avoid many of the potential pitfalls faced in other jurisdictions.
5. In welcoming the Review Group's report, the then Minister, David Hanson MP noted that, with the likely restoration of devolution in Northern Ireland, it would be more appropriate for implementation by the devolved Assembly. Following devolution in 2007, the then Minister of Finance and Personnel endorsed the thrust of the recommendations in the report and brought forward a paper to the Executive, which was subsequently agreed; and on that basis

work progressed in order to translate the policy proposals into more robust legislative provisions culminating in a draft Bill in 2009.

6. Following the devolution of policing and justice, which saw the creation of the Department of Justice in 2010 and, in light of the pending Assembly election in 2011, the work on the proposals was effectively placed in '*cold storage*'<sup>4</sup>. After further progress from 2012, DFP went out to consultation on the draft Bill from November 2013 until March 2015. The stakeholder responses to the consultation and the departmental response to the issues raised are available [here](#).

### **The Committee's Approach**

7. Following correspondence from the then Minister of Finance and Personnel, Mr Simon Hamilton MLA, on 5 September 2013, the Committee, at its meeting on 18 September 2013, sought an initial oral briefing from DFP officials on the consultation. During its pre-introductory scrutiny of the policy issues associated with proposed Bill, the Committee took oral evidence from DFP, the Bar of Northern Ireland<sup>5</sup>, the Law Society of Northern Ireland<sup>6</sup>, the Lay Observer<sup>7</sup> and also received written submissions from the Law Centre (NI)<sup>8</sup> and the Consumer Council<sup>9</sup>. The Committee also commissioned various research papers from Assembly Research & Library Service<sup>10</sup>, including comparative research on the arrangements for handling legal complaints and regulation in other jurisdictions, including England and Wales, Scotland and the Republic of Ireland (RoI). This preliminary scrutiny and research, ahead of the Bill being introduced to the

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<sup>4</sup> [Official Report – 18<sup>th</sup> September 2013](#)

<sup>5</sup> [Official Report – 29<sup>th</sup> January 2014 \(Bar of Northern Ireland\)](#)

<sup>6</sup> [Official Report – 29<sup>th</sup> January 2014 \(Law Society of Northern Ireland\)](#)

<sup>7</sup> [Official Report – 4<sup>th</sup> June 2014 \(Lay Observer for Northern Ireland\)](#)

<sup>8</sup> [Written Submission – Law Centre \(NI\)](#)

<sup>9</sup> [Written Submission – Consumer Council](#)

<sup>10</sup> Assembly Research and Information Service - [28<sup>th</sup> May 2014](#), [22<sup>nd</sup> August 2014](#), [9<sup>th</sup> September 2015](#), [10<sup>th</sup> November 2015](#)

Assembly on 8 June 2015, informed the Committee's contribution to the Second Stage debate on 16 June 2015, following which the Bill moved to Committee Stage.

8. During its Committee Stage scrutiny, the Committee issued a public 'call for evidence' and took further oral evidence from DFP<sup>11</sup>, the Bar of Northern Ireland<sup>12</sup>, the Law Society of Northern Ireland and from the Scottish Legal Complaints Commission (SLCC).<sup>13</sup> In addition, written submissions were received from the Assembly's Committee for Justice and from Dr Maeve Hosier<sup>14</sup>, an academic based at Middlesex University with expertise on the regulation of the legal profession, including in Rol.<sup>15</sup>

## Overview of the Bill

9. [The Bill, as introduced](#), contains fifty-five clauses and five schedules, the provisions of which are described in the [Explanatory and Financial Memorandum](#) (EFM).
10. In terms of the overall policy direction, DFP indicated that it shared the view of the Review Group that a 'root and branch' reform, leading to independent structures for complaints and regulation, would not be proportionate in the Northern Ireland context. On this latter point, it was argued that a different approach is required in Northern Ireland given the different nature of the legal profession here, the absence of regulatory failure or a regulatory maze (as existed in England and Wales), and the comparatively good regulatory record of the professional bodies locally. As such, DFP states in the EFM that:

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<sup>11</sup> [Official Report – 16<sup>th</sup> September 2015](#) & [11<sup>th</sup> November 2015](#)

<sup>12</sup> [Official Report – 21st October 2015 \(Bar of Northern Ireland\)](#)

<sup>13</sup> [Official Report - 21st October 2015 \(SLCC\)](#)

<sup>14</sup> [Written submission from Dr Maeve Hosier – 29<sup>th</sup> October 2015](#)

<sup>15</sup> <http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/committeetakes/JUS2014021200007?opendocument>

*'A copper-bottoming of the existing complaints-handling process of both professional bodies, with the move away from professionally-led control to a system of lay Chair, lay majorities with enhanced powers, given suitable strengthened oversight by way of a LSOC with greater authority and power, will, in the view of the Department, achieve the aims outlined by the Review Group.'*<sup>16</sup>

11. Also, in terms of the general architecture of the reforms arising from the Bill, DFP has explained that the process under this legislation will be as follows:

*'A complaint made against a lawyer will, except in clearly defined cases, be first dealt with "in-house" in order to attempt to achieve a speedy and satisfactory resolution to the customer. For solicitors, this will mean the complaint going through the solicitor's in-house process first. For barristers, this will mean the complaint being dealt with by the body set up by the Bar to assist with early resolution of complaints. Irrespective of the model for formal resolution elsewhere, this first step is common throughout all jurisdictions that examine complaints.*

*Should this step fail, or be deemed unsatisfactory by the customer, the complaint will, providing it meets the statutory criteria, be eligible for formal consideration by the relevant Complaints Committee. This Committee will be armed with greater powers than exist at the moment and will be able to consider a broader range of cases. As per the recommendation of Bain, this will include the power to consider low-level negligence cases. The committees will be chaired by lay—persons and have a lay chair [sic majority], a key recommendation of Bain.*

*Under-pinning this system will be a system of oversight provided by the LSOC. The LSOC will have a strong role in ensuring that the new system is accessible to the public, and be involved with planning, target-setting and general oversight of the complaints handling mechanisms of both the Bar and the Law Society.'*<sup>17</sup>

12. In terms of the general policy objectives of the Bill, the Committee acknowledges the Department's argument that the Northern Ireland context does not warrant the type of 'root and branch' reform, leading to independent structures for legal complaints and regulation, witnessed in other jurisdictions. That said, as a result of its pre-introductory and Committee Stage scrutiny, the Committee has identified a number of proposed amendments to the Bill,

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<sup>16</sup> [Explanatory and Financial Memorandum \(Page 3\)](#)

<sup>17</sup> [Correspondence from DFP – 27<sup>th</sup> October 2015](#)



**which aim to provide additional assurances and to strengthen and improve the legislative provisions.**

## **Key Issues from the Evidence**

13. A wide range of issues were raised in the written and oral evidence received by the Committee. While the key issues are outlined below, more detailed information is included in the appendices to this report and a summary is provided here.<sup>18</sup> As well as receiving clarification and assurances on various points of detail, the Committee gained the Department's agreement to bring forward a number of substantive amendments to address issues identified from the scrutiny of the Bill. The Committee will also table a separate amendment in its name at Consideration Stage.

### **'First Tier' Complaints**

14. At an early stage in the pre-introductory scrutiny process Committee members raised concern over the extent to which the published figures for legal complaints in Northern Ireland represent a realistic picture or merely the 'tip of the iceberg'. This was particularly important given that the Department's policy decision not to pursue 'root and branch' reform was, in part, premised on the belief that Northern Ireland experienced comparatively few complaints. Concerns were also raised by Committee members and by Dr Hosier around a potential barrier to clients pursuing complaints which may arise from a 'power relationship' existing between lawyer and client.<sup>19</sup>

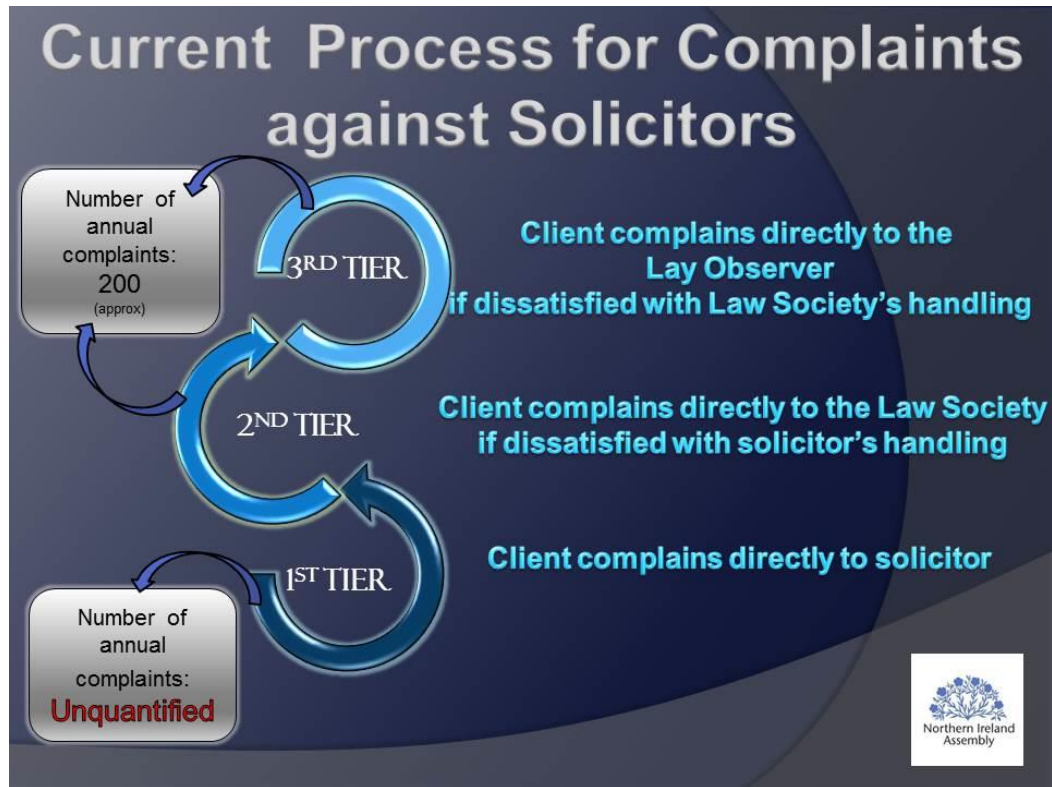
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<sup>18</sup> [Table of Issues](#)

<sup>19</sup> [Official Report – 18<sup>th</sup> September 2013](#) & [Written submission from Dr Maeve Hosier – 29<sup>th</sup> October 2015](#)

15. In terms of the number of complaints in relation to solicitors, the Committee noted that, under current arrangements, these are dealt with through a three-tier process, as outlined in Figure 1.

**Figure 1: Current Process for Complaints against Solicitors in Northern Ireland**



16. In querying the level of complaints made against solicitors, the Committee was advised by DFP officials and the Law Society that over recent years the number of complaints has actually decreased. In this regard, reports of the Lay Observer were cited which state that complaints numbers are, on average less than 200 per year. However, in noting that these reports represent the 'second and third tiers' of the current arrangements, the Committee questioned officials on the current arrangements for recording complaints made across all three tiers. In response, the DFP officials advised that complaints are currently only captured once they have progressed to the Law Society (i.e. to the 'second tier').<sup>20</sup>

<sup>20</sup> [Official Report – 11<sup>th</sup> November 2015](#)

17. The Committee also queried the number of complaints made against barristers during evidence from the Bar Council. In response it was acknowledged by the Bar Council that there had been an increase in the number of complaints; however, this was considered to be as a result of a better awareness of the complaints process rather than deterioration in standards.<sup>21</sup>
18. From the evidence received both prior to and during Committee Stage, a number of stakeholders raised issues around the figures on complaints against solicitors in Northern Ireland. In its written submission, for example, the Law Centre (NI) pointed out that there is no empirical evidence on whether the relatively few complaints in Northern Ireland is due to high levels of satisfaction with the work of solicitors, a lack of awareness of the complaints mechanisms, or a lack of faith in a solicitors body investigating its own members.<sup>22</sup>
19. From the evidence presented by the SLCC it was noted that, under the Scottish legislation, neither the Law Society nor the SLCC have the ability to monitor what happens to the handling of complaints at ‘first tier’. It was further noted that an amendment may be needed to address this gap in the Scottish legislation in order to provide visibility as to the true level of complaints.<sup>23</sup>
20. For his part, the Lay Observer, when presenting evidence prior to introduction of the Bill, stated that he did not know how many complaints are received at first tier. While he acknowledged that, from a governmental angle, there may be good reasons for wanting these figures, the Lay Observer emphasised that it is important that the Law Society knows whether its professional members are following the regulations set down for them. The Lay Observer also indicated that his personal view was that it is not important to know the information on

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<sup>21</sup> [Official Report – 29<sup>th</sup> January 2014](#)

<sup>22</sup> [Law Centre \(NI\) - January 2014](#)

<sup>23</sup> [Official Report – 21<sup>st</sup> October 2015](#)

the number of complaints at first tier and cautioned against an overly bureaucratic system.<sup>24</sup>

21. In her evidence provided at Committee Stage, however, Dr Hosier highlighted the Law Society's acknowledgment that it does not currently have reliable information on the overall level of complaints, including those at first tier. She pointed out that the statistics which have been cited on the rate of complaints in Northern Ireland are those complaints which have been made known to the Law Society and this may represent only a small proportion of the total number of complaints. In light of this, Dr Hosier argued that it is therefore difficult to accept assurances that the level of complaints is of a lower order than that which has been recorded in other jurisdictions. To help remedy this weakness in the system, she suggested enhanced power to enable the LSOC to compel the professional bodies to provide accurate information regarding the total number of complaints received by their members, and also by professional bodies in relation to their members. In addition, it was suggested that the LSOC should be under a duty to accumulate such data annually, which should be made available to the Department.<sup>25</sup>

22. Therefore, **a fundamental concern of the Committee throughout its scrutiny of the Bill has been around the need to capture information on 'first tier' complaints against solicitors, in order to establish a more complete picture of the amount of legal complaints in Northern Ireland than that presented in the figures published to date. While the Committee was prepared to bring forward amendments to address this gap in the information, it commends the Department for agreeing to table the necessary amendments at Consideration Stage, which will apply to clauses 2 and 29 and at paragraph 14 of Schedule 1.**

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<sup>24</sup> [Official Report – 4th June 2014](#)

<sup>25</sup> [Written submission from Dr Maeve Hosier – 29<sup>th</sup> October 2015](#)

23. In terms of Clause 2, which sets out the general powers of the Commissioner relating to oversight of the complaints-handling processes of solicitors and barristers, **the Committee therefore agreed that it was content with the following amendment prepared by the Department and recommends that it is agreed by the Assembly:**

**Clause 2, page 1, line 17**

**At end insert –**

**‘(aa) 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;’**

24. The Department’s proposed approach also involves three amendments to Clause 29. This clause deals with ‘Complaints procedures for solicitors’ and relates to the regulatory arrangements for the handling of complaints against solicitors. DFP explained that the amendments to this clause are required in order to give the Law Society the power to gather the necessary information at the first tier. The Committee was advised by the Department that an equivalent amendment is not required in relation to barristers because *‘clause 11 already provides the basis for the Bar Council to gather information on the total number of complaints against its members.’*<sup>26</sup> **The Committee agreed that it was content with the following amendments prepared by the Department and recommends that they are agreed by the Assembly:**

**Clause 29, Page 15, Line 26**

**At end insert –**

**‘(1A) The Law Society must make regulations requiring every solicitor to provide the Law Society with such information about the number of**

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<sup>26</sup> [Official Report – 25<sup>th</sup> November 2015](#)

relevant complaints made in relation to that solicitor as may be specified in the regulations.'

Clause 29, Page 15, Line 28

At end insert 'and (1A)'

Clause 29, Page 15, Line 29

After '(1)' insert 'and (1A)'

25. DFP's proposed approach will also involve two amendments at paragraph 14 of Schedule 1 to the Bill, which provides for the status, general powers, tenure of office and general staffing and procedural arrangements of the Commissioner. **The Committee agreed that it was content with the following amendments prepared by the Department and recommends that they are agreed by the Assembly:**

Schedule 1, Page 31, Line 29

After 'report' insert ', in such form as the Department may require,'

Schedule 1, Page 31, Line 30

At end insert –

**'(1A) 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.'**

## Absolute Privilege

26. In considering clause 8, the Committee highlighted a number of points in respect of privilege and asked DFP to clarify the extent of ‘absolute privilege’, including whether it also protects the information originator, and to provide an assurance that it does not give privilege to bad faith or gross incompetence.

Also, in its response to the Committee’s ‘call for evidence’, the Law Society stated that it considered this clause to be *‘too wide and the LSOC should be subject to the same rules as any other individual’*.<sup>27</sup>

27. In addition to providing the necessary clarification, DFP agreed to bring forward an amendment to address the issue identified by the Committee. This will involve an amendment to clause 8 on ‘Privilege for certain publications’ which provides that any publication of the Commissioner is to be considered to be absolutely privileged for the purposes of the law of defamation. **The Committee therefore agreed that it was content with the following amendment prepared by the Department and recommends that it is agreed by the Assembly:**

Clause 8, page 5, Line 4

After ‘privileged’ insert ‘unless the publication is proved to be made with malice’

## Merits of a Complaint

28. During its scrutiny the Committee identified a conflict in meaning in clause 17, between 17(4)(a) and 17(5)(a) and also at clause 36, between 36(4)(a) and 36(5)(a), whereby these provisions, as drafted, would suggest that a case could be dismissed by the respective complaints committees as being without merit when the merit was not considered. In other words, as Dr Hosier

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<sup>27</sup> [Written Submission – 2<sup>nd</sup> September 2015 \(Law Society of Northern Ireland\)](#)

explained in her evidence, it is not possible for the complaints committees to reasonably form the view that a complaint is either frivolous, vexatious or totally without merit unless they have firstly considered its merits. Dr Hosier suggested an amendment to address this conflict, which the Department subsequently agreed to bring forward.<sup>28</sup>

29. The amendments to be tabled by DFP at Consideration Stage will therefore be at clauses 17 and 36. These clauses deal with 'Procedures for complaints' in relation to barristers and solicitors respectively and provide for the detailed frameworks for the respective complaints committee schemes to be determined by rules to be made by the committees. The clauses also allow the complaints committees the flexibility to adapt their procedures if required. **The Committee therefore agreed that it was content with the following amendments prepared by the Department and recommends that they are agreed by the Assembly:**

**Clause 17, Page 8, Line 12**

**Leave out ' , without consideration of its merits'**

**Clause 36, Page 18, Line 12**

**Leave out ' , without consideration of its merits'**

### **Provision of an Apology**

30. In its evidence to the Committee, the Law Society highlighted a concern with reference to clause 19(2)(a) (and the corresponding clause 38(2)(a)) which makes provision for the Complaints Committee to direct that the legal practitioner issues an apology to the complainant. The Law Society suggested an amendment to remove the ability of such apologies to be used as evidence of liability in civil proceedings and it cited international examples of such clauses

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<sup>28</sup> [Written Submission from Dr Maeve Hosier – 29<sup>th</sup> October 2015](#)



which aim to tackle the ‘culture of defensiveness’ in relation to provision of apologies.<sup>29</sup>

31. **Arising from the evidence from the Law Society, the Committee pursued amendments to clauses 19(2)(a) and 38(2)(a) to facilitate the legal profession in providing apologies to complainants; and the Department subsequently confirmed that it was content to bring forward an amendment to cater for the concern raised.** The DFP approach will involve amendments to clauses 19 and 38. These clauses deal with the ‘Determination of complaints’ in relation to barristers and solicitors respectively, making provision for the complaints committees’ powers in making determinations. **The Committee therefore agreed that it was content with the following amendments prepared by the Department (which members were advised may be subject to slight change) and recommends that they are agreed by the Assembly:**

**Clause 19, Page 10, Line 18**

**After ‘apology’ insert ‘(which shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings)’**

**Clause 38, Page 20, Line 18**

**After ‘apology’ insert ‘(which shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings)’**

### **Independent Review of Implementation**

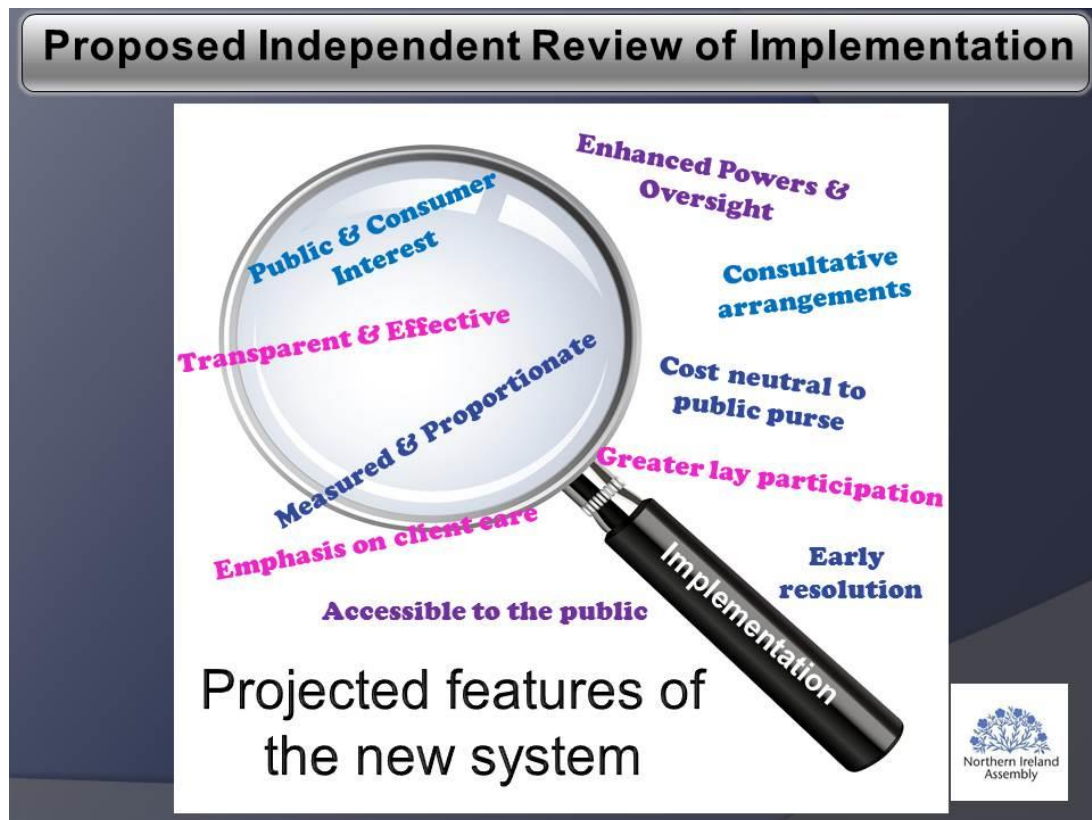
32. The Committee has noted that the Review Group and DFP have anticipated that the proposed new system for complaints handling and regulation will offer a range of improved features and benefits. These have been cited in making the case for ‘a copper-bottoming of the existing complaints-handling process’ and in

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<sup>29</sup> [Correspondence from the Law Society of Northern Ireland – 7<sup>th</sup> October 2015](#)

setting out the rationale for not moving to fully independent structures as pertain in GB and as planned in RoI.<sup>30</sup> Some of the main features and benefits of the proposed new system, as envisaged by the Review Group and by DFP, are outlined in Figure 2.

**Figure 2: Proposed Independent Review of Implementation**



33. The Committee is mindful that realisation of the projected benefits will need to be assessed in the future and that successful implementation will help prove the arguments which have been made against ‘root and branch’ reform in Northern Ireland. Some stakeholders have welcomed the proposals contained in the Bill as a positive step. For example, the Assembly’s Committee for Justice has taken the view that, amongst other things, the proposed new system should offer the opportunity to ‘address the perception that the current complaints process

<sup>30</sup> [Legal Services in Northern Ireland - Complaints, Regulation, Competition](#)

lacks independence’.<sup>31</sup> In her evidence, however, Dr Hosier stated that the Bill fails to reflect a growing consensus within the global academic community that self-regulation of the legal profession is an inherently flawed model. Dr Hosier argued that, as the Bill currently stands, it represents a missed opportunity to bring the regulation of the legal profession in Northern Ireland into line with best practice internationally.<sup>32</sup>

**34. In light of the concerns raised in the evidence and the need to gauge delivery of the projected benefits of the proposed new complaints-handling system, the Committee agreed to commission the Assembly Bill Office to prepare a draft amendment to include a review mechanism on the face of the Bill. This would require that, within a specified timeframe (3 years) after commencement of the legislation, DFP appoints an independent person to review the implementation of the provisions in the Bill and that a report on the review is published. The amendment also provides for the terms of the review to be set out in Regulations.**

35. In responding to the Committee’s proposal for a review mechanism, the Department indicated that it was not minded to include a statutory time-bound requirement for the new system to be reviewed. DFP argued against a review provision on the basis that: it would be difficult to predetermine an appropriate juncture to undertake such a review as there would be an element of bedding in the new requirements; it could lead to unnecessary resources being deployed; it could send out a ‘mixed message’ to the professional bodies; and that the provisions at clause 4 empower the Department to refer any matter to the LSOC for review and, if necessary, to be reported on.

**36. While noting the Department’s position on this proposal, the Committee would point out that clause 4 does not provide for a fully independent review,**

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<sup>31</sup> [Written Submission – 2<sup>nd</sup> November 2015 \(Committee for Justice\)](#)

<sup>32</sup> [Written submission from Dr Maeve Hosier – 29<sup>th</sup> October 2015](#)

not least because the LSOC will be a key participant in the new system. Committee members have emphasised that a statutory review provision would ‘concentrate minds’ and act as an incentive to successful implementation of the new system. Moreover, the Committee’s amendment has been drafted in such a way as to provide flexibility on when the review, which will be a one-off exercise, is concluded.

37. In light of this, the Committee is proposing an amendment to clause 50 on ‘Interpretation’, which defines certain terms used throughout the Bill. At the meeting on 25 November 2015, members agreed that **the Committee will therefore propose the following amendment prepared by the Assembly Bill Office and recommends that it is agreed by the Assembly:**

**Clause 50, Page 26, Line 22, at end insert-**

**‘50A—(1) The Department must not later than 3 years after the commencement of this Act appoint an independent person to review and publish a report on the implementation of this Act.**

**(2) Regulations under this section shall set out the terms of the review.’**

### **Definition of a Complaint**

38. During its evidence to the Committee, the SLCC highlighted the definition of a complaint in section 46 of the equivalent legislation in Scotland (the Legal Profession and Legal Aid (Scotland) Act 2007) which defines a complaint widely as any expression of dissatisfaction. The SLCC also pointed out that, given the perceived ‘power imbalance’ between consumers and legal practitioners, it was considered important that a broad definition be used in order to enable dissatisfaction to be captured, especially at an early stage.

39. This potential benefit of including a definition of a complaint on the face of the Bill was raised by the Committee during its scrutiny, including in terms of ensuring consistency of approach to complaints handling within and across the professional bodies and to provide clarity for the public. In noting this issue, DFP did not consider that such a definition would add value to the Bill. **While accepting the Department's advice that a definition of a complaint is not required on the face of the Bill, the Committee believes that the issues which have been raised in this regard, including the need for consistency of approach in recording complaints by the professional bodies, is an area that should be examined in future by the LSOC and/or as part of the proposed independent review of the implementation of the legislation.**

### **Appointment of Laypersons to Complaints Committees**

40. Arising from the evidence from the Law Society, the Committee highlighted a concern with DFP in respect of the provisions under clause 30 and paragraphs 2 to 4 of Schedule 3 which provide that the Law Society is responsible for appointing the laypersons to the Solicitors Complaints Committee. This contrasts with provision for laypersons on the Bar Complaints Committee being appointed by the Benchers, who are independent of the legal profession and which therefore achieves functional separation between regulation and representation in the case of the Bar.
41. In response the Department highlighted that, in law, the Solicitors Complaints Committee is a subcommittee of the Law Society, so there would be legal issues in terms of appointing members to it from an independent body. In addition, from a policy perspective, the Department did not consider it necessary; instead arguing that there are significant checks and balances within the Bill to ensure that the Law Society will have to act in the most open and transparent way in making the appointments. **The Committee welcomes the assurances from the Department that there are sufficient protections in the Bill to safeguard**

against the notion that the laypersons on the Solicitors Complaints Committee could potentially be hand-picked by the Law Society. While recognising that the Society will wish to ensure that it acts appropriately in this regard, members believe that it was important that the Department highlights these safeguards in the legislation given the perceptions that could arise.

## **Improved Explanatory and Financial Memorandum**

42. During its scrutiny the Committee also highlighted that, had the EFM included more detailed explanation of the provisions in the Bill, many of the queries raised by the Committee could have been avoided. More detail on the provisions requiring further explanation is available here<sup>33</sup> and include, not least, the need for a more comprehensive description of the remit and scope of the LSOC's work. **The Committee welcomes the Department's willingness to re-examine the EFM with a view to adding more detail where the need for this has been identified by the Committee. The Committee looks forward to receiving a revised EFM once the amendments to the Bill have been taken into account and agreed.**

## **Other Issues**

43. As alluded to above, the Committee obtained clarification and assurances from DFP on a wider range of points of detail relating to the provisions of the Bill. This detailed information is available here.<sup>34</sup>

44. In terms of the other substantive issues arising from the evidence, the Committee queried whether time limitations should be included on the face of the Bill in relation to both the time period during which a complaint can be brought and the time period for dealing with complaints, as well as the potential

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<sup>33</sup> [Table of Issues](#)

<sup>34</sup> [Table of Issues](#)

for an exceptionality clause to allow for exceptional circumstances if a limitation was included. In response, DFP stated that timeframes will be properly a matter for the relevant complaints committees to determine.

45. On a separate issue, during its preliminary scrutiny of the Bill, the Committee was copied into correspondence sent anonymously to the Bar of Northern Ireland purporting to come from a group of barristers that made uncorroborated allegations about unsavoury and unprofessional conduct and practices in the Bar. During oral evidence on 21 October 2015, Committee members questioned representatives from the Bar of Northern Ireland to ascertain the outcome of the independent review, which it had commissioned upon receipt of the aforementioned correspondence. In response, the Bar representatives explained that the deputy Ombudsman had determined that, given the anonymity of the correspondent(s), the allegations could not be acted upon. However, the Committee was advised that, in order to address the issues highlighted, the Bar had introduced an urgent whistle-blowing policy, which would be presided over by the former Lord Justice of Appeal, Lord Justice Higgins, who would deal with such complaints anonymously and, where evidence of wrongdoing is found, he would refer such matters to the appropriate authorities. Furthermore, the Committee was assured that the Bar of Northern Ireland had revised its equality code following a number of suggestions made by the Equality Commission. The Committee welcomes the steps taken by the Bar of Northern Ireland and the assurances provided in this regard.<sup>35</sup>

46. Arising from the scrutiny of delegated powers in the Bill, the Examiner of Statutory Rules raised an observation in relation to clause 51 on 'Further provision'. This clause allows the Department to make orders containing further provision (supplementary, incidental, consequential, transitional and transitory).

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<sup>35</sup> [Official Report – 21st October 2015 \(Bar of Northern Ireland\)](#)

Orders modifying (including amending or repealing) a statutory provision (which term encompasses both primary and subordinate legislation) are subject to draft affirmative procedure; and in any other case orders under clause 51 are subject to negative resolution.

47. The Examiner suggested that the Department might wish to refine this so that orders under the clause which modify primary legislation (provision of an Act of Parliament or Northern Ireland legislation) would be subject to draft affirmative procedure; and in any other case orders under this clause would be subject to negative resolution. In response, DFP confirmed that it was content to make a suitable amendment to this clause to take account of the Examiner's points.

48. The DFP approach will involve two amendments to Clause 51. **Members agreed that they were content with the following amendments prepared by the Department to address issues identified by the Examiner of Statutory Rules; and the Committee recommends that they are agreed by the Assembly:**

**Clause 51, Page 26, Line 32**

**Leave out 'and' and insert 'but'**

**Clause 51, Page 26, Line 33**

**Leave out 'does so' and insert 'modifies an Act of Parliament or Northern Ireland legislation'**



## Clause-by-Clause Consideration of the Bill

49. Having reviewed the substantial body of written and oral evidence received on the Bill, the Committee deliberated on the clauses and schedules to the Bill at its meeting on 18 November 2015 and undertook its formal clause-by-clause scrutiny of the Bill at its meeting on 25 November 2015. The Committee carried out formal clause-by-clause consideration of the Bill as follows:

50. ***Clause 1: The Legal Services Oversight Commissioner for Northern Ireland***

*Agreed:* that the Committee is content with Clause 1 as drafted.

51. ***Clause 2: General powers of the Commissioner.***

*Agreed:* that the Committee is content with Clause 2, subject to the proposed amendment which has been agreed with the Department.

52. ***Clause 3: Duty of certain bodies to consult Commissioner***

*Agreed:* that the Committee is content with Clause 3 as drafted.

53. ***Clause 4: Duty of Commissioner to review certain matters***

*Agreed:* that the Committee is content with Clause 4 as drafted.

54. ***Clause 5: The levy***

*Agreed:* that the Committee is content with Clause 5 as drafted.

55. ***Clause 6: The levy: supplementary provisions***

*Agreed:* that the Committee is content with Clause 6 as drafted.

56. ***Clause 7: Payments by Department***

*Agreed:* that the Committee is content with Clause 7 as drafted.

**57. *Clause 8: Privilege for certain publications***

*Agreed:* that the Committee is content with Clause 8, subject to the proposed amendment which has been agreed with the Department.

**58. *Clause 9: Lay observer.***

*Agreed:* that the Committee is content with Clause 9 as drafted.

**59. *Clause 10: Interpretation of Part I.***

*Agreed:* that the Committee is content with Clause 10 as drafted.

**60. *Clauses 11: Complaints procedures for barristers***

*Agreed:* that the Committee is content with Clause 11 as drafted

**61. *Clauses 12: Bar Complaints Committee***

*Agreed:* that the Committee is content with Clause 12 as drafted.

**62. *Clause 13: Jurisdiction of the Bar Complaints Committee.***

*Agreed:* that the Committee is content with Clause 13 as drafted.

**63. *Clause 14: Excluded complaints***

*Agreed:* that the Committee is content with Clause 14 as drafted.

**64. *Clause 15: Complainants***

*Agreed:* that the Committee is content with Clause 15 as drafted.

**65. *Clause 16: Orders under section 15***

*Agreed:* that the Committee is content with Clause 16 as drafted.

**66. *Clause 17: Procedure for complaints***

*Agreed:* that the Committee is content with Clause 17, subject to the proposed amendment which has been agreed with the Department.

**67. *Clause 18: Notification requirements***

*Agreed:* that the Committee is content with Clause 18 as drafted.

**68. *Clause 19: Determination of complaints***

*Agreed:* that the Committee is content with Clause 19, subject to the proposed amendment which has been agreed with the Department and which may be subject to slight change.

**69. *Clause 20: Alteration of compensation limit***

*Agreed:* that the Committee is content with Clause 20 as drafted.

**70. *Clause 21: Appeals***

*Agreed:* that the Committee is content with Clause 21 as drafted.

**71. *Clause 22: Information and documents***

*Agreed:* that the Committee is content with Clause 22 as drafted.

**72. *Clause 23: Reporting failures to provide or produce documents***

*Agreed:* that the Committee is content with Clause 23 as drafted.

**73. *Clause 24: Enforcement of requirements to provide information or produce documents***

*Agreed:* that the Committee is content with Clause 24 as drafted.

**74. *Clause 25: Reports of investigations***

*Agreed:* that the Committee is content with Clause 25 as drafted.

**75. Clause 26: Protection from defamation claims**

*Agreed:* that the Committee is content with Clause 26 as drafted.

**76. Clause 27: Consultation requirements for Bar Complaints Committee rules**

*Agreed:* that the Committee is content with Clause 27 as drafted.

**77. Clause 28: Interpretation of Part II**

*Agreed:* that the Committee is content with Clause 28 as drafted.

**78. Clause 29: Complaints procedures for solicitors**

*Agreed:* that the Committee is content with Clause 29, subject to the proposed amendment which has been agreed with the Department.

**79. Clause 30: Solicitors Complaints Committee**

*Agreed:* that the Committee is content with Clause 30 as drafted.

**80. Clause 31: Jurisdiction of the Solicitors Complaints Committee**

*Agreed:* that the Committee is content with Clause 31 as drafted.

**81. Clause 32: Excluded complaints**

*Agreed:* that the Committee is content with Clause 32 as drafted.

**82. Clause 33: Complainants**

*Agreed:* that the Committee is content with Clause 33 as drafted.

**83. Clause 34: Orders under section 33**

*Agreed:* that the Committee is content with Clause 34 as drafted.

**84. Clause 35: Continuity of complaints**

*Agreed:* that the Committee is content with Clause 35 as drafted.

**85. *Clause 36: Procedure for complaints***

*Agreed:* that the Committee is content with Clause 36, subject to the proposed amendment which has been agreed with the Department.

**86. *Clause 37: Notification requirements***

*Agreed:* that the Committee is content with Clause 37 as drafted.

**87. *Clause 38: Determination of complaints***

*Agreed:* that the Committee is content with Clause 38, subject to the proposed amendment which has been agreed with the Department and which may be subject to slight change.

**88. *Clause 39: Alteration of compensation limits***

*Agreed:* that the Committee is content with Clause 39 as drafted.

**89. *Clause 40: Appeals***

*Agreed:* that the Committee is content with Clause 40 as drafted.

**90. *Clause 41: Information and documents***

*Agreed:* that the Committee is content with Clause 41 as drafted.

**91. *Clause 42: Reporting failures to provide information or produce documents***

*Agreed:* that the Committee is content with Clause 42 as drafted.

**92. *Clause 43: Enforcement of requirements to provide information or produce documents***

*Agreed:* that the Committee is content with Clause 43 as drafted.

**93. *Clause 44: Reports of investigations***

*Agreed:* that the Committee is content with Clause 44 as drafted.

94. ***Clause 45: Protection from defamation claims***

*Agreed:* that the Committee is content with Clause 45 as drafted.

95. ***Clause 46: Consultation requirements for Solicitors Complaints Committee rules***

*Agreed:* that the Committee is content with Clause 46 as drafted.

96. ***Clause 47: The Solicitors Disciplinary Tribunal***

*Agreed:* that the Committee is content with Clause 47 as drafted.

97. ***Clause 48: Recognised bodies***

*Agreed:* that the Committee is content with Clause 48 as drafted.

98. ***Clause 49: Interpretation of Part III***

*Agreed:* that the Committee is content with Clause 49 as drafted.

99. ***Clause 50: Interpretation***

*Agreed:* that the Committee is content with Clause 50, subject to the proposed amendment which will be tabled by the Committee at Consideration Stage.

100. ***Clause 51: Further provision.***

*Agreed:* that the Committee is content with Clause 51, subject to the proposed amendment which has been agreed with the Department.

101. ***Clause 52: Minor and consequential amendments***

*Agreed:* that the Committee is content with Clause 52 as drafted.

102. ***Clause 53: Repeals***

*Agreed:* that the Committee is content with Clause 53 as drafted.

103. **Clause 54: Commencement**

*Agreed:* that the Committee is content with Clause 54 as drafted.

104. **Clause 55: Short title**

*Agreed:* that the Committee is content with Clause 55 as drafted.

105. **Schedule 1: The Legal Services Oversight Commissioner for Northern Ireland**

*Agreed:* that the Committee is content with Schedule 1, subject to the proposed amendments which have been agreed with the Department.

106. **Schedule 2: The Bar Complaints Committee**

*Agreed:* that the Committee is content with Schedule 2 as drafted.

107. **Schedule 3: The Solicitors Complaints Committee**

*Agreed:* that the Committee is content with Schedule 3 as drafted.

108. **Schedule 4: Minor and consequential amendments**

*Agreed:* that the Committee is content with Schedule 4 as drafted.

109. **Schedule 5: Repeals**

*Agreed:* that the Committee is content with Schedule 5 as drafted.

110. **Long Title of the Bill**

*Agreed:* that the Committee is content with the Long Title of the Bill as printed.

111. **In summary, the Committee is content with the provisions of the Bill as drafted aside from the aforementioned amendments to clauses 2, 8, 17, 19, 29, 36, 38, 51 and Schedule 1, which will be tabled by DFP, and the amendment to clause 50, which will be tabled by the Committee at Consideration Stage.**

**112. The Committee thanks the various stakeholders who have provided oral and written evidence to inform this report and also acknowledges the constructive engagement by the Department during the scrutiny of this Bill.**



## Appendices

Appendix 1 – [Minutes of Proceedings](#)

Appendix 2 – [Minutes of Evidence](#)

Appendix 3 – [Memoranda and Correspondence from DFP](#)

Appendix 4 – [Written Submissions](#)

Appendix 5 – [Assembly Research Papers](#)