



Northern Ireland  
Assembly

Committee for Finance and Personnel

# OFFICIAL REPORT (Hansard)

Legal Complaints and Regulation Bill: DFP  
Officials

10 June 2015

# NORTHERN IRELAND ASSEMBLY

## Committee for Finance and Personnel

### Legal Complaints and Regulation Bill: DFP Officials

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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 John McCallister  
Mr Ian McCrea  
Mr Adrian McQuillan

**Witnesses:**

Mr Michael Foster	Department of Finance and Personnel
Mr Oswyn Paulin	Department of Finance and Personnel

**The Chairperson (Mr McKay):** I welcome Oswyn Paulin, head of legal services, and Michael Foster, a legal adviser in DFP, to the Committee. Gentlemen, you are both very welcome. I apologise in advance: there is a lot of noise and beeping outside. Just in case you think that it is a lie detector, I assure you that it is not.

I am conscious that some new members have come on to the Committee recently, so perhaps you would like to set out the background and principles of the Bill and talk through developments to date.

**Mr Oswyn Paulin (Department of Finance and Personnel):** I will make a few opening remarks and then deal with questions, if that is satisfactory, Chairman.

Thank you for the invitation to speak to you. You will know that the Executive, at their meeting of 28 May 2015, agreed the final policy of the Legal Complaints and Regulation Bill and that it be introduced. The introduction took place on Monday, and Second Stage is scheduled for next Tuesday, after which it will be referred to the Committee for its consideration.

This is the fourth evidence session that we, as officials, have provided on the Bill. You will recall that we briefed you in advance of the consultation on the draft Bill in September 2013. The consultation ran until March last year, and we, along with others including the Law Society and the Bar, gave further evidence to you during that process. You may remember that that was in Law Society House. We last gave formal evidence to you on 25 June 2014, just short of a year ago, when we provided you with a briefing on the outcome of the consultation process.

Since then, we have worked closely with the Office of the Legislative Counsel (OLC). While endorsing the general policy aims and the work carried out by the Bain review group some years ago, the consultation on the draft Bill also raised quite a number of specific points that took some time to work through and consider. The Office of the Legislative Counsel assisted us with that process as we shaped and finalised the draft Bill for consideration by the Minister. We updated the analysis document, albeit in a fairly minor way, and the revised draft was completed late last year.

The previous Minister, Simon Hamilton, agreed the final draft earlier this year and agreed to seek the agreement of his Executive colleagues for the final policy and to introduce the Bill in the Assembly. He also wrote to you, Mr Chairman, and enclosed a copy of the Bill, its accompanying explanatory and financial memorandum and the updated analysis document.

We had awaited approval to proceed for a number of months. The paper was, as I mentioned, considered and agreed by the Executive on 28 May. The Bill has changed only slightly since it was issued for consultation. There have been a number of amendments, but most of those are technical or minor in nature. We highlighted our thoughts on potential amendments at our previous session with you last June. The overall architecture of the Bill, its general principles and its overall policy aim remain unchanged and in keeping with the views that were represented during the consultation exercise.

As I noted, the Bill is now in the Assembly and will be with the Committee shortly for detailed scrutiny. We are happy to field any questions that you might have.

**The Chairperson (Mr McKay):** Thank you very much, Oswyn. Given that the commissioner will oversee solicitors and barristers, what merit would there be in having a clear and common definition of a complaint to ensure consistency over the two professions?

**Mr Michael Foster (Department of Finance and Personnel):** I am happy to field that question, Chair. We looked at the issue of defining a complaint, which has been raised at the Committee in the past. The difficulty is that you would lead yourself into waters in which you had to have quite a strict definition. A complaint about a lawyer can take many, many shapes and forms. It can be down to simple miscommunication or things as straightforward as a delay or missed phone call. In the past, we have even seen complaints about someone spelling a name wrongly. A common definition of a complaint would, in many ways, take us into uncharted territory from a drafting perspective, and it is certainly not something that we have seen in other jurisdictions.

We feel that leaving the relevant complaints committees to determine what is a complaint will be sufficient, given that they will sit with a lay chair and a lay majority. They will have a range of powers available to them and will be able to set their own rules and procedures. To write into the draft legislation the definition of a complaint would be almost too difficult and, in many ways, would not necessarily serve the purpose that might be intended.

**The Chairperson (Mr McKay):** Was that suggested in any of the consultation responses?

**Mr M Foster:** No. No consultees raised that as a particular issue.

**The Chairperson (Mr McKay):** Given that the proposed system still involves self-regulation, with unresolved complaints being filtered upwards to the oversight commissioner, is there a risk that he or she will see only the tip of the iceberg and only the cases of individuals who have persisted with their complaint? Would it not be better to have a wider view?

**Mr M Foster:** We do not see that happening, Chair. At the very first tier, solicitors and barristers will have to have in place a formal in-house complaint-handling system. In many cases, they already have those, particularly in the solicitor profession.

A number of observers picked up on that idea — as I said, it has been mentioned at Committee a couple of times in the past — particularly the lay observer, who is the one currently in charge of overseeing the system. It is his view that, if we have to formally register complaints at that very first tier, it will build in cost to the system and not add any particular value. The purpose of this is that we hope to see complaints being addressed fairly quickly and efficiently. If that is done at the first tier, all well and good.

The difference between the new system and the system that we have in place now is that there will be a lot more transparency and a lot more exposure to the system for consumers. We will have in place

oversight by the Legal Services Oversight Commissioner, who will have a very clear role in getting the message out to all users of legal services. To an extent, the Law Society already does that, and, in the period between this being thought about and now, it has taken a lot of steps to try to address the issue, but there is probably more that it can do, and it will be able to do that within the new system. So, starting the process of registering complaints at the very first tier would not give added value and, potentially, just add to the costs.

**The Chairperson (Mr McKay):** I agree with your point that there will be more transparency in any new system. I suppose the question is whether there will be enough transparency.

**Mr M Foster:** You have to bear in mind that the Legal Services Oversight Commissioner will have very much stronger powers than the current lay observer. He or she will be responsible for making sure that the Law Society and the Bar Council set targets and that they make and stick to plans. They will have at their disposal tools to ensure that that happens. At the moment, the lay observer does not really have those powers at his disposal and is more there to audit, for want of a better word, the work of the Law Society. This will be a very different dynamic. Added to that is the fact that, at the moment, the complaints committees in the Law Society are chaired by solicitors. There is an inbuilt two thirds majority of solicitors on the panels. That dynamic will also shift to the lay chair, lay majority model. All those points taken together will open up the system and make it much more accessible and transparent. The Legal Services Oversight Commissioner will have a very clear role in making that happen.

**The Chairperson (Mr McKay):** Did many consultees say that this level of transparency does not go far enough?

**Mr M Foster:** One individual, who focused his comments on the existing system, felt that it was not in any way transparent enough. You have to bear in mind, however, that although that person's arguments were well set out and well argued, it was obvious that he had had a very direct experience of the Law Society. The groups that came at this from a consumer perspective, such as the Consumer Council, the Federation of Small Businesses, Citizens Advice, Disability Action — the type of organisation with a consumer focus — felt that the new system was a proportionate response to the issues that this jurisdiction had faced and will face, and that it would make things much more open and transparent.

**The Chairperson (Mr McKay):** What do you foresee will be the resource requirements of the commissioner?

**Mr M Foster:** We have not finalised that. It will largely be a matter for regulations flowing from the levy, but our initial scoping suggests that the Legal Services Oversight Commissioner will be a fairly modest office, given the type of workload, the size of the jurisdiction, the number of complaints coming into the system and the remit of the office holder. You certainly would not expect there to be anywhere near the amount of resource required in England and Wales or in Scotland. We are looking at a figure in the low six figures as a benchmark for the cost of the office. Early estimates are in and around £200,000 a year, which will be, as you know, Chair, supported by the levy on the professional bodies. The nature of the levy will have to be considered in the regulations that follow the Bill, but, adopting a blunt tool, we are probably looking at no more than a £80 to £100 levy per annum on each practising lawyer in this jurisdiction.

**Mr Cree:** I am interested in your answer to the Chair on the definition of a complaint. Has there been any resolution to the definition of maladministration?

**Mr M Foster:** In what context?

**Mr Cree:** Is there any definition of it?

**Mr Paulin:** Do you mean in the context of the ombudsman?

**Mr Cree:** In any context. My recollection is that there is not. Maybe I am out of date.

**Mr Paulin:** A Bill going through the Assembly relates to the Commissioner for Complaints and the ombudsman.

**Mr Cree:** I do not think that there is a definition anywhere in the UK or Europe. That is a bit of a nonsense, really, is it not?

**Mr M Foster:** In relation to this Bill, as I said to the Chair, complaints can take such a wide variety of forms. One man's complaint might not be another man's.

**Mr Cree:** By the same token, you could advance some broad-brush, probably fairly blasé, all-encompassing choice of words.

**Mr M Foster:** I do not think that we are entirely convinced of the benefits of that, particularly in primary legislation. It may well be the case that we can develop a sort of common definition, for want of a better description, of a complaint, when we look at the work of the complaints committees after they have been up and running. The Legal Services Oversight Commissioner could well assist in that.

**Mr Cree:** It is still the case that the levy will cover all the costs involved?

**Mr M Foster:** Yes.

**The Chairperson (Mr McKay):** Do barristers and solicitors have different definitions of a complaint?

**Mr M Foster:** It is wise to remember that solicitors and barristers, although they serve a common goal of administering justice, come at it from different perspectives. Barristers, for example, do not hold clients' money. A lot of, or certainly some, complaints against solicitors will relate to that issue, whereas complaints against barristers do not because they never hold clients' moneys. Whilst the roles of solicitors and barristers complement each other, the actual work that they do can, at times, vary significantly.

**The Chairperson (Mr McKay):** Are there two trains of thought on the definition of a complaint?

**Mr Paulin:** I would have thought that there would be very similar views.

**Mr M Foster:** When looking at a service complaint, the starting point is that, whether you are dealing with a solicitor or a barrister, something has gone wrong in that relationship, and it is something that you want to try to rectify. That is where your starting point for a complaint is based. Most people using the system will know whether they have a complaint, if I can put it that way, but it is how that complaint emanates and the nature of it. It is very difficult to define that in legislation.

**The Chairperson (Mr McKay):** Finally, what was the rationale for the commissioner being appointed for a three-year term, whereas the solicitors and Bar complaints committee may be appointed for five years?

**Mr M Foster:** The three-year term for the oversight commissioner is a fairly standard template now for this type of role. When looking at the primary legislation, we took as our model the Children's Commissioner and other commissioners for whom the period of appointment was three years. For the solicitors complaints committee and the Bar complaints committee, we bore in mind that both will appoint members by open process. We felt that allowing them to serve for a five-year period would help to drive down costs because they would not have to go out to a fresh competition every three years. It was done partly from a cost perspective. Certain clauses allow members to leave or to be removed earlier for a variety of reasons set out in the Bill. The five-year period is the maximum.

**The Chairperson (Mr McKay):** Are there any issues arising in the Department that may lead to further amendments to the Bill?

**Mr M Foster:** We considered the consultation and outlined when we last spoke to you that there were relatively minor amendments that we were minded to make, and we have made those. As far as the Department is concerned, the Bill is in the shape that we want it to be for consideration by the Assembly. Second Stage is next week, after which it will be referred to the Committee. We will work with the Committee to see whether anything further needs to be done to get the Bill into its final shape, but we are content that, at the moment, it is ready.

**The Chairperson (Mr McKay):** OK. No problem. Thank you both very much.