



Northern Ireland  
Assembly

Committee for Finance and Personnel

# OFFICIAL REPORT (Hansard)

Draft Legal Complaints and Regulation Bill:  
Bar Council

29 January 2014

# NORTHERN IRELAND ASSEMBLY

## Committee for Finance and Personnel

### Draft Legal Complaints and Regulation Bill: Bar Council

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

Mr Daithí McKay (Chairperson)  
Mr Dominic Bradley (Deputy Chairperson)  
Ms Michaela Boyle  
Mrs Judith Cochrane  
Mr Leslie Cree  
Mr Paul Girvan  
Mr Ian McCrea  
Mr Mitchel McLaughlin  
Mr Peter Weir

**Witnesses:**

Mr Mark Mulholland	Bar Council of Northern Ireland
Mr Gary Potter	Bar Council of Northern Ireland

**The Chairperson:** I welcome to the meeting Gary Potter, chairman of the professional conduct committee (PCC) at the Bar Council, and Mark Mulholland QC, chairman of the Bar Council. Folks, we will go straight into questions, because of time constraints on the Committee today, if that is OK with you.

First, what research has the Bar Council undertaken to identify the number of complaints that have been made against barristers that perhaps do not come to the attention of the council?

**Mr Gary Potter (Bar Council of Northern Ireland):** As chairman of the PCC and having reviewed the figures, I can tell you that, while there has been some increase in complaints against barristers in the past few years — I put that down not to falling standards at the Bar but to publicity about our complaints procedures — we have had no more than 40 fresh complaints coming in to the PCC in the past two years. Most of the complaints are dealt with at PCC level, which comprises me, 11 other members of the Bar and two laypersons. There are 700 members of the Bar, and, of those 700, we get very few complaints. Most complaints are not of a serious nature.

**The Chairperson:** So, are you satisfied that the complaints are handled effectively and within the framework that the council sets out?

**Mr Potter:** Yes, I am satisfied with that. We take complaints extremely seriously, and even though some of the complaints are coming through from ordinary members of the public and are sometimes not well articulated — it can be difficult to find the nub of the complaint — we will nevertheless investigate those complaints thoroughly to identify where we think the complaint is. I appoint an investigator in the PCC to undertake the drafting of various letters and contacting witnesses, including

solicitors or any other person that may be of assistance. That investigator then sends the case to the PCC, does not have a vote and the members of the PCC, including laypersons, make a determination about the rights and wrongs of that complaint.

**The Chairperson:** With regard to paragraphs 23 and 24 of your paper, what is the basis of the Bar Council's considerable reservations about an oversight body? What specific concerns do you have?

**Mr Mark Mulholland (Bar Council of Northern Ireland):** Perhaps, I may deal with that. You may know that I am currently chairman of the Bar Council. I should say that I was previously chairman of the professional conduct committee for two years. Gary has touched upon the role of the PCC. We ensure now that the Bar Council and the professional conduct committee are totally separate. The chairman of the professional conduct committee cannot be a Bar Council member. In addition, we have a review procedure, which, again, is chaired by a non-Bar Council member and a lay representative. Beyond that, when we get to the disciplinary stage, which happens occasionally, that is normally chaired by a High Court judge. In some instances, the benefit of the knowledge and experience of a retired High Court judge may also be called upon.

Certainly, from our point of view, to not have the benefit of, and to preclude, someone in the capacity of oversight commissioner who may be a retired judge, for example, who has the breadth of experience and the depth of knowledge of the legal profession in general in Northern Ireland, which could be of greatest assistance with regard to having an understanding of the workings of both branches of profession and, at the same time, has obviously been a public servant for a number of years, might be of assistance. It is merely an observation that, rather than just immediately excluding someone with that capacity of experience and knowledge, that is perhaps something that should be taken into consideration.

**Mr Mitchel McLaughlin:** Good morning. Thank you very much for the submission. I am interested in the complaints procedure as well. I suppose that I am particularly anxious to explore that. There is a relatively low level of complaints. Do we take that as a testimony of the efficiency of the system, general satisfaction and the level of service that is provided, or are there issues with the process that we need to concern ourselves with? How aware are the public of the complaints process? Generally speaking, how transparent is it? What kind of assistance and support are they given?

**Mr Potter:** I will deal with that question. First, I think that the public are increasingly aware of the complaints system. As I have indicated, there has been an increase in the number of complaints. I think that that is because of awareness of it. We are satisfied that the way in which things have been run so far is a good system in so far as it goes. The PCC is not only proactive but reactive. It reacts to complaints that come in and investigates them as I told you, Mitchel. We are proactive in the sense that we constantly advise barristers. I have people contacting me regularly to ask me for advice about a case that is coming up in a couple of days. I do my best to refer them to the provisions in the code of conduct, which binds them, to advise them how to act. If issues of concern come up, we send circulars to members of the Bar to say that the issue has come to the attention of PCC. We tell them to be careful and which provisions of the code they need to look at to ensure that they apply themselves in accordance with the code.

If a matter comes to our attention, we will investigate it. We do not necessarily react to a complaint that comes in. We will do that of course. However, if we become aware of an issue, we are entitled under our rules to investigate it. We do that. We are proactive in ensuring that we maintain the highest standards of the Bar by doing so. It is a dual role, in a sense. It seems to work. That is one of the fundamental reasons why there are such a low number of complaints. Of course, barristers do not deal with clients' money, so we do not have that sort of situation either.

**Mr Mitchel McLaughlin:** Do the statistics that we are considering here reflect the low number of complaints, or do they actually reflect the final outcome of a complaints procedure that has arrived at an arbitration or adjudication? Is there a difference with regard to the number of complaints that are generated and perhaps go through the in-house process first and then move on to you?

**Mr Potter:** No. Those are the top-line numbers. Everything has to go through the PCC. What happens is as Mark was saying. In 2013, two serious complaints were sent to what we call a summary panel, which is headed by a QC, one junior counsel and a layperson. That is conducted. We have dealt with two of them successfully. The more serious complaints go to a disciplinary hearing, which is prosecuted by a QC. We appoint a solicitor to instruct the QC who presents that. The barrister who is complained about has legal representation, which is usually also from a QC. The

disciplinary hearing is chaired by a High Court judge. There are several laypersons on it as well as other members of the Bar. All of those people have to be different from the people who were involved in the initial process. So, when the PCC makes a determination that a complaint is serious enough to go to a disciplinary committee, the PCC relinquishes control over it, and it goes to a separate body altogether. So, when I tell you that there are no more than 40 complaints coming in each year at this stage, that is the total line. That includes those cases that have been referred up to the summary panel or disciplinary committee.

**Mr Girvan:** That leads me to the point about people's confidence when a complaint is investigated by members of the same profession, and, as such, it reeks of the possibility of cronyism in the making of a determination about how it goes forward. We know that the legal profession has closed ranks many times. It is probably thought of as being somewhere around the same level as politicians, to be truthful with you. So, there is a lack of confidence. Perhaps, you do not see it like that. However, there is that perception in the wider community.

**Mr Potter:** I understand where you are coming from. With respect, I do not accept that proposition.

**Mr Girvan:** Of course, you do not.

**Mr Potter:** As I indicated to the Committee, we take those matters seriously and investigate them. At the main level of the PCC, we have two laypeople. If this were the PCC, I would go round and ask you, as the layperson, what you think. I want your contribution before any determination is made. I will give you one example. One case that we referred to —

**Mr Girvan:** Before you move on to that; how are those laypeople appointed?

**Mr Potter:** There is a panel of laypersons, from which they are appointed. So, for the other levels, there would be different laypeople dealing with them. Those people are nothing to do with the Bar; they are not legally qualified whatsoever.

I will tell you this in response to your point that the Bar or legal profession might be closing ranks. One case that came to our attention, as opposed to a complaint, was about a barrister who was working as a fireman. He had been doing that for over 10 years. The rules require anybody who does any work outside their practice as an independent barrister to ask for permission. That person did not do that. That person had a financial advantage over other people who were struggling at the Bar, trying to get work and so on, during that period. We at the PCC considered that to be a very serious matter. So, we referred it to a disciplinary hearing, which was chaired by Lord Justice Coghlin. I understand that the laypeople did not think that it was a big issue. My point is that I think we actually consider our disciplinary issues sometimes more seriously than a layperson does. I do not think that they actually got the significance of the breach of the code that had occurred. I was actually disappointed in the result, which was that the person was only admonished. I thought that it was a very serious matter, as did the rest of the PCC. With respect, I do not actually accept the point about our closing ranks.

We are here to ensure that we maintain the highest standards of the Bar. In doing so, we are proactive and reactive. If we do not do that job properly, we will have problems. The very fact that we have had only 40 complaints for 700 barristers is testament to the fact that we are getting something right.

**Mr Girvan:** That brings me back to a point that might come out when we deal with the likes of the Law Society, and that is the perception in the wider community that there is no point in complaining. What is the point of complaining? I say that because it goes on in other areas; I am not just talking about the legal profession. People say, "There is no point in complaining, because we know what the outcome will be". It is a similar situation in the health profession in that if you make a complaint against a doctor, it is extremely difficult to get that brought forward because there seems to be an incestuous set-up. I appreciate what you said and take it on board.

**Mr Mulholland:** The other element, of course, is this: we are in a somewhat unique position because a member of the public can bring a complaint against a barrister either directly or through their solicitor. Of course, a solicitor who retains us for a case can also bring a complaint, as can a member of the judiciary before whom we appear in court, and that has happened.

Of course, we are under a positive duty in our own code to report a colleague barrister if we believe and have a reasonable basis to believe that they have, in fact, breached the code. If we fail to do that, we ourselves are prima facie held out to be in breach of our code. So, although there may be a misconception that it is very easy for the legal profession to close ranks, in reality, that is not possible, bearing in mind the various people who may trigger a complaint and the fact that we are all in independent practices. Day and daily, we take on work independently, so it is not that we are in a partnership together or are working together out of the same business. We all are sole traders.

When it comes to, as Gary says, upholding the standards, we teach that from day one. The Bar students trained at the institute take a course on ethics. When I addressed the new students three weeks ago, I referred to this very Bill. During their pupillage training, there is a compulsory course, and, again, that is marked. Again, if issues arise that concern the Bar — professional misconduct issues or service issues — we will send out circulars about that to ensure that no barrister can ever say, "Oh, I did not know about that". That is to guarantee that the highest standards are met, and if they are not, we take a firm line on that.

**Mr Girvan:** That leads me nicely on to my next point about the implications of the proposed changes to the existing complaints arrangements and how that will affect the work of the Bar Council. What impact will the proposed changes have?

**Mr Mulholland:** There will certainly be a significant impact for the Bar. I should say that the Bain recommendations, which were broadly welcomed by the profession in general, will have a significant impact in two ways. I say candidly that we appreciate and realise that the transparency that the public require is to be welcomed. Next month, we will be appearing in a BBC documentary on the Bar of Northern Ireland for that very reason.

Setting up the Bar complaints committee will have a significant financial impact on the Bar. Although, in many ways, it is a change, in so far as it will involve a greater role for lay representatives, as Gary said, that occurs with the professional conduct committee. It means advancing the number of lay representatives who come onto and, in fact, this is what is proposed, chair the committee. That will require the allocation of significant resources to afford the position for that, the premises that are required and the personnel to go with it.

Outwith that, perhaps the biggest and most significant aspect will be the role of the commissioner. There are aspects of that — ensuring proportionality is, of course, paramount in respect of the cost, the powers and the role of the commissioner — that may require further clarification in some instances. It certainly is a significant and fundamental change for the profession in general. We certainly acknowledge that it is a move forward into the future, which we will work with and make sure comes about with our full cooperation.

**The Chairperson:** There are a couple of supplementary questions on this.

I will come back to the issue that Paul raised about the laypersons' panel. Gary, you said that laypeople in the disciplinary hearing come from that panel. How are they appointed to the panel?

**Mr Potter:** I need to check that for you, Chairman, but there is a pretty wide panel from which those people are appointed. I think that they may apply to the panel. I will come back to you at some point and inform the Committee about that. I am not entirely sure about the exact mechanics of that.

**Mr D Bradley:** Good morning. The proposals suggest that, initially, there should be an informal procedure to deal with complaints before they proceed to a more formal mechanism. How does the informal procedure that you perhaps operate at the moment work? What are the nuts and bolts of that?

**Mr Potter:** Do you want to know what we propose as an informal procedure for the future?

**Mr D Bradley:** Yes.

**Mr Potter:** The Scottish model initially offers mediation. We have a lot of newly qualified Bar mediators, and we could utilise that facility by offering mediation in the first instance. One issue is that with a lot of the complaints that come in — not just those against barristers or solicitors but against doctors as well — you find that there is a lack of understanding about what process they have been

through, and, once that is explained, you quite often find that there is not actually a complaint about conduct or service.

Obviously, we have to develop the proposals for you, but we envisage that, initially, we might offer mediation as a means of opening the informal procedure. If that does not work, we would maybe have a couple of stages that are more transparent, where somebody will look at the complaint and maybe carry out an investigation. If that does not satisfy matters for both sides, it would be referred to another committee, and the appropriate cases would then be filtered to the Bar benches committee, which is the second and more formalised tier that deals with allegations of inadequate professional services, so the case of the consumer who is complaining about their own barrister can then go through.

I can tell you that a lot of the complaints that come through are not necessarily complaints by a client against their own barrister. As politicians, you will find that a lot of personal litigants now try to use the complaints process simply to have a go. For example, in a relief case, a lot of males do not represent themselves. They want to have a go at the wife and the wife's barrister, and they feel, wrongly, that making a complaint to the Bar disciplinary body is a means by which they can continue their substantive case. That can be rather frustrating, but a mediation situation might address that at an early stage.

**Mr D Bradley:** Would the mediators be independent of the Bar Council, or would they be fellow practitioners who act in that role on your behalf?

**Mr Potter:** We have to develop it, but there would be barrister mediators. We can consider whether the mediator, at that stage, should be somebody other than a barrister. However, my reading of the draft Bill as it stands is that the requirement is for the complainant and the barrister to engage with the Bar internal procedures, which is called the internal resolution body. To that extent, we would think about offering mediation by a barrister mediator in the first instance. That does not necessarily end matters. The complainant would have an opportunity to develop the complaint further in the appropriate case.

**Mr D Bradley:** If the mediator were to be a barrister, would there not be a danger that that would be seen as being weighted against the complainant?

**Mr Potter:** The very nature of mediation means that a mediator should sit there and try to tease out the issues from both sides, not to make a decision as such. The whole idea of mediation is to look at the big picture as opposed to the specifics and try to identify where the difficulties are coming from. So, it does not matter where the mediator comes from, as long as they are operating the role correctly. It should not really matter whether the mediator is a barrister, because they are not making the decision.

**Mr D Bradley:** I think that the point you make is that a good mediator will be objective and independent, obviously. However, when that is viewed from the outside, it may look as though barristers are looking after their own.

**Mr Potter:** What I am saying is that this is just a first tier. As you come through the internal Bar resolution body, this is the first offer. I understand where you are coming from. However, if that does not work out, in my experience of cases involving personal litigants, they will keep coming, whether it is against a politician, barrister, solicitor or whoever. Mediation is not going to kill the thing off, and, in the appropriate case, it can move onto the next stages and, in other appropriate cases, it will be referred on to the benchers' disciplinary committee. So there will be that transparency, and the complainant will be able to go through the various stages.

I accept entirely the need for transparency and openness and so on and so forth, but, if this is an initial stage to weed out and identify what complaints there are, what they are about and how they should be approached, it seems to me that it is a good first step.

**Mr D Bradley:** Then it moves on to the more formal stage, the complaints committee. What do you think is the best way of ensuring that the lay members are both independent and capable?

**Mr Potter:** I see that there is some suggestion that lay members will need some formal training. There will be a cost to that. That is important because a lot of the stuff that we deal with in the PCC

and in other areas is very technical material that deals with technical breaches of the code. As I was saying to Paul, I have a sense that the laypeople who were on that case did not really get the seriousness that we, as barristers, thought it should be dealt with. So I think that laypeople need to have some formal training in relation to it, that is for sure. However, those laypeople should be nothing to do with the law, obviously. They should have no legal connection at all. The laypeople who are on our committees have no connection. They are union people, teachers, in business and so on and so forth, so they are outwith the legal process.

**Mr D Bradley:** In the Bill, do you think that they should be appointed on the basis of open recruitment?

**Mr Potter:** I do not see why not.

**Mr Weir:** Paul has asked about the commissioner side of it. Mark had started to deal with that a bit. Perhaps you could expand, from the profession's point of view, on the section dealing with the legal services oversight commissioner? Have you any views on what has been drafted about the remit, powers, independence and resources of the commissioner? I will be asking the same question of the Law Society.

**Mr Mulholland:** Peter, that is one of the issues that we have touched upon in the paper. It is one of the issues on which we have sought views from our own membership and are consulting.

**Mr Weir:** Is it still, to some extent, a work in progress?

**Mr Mulholland:** It is, very much. At first blush, when you consider the broad remit of potentially what the powers may be, they are quite extensive. The potential for the cost implications can be quite significant. It is trying to find a balance to ensure that the role of the office is carried out professionally without, at the same time, overburdening the profession with its cost. I know that the suggestion in the consultation paper was that, for example, the increase in the practising certificate for a solicitor could be £400. I can tell you candidly that, within the Bar, for even the internal restructuring that will have to take place and the establishment of the Bar complaints committee with lay representation and so forth, the cost will be significantly more than that, and that is before we turn to the role of the commissioner. However, there is no point in having a commissioner who does not have the powers that are required. It is just trying to get the balance of what those should be and the full ambit of responsibility. At the moment, it may be that the clause in relation to that is drafted quite widely, but that is something that we are working on.

**Mr Weir:** I know that we are taking evidence at this stage but, as we move forward with the legislation process, if you then get to the stage where there are quite specific ideas that you have, we are dealing with legislation here, and I suppose we need to get it tied down, if there is a need for any adjustment, as to what specifically that should be. The other issue — and I do not know whether I am poacher or gamekeeper today; among the barbarians, but I am not saying which side. People from outside the legal profession may have difficulty understanding. There is a situation with the volume of complaints, and obviously we have to look at the reasons for that. The numbers are heavily skewed towards the solicitors' side rather than the Bar. However, you have touched on that already in terms of the issue, for example, at the Bar, where there is not the direct handling of clients' money, which can have a major impact. With regard to the differential and balance, to what extent is that driven because of the particular divisions of responsibility between the two professions, which then essentially creates the potential for complaints, which will inevitably be very heavy on the solicitor's side compared with the Bar, which, to some extent, might be slightly insulated from the opportunities for complaint? Can you maybe just comment on that?

**Mr Mulholland:** I think that there is a point in that. I could not start to hazard a guess but, even on a pro rata basis, the number of clients that we deal with vis-à-vis the number that would walk through the door of any solicitor's firm in Northern Ireland, for every one case that I am retained to present in court or to advise on, it is probably one in 10 potential clients. Therefore, even the sheer number of potential complainants would be significantly fewer against the Bar as it would necessarily be against the solicitors' profession.

**Mr Weir:** Presumably, as part of that — I am choosing my words carefully here — it is possibly more likely that some, shall we say, more challenging clients that come through the door of a solicitor's firm whose legal cases may not be overly watertight, to put it euphemistically, are things that may not

reach the stage of court. Proportionately, they may be the type of people who are more keen to have a bit of a grudge against the world to complain, which would also explain one of the degrees of differentiation.

**Mr Cree:** Good morning. I have a question about the determination of complaints. As you know, the compensation figure has a ceiling of £3,500, which is, I believe, a fairly historic figure. Do you have a view on that?

**Mr Potter:** Yes. I think that it says somewhere in the papers that £3,500 was the excess on the solicitor's policy, for example. However, if there were some suggestion that that should be increased, I think that the Bar would resist that, because the bottom line is that the whole purpose of the sanction is for it to be a fair and proportionate one; it is not to be a punitive one. I sit as a legal adviser on the social worker disciplinary committee, and I used to sit on the nursing committee. What they call the indicative sanctions would say, "Look, any sanction that you impose should be fair and proportionate and should not be punitive". There is no reason why that principle should not apply to solicitors and barristers.

If, for the sake of argument, a client has a professional negligence case against a solicitor and/or a barrister, and it is obviously in excess of that, then that can go through the usual channels. If it is a good case, then there will be no difficulty about it; if it is a bad case, it should not be brought in the first place. I think that the Bar's view will probably be that it will probably be content with that level. However, the issue as to whether any financial penalty should be imposed will obviously be a matter for the benchers committee involving lay people to deal with on a case-by-case basis. Certainly from the material that has come through the PCC over the years, there has been no need for that sort of thing because, by and large, the complaints have not been of that serious nature. However, probably something like that should be there, but there should be a cap on it. I do not think that there should be an open-ended issue on that, and the Bar would certainly be very concerned if that were proposed.

**Mr Cree:** So you think that it is sufficient.

**Mr Potter:** Yes.

**Mr Cree:** In your knowledge, how does it compare with what happens elsewhere — in other parts of the United Kingdom or, indeed, in the Republic of Ireland?

**Mr Potter:** What aspect, sorry?

**Mr Cree:** The ceiling of £3,500.

**Mr Potter:** I will need to come back to you on that. It is not necessarily good to refer to the English situation in many aspects of the law; that is not necessarily the right way to go. We need to look at it on a local basis. All that I can say to you is that, from our perspective, whilst there may be a need for some sort of potential financial penalty in the appropriate case, there should be a cap on it. I am not familiar with exactly what is done in England and Wales. I can tell you that, in the Republic and in England and Wales, the costs of changes in the disciplinary process have been exorbitant.

We have a concern about getting the balance right between making sure that the whole procedure is as transparent as it can be and satisfies the consumers insofar as it can and making sure that it is not over-regulated and disproportionately expensive. If I am saying to you that we have 40 complaints coming through a year, and we take half of those — that is a rough figure, as it is very hard to know how many cases will ultimately go to a bench's disciplinary committee — it does not seem to me that it would require an awful lot of work to deal with those. It would not require an awful lot of over-regulation and excessive costing.

In short, I cannot give you a definitive answer about what the actual financial penalties are in England and Wales or the Republic. However, I daresay that they have some sort of format. I have concerns that it would be open-ended or excessive, because there would, nevertheless, be a means by which the complainant has a right to take a case of professional negligence and can pursue the usual channels. So, for example, if the case is worth a potential £100,000, that will be dealt with in the proper way.



**Mr I McCrea:** Some members have referred to the complaints procedure and how it is carried out. After Peter's exchange, we may have a new film coming out of this legislation starring Peter the barbarian.

**Mr Weir:** There is another Peter Weir who is a famous film director, so maybe I could direct and star.

**Mr I McCrea:** Well, who knows?

In respect of the complaints procedure, Peter and Mark's exchange made it easier for me to understand the process and how that works and whatnot. Do you find that there is enough education of the consumer and raising of public awareness of how people can complain? Paul touched on people's views — whether they are barristers, lawyers, politicians, health professionals or whatever — that, if it is done, there is no point in complaining because it will not really make much of a difference. If there is that type of attitude out there — I have to be honest that past experience tells me that there is — how do we overcome it? Is there a better way of dealing with that public awareness aspect?

**Mr Mulholland:** Part and parcel of that, Ian, is knowledge and educating the public. I said sort of half-heartedly in that we have engaged to try to ensure that the public have a transparent view of our profession and can see exactly what it is that we do, with the starting point being what a barrister is and what a barrister actually does.

Leading on from that, therefore, in terms of any potential complaint, amongst the steps that we already take in the most serious cases — and, again, we do not have that many — there is a public screening of the offence, the barrister's name and the details of what gave rise to the finding against the barrister. That is screened in the great hall of the High Court and is open to the public.

If you go onto our website, you can click to find out the steps in making a complaint. The website is currently being enhanced. On the home page of the new website, which will be launched next month, in the top right-hand corner is, "How do I make a complaint?" We are mindful that there is no point in saying, "We have this great system, but we have only a low number of complaints because no one knows about it." We are there to ensure that the system is tried and tested and works effectively, because otherwise there is no point, from our perspective, of ensuring the regulation of the profession to maintain the standards. That is what we are there to ensure happens.

It is about trying to ensure that there is public awareness. That is why I make the point that, if a barrister's level of service falls down in the courtroom or in giving advice, normally the first port of call for the client will be to say something to that solicitor. The solicitor then has a responsibility to the client, because it is the solicitor who will recommend the particular counsel in the case. First and foremost, the role of educating the client can also therefore be informed through the solicitor, either in their own capacity by raising dissatisfaction with the level of service, or by advising their client to do so.

I totally take on board the fact that we have to ensure that we sufficiently educate the public and ensure that the public are fully aware of the means by which a complaint can be made. We are trying to do that as best we can.

**Mr I McCrea:** You touched on one of the issues that I was going to raise with you in respect of how you get that information out. Certainly, in the days of technology, when members are sitting around with the tablet things that we have and people, either through their smartphones or through their electronic devices, are more and more — if you want to find anything out, you Google it nowadays, or maybe use Bing. I will not get too close to one company or another, but it is important that that awareness is out there. I suppose for me, I do not know. I try to stay away from legal things as best as I can. When a complaint is made, if it is made to the solicitor's firm, does it make the judgement call as to whether it is a complaint that is passed to you? Is it a case of passing the buck, almost?

**Mr Potter:** No, not at all. The bottom line is that sometimes complaints come in and it turns out that the complaint is against the judge in the case or the complaint is actually against the solicitor. That is why some of those complaints are dismissed in the sense that they are not within our remit. The bottom line is, if, I dare say, a complaint comes in to a solicitor about their barrister, I would expect the Law Society to refer that on to their client and on to the Bar PCC. That is what we would do, we would say that we only have a remit over the barristers, so, if the complaint is against the judge, there is a judicial ombudsman, off you go, or if it is against the solicitor, we would refer them to the Law Society.

It is not a matter of passing the buck; it is making sure that the client making a complaint gets the right body to determine that complaint.

**Mr Girvan:** Do you have a mechanism for filtering people out? I appreciate that we each and every one have it, that some people who, for one reason or another, probably, I might use the term have a psychiatric problem, more than anything else, associated with the reason why they complain, do you have any mechanism to allow them to be filtered out?

**Mr Potter:** No, we have no powers to ask a complainant to undergo any medical examination.

**Mr Girvan:** I appreciate that, but you will have people who could clog your system up with complaints and you could spend years corresponding on that.

**Mr Potter:** You are right. That is one of the frustrating things about it, Paul. We have a complaint at the minute that had been dealt with over a year ago. The guy made a complaint against his own barrister and then he made a complaint about any other barrister that was involved in the case and against the High Court judge. So that was that, he asked for a review and —

**Mr Mitchel McLaughlin:** Was he all right before he went into the legal profession? *[Laughter.]*

**Mr Potter:** I cannot verify that. I think that maybe he was not, but anyhow, out of the blue, he has come back again a year later and has made a complaint, in inverted commas. All he has done is to send us a copy of the appeal to the European Court of Justice. He has written a letter to me and to Her Majesty the Queen — so I am in good company on that — and we are supposed to determine that complaint. At the end of the day, we will look at that material and ultimately, there is no complaint in it because all he has done is to say, well, there is my material and my substantive complaint. That is what I was saying earlier on. An awful lot of people come in and they may have issues, mentally, and they may not understand what the process is, but we nevertheless have to deal with that and try to weed it out, investigate it and make a determination, and we do that. That is one of the reasons why it takes so long to go through these things. As politicians, you will face it as well, and even though you are making the right decision for the right reasons and so on and so forth, it is very frustrating. Nevertheless, we have to deal with that.

**Mr Mitchel McLaughlin:** I have a short question. Would you track any themes that emerge, say, in respect of a particular barrister?

**Mr Mulholland:** Yes.

**Mr Mitchel McLaughlin:** Even if the complaint was not substantiated, but a trend of such complaints emerged against a particular practice.

**Mr Mulholland:** Insofar as if the same barrister, over a period, has been complained about on more than one occasion, we do. In the course of that, one of the other aspects of this is that findings against a barrister are the type of thing that they must declare. For example, when I applied to become a QC, I had to state whether there were any findings against me from the professional conduct committee. So, we track them because, amongst other reasons, we will be consulted, or the Bar Council is then asked if there is anything on file. So, yes, we do and, candidly, depending again on the level and nature of the complaint. I can think of one instance when I was chairman, and it was not the public who complained but fellow barristers, where a barrister was admonished on two occasions over 24 months. However, if there is a level of complaint against one barrister, we will want to know why. It is therefore something that we want to dig into deeply to see what exactly is going on and if there is a cause for concern.

**Mr Potter:** Just to follow on from that, Mitchel, we would try and maybe advise that barrister — perhaps me and Mark or me and somebody else — and say to them, "Well, listen, there is this issue here now and you need to address it very carefully. I am not quite sure exactly what is going on here, but you need to be careful. We will be watching you". So, we would follow up that with advice and supervision, if you like.

**Mr Mitchel McLaughlin:** That can sound like cronyism, you know.

**Mr Potter:** Not at all.

**The Chairperson:** OK, members? Gentlemen, thank you both very much.