COMPLAINTS ABOUT SOLICITORS

A STUDY OF CONSUMERS’ EXPERIENCES
OF THE LAW SOCIETY OF SCOTLAND’S
COMPLAINTS PROCEDURE

SCOTTISH CONSUMER COUNCIL
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Scottish Consumer Council
CHAIRMAN’S PREFACE

In recent years there has been an increasing awareness among service providers of the importance of meeting the needs of consumers and, in particular, of developing effective procedures to deal with consumer complaints.

Given the emphasis the Scottish Consumer Council places on access to legal services by consumers, we are naturally interested in the quality of the important relationship between any individual consumer and their professional legal adviser. Part of that relationship is the provision for complaints where disagreements arise and in this report we examine how complaints are handled and resolved.

Initially, complaints should be handled internally by the legal firm or solicitor involved. However, the main focus of this research is on the experience of those consumers who were unable to resolve their complaints internally and who carried on to the next stage where the Law Society investigates the consumer’s complaint against his or her solicitor. The Law Society has an interesting dual role both as a representative body for the profession and as a regulator of it, which presents the Society with a challenge in the way in which it is perceived both by the profession and by consumers when carrying out its complaints handling function.

The aim of the research which is described in this report was to evaluate the experiences of consumers who have used the Law Society’s complaints system, in order to see where we could recommend improvements. The research also looked at the way in which solicitors themselves deal with complaints and at the role of the Scottish Legal Services Ombudsman. We are very grateful to the Law Society for their willing and constructive support in sending out questionnaires on our behalf and for providing input to the advisory group that oversaw the development of the research and the report. The conclusion and recommendation, however, came from the Scottish Consumer Council alone.

The results of our research show that half of those taking part were unhappy with the procedure and we have made recommendations based on our research which we believe would considerably improve the present system. However, if consumers are to be confident that the procedures are entirely fair, we believe the research suggests that the way forward should be to establish an independent body to deal with complaints about solicitors in Scotland.

Deirdre Hutton

January 1999
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SUMMARY OF THE REPORT

1. The study

This research was undertaken in order to assess the views of consumers who had used the Law Society of Scotland’s complaints procedure to make a complaint against their solicitor. It is the first time that an independent assessment of complainers’ experiences of using the complaints system has been carried out.

2. Methodology

The survey of complainers took the form of a postal questionnaire. The sample of the study consisted of all cases closed by the Law Society between 1 February 1997 and 28 February 1998. A total of 1,229 questionnaires were sent out in March 1998. 415 completed questionnaires were returned, representing a response rate of 36%.

In selecting all cases closed during a particular one year period, the study is likely to be representative of those who have recently used the Society’s complaints system.

3. The findings

a) Solicitors

Reasons for being unhappy with the solicitor

We asked respondents to rate the three most important reasons why they were unhappy with their solicitor. The three reasons given most frequently were lack of communication, incompetence and delay.

Information given by solicitors

An overwhelming majority of respondents (89%) said that when they first went to their solicitor they were not told what to do if they were unhappy with the service provided.
The initial complaint

Half of the respondents first took their complaint to their solicitor, while one-fifth (20%) approached the Law Society first. Of those who first complained to their solicitor, 16% said that they were completely ignored by the solicitor/firm.

b) The Law Society

Complaining to the Law Society

Respondents were asked how they found out that they could complain to the Law Society of Scotland. The highest number (39%) said they already knew about it. 7% said they found out through the Law Society’s leaflet ‘Dissatisfied with your solicitor?’. Only 2% found out through their solicitor/solicitor’s firm.

Most of those who had seen the leaflet ‘Dissatisfied with your solicitor?’ got it direct from the Law Society. However, 37% of respondents stated that they did not remember having seen the leaflet.

Initial contact with the Law Society

The majority (61%) of respondents first contacted the Law Society with their complaint in writing. A further 32% contacted the Law Society by telephone in the first instance.
92% of respondents said that they did not have difficulties in making initial contact with the Law Society’s staff to make the complaint.

Taking the complaint back to the solicitor’s firm

41% of respondents said that they had been advised by the Law Society to take the complaint back to the solicitor/solicitor’s firm.

Information about the complaints procedure

More than half (54%) of the respondents said they were given initial written information about how their complaint would be handled, besides the leaflet ‘Dissatisfied with your solicitor?’. However, 40% said they were not given such information. The majority (66%) of those who said they had received initial written information, said the information was very clear and they understood it all.
57% of respondents said they were kept well or very well informed by the Law Society throughout their complaint. However, 23% said they were kept neither well nor badly informed. 17% said they were kept badly/very badly informed.

Most respondents (78%) said that the letters which they received from the Law Society were clear/very clear.

**Conciliation**

Just over half (51%) of respondents said that the Law Society had suggested to them a way of resolving their complaint informally. The majority of respondents (80%) who said that conciliation had been suggested to them said that it involved the client relations partner/senior partner of the solicitor’s firm, rather than someone from the Law Society. More than half (53%) of respondents who had been offered conciliation by the Law Society said they did not find the process helpful.

**The help form**

Only 14% of respondents said they had used the help form produced by the Law Society. Some stated that they had never heard of the form before. The majority (74%) of those who used the help form said they had found it to be of assistance.

**The complaints investigator**

The majority of respondents (76%) said that they did not use the services of the Law Society’s complaints investigator. Some said they had never heard of the complaints investigator, and some also said that they would have liked to have been able to use this service. Of those who did use the investigator, the majority (69%) found the service helpful.

**Time taken to deal with the complaint**

More than half (57%) of respondents said that it took up to one year from their first approach to the Law Society with the complaint until it was closed. However, in a further 20% of cases, this took between one and two years, and in 17% of cases it took over two years.

48% of respondents thought the time taken to close their complaint was not reasonable. Almost half (46%) said the time taken was longer than they had expected initially. Of those whose complaint took longer than one year to be resolved, 89% said it took longer than expected.
Outcome of the complaint

When asked what they wanted to happen as a result of their complaint, the most common responses given by respondents were:

- the mistakes made put right
- financial compensation
- an apology from the solicitor/firm
- disciplinary action against the solicitor
- the fees reduced or waived
- an explanation about what went wrong

We asked respondents to tell us the actual outcome of their complaint. Just under one-quarter (23%) said their complaint was not upheld. Some other common responses were that compensation was paid, the solicitor's fees were reduced, and an apology was received. Some of those whose complaint had been upheld said the compensation awarded, or disciplinary action taken was not sufficient.

More than half of respondents said that they were unhappy/very unhappy with the outcome of their complaint. Fewer than one-third said that they were happy/very happy with the outcome.

Handling of the complaint

Half of all respondents thought their complaint was not handled fairly.

Overall, 30% of those whose complaint was upheld in some way thought that it had been unfairly dealt with. While the majority of respondents (62%) said they had been given an adequate chance to put their views forward, 27% disagreed. Over 40% of respondents said that they were very dissatisfied (29%) or dissatisfied (12%) overall with the way the Law Society dealt with their complaint.
**Likelihood of approaching the Law Society again**

We asked respondents how likely they were to approach the Law Society again, should they experience another problem with a solicitor at some future date. Almost half (47%) said it was very likely that they would do so.

However, some commented that they were likely to contact the Law Society again because there was no other body that they could take their complaint to.

c) **The Scottish Legal Services Ombudsman**

**Taking the complaint further**

The majority (68%) of respondents said they had not taken their complaint further. Of those who did, most (84%) took it to the Scottish Legal Services Ombudsman.

**Going to the ombudsman**

We asked respondents why they took their complaint to the ombudsman. The majority (67%) said they did so because they were unhappy with the outcome. However, 54% said that it was because they were unhappy with the way their complaint had been handled by the Law Society.

We asked respondents what happened after they took their complaint to the ombudsman. 30% said the ombudsman considered their complaint and referred it back to the Law Society recommending further action. One-third (32%) answered ‘other’. Most of these stated that the ombudsman was still considering their case.

An overwhelming majority (85%) of respondents who took their complaint to the ombudsman said they had not been given a satisfactory explanation for his decision. Two-thirds of those who answered said that they were not satisfied with the ombudsman’s decision.

We asked those who took their complaint to the ombudsman if they had taken it any further. Of those who responded, 39% said they had taken it further.

When asked if they knew what the role of the ombudsman is, only 27% identified this correctly. Almost one-fifth (19%) said they did not know what the ombudsman does. Some stated that they had never heard of the ombudsman before.

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**COMPLAINTS ABOUT SOLICITORS**
SUMMARY OF RECOMMENDATIONS

4.1 TO A SCOTTISH PARLIAMENT

1. A Scottish Parliament should establish a review of the Law Society of Scotland’s complaints procedure, with a view to establishing an independent complaints body to deal with consumer complaints against solicitors in Scotland.

4.2 TO THE LAW SOCIETY OF SCOTLAND

2. The Law Society of Scotland should issue a practice rule making the use of letters of engagement by solicitors compulsory.

3. The Law Society of Scotland should implement a client care practice rule, and carry out an education programme for its members as to the benefits of such a rule.

4. The Law Society of Scotland should produce a clearly written formal complaints procedure.

5. The Law Society of Scotland should ensure that the barriers to complaining which exist within its complaints procedure are removed. In particular, the Society should accept oral complaints as well as those made in writing.

6. The Law Society of Scotland should produce a clearly written information leaflet for complainers about its complaints procedure.

7. The Law Society of Scotland should issue a help form to everyone who wishes to make a complaint, and use of the form should be mandatory for complainers.

8. The Law Society of Scotland should offer the services of the complaints investigator to all complainers on first contact with the Society, either by telephone or in writing.

9. The Law Society of Scotland should publish performance targets for each stage of its complaints process. If targets cannot be met, complainers should be kept well informed as to the progress of their complaint.
10. Solicitors should, after the first interview with a client, send to the client a letter confirming the instructions given, and setting out the next steps to be taken. Where the client will be paying the solicitor’s fee, this letter should also advise as to the likely total cost of the services to be provided.

11. Solicitors should inform clients at the beginning of the solicitor-client relationship what they should do if they are dissatisfied with any aspect of the service provided.

12. Every solicitors’ firm should have a written internal complaints process. A specific solicitor within each firm should be nominated to deal with complaints.
1.1 **Background**

Since the advent of the Citizens’ Charter, there has been a greater awareness within society of the importance of meeting the needs of consumers, and of conducting research into consumer opinion in order to assess whether services provided actually meet those needs.

The Scottish Consumer Council has for many years had a particular interest in consumer complaints, and the procedures put in place to deal with them. The present research was undertaken in order to assess the views of consumers who had used the Law Society of Scotland’s complaints procedure to make a complaint against their solicitor.

In recent years, we have had various concerns about the operation of the Law Society’s complaints procedure, largely due to reports from people who have used the procedure. The Scottish Legal Services Ombudsman has also made critical remarks in recent annual reports about particular aspects of the way in which the procedure has been operating.

Moreover, the complaints system has been the subject of recent concern in the Scottish press. Considerable disquiet has been expressed about the way the procedure operates, by members of the public, by organisations representing the interests of complainers, and by members of the legal profession.

At the root of such concern lies the fact that the Law Society has responsibility both for representing the interests of solicitors, and for dealing with complaints against its members. Some see this as an unacceptable conflict of interest on the part of the Law Society.

In 1986, the Scottish Consumer Council published a discussion paper *‘I’m Not Happy With My Solicitor’*, which looked at the Society’s complaints system. A number of recommendations were made in the paper. These are reproduced at Appendix 2. Some of these recommendations have now been implemented by the Society, most notably in its implementation of a code of conduct for solicitors, and the recent introduction of conciliation into its complaints procedures.

Our main recommendation at that time was that there should be a separate complaints body independent of the Law Society. However, despite some refinements, the Law Society’s complaints system remains essentially the same today as it was in 1986.
In the twelve years which have elapsed since our last study, awareness of the needs of consumers, and the importance of good customer care has come to the forefront. The introduction of the Citizens’ Charter has led to a greater emphasis on the need for efficient complaints handling in all sectors of industry and public life. **Moreover, the introduction of new powers for the Law Society to deal with ‘inadequate professional services’ in 1989 has had a considerable impact on the number of complaints made, and the way in which these are handled.**

Given these significant developments since our discussion paper, we decided to undertake the present study in order to assess the complaints system as it is today. We wished to explore the views of consumers who have used the Law Society of Scotland’s complaints procedure to make a complaint against their solicitor.

This is the first time that an independent assessment of complainers’ experiences of using the complaints system has been carried out. We were able to obtain access to complainers as a result of the co-operation of the Law Society. We are indebted to the Law Society for their help, as without their assistance, we could not have carried out the study.

It must be emphasised here that the aim of our study was to assess the experiences of consumers who have used the Law Society’s complaints system. It is not a review of the way in which the procedures operate. Given that much of the work goes on ‘behind the scenes’ at the Law Society, for example, in the work of the committees, our respondents were not in a position to comment in detail on the mechanics of the procedures.

### 1.2 The Law Society of Scotland

The Law Society of Scotland is the professional body which represents the interests of solicitors in Scotland, and all practising solicitors are required to be members of the Law Society. The Society is also responsible for regulating the way in which its members conduct their professional business.

The Law Society regulates solicitors in various ways, mainly through making professional practice rules on various matters. One practice rule, for example, provides that a solicitor may not act for two parties in a transaction where they have conflicting interests. The Society also issued a code of conduct for solicitors in 1989. This outlines the standards of conduct which are expected of solicitors, and includes a duty to act in the best interests of the client, and a duty to provide a professional service.
The Law Society also has a statutory duty to investigate complaints against solicitors in Scotland. In 1997, the Society received 1481 written complaints, an increase of 14.4% on the figures for 1996.

In terms of the legislation, any person “having an interest” may complain to the Law Society of Scotland that a solicitor practising in Scotland has been guilty of professional misconduct, or has provided inadequate professional services (these terms are explained below at para 1.7). The Law Society has a duty to investigate all complaints properly made.

1.3 The principles of an effective complaints procedure

There are certain basic principles which are generally agreed, by local authorities and other agencies’ to be best practice when setting up an effective complaints system:

- **The procedure should be conciliatory:** it should promote conciliation rather than confrontation. Everyone concerned should feel that the matter has been fairly and adequately dealt with.

- **The procedure should have a positive approach to dealing with complaints:** staff should be aware of the benefits of an effective complaints procedure, and consumers should know that their complaints are welcomed.

- **The procedure should be consistent with the legal rights of the person complaining:** consumers should be made aware of their legal rights, for example the right to appeal. If this means another channel of complaint is available, findings from any investigation must be consistent with the legal rights of the person complaining.

- **The complaints procedure should be fair and impartial:** not only should the procedure actually be fair; it should also be perceived as fair both by complainers and those who are the subject of complaints.

- **The procedure should be completely confidential:** staff, complainers, and those who are the subject of complaints should be assured that each case will be handled in the strictest confidence, and that no-one will suffer discrimination as a result of making a complaint.

- **The procedure should have a clearly defined scope:** it should be made clear to whom the complaints procedure is available; and the range of complaints which are or are not covered. Both staff and consumers need to know this.

- **The procedure should be developed in consultation with consumers.**
- The procedure should be well publicised.
- The procedure should be simple to understand and use.
- The procedure should be made up of three main stages: there should be an informal stage, a formal stage, and an appeal stage.
- There should be an independent appeal mechanism.
- The procedure should encourage outside support: people making complaints may wish to seek the advice of other agencies, such as CABx, or welfare rights offices. An effective complaints procedure will welcome and encourage the use of such services.
- There should be time limits set for complaints handling: complainers should expect a prompt response. People should be aware of the time limits set for handling complaints.
- Systems should be in place for monitoring complaints: complaints should provide information to managers, in a usable form.

1.4 The research

In carrying out the research, we contacted all of those complainers whose cases were closed by the Law Society between 1 February 1997 and 28 February 1998. We understand from the Law Society that they have increased their resources in terms of staffing since that time, and this should be borne in mind throughout.

It is also important that the volume of complaints made to the Law Society is put into context. Although over 1400 complaints were made to the Society about solicitors last year, these represent only a very small proportion of the total number of transactions carried out by solicitors in Scotland on behalf of clients each year. The Law Society was unable to provide us with an estimate of the total number of transactions which take place each year. However, the Society considers that the number of matters which lead to a formal enquiry or complaint being made is very low, probably less than 1% of the total.

Despite these figures, it should be noted here that past research has shown that not all customers who are dissatisfied actually make a complaint. For example, research we carried out in 1995 looking at client care by solicitors showed that, of those respondents who were dissatisfied with the service, around 40% did not complain, while a further 13% said that they had not even thought about complaining. Those who chose not to complain were anxious to conclude their business first, or felt that complaining would not do any good, and did not wish to make a fuss.
1.5 Why clients complain about solicitors

The Law Society’s 1997 Annual Report shows that the most frequent cause of complaints was the solicitor’s failure to communicate (36%), followed by delay (17%). Other reasons for complaints include breach of the code of conduct, failure to follow instructions, and failure to prepare adequately. While these figures can vary from one year to the next, previous annual reports indicate a similar pattern.

When a solicitor agrees to carry out legal work for a client, s/he enters into a contract with the client to provide a service in return for payment by the client (or in some cases, the Scottish Legal Aid Board). Under common law, it is an implied term of this contract that the solicitor will carry out the work with reasonable care and skill, as might be expected of a competent solicitor.

In addition to these legal rights, the client is a consumer of the solicitor’s services, and as such, is entitled to a satisfactory level of professional service from the solicitor. If this level of service is not provided, or if the solicitor has not acted in an appropriate professional manner, the client may complain about this, in the same way as a consumer is entitled to complain about poor service of any other kind.

It may be argued that clients are not in a position to judge whether the legal advice they are given is accurate, or whether the matter has been dealt with in the correct manner. While there may be some truth in this assertion, most clients are nevertheless perfectly capable of judging whether the quality of service was up to the standard which should reasonably be expected from a competent solicitor. A client will know, for example, whether they were informed about costs at the outset, how well they were kept informed as to the progress of the matter, and/or whether the advice given was clear.

Of course, it is inevitable that there may be some cases where a client complains about a solicitor, even though the solicitor has done a perfectly competent job. In some cases, the solicitor or the Law Society may consider that a complaint is unfounded, or indeed that there is no complaint as such. It may be, for example, that the client is actually aggrieved about the law or procedure involved, or a decision made by a sheriff or judge, rather than the solicitor’s conduct or service. Even if this is the case, the client is likely to be confused and angry, and the solicitor has a professional responsibility to explain the situation clearly to the client.
This is where the important concept of ‘client care’ comes in (this concept is looked at in more detail at para 1.6 below) As the client care guide issued by the Office for the Supervision of Solicitors in England and Wales states:-

“There is more to being a professional than just doing a technically competent job. The client must also know that the job was done well. Convincing the client of this is not easy. (...) providing even the best professional services can have an unhappy ending. The most successful professionals do, however, manage to convince their clients that even when they have lost, they have had a good service.”

When asking why clients complain, one must also ask what it is that the client wishes to see happen as a result of his/her complaint. Does s/he want compensation, to see the solicitor disciplined, or simply to force an apology or an explanation from the solicitor? The answers given in Table 28 on page 49 provide some insight as to what clients want to see happen as a result of their complaint.

There is a distinction here between issues of compensation and of discipline. In some cases, all the complainer wants is for the solicitor to be disciplined for the way s/he has behaved. This can only happen where the client is complaining about the solicitor’s conduct. In others, the client simply wishes to be compensated for a loss which s/he has suffered as a result of the solicitor’s poor service. Often, it may be that the client believes the solicitor has not acted as s/he should have done, and wishes to have this view confirmed by the solicitor’s disciplinary body.

As discussed at para 1.8 below, one difficulty for clients is the confusing categorisation of different types of complaint used by the Law Society. Although the Society is required by law to distinguish between conduct and service by law, the client is unlikely to know or indeed to care whether the complaint relates to IPS, negligence or misconduct. It is likely that in most cases, the client simply wants the matter to be resolved.

1.6 Solicitors firms and client care

The findings of our survey, which are contained in chapter 2, suggest that many complaints might be avoided if dealt with at an early stage. This is because such a high proportion of complaints appear to relate to the service provided by solicitors.
Many complaints, for example, can stem from something as simple as a misunderstanding over the amount of the solicitor’s bill. It might therefore be assumed that some of these complaints could be avoided if solicitors were to try to improve the quality of their service and procedures at the outset of the solicitor-client relationship. In other words, these solicitors need to improve their ‘client care’.

In our 1995 survey on client care by solicitors, we wanted to assess the extent to which solicitors were considering this ‘client care’ aspect of their service to clients. We found that only 7% of clients questioned felt that they had some reason to be dissatisfied with the service provided by their solicitor.

However, we concluded that this did not mean there was no room for improvement, particularly as many of those who were dissatisfied did not complain. We made various recommendations at that time to solicitors themselves and to the Law Society as to how things could be improved.

In particular, we recommended that solicitors should, after the first meeting with a client, send to the client as a matter of course a letter confirming what had been agreed, and the fees to be charged. The use of such ‘letters of engagement’ should ensure that both parties clearly understand what work the client has asked the solicitor to do, the solicitor’s general terms of business, and how much the work is likely to cost.

The Scottish Legal Services Ombudsman (see para 1.10 below) has also recommended that the Law Society should introduce a practice rule making the use of such letters compulsory. This recommendation was made on the basis that many of the complaints which end up with the ombudsman could have been avoided had such a letter been issued at the start of the solicitor-client relationship.

The use of letters of engagement is a requirement in England and Wales. However, while the use of such letters is recommended by the Law Society of Scotland as good practice in its Better Client Care and Practice Management guidance manual, the Society has not made this mandatory. This is because the Society believes that encouraging solicitors to see the benefits of using such letters is more effective than forcing them to do so.

When a solicitor’s client is not satisfied with the solicitor’s conduct or the service s/he provides, it seems logical that the first step which the client would wish to take would be to air the grievance to the solicitor or firm concerned. In this way, the problem might be dealt with efficiently at an early stage, without the need to take it further.
This would also, of course, be in the interest of the solicitor’s firm. Aside from saving time and money, solicitors often have an ongoing relationship with their clients, and would presumably wish to preserve this. Moreover, solicitors tend to rely on existing clients to recommend them to others. It would therefore follow that evolving efficient complaints procedures is an important aspect of practice management by solicitors’ firms.

In 1995, the Law Society published its *Better Client Care and Practice Management* guidance manual, which was distributed to all of its members. The manual covers various aspects of client care, including keeping the client informed, and the best ways of relating to clients. It also includes aspects of practice management, such as keeping track of files, and training of staff.

A recurring theme throughout is the importance of client care, as a means of keeping clients satisfied, and avoiding complaints. In particular, the manual contains a chapter on how to deal with dissatisfied clients. This suggests that each firm should nominate one partner to be responsible for dealing with such clients, to be known as the *client relations partner*. S/he is responsible for trying to resolve such difficulties in “an appropriate way”.

The manual contains general advice for the client relations partner, stressing the importance of attempting to resolve the matter within the firm. There is particular emphasis on dealing with complaints without delay, and on carrying out a full investigation in each case.

It is also suggested that there should be a reserve client relations partner in case the problem directly involves the client relations partner. Where a solicitor is in business on his/her own, it is suggested that s/he may agree with another sole practitioner to “swap” complaints, or to seek help through the local faculty of solicitors.

However, the manual remains for guidance only. While the Law Society has tried to encourage the introduction of internal complaints procedures, this has been left up to individual firms to decide upon. It is not compulsory for firms to appoint a client relations partner, or indeed to have any form of internal complaints procedure. The Law Society estimated in 1995 that only around 50% of firms had followed the guidance and appointed a client relations partner.

In England and Wales, by contrast, the Law Society’s Practice Rules have, since 1991, included a ‘client care’ rule. This provides that every firm must have an in-house complaints procedure, and that every client must be made aware of the name of the person within the firm designated to deal with complaints.
The Law Society of Scotland acknowledges that many complaints could be avoided if problems were resolved early on within the solicitor’s firm itself. Indeed, staff from the Society’s Client Relations Office have pointed out to solicitors that the use of effective complaints handling procedures can, by resolving matters at an early stage, turn a dissatisfied client into a satisfied client, thereby preventing them from taking further action.\textsuperscript{11}

The introduction of such a ‘client care’ rule into the Scottish solicitors’ practice rules would be one way of encouraging solicitors to improve their complaints handling procedures. This would be likely to yield benefits for both the solicitor and the client. As the foreword to the Better Client Care and Practice Management guidance manual states:-

\textit{“Surveys show that most new business comes from previously satisfied clients and from those to whom the firm has been recommended. Conversely it is said that one dissatisfied client tells another nine friends and acquaintances of his or her dissatisfaction. It follows therefore that for private firms good client care practices should retain existing clients and help to attract new ones.”}

1.7 \textbf{Types of complaint}

A complaint made to the Law Society about a solicitor may relate either to the quality of the service provided by the solicitor, or to his/her conduct. In some cases, there are elements of both. A complaint may also involve allegations of professional negligence by the solicitor.

The difficulty facing the dissatisfied client is that, while s/he may believe that s/he has cause for complaint about a solicitor, a ‘complaint’, as understood by the Law Society, must fall into one of the various categories of complaint dealt with by the Society’s procedure.

The present system breaks complaints down into a number of categories according to their nature. This can be very confusing for those who complain. The complainer simply feels that s/he has cause for complaint, and is unlikely to be concerned as to how that complaint is labelled. However, each complaint must be categorised before the matter can be taken any further by the Law Society.
The dividing line between the different sub-categories of complaint is often difficult to draw. Moreover, the way in which a complaint is defined at the outset can affect the outcome of the complaint. For example, the complainer, if successful, will only be entitled to compensation if the complaint is categorised as a matter of service provided, not if it relates to the solicitor’s conduct.

The various sub-categories of complaint, as defined under the current system, are examined below.

a) Professional negligence

Where a client believes that his/her solicitor has acted in a negligent fashion, resulting in that client suffering a financial loss, the complaint may amount to one of professional negligence. If this is the case, the client’s remedy will generally be to take the solicitor to court to sue him/her for damages.

The general rule here is that the Law Society will not deal with a complaint about professional negligence by a solicitor. Where the client has raised a court action, or intimated a formal claim, for negligence, the Law Society will put on hold any investigation of the complaint until the court action has been concluded. This situation is made clear to potential complainers by the Society.

The reason for this policy is that the Society believes it is likely that the substance of the negligence case is likely to be the same as that of the complaint, and that it is therefore possible that the court action may resolve the matter. However, it may be some years before the court action is concluded.

In many cases, a client may have little choice but to bring a court action for professional negligence against the solicitor. Where a client has suffered a financial loss as a result of the solicitor’s actions, the Law Society has powers to award compensation, but only up to a maximum of £1000. If the loss is more substantial, court action is the only means of obtaining greater compensation.

If a client contacts the Society with a concern about potential negligence, they are given details of three local solicitors who may be able to advise them about this. If at this stage, a client has been unable to find a solicitor to provide such a service, the Society will offer to put him/her in contact with one of its panel of ‘troubleshooters’. These are solicitors who will advise complainers in the first instance as to whether or not they have a potential claim for cases of negligence. The Law Society will, in appropriate cases, pay for the client to have up to two interviews with the troubleshooter.
After investigating the matter, the troubleshooter may, if s/he believes there is a potential negligence claim, s/he may decide to act on behalf of the complainer. The Law Society has no further involvement in the case, at least until the negligence action is over. There were 27 referrals to troubleshooters during 1997.

b) Professional misconduct

This term has been defined by the Court of Session as follows:-

“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct.”

Examples of professional misconduct might include breach of a client’s confidentiality by a solicitor, or a solicitor acting for both parties in a situation where there is a clear conflict of interest.

In order to make a finding of professional misconduct, the case against a solicitor must be proved ‘beyond reasonable doubt’. This is the same standard of proof which is required in criminal court cases, and is accordingly a very high standard.

As this is a conduct matter, no compensation is payable to the complainer, even if the solicitor is found to be guilty of professional misconduct. **However, it should be noted that many complaints have elements of both misconduct and service.**

c) Unprofessional conduct

This is defined by the Law Society as conduct which falls short of professional misconduct but which is nevertheless disapproved of by the Society. Examples might include minor breaches of the practice rules, rudeness to a client, or delay in responding to requests for information by the Law Society.

In some cases, a finding of unprofessional conduct may be made where the conduct is ‘serious and reprehensible’ enough to warrant a finding of professional misconduct, but this cannot be proved beyond reasonable doubt.

Again, no compensation is payable to the complainer, even if the solicitor is found to be guilty of unprofessional conduct. **Again, however, a complaint relating to unprofessional conduct may also include an element of service.**
d) Inadequate professional services (IPS)

The code of conduct for solicitors requires every solicitor to provide ‘adequate professional services’. However, until 1988, the Law Society had the power to deal only with allegations of professional misconduct and unprofessional conduct, but not with complaints about the service provided by a solicitor.

Since 1988, the Society has also had the power to deal with complaints about “inadequate professional services” (IPS), which do not involve misconduct. These are defined as:-

“professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor”.

IPS might include, for example, delay in dealing with a case, or failing to keep a client sufficiently informed as to the progress of their case. Since the concept of IPS was introduced, it has led to a considerable increase in the number of complaints made to the Law Society.

A substantial number of complaints made actually involve elements of both IPS and misconduct. The distinction between misconduct and IPS can be difficult to draw in some cases. In fact, some cases now dealt with as matters of service under IPS may, prior to 1988, have been categorised as unprofessional conduct.

Where a complaint of IPS is upheld, the Law Society has power to order the solicitor to compensate the complainer in various ways. The Society can, for example, reduce or waive the solicitor’s fee for the work done, or order him/her to rectify any mistakes at his/her own expense. The Society also has the power to order the solicitor to pay the complainer compensation of up to £1000.

Numbers of complaints by type

The rough numbers of each type of complaint dealt with by the Law Society may be seen from the breakdown of complaints received in 1997, as shown in the table below. From this table it may be seen that the majority (56%) of complaints received during the year were categorised as ‘suitable for conciliation’.
This is the Law Society’s own categorisation, and does not, at first glance, appear to relate to the categories outlined above. **However, this category includes all cases of IPS, ie service only matters, where the following apply:-**

1) the client has not spoken to the client relations partner of the firm, if there is one, and

2) the Society believes that the matter may be resolved without the need for a formal written investigation.

Conciliation is looked at in more detail at para 1.8.

<table>
<thead>
<tr>
<th>CATEGORY OF COMPLAINT</th>
<th>PERCENTAGE OF TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suitable for conciliation</td>
<td>56%</td>
</tr>
<tr>
<td>Misconduct</td>
<td>17%</td>
</tr>
<tr>
<td>Misconduct and IPS</td>
<td>13%</td>
</tr>
<tr>
<td>IPS unsuitable for conciliation</td>
<td>13.5%</td>
</tr>
<tr>
<td>Negligence</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

1.8 **The Law Society’s present procedure for handling complaints**

The Law Society has a Client Relations Office to deal with complaints. This office deals with written complaints from members of the public about the professional conduct of solicitors and /or the services which they provide.

This office has, since October 1998, been staffed by six Deputy Secretaries (five at the time of our survey), all of whom are qualified solicitors, who have also been trained in mediation skills. **They are assisted in their work by seven full-time, and now (since the time of our survey) four part-time, word-processor operators.**

The Deputy Secretaries receive and investigate complaints about solicitors, and in many cases, assist in resolving complaints informally (known as conciliation). Where this is not possible, they carry out a formal written investigation through correspondence with both the complainer and the solicitor. If the case is not otherwise resolved during this time, a report is then prepared for consideration by one of the Society’s complaints committees.

The Society has no formal written procedure for handling complaints. The procedures currently followed by the Client Relations Office have simply evolved over time. The Society believes that the flexible nature of these procedures is important, given its emphasis on resolving complaints informally, where possible.
However, from the complainer’s point of view, these procedures are complex, difficult to follow and vary according to the nature of the complaint. In preparing this report, an attempt was made to outline the various procedures in a flowchart; however, given their complicated and ad-hoc nature, this proved too difficult to achieve. The various steps of the procedure are as detailed below:

**a) Initial investigation**

When a member of the public telephones the Law Society about making a complaint, s/he is advised that complaints can only be dealt with if put in writing. S/he is also advised that, before doing so, it may be helpful to discuss the matter with the client relations partner of the firm. In cases where no client relations partner has been nominated by the firm, it is suggested that they speak with the senior partner. Where the solicitor involved is in practice on his/her own, the client is advised to contact this sole partner, as the complaint may be about an assistant solicitor, rather than the partner him/herself.

The Law Society generally point out at this stage that experience shows speaking first to the firm involved is often the quickest and easiest way to resolve the difficulty. Taking the complaint back to the firm is suggested in all cases where the Deputy Secretary believes the complaint is capable of being resolved without a formal investigation.

However, this applies only to cases of IPS. In cases where it is clear from the outset that there is an issue of professional misconduct, the complainer is always advised to put the complaint in writing. Because there is a discipline element to this type of complaint, the Law Society is always required to carry out a formal investigation.

**When does a complaint become a complaint?**

At this stage, the enquiry is not registered as a complaint. No note is kept of telephone calls, or whether they are followed up by written complaints at a later date. This means that if the complainer does not return to the Law Society at a later stage, his/her initial enquiry is not recorded as a complaint in official statistics.

**Receipt of the ‘complaint’**

When a letter is received from a member of the public, or a solicitor, which appears to be a complaint, the Deputy Secretary first considers whether it is, in fact, a complaint. This involves deciding, firstly, whether the complainer has an “interest”, and secondly, whether they are in fact making a complaint. For example, it may be that a complainer is in fact unhappy about the outcome of a court case, rather than with the way this was conducted by the solicitor.
In cases where a complainer has difficulty in expressing the complaint in writing, or where the Law Society feels that the complaint has not been fully set out, s/he may be invited to fill out a ‘help form’ (reproduced at Appendix 3) or to meet with the Society’s complaints investigator, who is a lay person employed by the Society.

The complaints investigator will help the complainer by taking a statement from him/her, detailing the reasons for the complaint. S/he will normally interview the complainer personally. The investigator also deals with telephone calls from members of the public asking for general assistance or enquiring about making a complaint. He cannot, however, provide legal advice.

If it is clear that, in addition to a complaint about misconduct and/or IPS, the complainer has begun legal action against the solicitor in respect of professional negligence, the Law Society will not investigate the complaint until the court action is over, or a settlement reached. If there is a question as to negligence, the Society will assist him/her to find a solicitor who can advise as to whether s/he has a potential claim.

If, however, the complainer decides s/he does not wish to pursue a court action, the Law Society will agree to investigate, while making clear to him/her that the maximum amount which the Society can award in compensation is £1000.

(Note: it should also be noted that if any legal action is underway which relates to the matter, the Law Society will not investigate the complaint until this is over. For example, the solicitor may have raised a court action against the complainer for payment of fees. If s/he agrees to pay the fees, the Law Society will deal with the complaint. If this is upheld, the Society can refund this money to the complainer. Otherwise, the complaint must be put on hold until the court action is over).

b) Conciliation (IPS cases only)

The policy of the Law Society in recent years, in cases of alleged IPS only, has been to try, if possible, to ensure that the parties resolve matters informally. Since 1996, one Deputy Secretary has been engaged full-time in conciliation, leading to an increase in the number of cases dealt with in this way.

The Law Society has recently agreed with the Scottish Legal Services Ombudsman a definition of the term ‘conciliation’, as the term is understood by the Society. This defines conciliation as the resolution of a complaint without the need for a formal written investigation. Conciliation is a voluntary process, and either, or both, of the parties may refuse to participate.
It seems that ‘conciliation’ can have two possible meanings depending on the circumstances:-

1) If it appears from the complainer’s letter that the problem has not been discussed with the solicitor, the matter is sent back to the firm with a request that the firm contact the complainer to discuss the matter with a view to resolving it informally.

2) If either party is unwilling to agree to such a discussion, or where the solicitor is a sole practitioner, the Deputy Secretary will try to resolve the matter by conciliation, discussing the case with both the complainer and the solicitor.

If matters are resolved by conciliation, either by the firm or by the Law Society, the Society’s file on the matter is closed.

The conciliation process usually takes around 3 months. **However, it can take up to a year depending on the nature and complexity of the case. For example, where the complaint relates to an executry or a complicated court case, the process may be longer.**

c) Written investigation

Where conciliation has been unsuccessful, or where the complaint relates to a solicitor’s professional conduct or to both conduct and service, the Law Society will investigate the matter further. First of all, the Deputy Secretary writes to both the complainer and the solicitor setting out the details of the complaint.

Both parties are then given the chance to respond with their views as to this version of events. The complainer is not routinely advised that s/he may take independent advice about this. However, in certain circumstances, the Law Society may suggest that s/he speaks with the complaints investigator or the citizens’ advice bureau.

There then follows an exchange of letters between the parties, as the Law Society attempts to establish the full background to the complaint. If the complaint involves IPS, the Law Society asks the solicitor to surrender the client’s file. The Society has a statutory power to require the solicitor to do so.16

The written investigation takes on average 6-8 months, sometimes longer. Once the matter has been fully investigated, the complaint may be referred to one of the Society’s three complaints committees.
d) Reporting

Once the investigation has been concluded, a report is prepared by a Law Society reporter. The reporter may be either a member of a complaints committee, or an outside reporter. S/he may be either a solicitor or a lay person. Until May of this year, there were around 55 reporters, most of whom were committee members. Since that date, there have been around seventy reporters in total. Reporters receive some initial and ongoing training from the Law Society, and are unpaid.

The first part of the report sets out the heads of complaint and the facts and circumstances of the case. Once this has been prepared, both the complainer and the solicitor are invited to comment upon it, to ensure that the nature of the complaint and the facts have been fully understood by the reporter. Once any comments have been received, the reporter forms an opinion on the complaint.

In certain cases, two independently prepared reports, one from a qualified solicitor and one from a lay member, are obtained. This happens where the complaint involves a firm which is represented on the Law Society’s Council or of one of its complaints committees.

There is a guideline of 30 days for the preparation of reports, although this period may require to be extended if the complaint is particularly detailed or complex. The parties are then given 14 days to comment on the report. Again this period may be extended in some circumstances. The reporter then delivers an opinion within around 4-6 weeks.

e) Disposal

How the matter is then disposed of depends on the opinion of the reporter, and the type of complaint.

If the reporter is of the view that a complaint should not be upheld, the matter does not require to go to a committee. The report is considered by a Deputy Secretary, and if s/he is satisfied that the complaint has been properly considered, and that the opinion is fully reasoned, the file is closed.

If the complaint relates to service only, and is upheld, the reporter’s opinion is put to both sides. If both parties accept the opinion, this is considered an informal resolution of the matter, and the file is closed.

However, if either party does not accept the opinion, the matter is referred to a committee. Equally, in cases where the reporter recommends a finding of either unprofessional conduct or professional misconduct, the matter must go to a committee for determination.

COMPLAINTS ABOUT SOLICITORS
Complaints committees

At the time of the study, there were three complaints committees, each comprising ten solicitors and four lay members. (Since June 1998, the committees have been split into conduct panels and service panels, dealing with matters relating to conduct and to service respectively. These panels consist of three solicitors and two lay members, and two solicitors and two lay members respectively.)

The lay members are intended to help achieve a balance on the committee. They are present in order to help the committee deal with complaints in an impartial manner, given that they will look at matters from the point of view of the lay person, rather than that of the solicitor.

**In conduct cases, the committee considers whether the parties should be permitted to make written representations. Generally, this is permitted where new factual issues have emerged from the reporter’s investigation. The complainer is given the opportunity to comment before a decision is taken. Such representations must be in writing; the committee never sees complainers or solicitors personally.**

The reason for this, according to the Law Society, is that if the complainer were allowed to appear before the committee, then in the interests of fairness, the solicitor would also have to be given the opportunity to do so. This would be likely to lead to lengthy delays in the process. It would also be unfair, and to the solicitor’s advantage, given that the complainer may not be represented.

However, in certain circumstances, the solicitor is called before the committee for a ‘fact-finding interview’. The solicitor is not compelled to attend, but if s/he does so, the complainer is not entitled to be present. However, any new information which comes to light as a result of this interview is made known to the complainer, who is then given the opportunity to comment on this.

The only situation in which representation is permitted is where there is a recommendation before Council that a solicitor be prosecuted before the Scottish Solicitors’ Discipline Tribunal. (See para. 1.9) This is looked at in more detail below.
Disposals which may be made by a committee

There are various ways in which a committee may dispose of a complaint. The Law Society Council delegates power to the committees to make decisions about complaints on its behalf. The only exception is in those cases where the committee makes a recommendation that a solicitor should be prosecuted before the Scottish Solicitors’ Discipline Tribunal. (See para. 1.9) In such cases, this recommendation must be considered by the full Council.

A committee may dispose of a complaint in any of the following ways:-

1. **Dismissal of the case.**

2. **In cases of IPS, there are various sanctions which may be applied.** The committee can reduce or waive the solicitor’s fee for the work done, order him/her to rectify any mistakes at his/her own expense, and/or to pay the complainer compensation up to a maximum of £1000.

3. **A finding of unprofessional conduct.** The solicitor is told that this conduct is to be “deplored” or “regretted”.

4. **A finding of professional misconduct.** The sanctions applied here depend on the degree of seriousness, ranging from a reprimand and a warning, to a recommendation to Council that the solicitor be prosecuted before the Scottish Solicitors’ Discipline Tribunal.

Solicitors’ professional records

Where there is a finding of either IPS or unprofessional conduct, this finding is intimated only to the complainer and the solicitor involved. It is not noted on the solicitor’s professional record, or made public. In all cases of misconduct, the finding is put onto the solicitor’s personal record, and stays there for five years.

A solicitor’s professional record is held by the Law Society, and any findings of misconduct can significantly affect his/her career. However, the Law Society is not bound to disclose details of a solicitor’s record to members of the public. **The only exception to this rule is that the Society has a duty to hold a register of findings of the tribunal, which is available to the public on request.**
Recommendation of prosecution before the tribunal

Where such a recommendation is made, the matter is referred to the full Council for decision, rather than one of its committees. At this stage, the solicitor is entitled to make further representations in his/her defence. If s/he wishes to do so, these representations, which must be made in writing, are referred back to the committee for consideration. If these representations introduce new issues of fact, the complainer is invited to comment.

The matter is then referred back to the full Council. The solicitor may instruct a member of the Council to represent him/her before the Council. The complainer is not entitled to be present, or to be represented. In the Law Society’s view, the convener of the complaints committee in effect represents the interests of the complainer, by speaking in support of the recommendations for the reasons for the recommendation.

The complainer is not entitled to be present or represented because the finding of misconduct has already been made, and only the sanction to be applied (ie. referral to the tribunal) is under discussion. The analogy used by the Society here is that of the victim in a criminal court case, who has no say in the sentence passed on the accused.

This means that the punishment is not for the complainer to decide, but must be determined by the Council. The complainer is simply giving evidence, in writing. The hearing before Council is entirely a matter of disciplining the solicitor. Any redress which the complainer might be entitled to in respect of an inadequate professional service is considered separately by the committee.

Outcome of complaints  (see table below)

A total of 1470 written complaints were disposed of by the Law Society in 1997. Of these, 1062 were dealt with without reaching committee stage. In a significant proportion of these cases, the complainer abandoned the complaint (171), or a decision was taken by the Law Society to take no further action ie. there was deemed to be no complaint (247).

The majority (644) of complaints were dealt with by either informal ‘dispute resolution’ by the Law Society, or by conciliation by the solicitor’s firm. ‘Dispute resolution’ includes both those complaints resolved by conciliation by the Client Relations Office, and those resolved informally by the Law Society in other ways, after a written investigation has been commenced. This might involve, for example, negotiating a compromise figure in a dispute over a solicitor’s bill.
Only a minority (28%) of complaints reached committee stage. Of these, almost half resulted in IPS sanctions, and a further 31% were dismissed. There were 28 findings of misconduct, and 44 solicitors were censured ie. told their conduct was “deplored” or “regretted” by the Society. A total of 27 solicitors were sent for prosecution before the Discipline Tribunal.4

<table>
<thead>
<tr>
<th>OUTCOME</th>
<th>NUMBER OF COMPLAINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>No further action taken</td>
<td>247</td>
</tr>
<tr>
<td>Abandoned</td>
<td>171</td>
</tr>
<tr>
<td>Dispute resolution by Law Society</td>
<td>459</td>
</tr>
<tr>
<td>Conciliation by solicitors firm</td>
<td>185</td>
</tr>
<tr>
<td>Referred to committee</td>
<td>408</td>
</tr>
<tr>
<td>of which:</td>
<td></td>
</tr>
<tr>
<td>i. IPS sanctions</td>
<td>180</td>
</tr>
<tr>
<td>ii. Dismissed</td>
<td>129</td>
</tr>
<tr>
<td>ii. Finding of misconduct</td>
<td>28</td>
</tr>
<tr>
<td>iv. Censured</td>
<td>44</td>
</tr>
<tr>
<td>v. Prosecution before SSDT</td>
<td>27</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1470</td>
</tr>
</tbody>
</table>

1.9 The Scottish Solicitors’ Discipline Tribunal

The tribunal is a statutory body, which is entirely independent of the Law Society. A recommendation of prosecution before the tribunal is made only in cases where the committee considers the solicitor’s misconduct to be serious enough to bring the profession into disrepute.

Where the tribunal is satisfied that the solicitor is guilty of professional misconduct, it has various powers. It can order that the solicitor be struck off the roll, or suspended from practice, restrict his/her rights of audience in court, impose a fine of up to £10,000, and/or censure the solicitor.18 The tribunal also has power to make findings of inadequate professional services in cases referred to it when no finding of IPS has been made by the Law Society.

1.10 The Scottish Legal Services Ombudsman

If a complainer is unhappy about the way in which his/her complaint has been handled by the Law Society of Scotland, s/he can take the case to the Scottish Legal Services Ombudsman. The ombudsman can also investigate complaints about the unwillingness of the Law Society to investigate a complaint about a solicitor.
The ombudsman, who cannot be a solicitor, is appointed by the Secretary of State, and is entirely independent of the Law Society. In addition to dealing with Law Society complaints, the ombudsman’s role includes investigation of the handling of complaints by the Faculty of Advocates and by the Conveyancing and Executry Services Board.

However, the vast majority of complaints dealt with by the ombudsman relate to solicitors and the Law Society. In 1997, 98.5% of cases in which the ombudsman issued an opinion were Law Society cases. This is due to the fact that there are around 8000 solicitors in Scotland, far outnumbering the relatively small numbers of advocates, licensed conveyancers and executry practitioners.

The ombudsman cannot investigate the merits or legal aspects of a complaint against a solicitor, but can look into the way that a complaint has been handled by the Law Society. Any complaint to the ombudsman must be made within six months of the case being disposed of by the Law Society.

After investigation, the ombudsman’s opinion is sent to the complainer, the solicitor and the Law Society. If he upholds the complaint, the ombudsman can make various recommendations to the Law Society.

The ombudsman can recommend that the Law Society carries out a further investigation and/or reconsiders its decision. He can also recommend that the Society provides the complainer with further information and explanation about the initial complaint, and how it was dealt with. He may also recommend that compensation is paid to the complainer.

However, the Law Society is not obliged to follow these recommendations. If the Law Society does not accept a recommendation within three months, the ombudsman has the power to publish this fact in the national press.

In total, the ombudsman issued opinions in 128 Law Society cases during 1997. Of these, he recommended further action in 39 cases. The Law Society accepted two-thirds of these recommendations, either in whole or in part. Four recommendations were rejected, and there was no response from the Law Society in almost one-quarter of the cases.

The most frequent cause for criticism of the Law Society to date is that each head of complaint has not been addressed separately. For example, complaints have in the past been categorised as a ‘failure to communicate’ or ‘failure to advise’. We believe that the ombudsman’s criticisms have recently resulted in some improvement here, and the Law Society is now identifying each of the complainer’s specific concerns in more detail.
1.11 Methodology

The preliminary stage of this research was carried out between September 1997 and January 1998. This involved liasing with the Law Society of Scotland to agree on the methodology to be used in the study. During this initial phase, an Advisory Group was set up. The Group was comprised of staff and council members of the Scottish Consumer Council, two representatives from the Law Society (one staff member and one lay committee member nominated by the Society), and a former lay committee member. The Group met at regular intervals to discuss the progress of the research.

The survey of complainers took the form of a postal questionnaire, which is reproduced at Appendix 4. The Law Society agreed to dispatch the questionnaires on our behalf, as it was unable to disclose the names and addresses of complainers for reasons of confidentiality. A covering letter from the chairman of the Scottish Consumer Council, explaining the purpose of the study, was enclosed, and a freepost envelope was provided for respondents to return questionnaires directly to us.

Due to the nature of the study, and to encourage respondents to freely express their views about their experiences of the complaints system, questionnaires were kept anonymous and respondents were assured that their responses would remain confidential.

A pilot study, consisting of 30 questionnaires, was carried out in late January 1998. The questionnaires were sent to complainers whose cases were closed in January 1997. The cases for the pilot were selected by the Law Society to include examples of varying levels of satisfaction with the complaints process, among them some cases which had been taken to the Scottish Legal Services Ombudsman. Eleven responses were received and these were used to make further amendments to the final draft of the questionnaire.

The sample of the study itself consisted of all cases closed between 1 February 1997 and 28 February 1998. A total of 1,229 questionnaires were sent out in early March 1998 with a request that they be returned by the end of March. In cases where one person had made more than one complaint to the Law Society, more than one questionnaire was sent.

Of the questionnaires sent out, 62 were returned to the Law Society as the respondent was no longer at that address. When a complainer made their complaint through another solicitor, the name which appears on the Law Society’s files is that of the solicitor.
It is therefore likely that some questionnaires may not have reached the actual complainer in cases where the solicitors’ firm were unable to trace the client. The Law Society was unable to identify the exact number of questionnaires which were sent to solicitors’ firms, due to the time that this would involve. However, the Society has assured us that there were unlikely to be more than one hundred such cases.

A total of 415 completed questionnaires were returned, representing a response rate of 36% (excluding the 62 questionnaires sent back to the Law Society).

The results were analysed using SPSS (Statistical Package for Social Sciences). The results for all questions are given in percentages and numbers. Further analysis was also carried out to test for the association between answers to certain questions. A more detailed explanation of the methods used is contained in Appendix 5.

This study looks at the experiences of consumers using the Law Society’s complaints system. In selecting all cases closed during a particular one year period, the study is likely to be representative of those who have recently used the Society’s complaints system.

The sample used in this study is of a reasonable size. However, it must be acknowledged that, as with all surveys, there is a potential for bias regarding outcomes from response rates. Individuals who respond to questionnaires tend to have a reason for doing so. In this particular study, it is likely that those complainers who have had negative experiences were more keen to express their views and, therefore, respond to the questionnaire than those who have had positive ones.

Throughout the text of Chapter 2 of this report, we have quoted some of the views stated by respondents in the form that these appeared on the completed questionnaires. It should be pointed out that these views are, of course, entirely those of the individual respondents. While we have reproduced these quotes in full, it should be made clear that the Scottish Consumer Council does not endorse these views in any way.
2.1 Profile of respondents

Of the 1,229 questionnaires dispatched, a total of 415 were completed and returned. The sample selection and response rate are discussed further at Para 1.11.

The general profile of the respondents is shown in Table 1 below.

Table 1

<table>
<thead>
<tr>
<th>Your age?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 - 25</td>
<td>10</td>
<td>2.4</td>
</tr>
<tr>
<td>26 - 40</td>
<td>111</td>
<td>26.7</td>
</tr>
<tr>
<td>41 - 60</td>
<td>225</td>
<td>54.2</td>
</tr>
<tr>
<td>over 60</td>
<td>59</td>
<td>14.2</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>10</td>
<td>2.4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Are you male or female?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>251</td>
<td>60.5</td>
</tr>
<tr>
<td>Female</td>
<td>152</td>
<td>36.6</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>12</td>
<td>2.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Were you on Legal Aid?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>80</td>
<td>19.3</td>
</tr>
<tr>
<td>No</td>
<td>316</td>
<td>76.1</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>19</td>
<td>4.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

Over half (52%) of the respondents were aged between 41 and 60 years. More than one quarter (27%) fell within the 26-40 age group, while 14% were over 60 years of age. Very few respondents (2%) were under the age of 25. There were more male respondents (61%) than female (37%). Most respondents (76%) were not in receipt of legal aid, while 19% said that they were.
2.2 Type of legal work

We began by asking respondents about the type of legal work their solicitor was doing for them. The answers are set out in Table 2. Over one-quarter of respondents (26%) said that their solicitor was carrying out a conveyancing transaction for them. There are two likely explanations for this high proportion of conveyancing transactions.

Firstly, this finding is consistent with a consumer survey carried out in 1992 by the Scottish Office, which revealed that the highest proportion of those seeking legal advice had done so in connection with buying or selling a house. The findings of our 1995 survey demonstrated a similar pattern.

Secondly, many people will use a solicitor for the buying or selling of their house at least once, if not several times. Accordingly, people tend to become familiar with the process of conveyancing, and may, therefore, be more likely to complain when the standard of service provided falls below that which they expect.

Table 2

<table>
<thead>
<tr>
<th>What legal work did you ask your solicitor to do for you?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conveyancing</td>
<td>106</td>
<td>25.5</td>
</tr>
<tr>
<td>Wills / executry</td>
<td>55</td>
<td>13.3</td>
</tr>
<tr>
<td>Family</td>
<td>53</td>
<td>12.8</td>
</tr>
<tr>
<td>Claiming compensation for something not involving personal injury</td>
<td>35</td>
<td>8.4</td>
</tr>
<tr>
<td>Claiming damages for personal injury</td>
<td>23</td>
<td>5.5</td>
</tr>
<tr>
<td>Criminal</td>
<td>17</td>
<td>4.1</td>
</tr>
<tr>
<td>Debt / money problems</td>
<td>12</td>
<td>2.9</td>
</tr>
<tr>
<td>Other*</td>
<td>102</td>
<td>24.6</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>12</td>
<td>2.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

* ‘Other’ included sale of a business, advice about being a witness in a court case.

2.3 Reasons for being unhappy with the solicitor

We asked respondents to rate the three most important reasons why they were unhappy with their solicitor. The three reasons given most frequently were lack of communication, incompetence and delay. The responses are shown in Table 3. These responses are broadly consistent with the principal reasons for complaint contained in the Law Society’s own recent complaints statistics.
Table 3

<table>
<thead>
<tr>
<th>What were the reasons for you being happy with the service provided by your solicitor?</th>
<th>Most important</th>
<th>Second most important</th>
<th>Third most important</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Lack of communication</td>
<td>42</td>
<td>10.1</td>
<td>58</td>
<td>14.0</td>
</tr>
<tr>
<td>Incompetence</td>
<td>68</td>
<td>16.4</td>
<td>36</td>
<td>8.7</td>
</tr>
<tr>
<td>Delay</td>
<td>48</td>
<td>11.6</td>
<td>41</td>
<td>9.9</td>
</tr>
<tr>
<td>Failure to follow instructions</td>
<td>36</td>
<td>8.7</td>
<td>37</td>
<td>8.9</td>
</tr>
<tr>
<td>Poor advice</td>
<td>30</td>
<td>7.2</td>
<td>39</td>
<td>9.4</td>
</tr>
<tr>
<td>Solicitor’s behaviour</td>
<td>25</td>
<td>6.0</td>
<td>15</td>
<td>3.6</td>
</tr>
<tr>
<td>Over charging</td>
<td>26</td>
<td>6.3</td>
<td>15</td>
<td>3.6</td>
</tr>
<tr>
<td>Dishonesty</td>
<td>24</td>
<td>5.8</td>
<td>18</td>
<td>4.3</td>
</tr>
<tr>
<td>Other*</td>
<td>19</td>
<td>4.6</td>
<td>6</td>
<td>1.4</td>
</tr>
</tbody>
</table>

* ‘Other’ included bad advice, rudeness, losing deeds to a property, deceit, not dealing with the matter properly.

It should be emphasised that the answers given here reflect the respondents’ own interpretation of the headings provided in the questionnaire. In particular, those who answered ‘other’ were asked to specify what they actually meant, and it may be seen from the examples given above that many of these answers could in fact fall within some of the other categories suggested.

2.4 Information given by solicitors

Successive Citizens’ Charter guides on dealing with complaints (see Appendix 1) have recommended that information should be given by service providers to consumers at the outset of their relationship about what to do if things go wrong.

Our 1995 study on client care provided by solicitors in Scotland revealed that the majority (87%) of the solicitors surveyed informed their clients how to complain only when they had expressed dissatisfaction.

At that time, we noted that despite the existence of both the Law Society’s leaflet ‘Dissatisfied with your solicitor?’ and the Scottish Consumer Council / Law Society leaflet ‘Getting the Best from your Solicitor’, only 13.7% of solicitor respondents reported having a leaflet in their waiting room. As a result, we recommended to solicitors that they inform clients, at the start, what to do if dissatisfied.

However, the present findings reveal that solicitors are still not informing clients what they should do if they are unhappy with the service provided. An overwhelming majority of respondents (89%) said that when they first went to their solicitor they were not told what to do if they were unhappy with the service provided. (Table 4)
Table 4

<table>
<thead>
<tr>
<th>When you first went to your solicitor, were you told of what to do if you were unhappy with the service provided?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>15</td>
<td>3.6</td>
</tr>
<tr>
<td>No</td>
<td>368</td>
<td>88.7</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>32</td>
<td>7.7</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

2.5 The initial complaint

We asked the respondents to whom they first took their complaint. The answers can be seen from Table 5. Half of the respondents first complained to their solicitor, while one-fifth (20%) approached the Law Society first.

Table 5

<table>
<thead>
<tr>
<th>To whom did you complain first?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>My solicitor</td>
<td>207</td>
<td>49.9</td>
</tr>
<tr>
<td>The Law Society of Scotland</td>
<td>84</td>
<td>20.2</td>
</tr>
<tr>
<td>Someone else in my solicitor’s firm</td>
<td>49</td>
<td>11.8</td>
</tr>
<tr>
<td>A solicitor in another solicitor’s firm</td>
<td>36</td>
<td>8.7</td>
</tr>
<tr>
<td>An advice agency</td>
<td>15</td>
<td>3.6</td>
</tr>
<tr>
<td>Other</td>
<td>7</td>
<td>1.7</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>17</td>
<td>4.1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

* ‘Other’ included local MP, insurance telephone helpline, newspapers, the Scottish Legal Aid Board.

We asked those who first approached either their solicitor or someone else in the solicitor’s firm, what the firm did about the complaint. (Table 6) Very few respondents (3%) said that their solicitor/firm accepted that the complaint was justified and made amends. Just under one-quarter (22%) said that their complaint was investigated but not found to be justified, and an equivalent number said that the solicitor/firm refused to investigate the complaint.
It is significant here that the most frequent response, from 40% of those answering, was 'other'. When asked to explain this, 42 respondents (16% of those who first complained to the solicitor) said that they were completely ignored by the solicitor/ firm. Comments included:

“*They did not acknowledge nor reply to 3 letters over 8 week period. The chance of an answer would have been a fine thing.*”

“Nothing! *Did not reply to letters or phone calls until the Law Society involved.*”

“*Did not reply to my letter of complaint. As I did not receive a reply to my letter after a reasonable time (4 weeks) (...) I then complained to the Law Society. I did not feel that a partner in a reputable and well-known city firm should be allowed to treat a client in such a manner without bringing it to the attention of the Society.*”

In some of these cases, it may be that the solicitor had in fact attempted to deal with the complaint, but that this had not been adequately explained to the client. If this were the case, however, the client’s perception of the situation was clearly rather different.

**Table 6**

<table>
<thead>
<tr>
<th>What, if anything, did she/he/they do about it?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigated my complaint but did not accept my complaint was justified</td>
<td>55</td>
<td>21.7</td>
</tr>
<tr>
<td>Refused to investigate my complaint</td>
<td>55</td>
<td>21.7</td>
</tr>
<tr>
<td>Accepted my complaint was justified and made amends</td>
<td>8</td>
<td>3.2</td>
</tr>
<tr>
<td>Accepted my complaint was justified, but did not make amends</td>
<td>34</td>
<td>13.4</td>
</tr>
<tr>
<td>Other *</td>
<td>101</td>
<td>39.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>253</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 6 refer only to respondents who first complained to their solicitor or someone else in their solicitor’s firm.

* ‘Other’ - 42 people who replied ‘other’ said they were completely ignored. ‘Other’ also included “fob me off with a list of legal jargon”; “tried to stop my complaint to the Law Society”; “told me to change lawyers”.

COMPLAINTS ABOUT SOLICITORS
Respondents were asked to tell us what they thought of the answer they received from their solicitor. Some common issues emerged from these comments. Some respondents said that the solicitor was slow in responding to their complaint. Others felt that the solicitor did not take their complaint seriously, while some believed that when they took their complaint to the senior partner of the firm, s/he was very protective of the solicitor involved:

“The partner of the firm attempted to cover up the solicitor’s actions in dealing with my claim and complaint.”

“I believe that the senior partner was defending a younger inexperienced partner as he rejected my complaint, apparently without discussing it with my solicitor.”

2.6 Complaining to the Law Society

Respondents were asked how they found out that they could complain to the Law Society of Scotland. The responses are set out in Table 7.

The highest number (39%) replied that they already knew about it. A small proportion (7%) said that they found out through the Law Society’s leaflet ‘Dissatisfied with your solicitor?’.

Only a small minority (2%) said that they found out about complaining to the Law Society through their solicitor / solicitor’s firm. This provides further evidence that most solicitors are not informing their clients about what they should do if they wish to complain.

Table 7

<table>
<thead>
<tr>
<th>How did you find out about complaining to the Law Society?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I already knew about it</td>
<td>160</td>
<td>38.6</td>
</tr>
<tr>
<td>Through a friend / family member</td>
<td>71</td>
<td>17.1</td>
</tr>
<tr>
<td>Through a solicitor in another solicitor’s firm</td>
<td>61</td>
<td>14.7</td>
</tr>
<tr>
<td>Through an advice agency</td>
<td>49</td>
<td>11.8</td>
</tr>
<tr>
<td>Through the Law Society’s leaflet ‘Dissatisfied with your Solicitor’</td>
<td>27</td>
<td>6.5</td>
</tr>
<tr>
<td>Through my solicitor / solicitor’s firm</td>
<td>9</td>
<td>2.2</td>
</tr>
<tr>
<td>Other *</td>
<td>23</td>
<td>5.5</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>15</td>
<td>3.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

* ‘Other’ included the Law Society, MP, the ombudsman, estate agent, insurance helpline
The Law Society’s leaflet ‘Dissatisfied with your solicitor?’ (reproduced at Appendix 6) gives information on the reasons why people may wish to complain and what to do first. It goes on to describe the matters which the Society can and cannot deal with. The leaflet also provides information about the Scottish Legal Services Ombudsman.

We asked those who had seen the leaflet to tell us where they had obtained it. The responses can be seen from Table 8. Most of those who had seen the leaflet got it direct from the Law Society (28%).

Once a formal written investigation into a complaint has been commenced by the Law Society, a copy of the leaflet is always sent to the complainer together with the Society’s standard initial letter. It is surprising, therefore, that 37% of respondents replied that they did not remember having seen the leaflet.

The most likely explanation for this is that these people had in fact been sent the leaflet, but simply did not remember this. However, some respondents specifically commented that they had definitely never seen the leaflet.

It should also be pointed out that a high proportion of respondents (20%) did not answer this question. This may have been due to the wording of the question, which may have led only those who had seen the leaflet to answer it, although an option was also provided for those who had not seen it.

Only six respondents said that the leaflet was displayed in their solicitor’s office, while only two said that their solicitor / someone else in the solicitor’s firm gave them the leaflet. These findings suggest that the leaflet is not being handed out by solicitors to their clients, nor displayed in solicitors’ offices.

Table 8

<table>
<thead>
<tr>
<th>If you have seen the leaflet ‘Dissatisfied with your solicitor’, where did you get it?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I don’t remember seeing the leaflet</td>
<td>152</td>
<td>36.6</td>
</tr>
<tr>
<td>Directly from the Law Society of Scotland</td>
<td>118</td>
<td>28.4</td>
</tr>
<tr>
<td>From an advice agency</td>
<td>40</td>
<td>9.6</td>
</tr>
<tr>
<td>The leaflet was displayed at my solicitor’s office</td>
<td>6</td>
<td>1.4</td>
</tr>
<tr>
<td>My solicitor / solicitor’s firm gave me the leaflet</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>Other *</td>
<td>16</td>
<td>3.9</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>81</td>
<td>19.5</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

* ‘Other’ included the Legal Aid Board, a friend, sheriff officer, prison staff, library, post office.
We asked those who said they had seen the leaflet to describe what they thought of it. Many made positive comments:

“Comprehensive and easy to follow.”

“Simple, straightforward and well set out.”

However, others made negative observations about the leaflet. For instance, some said that it did not explain the procedure in sufficient detail:

“It does not explain the processes through their various committees.”

“Simplistic. Flow chart of all alternatives would have been helpful for pursuing a complaint.”

“Inadequate - no clues given about how to make a complaint, what the procedure is or how long it might take. Other respondents thought the leaflet was misleading:

“Very deceiving indeed when the Law Society failed to comply with it.”

“Sounds caring but should be more honest stating the solicitor will be believed over and above the client, that the client’s problems are not of paramount importance.”

2.7 Initial contact with the Law Society

We asked the respondents how they first contacted the Law Society. (Table 9) The majority (61%) first contacted the Law Society with their complaint in writing. The second most frequent response was contacting the Law Society by telephone in the first instance (32%).
As explained at Para 1.8, the Law Society will only deal with a complaint once it has been made in writing. Until then, an enquiry is not identified as a ‘complaint’. It is clear from the above figures that the first instinct of one-third of complainers, who later followed up their complaint in writing, was to contact the Law Society by telephone. Unfortunately, as no note is kept of telephone calls, the number of people who may have initially contacted the Law Society by telephone, but did not pursue their complaint, can only be speculated upon.

We then asked respondents if they had experienced any difficulties in making initial contact with the Law Society. The figures in Table 10 indicate that most complainers (92%) did not have difficulties in making initial contact with the Law Society’s staff to make the complaint. We asked those who had difficulties to let us know what the problem was. Comments made included:

- “Trying to fob me off”
- “Staff shortages”
- “Any period of time I phoned to ask for the person dealing with my complaint (...) I could never be able to talk to him.”

Table 9

<table>
<thead>
<tr>
<th>How did you first contact the Law Society about your complaint?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>In writing</td>
<td>254</td>
<td>61.2</td>
</tr>
<tr>
<td>By phone</td>
<td>133</td>
<td>32.0</td>
</tr>
<tr>
<td>Someone else contacted the Law Society on my behalf</td>
<td>11</td>
<td>2.7</td>
</tr>
<tr>
<td>In person</td>
<td>6</td>
<td>1.4</td>
</tr>
<tr>
<td>Other *</td>
<td>3</td>
<td>0.7</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>8</td>
<td>1.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

* ‘Other’ - the three responses were: fax, lay observer (ombudsman), MP.

Table 10

<table>
<thead>
<tr>
<th>Did you have difficulties in making initial contact with the Law Society’s staff to make the complaint</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>26</td>
<td>6.3</td>
</tr>
<tr>
<td>No</td>
<td>381</td>
<td>91.8</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>8</td>
<td>1.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>
2.8 Taking the complaint back to the solicitor’s firm

When the Law Society first receives an enquiry from a member of the public about making a complaint, the Client Relations staff usually advise that s/he should first take his/her complaint back to the solicitor, or to the client relations partner of the solicitor’s firm, if there is one. This is done in all cases of IPS where it is considered appropriate by the Law Society. This is explained further at para 1.8.

When asked if the Law Society advised them to take the complaint back to the solicitor/solicitor’s firm, 41% said that they were advised to do so. (Table 11)

Table 11

<table>
<thead>
<tr>
<th>Did the Law Society advise you to take your complaint back to your solicitor/solicitor’s firm before they agreed to investigate it?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>168</td>
<td>40.5</td>
</tr>
<tr>
<td>No</td>
<td>228</td>
<td>54.9</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>19</td>
<td>4.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

Respondents were asked to comment on this advice. Many people said that they did not find this advice helpful. The Law Society tell us that they always emphasise to callers that it is not compulsory to take the complaint back to the firm if they do not wish to. However, there is evidence that some respondents felt that they had no option but to take the advice, as this was part of the Law Society’s procedure:-

“I felt they were reluctant to get involved. This only led to further delays, but I assumed this was the procedure which must be followed.”

“I took this advice, feeling I had no option but to do so. I regret having done so. It was a waste of time. The company would go to any lengths to avoid an admission of fault. They ducked and dived for months through a protracted correspondence described as ‘conciliation’ which actually just meant ‘excuses and self justification’.”
Some respondents said that they felt it was pointless to take the complaint back to the solicitor because they had already done so. Comments included:-

“I responded by saying that I felt that I was getting nowhere with the solicitor and had effectively hit a “brick wall”. Thus the advice I received would only be beneficial if I hadn’t pursued it as far as possible in the first place - in other words pointless.”

“Having already spent a considerable amount of time discussing my complaint with the solicitors, I felt it was a waste of time and only reluctantly agreed to it after making the Law Society aware of my feelings.”

However, others said that they believed the advice was helpful, for example:-

“I thought that it would maybe save me from having to take my complaint any further.”

Again, it must be borne in mind here that there may be many instances where the complainer contacts the Law Society by telephone, returns to the solicitor as advised, and in fact succeeds in resolving the difficulty informally. Equally, there may be cases where the complainer telephones the Law Society, and either does not contact the solicitor as advised, or does so and fails to resolve the matter, but does not return to the Law Society. As such cases are not registered as complaints; we have no way of knowing how many such cases there are, and whether or not such complainers are happy with the outcome.

It should be noted that over half (55%) of the respondents said that they were not advised to take the complaint back to the solicitor / solicitor’s firm. There are two likely explanations for this. Firstly, as already pointed out, this advice is not given in misconduct cases. Secondly, (although many of the comments made suggest otherwise) in cases where the Law Society was aware that the complainer had already taken the matter back to the solicitor/ firm, they would not normally advise him/her to do so again.
2.9 Information about the complaints procedure

We asked respondents whether they were given initial written information about how the complaint would be handled, besides the leaflet ‘Dissatisfied with your solicitor?’ More than half (54%) said that they did get initial written information, but a significant number (40%) said that they did not. (Table 12)

It is likely that the answers to this question depend upon how each individual respondent understood the question. It also depends on whether the case is one which the Law Society considers ‘suitable for conciliation’.

Where the latter applies, the Society sends a letter to the complainer advising that they have written to the client relations partner of the firm, asking them to contact the complainer. This letter is reproduced at Appendix 7. At this stage, the complainer is sent no further information.

In non-conciliation cases, the complainer is sent a letter setting out the details of the complaint, explaining that the Society has written to the solicitor, and that a copy of any response will be sent to them (reproduced at Appendix 8). With this letter, a copy of the leaflet ‘Dissatisfied with your solicitor?’ is also sent.

Therefore, the only written information usually received by the complainer, aside from the leaflet ‘Dissatisfied with your solicitor?’, would be one of these two letters. Nothing further is sent to explain the procedure in any detail. It may be, therefore, that some respondents considered the letter received to be ‘written information’, whereas others did not. Some respondents may have been under the impression that further explanatory information about the procedure was available.

Table 12

<table>
<thead>
<tr>
<th>At the beginning, did the Law Society give you any written information on how your complaint would be handled (apart from the leaflet ‘Dissatisfied with your solicitor?’)?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>222</td>
<td>53.5</td>
</tr>
<tr>
<td>No</td>
<td>165</td>
<td>39.8</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>28</td>
<td>6.7</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>
When we asked respondents how clear the written information they received was, the majority (66%) of those who said that they had received initial written information, said that the information was very clear and that they understood it all. A further 26% said that the information was clear and they understood most things. (Table 13)

**Table 13**

<table>
<thead>
<tr>
<th>How clear was the information you received?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>The information was very clear, and I understood it all</td>
<td>146</td>
<td>65.8</td>
</tr>
<tr>
<td>The information was very clear, and I understood most things</td>
<td>57</td>
<td>25.7</td>
</tr>
<tr>
<td>The information was confusing, and I did not understand a great deal</td>
<td>14</td>
<td>6.3</td>
</tr>
<tr>
<td>The information was very confusing, and I did not understand it</td>
<td>5</td>
<td>2.3</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>222</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 13 refer only to respondents who said that they had received, at the beginning, written information on how the complaint would be handled.

We asked respondents how well they were kept informed by the Law Society throughout. Over half (57%) said they were kept very well or well informed throughout the complaints process.

However, 17% said they were kept badly or very badly informed throughout. A significant 23% were non-committal, saying that they were kept neither well nor badly informed. (See Table 14)

**Table 14**

<table>
<thead>
<tr>
<th>Overall, how well informed did the Law Society keep you throughout your complaint?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very well informed</td>
<td>110</td>
<td>26.5</td>
</tr>
<tr>
<td>Well informed</td>
<td>127</td>
<td>30.6</td>
</tr>
<tr>
<td>Neither well nor badly informed</td>
<td>93</td>
<td>22.4</td>
</tr>
<tr>
<td>Badly informed</td>
<td>36</td>
<td>8.7</td>
</tr>
<tr>
<td>Very badly informed</td>
<td>34</td>
<td>8.2</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>15</td>
<td>3.6</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>
We then asked respondents how clear they felt the letters they received from the Law Society were. Most respondents (78%) said that the letters were either very clear or clear. (Table 15)

Table 15

<table>
<thead>
<tr>
<th>Overall, how clear were the letters you received from the Law Society?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very clear</td>
<td>144</td>
<td>34.7</td>
</tr>
<tr>
<td>Clear</td>
<td>179</td>
<td>43.1</td>
</tr>
<tr>
<td>Neither clear nor unclear</td>
<td>41</td>
<td>9.9</td>
</tr>
<tr>
<td>Unclear</td>
<td>20</td>
<td>4.8</td>
</tr>
<tr>
<td>Very unclear</td>
<td>17</td>
<td>4.1</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>14</td>
<td>3.4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

2.10 Conciliation

In 1997, a total of 644 complaints made to the Law Society were disposed of either by conciliation involving client relations partners or through dispute resolution involving the Client Relations Office. Of these, 185 were resolved through conciliation by the complaints partner or senior partner of the solicitor’s firm, without the need for any formal written investigation. A further 459 were resolved by ‘dispute resolution’ by the Law Society. ‘Dispute resolution’ includes both conciliation and other informal methods of resolution by the Client Relations Office, after a written investigation has been commenced by the Law Society.

On receipt of a complaint of IPS, the Law Society will usually suggest conciliation between the complainer and the solicitor. This is not suggested, however, in cases of alleged misconduct, or where the complainer had already tried to resolve the matter informally with the solicitor. Where the complainer agrees, the Law Society will write to the solicitor asking the firm to contact the client to attempt to resolve the matter informally.

However, if either party refuses conciliation, where conciliation fails, or in cases where a solicitor is in practice on his/her own, the Deputy Secretary may intervene, and try to resolve the matter by mediating between the parties.
Respondents were asked if the Law Society had suggested a way of resolving their complaint informally. Just over half (51%) said that the Law Society had made such a suggestion to them. (Table 16)

Table 16

<table>
<thead>
<tr>
<th>Did the Law Society suggest a way of resolving your complaint informally?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>212</td>
<td>51.1</td>
</tr>
<tr>
<td>No</td>
<td>174</td>
<td>41.9</td>
</tr>
<tr>
<td>Don’t know</td>
<td>16</td>
<td>3.9</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>13</td>
<td>3.1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

We then asked those who said conciliation had been suggested to them whether this process involved the client relations partner / senior partner of the solicitor’s firm, or somebody from the Law Society. The majority of respondents (80%) said that it involved the client relations partner / senior partner of the solicitor’s firm. (Table 17)

Respondents who had been offered conciliation were asked whether they had found the process helpful. Although 47% said that they had, more than half of the respondents (53%) replied that they had not. (Table 18)

Table 17

<table>
<thead>
<tr>
<th>Did it involve:</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>The client relations partner / senior partner of the solicitor’s firm</td>
<td>161</td>
<td>79.7</td>
</tr>
<tr>
<td>Somebody from the Law Society</td>
<td>41</td>
<td>20.3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>202</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 17 refer only to those who were offered conciliation.
Table 18

<table>
<thead>
<tr>
<th>Was this process helpful?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>95</td>
<td>46.6</td>
</tr>
<tr>
<td>No</td>
<td>109</td>
<td>53.4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>204</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 18 refer only to those who were offered conciliation.

2.11 The help form

Where conciliation fails or is not considered appropriate, or where the case involves misconduct, the Law Society begins a written investigation of the complaint.

The Law Society has produced a help form (Appendix 3) to assist people to put their complaint in writing. The form is not offered to complainers as a matter of course. It is sent only in cases where the Law Society believes this would be useful, or where the complainer specifically asks for the form.

We asked complainers whether they had used the help form to make their complaint. Only 14% of respondents said they had used the form. (Table 19) Some stated that they had never heard of it, which indicates that complainers are not always informed of the existence of this form:-

“This questionnaire is the first indication I have had of the existence of such a form.”

“I did not even know that such a form existed until I read it here, in your form (...) Now I am beginning to wonder why that’s 2 items I knew nothing of.”

Table 19

<table>
<thead>
<tr>
<th>Did you use the HELP FORM to make your complaint?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>56</td>
<td>13.5</td>
</tr>
<tr>
<td>No</td>
<td>338</td>
<td>81.4</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>21</td>
<td>5.1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

COMPLAINTS ABOUT SOLICITORS
We asked those who had used the help form whether it assisted them in putting their complaint in writing. The majority of those who had used the help form (74%) said that they had found the form to be of assistance. (Table 20)

Table 20

<table>
<thead>
<tr>
<th>Did the HELP FORM assist you in putting your complaint in writing?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>40</td>
<td>74.1</td>
</tr>
<tr>
<td>No</td>
<td>14</td>
<td>25.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>54</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 20 refer only to those who used the help form.

We asked those who had used the help form what they thought of it. Some made positive comments about the form:-

“The form was very clear and easy to understand.”

“Very useful as points could be made without having to go into any length of explanation.”

“It assisted me by letting me know what information was required.”

One commented, however, on the poor appearance of the form:-

“Apart from its appearance (an overused photocopy of a photocopy), I have no criticism of the form.”
Although most people who used the help form thought it was helpful, some also pointed out negative aspects. Many said that they had already provided all the necessary information in a letter, and felt that the help form was, as one person said, “not altogether necessary”.

Comments included:-

“I felt that having already detailed my complaint in my letter to the Law Society, it shouldn’t have been necessary to write it all down again, albeit on a help form.”

“After writing to the Law Society a detailed letter, I expected someone to read it rather than sending me a short form.”

Another respondent described the form as “a typical lawyer’s form, not easy.”

Others commented that there was not enough space on the form to describe their complaint in detail, for example:-

“Though of assistance, could not possibly cover my complaint - full letter of explanation of the case was therefore required.”

“Useful, it made me condense what had happened into smaller paragraphs. However, so big was my complaint (...) that I felt I had to submit this document as well as all the correspondence that had gone before.”

2.12 The complaints investigator

The Law Society has one full-time complaints investigator, based in Edinburgh, who can meet complainers on an individual basis to discuss their complaint and assist them to put it in writing. In theory, the complaints investigator is available to all complainers if requested, and can make home visits. However, as a rule, complainers are encouraged to come to Edinburgh to see the investigator.
When asked, the majority of respondents (76%) said that they did not use the services of the complaints investigator. (See Table 21) Some respondents said that they had never heard of the complaints investigator and some also said that they would have liked to have been able to use this service:-

“I was not made aware of the ‘help’ form or the complaints investigator ie. that this person would help you to put your case on paper! Although I felt able to put my complaint in writing, I did think at the time that it would be a daunting task for many lay people.”

Table 21

<table>
<thead>
<tr>
<th>Did you use the services of the Law Society’s complaints investigator?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>67</td>
<td>16.1</td>
</tr>
<tr>
<td>No</td>
<td>315</td>
<td>75.9</td>
</tr>
<tr>
<td>Don’t know</td>
<td>18</td>
<td>4.3</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>15</td>
<td>3.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

Of those respondents who did use the service, the majority (69%) found the complaints investigator helpful (43% very helpful and 25% helpful). (Table 22)

Table 22

<table>
<thead>
<tr>
<th>How helpful was the complaints investigator?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very helpful</td>
<td>29</td>
<td>43.3</td>
</tr>
<tr>
<td>Helpful</td>
<td>17</td>
<td>25.4</td>
</tr>
<tr>
<td>Neither helpful nor unhelpful</td>
<td>10</td>
<td>14.9</td>
</tr>
<tr>
<td>Unhelpful</td>
<td>4</td>
<td>6.0</td>
</tr>
<tr>
<td>Very unhelpful</td>
<td>7</td>
<td>10.4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>67</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 22 refer only to those who used the complaints investigator.
Some respondents who had used this service said that they would have liked to use it more often. However, as the investigator’s main function is simply to take a statement from the complainer as to the details of his/her complaint, the service is intended for use on one occasion only by each complainer.

The data suggest that many complainers are not being told by the Law Society that the complaints investigator exists. Certainly, the service is not mentioned in the leaflet ‘Dissatisfied with your solicitor?’. This seems to be largely a problem of resources. The Law Society tell us that there are future plans to employ more investigators, in different areas of Scotland. This would make the service more accessible to complainers.

At present, however, it appears that, as a rule, Law Society staff suggest the investigator to complainers only in cases where they find it difficult to understand what the complainer has written.

2.13 Time taken to deal with the complaint

The Law Society has, at present, no performance standards regarding the length of time within which a complaint will be dealt with, although we understand this is currently being considered. The various Citizens’ Charter complaints guides (see Appendix 1) recommend that every organisation should have publicly stated time standards for acknowledging and responding to complaints.

It is also recommended that complainers should be kept informed of progress at regular intervals if deadlines cannot be met. However, the Law Society does not currently give any indication to complainers at the start as to how long it is likely to take to resolve their complaint.

We asked the respondents how long it took from their first approach to the Law Society with the complaint until it was closed. More than half (57%) said that it took up to one year, with 37% saying it took less than six months and 20% between six months and one year.

However, in a further 20% of cases, it took between one and two years for the complaint to be resolved, and a significant 17% of cases took over two years to be closed. (Table 23)

When asked whether the time it took to close their complaint was reasonable, there was a fairly even split between those who thought it reasonable (46%) and those who did not (48%). (Table 24)
Table 23

<table>
<thead>
<tr>
<th>How long did it take from first approaching the Law Society with your complaint until it was closed?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 6 months</td>
<td>152</td>
<td>36.6</td>
</tr>
<tr>
<td>6 months to 1 year</td>
<td>84</td>
<td>20.2</td>
</tr>
<tr>
<td>1 to 2 years</td>
<td>83</td>
<td>20.0</td>
</tr>
<tr>
<td>more than 2 years</td>
<td>71</td>
<td>17.1</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>25</td>
<td>6.0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 24

<table>
<thead>
<tr>
<th>Did you consider this a reasonable time?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>189</td>
<td>45.5</td>
</tr>
<tr>
<td>No</td>
<td>200</td>
<td>48.2</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>26</td>
<td>6.3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

For example, one respondent said:

“The Law Society dealt very quickly with our case. They contacted the solicitors’ firm on our behalf and ensured that a meeting took place. The Law Society also followed this up to enquire about the outcome.”

However, others said:

“I feel that the Law Society should have dealt with my complaint more speedily. They also should have insisted that the solicitors respond to their requests for information promptly.”

“The time the Law Society took to consider what was a relatively straightforward complaint was totally unacceptable and, in my view, affected the outcome as circumstances changed in the interim.”
We wanted to find out whether there was an association between the time it took for complaints to be closed and respondents’ views as to whether this was a reasonable time. We found (with a Chi-Square probability of <0.01) that there appeared, perhaps not surprisingly, to be a strong link between the time it took for a complaint to be closed and the complainer’s perception as to whether this was a reasonable time. The longer it took for a complaint to be closed, the less likely people were to think that it was a reasonable time.

Table 25

<table>
<thead>
<tr>
<th>Time taken to close complaint</th>
<th>Reasonable time</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Less than 6 months</td>
<td>136</td>
<td>12</td>
</tr>
<tr>
<td>6 months to one year</td>
<td>40</td>
<td>39</td>
</tr>
<tr>
<td>1 to 2 years</td>
<td>8</td>
<td>74</td>
</tr>
<tr>
<td>More than two years</td>
<td>3</td>
<td>67</td>
</tr>
<tr>
<td>Total</td>
<td>187</td>
<td>192</td>
</tr>
</tbody>
</table>

Most of those (92%) whose complaint took less than 6 months to finalise thought this was a reasonable time. Of those whose complaint took between 6 months and 1 year to be closed, around half thought this was a reasonable length of time. However, very few (7%) of the respondents whose cases took over a year to be closed thought that this was a reasonable time. (Table 25)

The findings would indicate, therefore, that the majority of complainers feel that up to a year is an acceptable length of time, but that longer than this is not.

We also asked how the time taken to close complaints compared with complainers’ initial expectations as to how long it would take the Law Society to deal with the case. The responses can be seen from Table 26. Almost half (46%) of the respondents said that the time taken to close their complaint was longer than they had expected initially (31% answered a lot more, 15% answered more).
Table 26

<table>
<thead>
<tr>
<th>How does this time compare with your initial expectations?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>A lot less than I expected initially</td>
<td>50</td>
<td>12.0</td>
</tr>
<tr>
<td>Less than I expected initially</td>
<td>27</td>
<td>6.5</td>
</tr>
<tr>
<td>Approximately what I expected initially</td>
<td>112</td>
<td>27.0</td>
</tr>
<tr>
<td>More than I expected initially</td>
<td>64</td>
<td>15.4</td>
</tr>
<tr>
<td>A lot more than I expected initially</td>
<td>128</td>
<td>30.8</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>34</td>
<td>8.2</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

We then analysed whether there was an association between the time it took to close the complaint and respondents’ initial expectations. Of those whose complaint took up to one year to be closed, 31% said it took less time than they had initially expected. A further 45% said it took about the same, and 23% said it took longer than expected.

Of those whose complaint took longer than one year to be resolved, only 4% said that it took less time to close than initially expected, 7% said it took about the same, and an overwhelming majority of 89% said it took longer. Again, the figures (Chi-Square probability of <0.01) indicate that there is a strong association between the time taken to close the complaint and respondents’ initial expectations. (Table 27)

Table 27

<table>
<thead>
<tr>
<th>Time taken to close complaint</th>
<th>Initial Expectations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Less</td>
</tr>
<tr>
<td>Up to one year</td>
<td>59</td>
</tr>
<tr>
<td>More than one year</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>75</td>
</tr>
</tbody>
</table>

The evidence suggests that delay has been a problem in the Client Relations Office for some time. The Scottish Legal Services Ombudsman refers in his most recent annual report to a “pattern of delay” by the Law Society. He suggests that the reason for this is that the current workload of the Deputy Secretaries is too demanding, and recommends that the Law Society reviews its resources to ensure complaints are dealt with quickly and effectively.
We are assured by the Law Society that ways of improving this situation are currently being considered. **An additional Deputy Secretary post in the Client Relations office was appointed in October 1998.** The Society is also advertising at the time of writing for new reporters, in recognition of the fact that delays within that part of the system are a significant problem.

There are a variety of factors which may contribute to delay. Firstly, delay is to an extent inherent in the current system. The Law Society is relying on both sides to respond to letters, although it does ask solicitors to contact the complainer within 14 days. If either or both parties fail to respond promptly, this can increase the time taken to process the complaint.

Other factors which the Law Society acknowledges can affect the length of time taken include the complexity of the complaint, the various stages through which the process itself must go, and the resources available. Also, in some cases, the reason for the apparent delay is that the file has been kept open, either because there is an ongoing negligence action to be dealt with first, or the complaint concerns an executry which has not been finalised.

### 2.14 Outcome of the complaint

We asked respondents what they wanted to happen as a result of their complaint. Various options were provided, and some respondents gave several different answers. These are shown in Table 28.

**Table 28**

<table>
<thead>
<tr>
<th>What did you want to happen as a result of your complaint?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>The mistakes made put right</td>
<td>161</td>
<td>38.8</td>
</tr>
<tr>
<td>Financial compensation</td>
<td>160</td>
<td>38.6</td>
</tr>
<tr>
<td>An apology from my solicitor / solicitor’s firm</td>
<td>159</td>
<td>38.3</td>
</tr>
<tr>
<td>A disciplinary action taken against the solicitor</td>
<td>158</td>
<td>38.1</td>
</tr>
<tr>
<td>My fees reduced / waived</td>
<td>154</td>
<td>37.1</td>
</tr>
<tr>
<td>An explanation about what went wrong</td>
<td>132</td>
<td>31.8</td>
</tr>
<tr>
<td>An assurance that what went wrong would not happen again</td>
<td>74</td>
<td>17.8</td>
</tr>
<tr>
<td>Other*</td>
<td>51</td>
<td>12.3</td>
</tr>
<tr>
<td>Don’t know</td>
<td>3</td>
<td>0.7</td>
</tr>
</tbody>
</table>

* ‘Other’ included:- information requested from the solicitor to be supplied, the solicitor’s professional body to be aware of his bad behaviour, recovery of my moneys.
The most common responses were:-

1. the mistakes made put right (39%)
2. financial compensation (39%)
3. an apology from the solicitor/ firm (38%)
4. disciplinary action against the solicitor (38%)
5. the fees reduced or waived (37%)
6. an explanation about what went wrong (32%).

Only three respondents said that they did not know what they wanted as a result of their complaint.

It is clear from these responses that in many cases, the outcome which the complainer wanted may well have been achieved at an earlier stage had the complaint been disposed of by the solicitor’s firm. For example, in those cases where the complainer simply wanted an explanation or an apology, it is possible that had this been established, and dealt with, at the start, a formal complaint could have been avoided.

We then asked respondents to tell us the actual outcome of their complaint. The responses are set out in Table 29. It should be noted here that some respondents gave more than one answer to this question.

While just under one-quarter (23%) of respondents said that their complaint was not upheld, the highest percentage (24%) of respondents answered ‘other’. The answers in this category were varied, but some common patterns emerged. Around one-fifth of these respondents gave answers which could have fallen under one of the other categories.

For example, some said that compensation had been awarded, but that they felt this was insufficient or “derogatory”. Others said that the compensation awarded had not yet been paid. Some said their complaint had been upheld, but the disciplinary action taken had not been severe enough.

Approximately 10% of those answering ‘other’ said that the matter had not been resolved, and a small number simply answered ‘nothing’. These figures provide some cause for concern, given that the complaints of all respondents in the sample had been closed by the Law Society. It is possible that these complaints had been resolved, but that the complainers did not understand what had happened.
It is interesting that in only 3% of cases did the solicitor/solicitor’s firm do or pay for some work to be done to put things right, when as we saw above, this was what the greatest proportion actually wanted to happen. Likewise, only 12% of respondents received an apology from the solicitor/solicitor’s firm, despite the fact that this was what 38% said they wanted. The other most common responses to the question were that compensation was paid (16%), the solicitor’s fees were reduced, and that an apology was received. In 8% of cases, disciplinary action was taken against the solicitor, and the solicitor’s fees were refunded in a further 8% of cases.

### Table 29

<table>
<thead>
<tr>
<th>Which of the following best describes the settlement of your complaint?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>My complaint was not upheld</td>
<td>97</td>
<td>23.4</td>
</tr>
<tr>
<td>I received a payment of compensation from the solicitor/solicitor’s firm</td>
<td>66</td>
<td>15.9</td>
</tr>
<tr>
<td>The fees I had to pay to the solicitor/solicitor’s firm were reduced</td>
<td>60</td>
<td>14.5</td>
</tr>
<tr>
<td>I received an apology from the solicitor / solicitor’s firm</td>
<td>50</td>
<td>12.0</td>
</tr>
<tr>
<td>I received an explanation about what went wrong</td>
<td>41</td>
<td>9.9</td>
</tr>
<tr>
<td>Disciplinary action was taken against my solicitor</td>
<td>35</td>
<td>8.4</td>
</tr>
<tr>
<td>The solicitor’s fees were refunded</td>
<td>32</td>
<td>7.7</td>
</tr>
<tr>
<td>The solicitor/solicitor’s firm did/paid for some work to be done</td>
<td>13</td>
<td>3.1</td>
</tr>
<tr>
<td>Other*</td>
<td>101</td>
<td>24.3</td>
</tr>
</tbody>
</table>

* ‘Other’ included :- Many people said that the complaint was upheld, but the sanction was inadequate. Some said the matter had not been resolved, or that nothing had happened. Many answers related to the respondent’s own particular problem, for example, payment of the legacy to the legatee.

It should be pointed out here that the outcome which the complainer wanted may not have been possible for the Law Society to provide. While the Society has the power to reduce or waive the solicitor’s fees, or order him/her to rectify any mistakes, or to pay the complainer compensation, it cannot, for example, compel a solicitor to apologise to the complainer.

Moreover, the Law Society can only discipline a solicitor where the matter can be categorised as one of conduct. If the complaint is in fact one of IPS, the Law Society has power only to compensate the complainer, rather than to censure the solicitor.
Very few respondents (10%) said that they had received an explanation about what had gone wrong. The answer to this question may have depended on how it was understood by respondents. If the respondent was looking for an explanation as to why they had lost their legal case, for example, this would not be provided by the Law Society, as this is not the Society’s function.

The Law Society’s role is to provide complainers with an adequate explanation as to the decision taken on the complaint. In each case where there has been a written investigation, an explanatory letter is sent to the complainer. Attached to this letter is a copy of the reporter’s report and, where appropriate, a copy of the full committee decision. The complainer is told what the heads of complaint were, whether or not they were justified, and why. S/he is also told which, if any, sanction applies. Despite this, however, it may be that some complainers find this information hard to understand, and accordingly do not consider that they received an explanation about what went wrong.

We then asked respondents how happy they were with the outcome of their complaint. Almost half (45%) said that they were very unhappy with the outcome of their complaint. A further 11% said that they were unhappy with the outcome. Fewer than one-third of respondents said that they were happy with the outcome. (9% saying that they were very happy, and 18% that they were happy). (Table 30)

Table 30

<table>
<thead>
<tr>
<th>(...) how happy were you with the outcome of your complaint?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very happy</td>
<td>36</td>
<td>8.7</td>
</tr>
<tr>
<td>Happy</td>
<td>76</td>
<td>18.3</td>
</tr>
<tr>
<td>Indifferent</td>
<td>49</td>
<td>11.8</td>
</tr>
<tr>
<td>Unhappy</td>
<td>47</td>
<td>11.3</td>
</tr>
<tr>
<td>Very unhappy</td>
<td>187</td>
<td>45.1</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>20</td>
<td>4.8</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

We then analysed the data to find out whether the actual outcome achieved had any influence on how happy the respondents were with the outcome. This analysis produced some interesting results. These can be seen from Table 31. As might be expected, those who were most unhappy were those whose complaint was not upheld. Of those whose complaint was not upheld, 92% were unhappy or very unhappy with the outcome of their complaint.
Those who said their fees had been refunded were the happiest of all respondents, with 60% saying that they were happy or very happy with the outcome. This was closely followed by those who had received an apology (56% were either very happy or happy), those who received an explanation (51%), and those who had their fees reduced (51%).

It is interesting to note that in those cases where disciplinary action was taken against the solicitor, one-half of respondents were unhappy or very unhappy with the outcome. Of those who received compensation, 38% were unhappy / very unhappy with the outcome.

As we have seen, many of those who answered ‘other’, when asked about the outcome, stated that the solicitor had been disciplined, or that compensation had been paid, but were still unhappy with this. This was generally because they felt that the compensation awarded or disciplinary action taken was inadequate. It is likely, therefore, that this explains why such a considerable number of respondents whose complaint was upheld were nevertheless unhappy with the outcome.

Table 31

<table>
<thead>
<tr>
<th>Happiness with the outcome</th>
<th>Percentage of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>work paid for</td>
<td></td>
</tr>
<tr>
<td>fee refunded</td>
<td></td>
</tr>
<tr>
<td>received apology</td>
<td></td>
</tr>
<tr>
<td>received explanation</td>
<td></td>
</tr>
<tr>
<td>fee reduced</td>
<td></td>
</tr>
<tr>
<td>compensation</td>
<td></td>
</tr>
<tr>
<td>disciplinary action</td>
<td></td>
</tr>
<tr>
<td>not upheld</td>
<td></td>
</tr>
</tbody>
</table>

[Bar chart showing the percentage of respondents who were unhappy/very unhappy, indifferent, and happy/very happy for each outcome category]
2.15 Handling of the complaint

We asked respondents whether they thought their complaint had been handled fairly by the Law Society. (See Table 32) Half of all respondents replied that they thought their complaint was not handled fairly.

Table 32

<table>
<thead>
<tr>
<th>Do you think your complaint was handled fairly?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>176</td>
<td>42.4</td>
</tr>
<tr>
<td>No</td>
<td>209</td>
<td>50.4</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>30</td>
<td>7.2</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

We asked the respondents to comment further on their answer to this question. From the comments made, there emerged a clear view that the Law Society was not impartial, appearing to take the side of the solicitor. For example:

“I thought that the Law Society was entirely on the side of the lawyer. They asked me to send documentation, but when I did send documents they disregarded it. I honestly think, unless it is a matter of national or political importance or a huge scandalous matter, the Law Society of Scotland only wastes time with their complaints department.”

“I feel the Law Society ignored several points raised and readily accepted the word of the solicitors I was complaining about.”

“Repeated attempts were made to reduce the status of the complaint. Letters were clear enough in so far as they went but, on several occasions important points raised by me were completely unanswered. The impression was gained that an attempt was being made to discourage me from pursuing my complaint.”
A total of 30 respondents (7%) did not answer the question. Some commented that they did not know whether their complaint was handled fairly or not. As one wrote:

“I am not aware of the outcome of the complaint so cannot say if it was handled fairly.”

Given that all the cases in our survey had been closed, it might be assumed that the respondents had received an explanation as to the outcome from the Law Society. However, such comments would tend to indicate that some had not understood this explanation, although it is possible that they had not in fact received an explanatory letter from the Society.

Some respondents, despite believing that their complaint was handled fairly, still felt that the Law Society had not gone far enough:

“Although I feel my complaint was handled fairly, I do not think that the Law Society took any steps against my solicitor to ensure that someone else did not get the same advice, eg additional training.”

“The procedure seemed fair, as far as it went. The outcome did not seem fair but it ended up as a choice between believing my version of events and that of a slippery-tongued solicitor.”

Some people felt that the Law Society failed to investigate the complaint in an appropriate manner, ignoring many of the issues raised by the complainer:

“The Law Society were seen to be an organisation solely intent on protecting their members. Numerous questions, queries and issues raised by us during the complaint were merely and rather bluntly ignored by the complaints committee.”

“Not for the first time the Law Society were seen to be merely a mechanism for protecting incompetent, negligent members. Many issues raised were ignored where it would obviously cause embarrassment to the Society and their members.”
It may, of course, be argued that some respondents confused the issue of the outcome of their complaint with that of whether or not it was handled fairly. Certainly, the statistics bear out this argument to a degree. For instance, all 36 respondents who were very happy with the outcome of their complaint also said that their complaint was handled fairly. Similarly, most people (94%) who were very unhappy with the outcome said their complaint was not handled fairly.

However, a closer look at the figures shows that the link between outcome and fairness is not as clear-cut as it might at first appear. First of all, it seems reasonable to assume that the outcome most people would want would be to have the complaint upheld. However, as we have seen, only 23% of respondents said that their complaint was not upheld. This compares with 56% who said they were unhappy / very unhappy with the outcome of the complaint, and 50% who thought that their complaint had not been handled fairly.

We analysed the statistics to look at whether the perception of respondents as to whether the procedure was fair was related to the outcome of their complaint. These can be seen from Table 33. While 94% of those whose complaint was not upheld inevitably thought their complaint was not handled fairly, some cases where the respondent’s complaint was upheld demonstrate some interesting statistics.

Those who received an explanation about what went wrong were the most likely to think their complaint had been fairly dealt with, with 80% of those respondents saying that their complaint was fairly dealt with. Of those who had their fees refunded, 74% thought it was fair, while 73% of those who had received an apology thought their complaint had been dealt with fairly.

The most striking statistic here is that 48% of those who said disciplinary action had been taken said that they thought their complaint had been unfairly dealt with.

Overall, 30% of those whose complaint was upheld in some way thought that it had been unfairly dealt with. Given that it might be expected that the outcome people would want would be to have their complaint upheld, it seems that outcome is only one factor which might influence their perception of fairness.

This conclusion is supported by past research which has shown that there is not necessarily a link between the outcome of a procedure and whether those involved felt that the procedure was fair. One example of this was research carried out in 1991 on the small claims procedure in Scotland by the Scottish Office Central Research Unit.24
That study found that whether litigants were satisfied with the outcome of their case was not entirely explained by whether they won or not. In fact, they found that “the overwhelming majority praised the sheriffs for their fairness, irrespective of the outcome of their cases”.

### Table 33

<table>
<thead>
<tr>
<th>Settlement of Complaint</th>
<th>Complaint Handled Fairly</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>complaint not upheld</td>
<td>5</td>
<td>86</td>
</tr>
<tr>
<td>payment of compensation from solicitor</td>
<td>43</td>
<td>21</td>
</tr>
<tr>
<td>fees reduced</td>
<td>40</td>
<td>18</td>
</tr>
<tr>
<td>apology from solicitor</td>
<td>35</td>
<td>13</td>
</tr>
<tr>
<td>explanation about what went wrong</td>
<td>31</td>
<td>8</td>
</tr>
<tr>
<td>disciplinary action against solicitor</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>fees refunded</td>
<td>23</td>
<td>8</td>
</tr>
<tr>
<td>work done to put things right</td>
<td>11</td>
<td>1</td>
</tr>
</tbody>
</table>

We also wanted to find out whether complainers felt they had been given a chance to put their views forward. The majority of respondents (62%) said that they had been given an adequate chance to put their views forward. (Table 34) However, over a quarter (27%) did not consider that they had been given an adequate chance to put their views forward.

Some of those who considered that they had had a chance to give their views commented that they had only had a chance to put their views in writing and they wished they had been given the opportunity to see someone in person to discuss their complaint:

“The Law Society communicated only by mail and never by personal interviews. Everything was done by letter. I had no opportunity to express my case to a panel or directly to the solicitors involved.”

### Table 34

<table>
<thead>
<tr>
<th>Did you have an adequate chance to put your views forward?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>259</td>
<td>62.4</td>
</tr>
<tr>
<td>No</td>
<td>112</td>
<td>27.0</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>44</td>
<td>10.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>
Under the present system, the complainer is permitted to make written representations to the committee in certain circumstances (outlined at para 1.8), but is never allowed to appear in person before the committee. Aside from those who meet the complaints investigator, there is usually no personal contact between the Law Society and the complainer at any stage of the complaints process.

Other respondents said that although they had been given an adequate chance to put their views forward, the Law Society did not take their views on board when it came to making a decision on the settlement of their complaint:

“I put my views and questions forward and the Law Society either ignored or overlooked them.”

“I tried very hard to put my views forward but I feel that the Reporter only took note of what he felt was relevant.”

Respondents were asked how satisfied they were overall with the way in which the Law Society dealt with their complaint. The responses can be seen from Table 35. The most frequent response, from 29% of respondents, was that they were very dissatisfied, while a further 12% said that they were dissatisfied.

In total, 43% said that they were satisfied (23% very satisfied and 20% satisfied). A further 11% said that they were indifferent, while 4% did not answer the question.

These figures indicate that over 40% of respondents were dissatisfied with the current complaints procedure. Moreover, a total of 14% were either indifferent or chose not to answer. Again, it may be that these figures are partly accounted for by people confusing the outcome of their case with the fairness of the process.

Table 35

<table>
<thead>
<tr>
<th>Overall, how satisfied were you with the way the Law Society dealt with your complaint?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td>97</td>
<td>23.4</td>
</tr>
<tr>
<td>Satisfied</td>
<td>84</td>
<td>20.2</td>
</tr>
<tr>
<td>Indifferent</td>
<td>47</td>
<td>11.3</td>
</tr>
<tr>
<td>Dissatisfied</td>
<td>50</td>
<td>12.0</td>
</tr>
<tr>
<td>Very dissatisfied</td>
<td>122</td>
<td>29.4</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>15</td>
<td>3.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>
2.16 Likelihood of approaching the Law Society again

We wanted to find out whether complainers would be likely to approach the Law Society again, should they experience another problem with a solicitor at some future date. (Table 36) Almost half of the respondents (47%) said it was very likely that they would approach the Law Society again, and a further 16% said that it was likely.

It is significant that some respondents commented that they were likely to contact the Law Society again simply because there was no other body that they could take their complaint to:-

“When one has no alternative, one has to go through the nightmare of their unknown procedures.”

“But then who does a member of the general public turn to for assistance?”

Given that a lack of other options was the reason given by many who said they would approach the Law Society again, it is equally significant that around 25% of respondents said they were unlikely or very unlikely to do so, while 10% were undecided. This would indicate that these people were so disillusioned with the process that, despite the fact that there is nowhere else to take a complaint, they would not approach the Law Society again.

Table 36

<table>
<thead>
<tr>
<th>Should you experience, in the future, another problem with a solicitor, how likely would you be to approach the Law Society of Scotland again?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very likely</td>
<td>195</td>
<td>47.0</td>
</tr>
<tr>
<td>Likely</td>
<td>67</td>
<td>16.1</td>
</tr>
<tr>
<td>Unlikely</td>
<td>27</td>
<td>6.5</td>
</tr>
<tr>
<td>Very unlikely</td>
<td>75</td>
<td>18.1</td>
</tr>
<tr>
<td>Don’t know</td>
<td>41</td>
<td>9.9</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>10</td>
<td>2.4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>
We wanted to find out whether the way a complainer felt about the outcome of the complaint was related to how likely they were to approach the Law Society again in the future, should they experience another problem with a solicitor. Virtually all (94%) of those who said they were very happy with the outcome also said that it was very likely that they would approach the Law Society again. (Table 37)

Table 37

<table>
<thead>
<tr>
<th>Happy with Outcome</th>
<th>Would Approach Law Society Again?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Very likely</td>
</tr>
<tr>
<td>Very happy</td>
<td>34</td>
</tr>
<tr>
<td>Happy</td>
<td>59</td>
</tr>
<tr>
<td>Indifferent</td>
<td>30</td>
</tr>
<tr>
<td>Unhappy</td>
<td>23</td>
</tr>
<tr>
<td>Very unhappy</td>
<td>40</td>
</tr>
<tr>
<td>Total</td>
<td>186</td>
</tr>
</tbody>
</table>

Those who were unhappy or very unhappy with the outcome of the complaint were less consistent in their answers. Of those respondents who were very unhappy with the outcome, 37% said it was very unlikely that they would contact the Law Society again, with a further 11% saying it was unlikely. However, 22% said that they were very likely (and a further 11% likely) to approach the Law Society again should they experience, in the future, another problem with a solicitor.

Those who were very unhappy with the outcome of the complaint were the most indecisive as to whether they would approach the Law Society again. Of those answering ‘don’t know’, 88% were very unhappy with the outcome.

2.17 Taking the complaint further

We asked complainers whether they had then taken their complaint further. (Table 38) The majority (68%) replied that they had not taken their complaint further. Of those who did, most (84%) took it to the Scottish Legal Services Ombudsman. (See Table 39)
Table 38

<table>
<thead>
<tr>
<th>Did you take your complaint any further?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>113</td>
<td>27.2</td>
</tr>
<tr>
<td>No</td>
<td>282</td>
<td>68.0</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>20</td>
<td>4.8</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

It is significant that despite the fact that more than half of the respondents were unhappy with the outcome of their complaint, and a similar number were not happy with the handling of the complaint, over two-thirds did not take their complaint further. Of those who were very unhappy with the outcome of their complaint, almost a third (31%) did not take their complaint further.

Perhaps not surprisingly, of those who did take their complaint further, the majority (89%) had said that they were very unhappy with the outcome of their complaint.

Some respondents commented as to why they did not take their complaint further. Many of those who did not take their complaint further said that they did not do so because they had had enough of the whole process:-

“By this time I was sick to the teeth.”

“I felt I was fighting a losing battle and simply gave up.”

“I gave up on this complaint because I was seen as a nuisance and the whole process of complaining was taking over my life, at a time when I wanted to rebuild my life.”

We asked those who took their complaint further, but who did not go to the ombudsman, what they did. Responses included:-

“Letters to newspapers and contacted TV.”
2.18 Going to the ombudsman

Of those who took their complaint further, 84% went to the Scottish Legal Services Ombudsman. (Table 39)

<table>
<thead>
<tr>
<th>Did you take your complaint to the Scottish Legal Services Ombudsman?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>95</td>
<td>84.1</td>
</tr>
<tr>
<td>No</td>
<td>18</td>
<td>15.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>113</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 39 refer only to those who took their complaint further.

We asked those who took their complaint to the ombudsman whether they did so because they were unhappy with the outcome of their complaint, because they were unhappy with the way the Law Society had handled the complaint, because the Law Society was unwilling to investigate the complaint, or for any other reason.

Many respondents gave more than one answer to this question. A high proportion (67%) said that they took their complaint to the ombudsman because they were unhappy with the outcome, and just over half (54%) said that it was because they were unhappy with the way their complaint had been handled by the Law Society. (Table 40)

One in ten of those who took their complaint to the ombudsman said that they had done so because the Law Society was unwilling to investigate their complaint. The reasons for this refusal can only be speculated upon. It is possible, for example, that in some cases the complaint was time-barred, as complaints must generally be made within five years of the actings complained about.
Table 40

<table>
<thead>
<tr>
<th>Why did you take your complaint to the Ombudsman?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>I was unhappy with the outcome of my complaint</td>
<td>64</td>
<td>67.4</td>
</tr>
<tr>
<td>I was unhappy with the way the Law Society handled my complaint</td>
<td>51</td>
<td>53.7</td>
</tr>
<tr>
<td>The Law Society was unwilling to investigate my complaint</td>
<td>9</td>
<td>9.5</td>
</tr>
<tr>
<td>Other*</td>
<td>10</td>
<td>10.5</td>
</tr>
</tbody>
</table>

* ‘Other’ included:- the Law Society did not provide any evidence as to their conclusion, the Law Society corrupted the complaint, the Law Society overlooked several key issues.

Note: The figures shown in Table 40 refer only to those who took their case to the Scottish Legal Services Ombudsman.

We asked respondents what happened after they took their complaint to the ombudsman. 30% replied that the ombudsman considered their complaint and referred it back to the Law Society recommending further action. One-quarter said that no further action was recommended. It is important to note that one third (32%) of the respondents answered ‘other’. Most of these stated that the ombudsman was still considering their case. (Table 41)

Table 41

<table>
<thead>
<tr>
<th>What happened after you took your complaint to the Ombudsman?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Ombudsman considered my complaint and referred it back recommending further action</td>
<td>28</td>
<td>29.5</td>
</tr>
<tr>
<td>The Ombudsman considered my complaint, but no further action was recommended</td>
<td>24</td>
<td>25.3</td>
</tr>
<tr>
<td>Other*</td>
<td>30</td>
<td>31.6</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>13</td>
<td>13.7</td>
</tr>
<tr>
<td>TOTAL</td>
<td>95</td>
<td>100</td>
</tr>
</tbody>
</table>

* ‘Other’ - Most (23) stated that the ombudsman was still considering their case. Other responses included “dropped the complaint”, “fobbed off”.

Note: The figures shown in Table 41 refer only to those who took their case to the Scottish Legal Services Ombudsman.

We asked those whose complaint had not been upheld by the ombudsman, whether they had been given a satisfactory explanation. An overwhelming majority (85%) said that they had not been given a satisfactory explanation. (Table 42)
Table 42

If your complaint was not upheld, were you given a satisfactory explanation?

<table>
<thead>
<tr>
<th></th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>4</td>
<td>15.4</td>
</tr>
<tr>
<td>No</td>
<td>22</td>
<td>84.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>26</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 42 refer only to those who took their case to the Scottish Legal Services Ombudsman.

Note: The total figure of 26 comprises the 24 respondents who said the ombudsman recommended no further action, and 2 who answered “other”. (Table 41)

When the ombudsman has investigated a complaint, he sends his opinion to the complainer, to the solicitor, and the Law Society. However, it is clear from these figures that of those whose complaint was not upheld, the majority did not consider this opinion to provide a satisfactory explanation.

While the information leaflet produced by the current ombudsman emphasises that he is not the ‘consumer champion’, it is of some concern that so many complainers appear to feel that they have not been given a clear and sufficient explanation for his decision.

We asked respondents whether they were satisfied with the ombudsman’s decision. Two-thirds of those who answered this question (65%) said that they were not satisfied with the ombudsman’s decision, while 35% said they were satisfied.

It should be noted, however, that almost half (46%) of those who had taken their complaint to the ombudsman did not respond to this question. (Table 43)

Table 43

<table>
<thead>
<tr>
<th>Were you satisfied with the Ombudsman’s decision?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>18</td>
<td>18.9</td>
</tr>
<tr>
<td>No</td>
<td>33</td>
<td>34.7</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>44</td>
<td>46.3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>95</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 43 refer only to those who took their case to the Scottish Legal Services Ombudsman.
We asked those who took their complaint to the ombudsman if they had taken it any further. Of those who responded to this question, 39% said that they had taken it further. This compares with 65% of those answering who said that they were not satisfied with the ombudsman’s decision. Again, it should be noted that 36% of respondents did not answer this question. (Table 44)

We asked those who took their complaint further what they had done. One replied:-

“Went to local MP to see if we could get a lawyer to take the case on a 'no win, no fee' basis.”

Table 44

<table>
<thead>
<tr>
<th>Did you at this stage take your complaint to anyone else?</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>24</td>
<td>25.3</td>
</tr>
<tr>
<td>No</td>
<td>37</td>
<td>38.9</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>34</td>
<td>35.8</td>
</tr>
<tr>
<td>TOTAL</td>
<td>95</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: The figures shown in Table 44 refer only to those who took their case to the Scottish Legal Services Ombudsman.

We then asked everyone in the sample if they knew what the role of the ombudsman is. (Table 45) Only 27% correctly said that the ombudsman examines peoples’ complaints about how the Law Society handles complaints against solicitors. Almost one-fifth (19%) of respondents said they did not know what the ombudsman does, while a further 19% thought that the ombudsman had the power to impose a decision on the Law Society. Some people stated that they had never heard of the ombudsman before, while others said that they did not know how to contact the ombudsman.
Table 45

<table>
<thead>
<tr>
<th>Statement</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Examines peoples’ complaints about how the Law Society handles complaints against solicitors and makes recommendations</td>
<td>110</td>
<td>26.5</td>
</tr>
<tr>
<td>Don’t know</td>
<td>79</td>
<td>19.0</td>
</tr>
<tr>
<td>Examines peoples’ complaints about how the Law Society handles complaints against solicitors and imposes a decision</td>
<td>77</td>
<td>18.6</td>
</tr>
<tr>
<td>Handles complaints from members of the public about how solicitors deal with their cases</td>
<td>38</td>
<td>9.2</td>
</tr>
<tr>
<td>NO RESPONSE</td>
<td>111</td>
<td>26.7</td>
</tr>
<tr>
<td>TOTAL</td>
<td>415</td>
<td>100</td>
</tr>
</tbody>
</table>

2.19 General views of respondents on their experiences

Finally, we asked respondents whether there were any additional comments which they wished to make about their experiences of the Law Society and/or the ombudsman. Approximately half of the respondents took advantage of this opportunity to give their views on the system.

We must acknowledge here that it is possible that those complainers who had negative experiences were more likely to make additional comments than those who have had positive ones. We must also make it clear that the answers reproduced below do, of course, reflect the views of the individual respondents. These views are not in any way endorsed by the Scottish Consumer Council.

Some general issues of concern were apparent from the comments made in response to this question. Around one-third of the comments made were positive about the Law Society procedure. However, the majority were critical of the Law Society, and its current system.

A number of respondents commented on the way in which their complaint was processed by the Law Society. Some said that they would have liked to have been allocated one specific person whom they could contact throughout the investigation of their complaint:

“I felt that every time I wrote to the Society highlighting important points, when I received a reply, these points seemed to have been ignored or glossed over. I was disappointed that my case was passed to three different people to deal with.”
“The personnel I had to deal with kept changing for whatever reason (...) I would suggest that, if possible, one name should be given to the complainant to correspond or communicate with from the start through to completion.”

As previously explained, the only written information received by complainers from the Law Society at the outset is a standard letter, together with a copy of the leaflet ‘Dissatisfied with your solicitor?’ (although as we have seen, some respondents claimed that they definitely had not seen this leaflet). Some suggested that a more detailed explanation of the various procedures should be provided to complainers by the Law Society:

“No helpful guide issued. No information on Law Society’s positions or powers. Slow! Difficult to initiate action. Plain English required and more attention to explanation.”

This was seen as being particularly important because solicitors were perceived to be at an advantage from the outset, given their familiarity with the workings of the system:

“More guidance could be given to members of the public who have a complaint. Solicitors do have an advantage over people who complain about them, they know how to use the system, and to this respect I feel that few complaints against a solicitor, no matter how unprofessional they are, are upheld.”

A number of respondents clearly felt that the Law Society had been unhelpful in dealing with their complaint, and some suggested that there was a general lack of customer care by the Society in dealing with complaints:

“The Law Society go through the motions, they treat you like a nuisance if you ask them for more information or if you want to question anything, and they take an age to do it.”

“We found the Law Society very unhelpful and at times to the point of arrogance.”

“The Law Society, in my view, are the most unhelpful people in society. If this customer care attitude was the attitude of business in general today, I do wonder what would happen?”

COMPLAINTS ABOUT SOLICITORS
Another respondent felt that the Law Society procedure was unnecessarily rigid and inflexible:

“Overall, I think that the Law Society handled the complaint very well, given the result. I feel that the procedures they follow are rather strict, and these should be eased to allow a more natural, common sense approach to handle the complaints”.

Others criticised the Law Society’s ‘hands-off’ approach in relation to the ‘conciliation’ procedure:

“I appreciated their backing, however I did feel that the Law Society did not want to get too involved unless it was absolutely necessary.”

One respondent felt that the Law Society had put pressure on them to agree to an informal resolution of the complaint:

“I feel that I was pressurised by the Law Society to accept the nominal sum offered by the solicitor involved.”

There were, however, many people who said that they were very happy with the way in which the Law Society had handled their case. For example:

“I certainly don’t have any complaints of the Law Society. I think they did a considerable amount of work on my behalf. The Law Society kept me well informed at all times by phone and letter. The work they did for me was very much appreciated and I told them so.”

“I cannot praise them enough.”

“I must say I was pleasantly surprised at the even-handedness and the professionalism, and I also must say the people I was dealing with at the Law Society were very helpful.”
Others, however, indicated that although they were generally satisfied with the way in which the Law Society had dealt with their complaint, they felt uneasy about the self-regulatory role of the Law Society:

“I was quite happy with the service I received from the Law Society. I would only say, that having never used them before I would have liked to receive more advice and help on what to do. I also feel that they were quite biased towards the solicitor.”

“The Law Society dealt with my complaint in a pleasant manner, keeping me informed at all times. I was always very conscious however of the fact that lawyers were involved in investigating the actions of a fellow lawyer, and had a distinct advantage over me.”

On the other hand, one respondent felt that the Law Society’s procedures were unnecessarily complicated, but praised the Society’s lack of bias:

“There is a cumbersome and to an extent slow but I felt it was fair and gave both sides a chance to put forward their side and then a decision was made. I don’t think the decision was in any way biased, it was taken on the facts - both parties could not be right!”

However, some felt that they were at an unfair disadvantage, given that the original problem was a legal matter, and that both the solicitor involved and the Law Society had an advantage over the lay person:

“Throughout my experience, it was clearly a case of a layman trying to take on experts in the manipulation of the legal points of the law. While it was proved by me that my lawyer was found to have made mistakes, he was not reprimanded in any way. I found the whole experience to be distasteful and I have little respect for the legal profession and in particular its closed shop.”

“I feel the Law Society tends to bias towards solicitors. I think they should actually meet the complainant to discuss the problems and not just do it by letters - I feel not speaking ‘legal jargon’ didn’t help my case.”
There was a very strong general view that the Law Society exists by its very nature to look after the interests of lawyers, and as a result will inevitably favour the point of view of the solicitor over that of the lay person:-

“There are two faces to the Law Society. Instead of impartially investigating complaints, they provide a supplementary free defence for their member’s firms. They persistently delay in replying and completely ignore points embarrassing to them or the firms.”

“It was a waste of time on my part but at the back of my mind, I knew it would be. Solicitors are hardly likely to uphold complaints against their own profession.”

“The Law Society, as far as I am concerned exists for the safeguarding of the interests of its (...) lawyers members, and the investigations into the genuine complaints of decent, honest, mere mortals is a very secondary consideration. In other words, it is simply a trade union of legal firms and lawyers.”

“The Law Society seemed to be acting on behalf of the solicitor rather than the plaintiff, in that mollification and damage limitation seemed to be uppermost in importance rather than seeing fair play.”

“It would appear to me that the Law Society is more concerned with upholding the ‘good name’ of solicitors and the practice, rather than establishing whether the complaints I made were justified.”

Some even expressed a belief that the self-regulatory role of the Law Society made it essentially out of reach and ‘untouchable’:-

“The Law Society of Scotland are in an exalted position, ie. they have complete autonomy, and therefore have an unfair advantage over non-members of their elite little club.”

“They know they are untouchable and exploit this.”
Given that there was such a strong feeling that the Law Society protected the interests of solicitors, it is not surprising that many respondents expressed the view that self-regulation by the Law Society was inappropriate, as this created an inevitable conflict of interest. Accordingly, a considerable number of respondents said that they felt complaints against solicitors should be dealt with by a separate body, independent of the Law Society:–

“An organisation with a department going through the motions and not at any costs prepared to take certain action against any member solicitors. Very protective of legal firms’ members and act in their interests and not the public. I think they are a complete waste of time and this function should be done by an external body with the power to make solicitors take action.”

“(…) the general public will always be aware that there may be bias on the part of the Law Society, and that justice may not always be seen to be done by an organisation that investigates one of its own profession. One day, it may be more suitable to have an organisation like ‘ACAS’ who are totally independent.”

“The Law Society has a vested interest in protecting its own (…) What can be done to protect the lay person? It is high time there was a top level independent body set up to investigate complaints from the lay person.”

Many respondents said they believed that the Scottish Legal Services Ombudsman should be given increased powers, in particular to require the Law Society to implement his recommendations:–

“His powers should be increased to allow for decisions to be overturned or reviewed and not confined to simply a review of how the complaint was handled. I found the Law Society to be an inappropriate body for investigations into the conduct of its own members.”

“Although the ombudsman upheld all aspects of my complaint, he could only make recommendations which the Law Society can refuse to implement (and did so in my own case). The ombudsman should be given the powers to impose sanctions or penalties on the Law Society if they refuse to implement his / her recommendations.”
“What is the point of the ombudsman if the Law Society refuse to act on his advice?”

A number of respondents expressed the view that, at present, the ombudsman has no ‘teeth’ and is accordingly ineffective or, in the words of several people, “useless”.

Many simply commented on their disillusionment with the whole process:-

“I am in a situation right now which requires legal help from the Law Society but in view of what has happened in the past, it is only going to involve more costs and time, something I don’t have a lot of and am therefore accepting the situation without a fight! I think that says it all!”

“No faith in a body who are like those you complain about. They are all solicitors.”

“The Law Society and its ombudsman do a whitewash for its members leaving the citizen unsatisfied with ‘the system’. The Law Society and its underling should be renamed ‘the lawyers’ society’ or ‘lawyers against society’.”

“The Law Society are the most unfriendly organisation I have ever known. They are 100% biased in favour of the solicitor. They make the complaints process extremely awkward for the complainer. The Law Society is a farce (...) the complaints process must be taken out of the hands of the Law Society.”

“The whole experience was very disappointing. When I first approached them, they seemed to be very reasonable on the phone (...)The Law Society was totally in favour of the lawyer. Dealing with the Society was like talking to a wall.”

In this chapter, we have looked in some detail at the findings of our study. These raise various issues of concern mainly regarding the Law Society’s complaints procedure, but also in relation to solicitors, these findings are discussed further in Chapter 3. In Chapter 4, we go on to make recommendations to those involved as to what might be done to address the concerns raised by the study.
CHAPTER 3 THE RESEARCH FINDINGS ANALYSED

3.1 Introduction

The standards required for a good complaints system by the Citizens’ Charter programme are set out in Appendix 1 to this report. We have referred to some of these standards at various points throughout this report. It is clear from both our analysis of the current arrangements in Chapter 1, and from the survey findings, that neither internal complaints procedures within solicitors’ firms, nor the Law Society of Scotland’s own complaints procedure measure up to these standards.

The answers given by respondents indicate that they did view some aspects of the Law Society’s procedure in a positive light. For example, 92% of respondents reported that they had no difficulty in making initial contact with the Law Society.

Moreover, although many respondents said that they would have preferred to receive more information about the procedure, 90% stated that the written information which they did receive from the Law Society was very clear and that they understood either all or most of it. Overall, 78% said that the letters which they had received from the Society were either clear or very clear.

The majority (74%) of those who had used the Society’s help form said they had found it helpful. Of those who had used the services of the Society’s complaints investigator, 70% also said that they had found his help useful.

Despite these positive statistics, our findings clearly demonstrate that, from the consumer’s point of view, there is a great deal of room for improvement in the Law Society’s complaints system. As we saw at the end of the previous chapter, overall respondents were highly critical of the current system, and, in particular, the Society’s self-regulatory role.

In this chapter, we analyse the research findings in detail. In doing this, we highlight our concerns relating to complaints handling by solicitors, the Law Society, and the Scottish Legal Services Ombudsman. The chapter concludes with a discussion of the self-regulatory role of the Law Society, and considers whether this is an appropriate role for the Society.

In Chapter 4, we make various recommendations based on our conclusions. These recommendations, as to how the current system might be improved, are made to solicitors, the Law Society of Scotland, and to a Scottish parliament.
3.2 Complaints handling by solicitors

The survey findings illustrate quite clearly that procedures for complaints handling within some solicitors’ firms leave much to be desired. It is apparent from our research that many problems which end up as complaints to the Law Society could well have been resolved at an earlier stage.

The reason given more frequently than any other by respondents for their dissatisfaction with their solicitor (34.5%) was lack of communication. The two next most quoted reasons were incompetence and delay. Given these statistics, it is reasonable to assume that, had these solicitors put in place more efficient monitoring systems, and improved client care arrangements, many of these complaints might have been avoided.

The first step which solicitors’ firms must take in order to achieve an efficient client care and complaints handling system is to adopt the practice of sending letters of engagement to all clients. Solicitors should, after the first interview with a client, send to the client a letter confirming the instructions given and setting out the next steps to be taken.

In our 1995 survey, we found that only one-fifth of solicitor respondents always sent out a ‘letter of engagement’ to their clients after the initial appointment. At that time we recommended that solicitors should use letters of engagement, and the ombudsman has also recommended their use. We would strongly endorse the view taken in his 1997 annual report, where he refers to letters of engagement as:

‘a requirement which is so obviously part of the service which a client should receive from a solicitor and which would surely reduce cause for complaint’.26

Another specific aspect of client care which solicitors require to address is the need to advise clients at the outset of the solicitor-client relationship what they should do if dissatisfied with the service provided. In our 1995 report on client care, we recommended to solicitors that this information should be given to clients at the first interview.

In terms of the Citizens’ Charter complaints guides, (see Appendix 1) this is an essential requirement of an effective complaints system. However, the survey provides overwhelming evidence that the majority of solicitors are still not following this basic principle, with fewer than 4% of respondents saying that they were given this information at the outset.

One argument which solicitors might put forward against doing so is that telling people how to complain at the start of the relationship is to take a negative approach, which gives the wrong message to clients.27
However, to wait until a client expresses dissatisfaction before telling them how to complain is to make the dangerous assumption that only those who actually express dissatisfaction are dissatisfied. Research by the Office of Fair Trading (OFT) into consumer dissatisfaction has shown that around one in four people who are dissatisfied with goods or services do nothing about it.²⁸

Our own 1995 survey on client care by solicitors⁶ showed that around 40% of those who said that they were dissatisfied with the service provided did not complain. Common reasons for not complaining include not knowing how to complain, believing that it would not do any good, and not wishing to make a fuss. Therefore, service providers, solicitors included, cannot assume that only those who say they are dissatisfied are dissatisfied.

Research has also shown that dissatisfied consumers tell twice as many other people about their experience as those who are satisfied, and it has been estimated that in the case of major problems, dissatisfied customers tell up to sixteen others. On the other hand, the OFT study showed that complainers who were satisfied by the resolution of their complaint were more likely to use the same service provider again than those who were dissatisfied but did not complain.

There is in fact some evidence that good complaints handling can result in greater customer loyalty among satisfied complainers than among those who were happy with the service. We believe, therefore, that the evidence clearly demonstrates that it would be in the interests of both solicitors and clients, if solicitors were to tell clients at the outset what they should do if dissatisfied.

The Law Society’s *Better Client Care and Practice Management* guidance manual does not tell solicitors that they should give this information to clients, but suggests that this is a matter for each individual firm to consider.²⁹ The manual does, however, suggest that if solicitors are concerned about the use of the word ‘complaint’, it is possible simply to point out to clients that the firm wishes to know if a client has a question or concern about their case, and that there is a mechanism for addressing these.

While we do not believe it to be necessary, we would suggest that if solicitors are truly concerned about giving clients a negative impression by using the word ‘complaint’, they might wish to take this approach. We would also suggest that the easiest, and most logical, means of following up this verbal information would be to include these details as a standard paragraph in the firm’s letter of engagement.
3.3 When the client makes a complaint

Once a dissatisfied client has overcome the first hurdle of finding out how to complain, how does s/he fare on expressing dissatisfaction to the solicitor? Unfortunately, our research suggests that many solicitors are not treating clients’ complaints seriously enough.

In 22% of cases, respondents said that the solicitor / firm refused to investigate their complaint. Even where the firm did investigate the complaint, some felt that the senior partner had tried to cover up for a more junior solicitor. Moreover, in the few cases where the firm investigated the complaint and accepted that it was justified, the vast majority (81%) of respondents said that the firm did not make amends.

The most alarming statistic to emerge here is that 17% of respondents said that when they tried to complain, they were completely ignored by the solicitor/ firm. It may be that in some of these cases, the client had not in fact been ignored, and the solicitor had actually attempted to deal with the complaint. Even if this were the case, however, it is clear that they had not explained things well to the client, who believed that they had been ignored. If some clients were in fact deliberately ignored, the solicitors involved were clearly neglecting their professional duties of client care.

We also found that only 2% of respondents found out about complaining to the Law Society through their solicitor / firm. This provides yet more evidence that solicitors are not telling clients what to do if they have cause for complaint. Ironically, it is possible that if the solicitors involved had tried to encourage clients to complain sooner, and attempted to resolve complaints where these were made, the client would not have felt the need to go to the Law Society.

While it may be the case that many solicitors’ firms are in fact dealing with complaints in an acceptable manner, the evidence of our research is that too many solicitors are not taking seriously the fundamental principles of client care. If those mentioned in the survey are representative of all solicitors, there is serious cause for concern.

It is essential that solicitors are educated to treat complaints seriously, and to try to deal with them as early as possible. The guidance contained in the Law Society’s Better Client Care and Practice Management guidance manual is a step in the right direction. However, this guidance is not mandatory, and unfortunately it seems that its message has not reached some members of the profession.
Given our findings, we would suggest that, firstly, those solicitors’ firms which do not currently have a designated client relations partner should appoint one as a matter of urgency. It was estimated by the Law Society in 1995 that only 50% of firms had appointed a client relations partner.\(^6\) We believe that designating a specific person to deal with complaints is an essential first step in introducing an efficient complaints handling process.

Secondly, all solicitors’ firms should introduce a clearly written complaints procedure, the existence of which should be made known to clients at the outset. If such a written procedure is to be effective, it is essential that it is understood by, and strictly followed by, everyone within the firm.

3.4 The role of the Law Society

Our findings clearly illustrate that many complaints to the Law Society are the result of poor handling by solicitors’ firms. While solicitors themselves must accept much of the responsibility for this, the Law Society ultimately has the power to regulate the profession, by issuing new practice rules.

We believe that the evidence clearly shows that voluntary guidance has not worked, and accordingly the time has come for the Law Society to introduce firstly, a rule requiring solicitors to issue letters of engagement, and secondly, a mandatory ‘client care’ rule.

As stated elsewhere, the use of letters of engagement has been recommended by the Scottish Legal Services Ombudsman for a number of years. In 1995, we recommended to the Law Society that it should encourage its members to adopt our recommendation to solicitors that they should issue letters of engagement.\(^6\)

The Law Society’s view then, as now,\(^30\) was that encouraging solicitors to use such letters is likely to be more effective than compelling them to do so. At that time, we were happy to support the Law Society’s voluntary approach so long as this worked. However, we feel that the results of our survey demonstrate that there is now a need for the Law Society to make the use of such letters mandatory.

In the past, the Law Society have also pointed to the fact that the Scottish Legal Aid Board will not pay for such letters to be sent to legally aided clients. We did recommend to the Board in 1995\(^6\) that it should pay for such letters to be sent, and continue to support this recommendation.
However, only 19% of our sample were in receipt of legal aid. If this is a representative sample, this argument becomes less forceful. In any case, it might well be argued that even if firms were to cover the costs for sending out such letters themselves, the benefits of doing so would outweigh the cost.

A pro-forma word processed letter would not be difficult or costly to produce. The use of such letters should ensure that the terms agreed between the solicitor and client are clear from the outset. This should help to reduce the likelihood of complaints, saving time and money in the long term.

In our 1995 report⁶, we noted that research into the operation of the English client care rule had shown that the mere fact that the rule existed did not necessarily mean that solicitors were complying with it. Accordingly, we decided on balance to support the Law Society’s decision not to introduce such a rule in Scotland, provided that this approach was seen to work.

We said at that time that it would be useful to review the position in a few years’ time to find out to what extent solicitors had acted voluntarily in response to the guidance manual. We also said that, if we were to find widespread evidence that the legal profession had not responded positively, it may be necessary to change our position.

The current findings provide considerable support for the conclusion that many solicitors are not acting in accordance with the voluntary guidance. Given this evidence, we now believe that the Law Society must implement a compulsory ‘client care’ practice rule.

This should be modelled on the equivalent rule in England and Wales, practice rule 15. This rule requires every solicitors’ firm to have an in-house complaints procedure, with a named person to deal with complaints. All complaints against solicitors are required to go through the in-house procedure as a first step. If they are not resolved at that stage, they are then handled by the independent Office for the Supervision of Solicitors.

Recent research carried out in England into the operation of practice rule 15 has shown that, despite the fact that this rule is mandatory, solicitors are still not taking it seriously. The researchers concluded that such a rule was not enough in isolation to change the attitudes of solicitors, but that a change in culture among practitioners is required.²⁷

It is therefore essential that the introduction of such a rule in Scotland should go hand in hand with an education campaign for solicitors about the importance of good client care and practice management. This should highlight the benefits of good, effective complaints systems.
Solicitors need to be convinced that complaints have positive aspects, and that a good complaints system can be to their advantage. An effective complaints handling procedure clearly shows that customer care is important to a business. This demonstrates that the business listens to its users, learns from its mistakes, and is continually trying to improve its service. Such a positive image can only assist a firm to attract new clients, and retain existing ones.

Moreover, as the Service First Charter guide How to deal with complaints points out, information gained from complaints is free customer feedback, and is accordingly the best form of free market research available to a business.

These benefits need to be emphasised to solicitors as part of an ongoing programme of training. We would suggest that such an education programme would best be carried out by the Law Society, given the influence which it has over the members of the profession. This programme should stress the advantages of good client care, thereby presenting a client care rule in a positive light. Such an approach is likely to be more effective in attempting to bring about the required change of attitude and culture amongst solicitors.

3.5 The need for a written complaints procedure

Throughout the following assessment of the Law Society’s complaints handling procedure, it must be borne in mind that our research was carried out before recent changes were put into place. We are pleased that the Law Society has increased staffing resources in its Client Relations Office. This is clearly a step in the right direction.

However, these changes relate purely to the resources available within the office. While this increase in resources should help to improve efficiency and cut down delays in the system, it cannot address what we see as the fundamental issues here. We believe our findings demonstrate that there are far more serious problems inherent in the present complaints system.

The most fundamental flaw in the current system is the lack of a coherent written procedure. The current procedures appear to be of an ad-hoc nature, according to the Society’s categorisation of each complaint. Given the variety of different steps in the procedure, depending on this categorisation, the process has become extremely complicated and difficult for clients to understand. We ourselves experienced some difficulty in attempting to produce a straightforward, coherent account of the procedure in writing this report.
It is an essential principle of the *Service First Charter* programme guide *How to deal with complaints* that every service provider should have a written procedure for dealing with complaints. This must be written in clear and simple language, so that consumers can understand the various stages of the procedure, and how it works.

It is vital that, after a complaint has been disposed of, the complainer feels that the procedure was properly followed, and the complaint fairly dealt with. If s/he has difficulty in understanding the procedure and how it works, s/he is more likely to perceive the procedure as unfair.

The introduction of a clearly worded written procedure should ensure that complainers understand the procedure and its various stages. If they understand what has happened and why, complainers are far more likely to feel that their complaints have been dealt with in a fair manner, in accordance with that procedure. Ultimately, this might in turn result in fewer complaints going to the ombudsman.

3.6 An explanatory leaflet for complainers

It is equally essential that any new written procedure is accompanied by written information for complainers explaining how it works. As we have seen, the present procedure can be confusing for the complainer. A lack of understanding as to how the procedure works may contribute to a belief that his/her complaint has not been fairly handled. It is therefore essential that the complainer is provided with clear information about the procedure at the start.

At present, the only written information which the complainer receives at the outset is a standard letter and a copy of the leaflet *'Dissatisfied with your solicitor?‘*. This leaflet (see Appendix 6) provides only very basic information, and does not describe the complaints procedure itself.

While some respondents made positive comments about the leaflet (for example, that it was straightforward and easy to follow), the general reaction was fairly negative. In particular, a number of those who had seen the leaflet criticised its lack of detail regarding the procedure and / or the time-scale involved.

Moreover, 37% of respondents said that they did not remember having seen the leaflet, despite the fact that it is sent to complainers as a matter of course. This would tend to suggest that the leaflet had not caught their attention, and perhaps was not well enough designed. However, it is also possible that this indicates a problem with the timing of the leaflet. It may be that the leaflet was sent too early or too late in the process, rather than at a stage where complainers might have been more receptive to the leaflet.
We would suggest that the survey results indicate that a clearer, more eye-catching leaflet is required. Any new leaflet should also include much more detail as to the definition of each type of complaint, the various stages of the procedure and the time-scales involved. Some respondents stated that they felt the Law Society does not currently provide complainers with enough information about the procedure. We believe that the most effective method of providing further information would be an improved, user-friendly leaflet.

The Scottish Legal Services Ombudsman recommended in his 1994 annual report that a standard letter should be issued to complainers, explaining the Law Society’s investigation procedures, what they could expect from the Law Society, and what the Law Society expected of them. This recommendation was accepted by the Society, but such a letter has never been produced.

We believe, however, that a well designed, clearly worded leaflet would be more user-friendly than a letter. A leaflet along the lines of that produced by the Conveyancing and Executry Services Board to explain its complaints procedure might be appropriate. This is produced in booklet form, and contains, in clear language, a considerable amount of detail about the Board’s procedure, including how long it is likely to take to resolve the complaint.

We understand that the Law Society currently intends to introduce a new series of leaflets for each type of complaint, detailing what happens at different stages of an investigation. In their view, it would be too difficult to produce a general leaflet for all complainers, given the different procedures for each sub-category of complaint.

However, we believe that the introduction of various different leaflets may simply have the effect of further confusing complainers. We would prefer to see one general booklet, outlining the various possibilities. Were a coherent written procedure in place, this should be a considerably easier task. The leaflet could be kept simple by the use of flowcharts tracing the path of each of the different sub-categories of complaint.

The leaflet should list and explain in simple terms the nature of each of the different categories of complaint, and how these are dealt with. At present, as we have seen, these categorisations are difficult for complainers to understand. For example, the definition of professional misconduct is very much narrower than that which the general public might understand to be conduct falling below professional standards. It also appears that the position where negligence is involved is far from clear at present.
The information contained in the leaflet should also be made available to complainers in other formats, such as the internet. **In his most annual report, the Scottish Legal Services Ombudsman also recommended that the Law Society should introduce a helpline service, along the lines of that provided by the Office for the Supervision of Solicitors in England and Wales.**

The helpline would advise members of the public about the matters which the Society can investigate, the difference between the various categories of complaint, and how to deal with their solicitor if dissatisfied. The ombudsman suggests that the helpline should be manned by trained staff, who could give personalised advice.

We would endorse the recommendation that a helpline be introduced, in the interests of good customer practice. However, we would view such a helpline as complementary to, rather than a substitute for, a detailed information leaflet.

### 3.7 Recognition of oral complaints

Another major flaw in the Law Society’s current complaints procedure is the fact that it does not allow for complaints which are made orally. We believe that a complaint is a complaint, however it may be expressed, and should be treated as such.

The *Service First Charter* guide ‘**How to deal with complaints**’ emphasises that barriers to complaining must be removed to ensure that everyone has access to the procedure. In requiring that a complaint must be in writing, the Law Society is creating an extra barrier to the complaints process, particularly for those who are not confident about expressing themselves in writing.

The Law Society says that a complaint must be in writing in order to assist its attempts to conciliate, as its staff must have an idea as to the nature of the complaint. However, we fail to see why a trained, competent complaints handler should not be able to take detailed notes of a telephone conversation on a help form, which can then form the basis of an investigation.

The present research shows that one-third of respondents first made contact with the Law Society by telephone. This would indicate that the first reaction of a high proportion of complainers is to make contact in this way. We are concerned that some people who feel they have a genuine grievance may be deterred by the requirement to put the complaint in writing, and accordingly do not pursue the complaint. There is no way of knowing this as telephone calls are not logged.
In fact, it has been suggested by one writer that, given that no record is kept of such calls, and that only written complaints are accepted, the official number of recorded complaints can be influenced to a degree by Law Society staff.\textsuperscript{33} Were all initial telephone enquiries to be recorded as official complaints, it may be that the actual number of complaints received would be considerably higher than the figure which is currently recorded.

3.8 The ‘conciliation’ procedure

One aspect of the Law Society’s complaints procedure which causes us particular concern is the process of ‘conciliation’. We explained at para 2.10 how this term is defined by the Law Society. However, we have some difficulty with this definition of ‘conciliation’. Our understanding of the term ‘conciliation’ in its usual sense is that it requires the involvement of an outside party to assist in resolving the dispute.

‘Conciliation’ as defined by the Law Society, however, basically means simply asking the client relations partner to become involved in the matter. Under the NHS complaints system, such an approach is, perhaps more accurately, described as ‘local resolution’.

The results of our survey show that more than half (53\%) of those offered conciliation did not find it helpful. This is a worrying statistic, which would tend to indicate that the process is not working as the Law Society intended. As we did not directly ask respondents why they did not find the process helpful, the reasons can only be speculated upon.

Our main concern here is the imbalance of power between complainer and solicitor in the ‘conciliation’ situation. As we saw earlier, most complainers do not have the benefit of independent advice. Under these circumstances, it may be that some complainers will reluctantly agree to a settlement with which they are not happy, because they feel intimidated.

The Scottish Legal Services Ombudsman has expressed a similar concern. He has pointed out that, as no research has been carried out into the conciliation process, there is no way of knowing whether complainers whose complaint is resolved through ‘conciliation’ are actually happy with the result, or whether they simply agree to a settlement in order to put the matter behind them.\textsuperscript{34}

The results of our survey cannot tell us this, particularly as we did not ask those who did not find conciliation helpful why this was the case. However, we do know that one respondent stated in the ‘further comments’ section that s/he had felt pressurised into agreeing to a settlement.
Conciliation is, of course, an entirely voluntary process. However, it may be that this is not always clearly understood by complainers. The study provides us with some indirect evidence that this is the case. This may be found in the comments of some respondents in the context of advice given by the Law Society on first contact, to take the complaint back to the firm.

It appears from these comments that some agree to do so purely because they believe that it is a necessary part of the procedure, and are unaware that they have a choice. It seems possible, then, that this is also true of the conciliation procedure, which is a very similar process. If so, this is a matter of grave concern which requires to be addressed by the Law Society.

We would suggest that it must be made absolutely clear to complainers, in plain and simple language, that conciliation is not compulsory. The Law Society should also advise complainers that they may take independent advice from a solicitor, citizens’ advice bureau, or other advice agency.

3.9 The help form

At present, the Law Society makes a decision in each individual case as to whether it is appropriate to issue a help form. Only 14% of respondents said that they had used the form, and many said that they had never heard of the help form, which is not mentioned in ‘Dissatisfied with your solicitor?’. Those who had used the form were generally positive about it, with 74% saying that they had found it helpful.

We believe that the Law Society should issue the form to everyone who wishes to make a complaint. The findings suggest that this would help many complainers to give details of their complaint. It would also assist the Law Society, as it should help to ensure that all the information required is given, on a standard form. A well structured form should also help to speed up the complaints process, as this should make it easier to ascertain what the complaint is actually about.

It is inevitable that some people will, as at present, feel that the form is unnecessary, where they have already detailed their complaint in writing. However, we believe that such arguments are outweighed by the advantages of using a standard form.

In England and Wales, all clients who wish to take a complaint to the Office for the Supervision of Solicitors are required to fill in a standard form, which also contains guidance notes on how to complete the form. The helpline number is given, and there is provision for the complainer to attach relevant correspondence.
We would suggest that this form should be used as a model by the Law Society. The guidance notes to help complainers complete the form are particularly helpful, and should be incorporated in any new form. We would agree with those respondents who criticised the poor quality of the current form. Even if this form were to be retained, it would require to be re-drafted in a better quality format than at present.

In the case of oral complaints, the person taking the call could write the details of the complaint down on a help form. The matter would, at that point, be officially registered as a ‘complaint’. The form could then be sent to the complainer for approval and signature. Once the signed form was received, any written investigation could then commence.

The services of the complaints investigator should also be offered to complainers at this stage, to provide assistance to those who may have difficulty in completing the form. The role of the investigator is discussed below in more detail.

3.10 The complaints investigator

We have various concerns regarding the Society’s complaints investigator. First of all, it is clear that he is not actually an investigator at all. Although he deals with telephone enquiries from potential complainers, his main role is simply to take a statement from the complainer.

Our research showed that only 16% of respondents had used the services of the investigator. It was also apparent that many respondents were unaware that the service existed. This is because, as with the help form, the Law Society makes a judgement in each case as to whether the investigator’s involvement is necessary. There is no mention of the investigator in ‘Dissatisfied with your solicitor?’.

Those who did use the services of the investigator were generally positive about the service, with 70% saying they had found it useful. However, we are concerned that a lack of information about the investigator may be creating yet another barrier for those who wish to complain. Should the Law Society make an incorrect judgement, the lack of assistance in making a complaint may put off some of those who feel unable to make the complaint without help.

At present there is only one investigator, who is based in Edinburgh, making access to his services very difficult for those who live elsewhere. If there were more complaints investigators, in various locations throughout the country, this would increase access for those who do feel that they need this assistance.
We would also like to see the role of the investigator being further enhanced. As we have seen, some complainers strongly felt that they would have liked to meet someone from the Law Society face to face to discuss their complaint. Given this fact, and considering the potential complexity of some complaints, we believe that there should be provision for such a meeting early in the complaints process, should the complainer request this.

We would suggest that the complaints investigator would be the most appropriate person to carry out this interview. We believe that all complainers should be offered a personal interview with an investigator, who will assist them with making their complaint. This offer should be made at the point of first contact with the Law Society, either in writing or by telephone.

It is inevitable that such an expansion of the investigator’s role would increase the demand for his / her services. This burden would, of course, be reduced by the provision of additional investigators. In any case, it is likely that if the service was offered to all complainers, many would decline, feeling able to make their complaint without assistance.

For others, however, such a service would provide extremely valuable assistance. For some, it may mean the difference between being able to pursue a complaint, and giving up because they do not feel able to do so without assistance.

3.11 Delays in the complaints system

One major concern which we share with the ombudsman relates to the delay in dealing with complaints. Although 92% of respondents whose complaint took up to six months to be finalised thought this was reasonable, this fell to around half of those whose complaint took six months to one year. Where the complaint took more than a year to resolve, this figure dropped to only 7%. We would agree with the respondents that over a year is an unacceptable length of time, unless there are exceptional circumstances.

As mentioned elsewhere, we are told that delays should now be reduced due to increased staffing within the Client Relations Office. The increase in the number of reporters, together with the recruitment of an additional Deputy Secretary, should also have a significant impact on handling times.

However, even if this is the case, this does not address the criticism by some respondents that they are given no idea as to the likely time-scale involved. At the very least, complainers are entitled to be given an indication at the start as to how long the process is likely to take.
The Law Society currently has no performance standards, laying down target times within which complaints should be processed. Such standards are an essential element of an effective complaints system, as recommended by the Citizens’ Charter complaints guides. The Law Society should follow the example of the Conveyancing and Executry Services Board, and publish a set of performance standards.

These standards should indicate the expected length of time which each stage of the procedure should take - for example, how long it should take for the complainer to receive replies from the Law Society. The standards should be detailed in the explanatory leaflet provided by the Law Society for complainers.

If the standards cannot be met for any reason, the complainer should be kept regularly informed as to progress. Complainers are entitled to expect replies within a reasonable time, and should, at the very least, be given an idea as to how long the procedure is likely to take.

3.12 Handling of complaints

The most striking statistic emerging from the study is that 50% of all respondents believed that their complaint had not been handled fairly by the Law Society. At first glance, the figures appear to indicate that there is a strong link between the outcome of the complaint and whether the respondent thought the complaint had been handled fairly.

However, closer examination reveals a slightly different story. It might be expected that the outcome most people would want would be to have the complaint upheld. However, only 23% of respondents said that their complaint was not upheld. This compares with 56% who said they were unhappy / very unhappy with the outcome of the complaint, and 50% who thought that their complaint had not been handled fairly.

While, as might be expected, 94% of those whose complaint was not upheld thought their complaint was not handled fairly, some of those whose complaint was upheld believed that it had been handled in an unfair manner. Overall, 30% of those whose complaint had been upheld thought that it had been unfairly dealt with. Given that these people had achieved an outcome which might generally be seen as desirable, this figure provides cause for concern.

The most striking statistic was that where disciplinary action had been taken, almost half (48%) of respondents thought the complaint had been dealt with unfairly. The responses given elsewhere showed that a number of respondents who said their complaint had been upheld were unhappy with the outcome because they felt that the disciplinary action taken, or compensation awarded, was not adequate.
Therefore, even although the complaint was upheld, it may be that some viewed the procedure as unfair, believing that the punishment / compensation was too lenient because the Society was taking the solicitor’s side.

The general comments made by the respondents are particularly telling here. There was a general view that the Law Society took the side of the solicitor, and was intent on ‘protecting its own’. This view indicates a clear criticism of the Law Society’s dual role, as both representative body and regulator of the legal profession.

The views expressed clearly demonstrate that many complainers are not happy with the present complaints system. When asked whether they would return to the Law Society if they had another complaint in the future, many said that they would approach the Law Society again simply because there is no other body to which they could take such a complaint. Moreover, 25% said that they were unlikely / very unlikely to return to the Law Society, despite the lack of alternatives.

As mentioned elsewhere in this report, our study covers complaints closed during the year to the end of February 1998. The Law Society tell us that many of the difficulties caused by lack of resources during that period have now been addressed, through additional staffing. Nevertheless, we believe our findings demonstrate that fundamental changes, rather than fine tuning, are required.

At the very least, the Law Society needs to radically review its complaints system, along the lines suggested. It is also essential that any reform of the procedure is accompanied by a new approach which focuses more on the needs of the complainer.

3.13 The need for a more client-centred approach

The results of the study indicate clearly that both solicitors and the Law Society require to adopt a more client-centred approach in dealing with complaints. In each case, this entails taking a fresh look at the entire complaints handling system, from the point of view of the client.

At present, it is clear that many solicitors’ firms are neglecting their duties of client care. It is equally apparent that Law Society’s complaints procedure does not focus to any great extent on the client, who, rightly or wrongly, believes that s/he has cause for complaint. It would also appear that little or no attention is generally paid, particularly by solicitors, to the outcome that the client wants.
The leaflet about complaints procedures produced by the Conveyancing and Executry Services Board\textsuperscript{32} suggests to clients that, when making a complaint, it is a good idea to say what they would like to happen as a result. When we asked respondents what they wanted to happen as a result of their complaint, the most frequent responses included: the mistakes put right, an apology, an explanation about what went wrong.

Given these responses, it is likely that, were solicitors to ascertain what the client actually wants at the outset, the result might be a quicker, easier resolution of many complaints for all involved.

For example, analysis of the survey results showed that those who received an apology from the solicitor after the complaint had been investigated by the Law Society were happier with the outcome than most of those whose complaint had been resolved in other ways. It may well be that had an apology been forthcoming from the solicitor at an earlier stage in such cases, a complaint would not have been made to the Society.

Of course, it is true that however perfect a complaints system may be, there will always be some complaints which cannot be resolved in an informal manner. Clearly, where there is a question of misconduct or dishonesty, for example, a complaint must be dealt with by the Law Society. However, as we saw in Chapter 1, the vast majority of complaints involve IPS. In these cases, there may be considerable scope for resolution by the solicitor/ firm.

In cases where a complaint does end up with the Law Society, the Society itself should adopt a similar approach, to try to resolve the matter sooner. If what the client wants is not appropriate, for example, if s/he wishes the solicitor to be disciplined where the matter relates to service, this should be explained to the complainer, in clear and simple language.

Taking a more client-centred approach to complaints handling means looking, first of all, at whether the client has been badly treated. Even if it is considered that s/he has not been ill-treated, s/he clearly believes that this is the case. It is therefore necessary to try, firstly, to explain the situation to the client and secondly, to resolve the matter. In doing so, solicitors would be well advised to remember the fundamental principle of business, that ‘the customer is always right’.

If the client has been badly treated, it must be considered what can be done to put things right. This may again involve asking the client what s/he wants, and considering what, if anything, can be done to compensate him/her, financially or otherwise.
Finally, the solicitor / Law Society should give consideration to what requires to be done to ensure that a similar situation does not arise again. In addition to addressing the complainer’s needs, such an approach can also help to improve procedures and further training, while ensuring that any necessary disciplinary action is taken.

The Law Society must also take steps to keep people better informed as to what is happening to their complaint. This is especially important where the complaint takes some time to resolve. Although 57% of respondents said that they were kept well or very well informed throughout their complaint, 17% said that they were kept badly or very badly informed, while 22% were non-committal.

The research also showed that only a minority (10%) of respondents believed that they had received an explanation about what had gone wrong. We pointed out at para 2.14 that if, for example, the respondent had expected an explanation as to why they had lost their case, this would not be given by the Law Society, as this is not the Society’s role. However, it is essential that complainers are provided with an adequate explanation, which they can understand, as to the decision taken on the complaint. Although a detailed letter is always sent to the complainer, explaining the decision reached, the evidence suggests that some respondents may have found this letter difficult to understand, and as a result, did not consider that they had received an adequate explanation.

Accordingly, we would suggest that the Law Society should review the form of explanation it provides to complainers, to ensure that this is written in language which is straightforward and capable of being easily understood by the lay person.

3.14 The Scottish Legal Services Ombudsman

When asked to describe the role of the ombudsman, only 27% of the sample gave the correct answer. Many said they did not know, and others said that they had never heard of the ombudsman. These statistics are surprising, particularly as both the standard explanatory letter which comes from the Law Society, and the leaflet ‘Dissatisfied with your solicitor?’ contain information about the ombudsman.

It should, however, be acknowledged that the ombudsman issued a new leaflet for complainers in March of this year, after the period of our study. This new leaflet is much more detailed than the previous one, and provides a much fuller explanation as to what the ombudsman can and cannot do. This was not, of course, available to those participating in our study, and hopefully this new leaflet will clarify the ombudsman’s role for complainers.
Of those whose complaint was not upheld by the ombudsman, an overwhelming 85% felt that they had not been given a satisfactory explanation as to why it was not upheld.

It is possible that these answers reflect the expectations which some complainers may have that the ombudsman can re-investigate the original complaint. This expectation may exist despite the fact that the Law Society’s disposal letter, the ombudsman’s leaflet and the ombudman’s office itself on first contact with the complainer, all make clear that the ombusdman’s role is confined to investigation of the way in which the Law Society has handled the complaint, i.e. to determine whether it has been handled in a fair, thorough and impartial manner.

Those complaining to the ombudsman are issued with a copy of his opinion as a matter of course, but it is apparent that some respondents may have had difficulty in understanding the nature of the investigation and the reasoning behind the ombudsman’s conclusions.

It is, of course, possible that some people ‘choose’ not to understand, because they do not achieve the outcome they want. Nevertheless, we believe that, given these figures, this is a matter which requires further investigation.

We would suggest that the ombudsman reviews the way in which his opinions are issued and explained to complainers, to ascertain whether there is room for improvement in terms of clarity and ease of understanding. We understand that the ombudsman is, in fact, presently considering carrying out research in this area in the near future, and we would suggest that such research would be very welcome.

There seemed to be a general feeling amongst respondents that the ombudsman is effectively toothless, and should be given greater powers. Some pointed particularly to the fact that the Law Society was not obliged to follow his recommendations, and many suggested that such an obligation should be introduced. It should be noted, however, that since 1997 the ombudsman has had the power to give publicity to situations where the Law Society has not accepted a recommendation21, and we understand that in 1998 most recommendations have been accepted.

Finally, the overall limitations on the powers of the ombudsman were seen as contributing to the perception of some respondents that the Law Society was ‘untouchable’.
3.15 Self-regulation and the need for an independent complaints body

In 1986, we recommended that a separate body, independent of the Law Society, should be set up to handle complaints against solicitors. The evidence of the present survey has not given us any cause to change our policy on this matter.

It is clear from our findings that the present Law Society complaints system does not meet the Citizens’ Charter standards. Nevertheless, while we believe that there could be significant improvements to the system, we do not think that these would be sufficient to address the problem. At the very least, there is a need for an entirely new complaints system. However, even the introduction of a completely new system within the auspices of the Law Society would not tackle the real root of the problem.

It is clear to us that at the heart of the matter lies the fact that the Law Society of Scotland is charged by statute with two conflicting roles, firstly, to represent the legal profession, and secondly, to regulate the profession. We believe that these roles fundamentally conflict, and that consequently the Law Society cannot possibly carry out both roles effectively.

The Scottish Legal Services Ombudsman believes that changes to the current system would suffice. It is his view that self-regulation works, as solicitors resent those colleagues who threaten to bring their profession into disrepute. He believes that they are therefore likely to be harder on their peers than any independent body. However, the evidence of our survey suggests that some solicitors may not take seriously the threat of a complaint to the Law Society.

Perhaps this is because they, too, believe that the Law Society will take their side. There is some evidence of a degree of arrogance by some solicitors, in that they either ignored the complainer completely, or refused to accept that s/he may have grounds for complaint. This is not true of all members of the profession, and we know that some solicitors, acutely aware of the conflict, agree there should be an independent complaints handling body.

The Law Society argues that its procedure is fair. Whether that is the case is a matter for some debate. However, whether the procedure is actually fair on an objective view is not the important point here. What is crucial is whether those who complain, and the public in general, perceive the procedure to be fair. As the Service First Charter guide How to deal with complaints points out, the public must see a reviewer as independent. If they do not, they will be discouraged from making complaints, and will have little faith in the investigation carried out by the reviewer.
Half of those who took part in our survey thought the complaints procedure was unfair. It is clear from the comments made that many of the complainers in our survey perceived the Law Society as biased, and as taking the side of the solicitor. As we have seen, it may be argued that people are likely to believe their complaint was not handled fairly if they were unhappy with the outcome, and that is likely to be true to an extent.

However, the figures show that there are other factors which must be taken into account here. The comments which people made showed that many felt the procedure to be unfair because they felt the Law Society was protecting its own. Although a high proportion of respondents had their complaint upheld in some way, many were still unhappy with the outcome. In some cases, this might well have been because they felt that the disciplinary action taken or compensation awarded was not sufficient.

It is possible that many of these respondents may have thought the procedure was unfair as a result, believing that the Law Society had taken the solicitor’s side. If the complaint had instead been handled by an independent body, it might be assumed that these people would be less likely to object to the way in which their complaint was handled. In other words, even if they did not achieve the outcome they wanted, they would at least have been left feeling that the handling of the complaint had been fair and impartial. They would be more likely to have felt that they had been given a fair hearing, and less likely to take the matter further.

A considerable number of respondents felt that there should be an independent body to deal with complaints. Their comments indicated that they would have been happy if their complaint had been dealt with by such a body, as they would have seen this as impartial. Clearly, many complainers felt strongly about this. We did not at any stage raise the issue of a separate complaints body in our questionnaire, yet many respondents brought this up.

The ombudsman has recommended in several annual reports that the Law Society should increase the numbers of lay members on its complaints committees, in order that the balance of members is not weighted so heavily in favour of the legal profession. The Law Society has, as a result of this, recently advertised for more lay committee members.

While we agree that an increase in lay membership is desirable, and would be an improvement on the current state of affairs, this in itself is not enough to address the difficulties with the system. Rather, this is simply another example of the Law Society ‘tinkering’ with its complaints process, rather than carrying out a radical review.
Given the evidence outlined above, we believe that an independent review body must be set up to deal with complaints against solicitors. Unless this is done, complainers will continue to perceive the Law Society’s procedure as biased in favour of the legal profession.

It is essential that the establishment of this new body is accompanied by a compulsory client care rule for solicitors. This would compel every solicitors’ firm to adopt an internal complaints procedures. The client would then be required to go through this procedure before taking a complaint to the independent body, as under the current English system.

The introduction of an independent body would accordingly have a direct impact on the way in which solicitors deal with complaints. An independent system, in conjunction with a client care rule, should encourage solicitors’ firms to make a greater effort to deal with complaints at an earlier stage.

In this way, it may be hoped that an independent body would gradually impact on solicitors firms in a positive manner, resulting in improved client care and internal complaints-handling systems. This in turn should ensure that the level of complaints made to the independent body would, in time, fall below that currently being dealt with by the Law Society each year.

The Law Society would also have a key role in making this new system work. Its implementation of a client care rule would encourage solicitors to improve their procedures. The Society would also have a vital role in promoting on an ongoing basis the adoption and improvement of good internal complaints systems. The Society would be at the forefront in educating solicitors as to the benefits of improved client care systems, in order to ensure that the new system works.

We must emphasise here that it is essential that the independent review body must be truly independent of the Law Society. In England and Wales, the Office for the Supervision of Solicitors (OSS) was set up in 1996 in response to heavy criticism of its predecessor, the Solicitors Complaints Bureau (SCB), by the National Consumer Council (NCC), among others.

The SCB was criticised because it was set up by the Law Society, and was dominated by solicitors. The evidence of the NCC study was that the public did not view the Bureau as impartial or independent. The study also showed that the procedures appeared to favour the solicitor over the complainer.
The NCC recommended the setting up of an independent Legal Services Complaints Council consisting of a majority of lay members appointed by the Lord Chancellor and chaired by a non-lawyer. There would, however, also be solicitor members on the Council, again independently appointed. This body would fulfil the roles of both the SCB and the Legal Services Ombudsman.

Instead, however, the Law Society set up the OSS, still under its own authority, and operating from the same offices as the SCB, with many of the same staff. Clearly this is very far removed from the NCC’s suggestion of an independent body, and it is inevitable that many people will continue to see the OSS as simply an arm of the Law Society.

It is essential that we do not repeat this experience in Scotland. There must be an effort to set up an entirely independent complaints body from the start. It is also vital that this body should be properly resourced, to ensure that the problems with delay which have dogged the current process are not replicated within the new system.

In constructing the model for this independent body, we believe that there are lessons to be learned from successful examples of independent complaints systems in other sectors. These include the insurance industry ombudsman scheme, and the Personal Investment Authority Ombudsman Bureau. There are various possibilities as to how the independent body could be constituted and run. A regulatory body with statutory authority would be one option, while another might be a non-statutory ‘arms-length’ scheme.

We believe that an independent statutory system would best serve the needs of complainers. In our view, statutory regulation is preferable to any voluntary scheme, in order to ensure that there is a change in the way complaints are dealt with at a practice level by solicitors. This is essential, as one of the important benefits of introducing an independent body would be the positive effects which this would have on the way in which solicitors’ firms handle complaints.

One possible model would be along the lines of the statutory Personal Investment Authority Ombudsman Bureau (the Bureau), which was established in 1994. The Bureau is the independent complaints handling body for resolving complaints by policyholders and investors against firms which are regulated by the Personal Investment Authority.

The Bureau has statutory authority over regulated firms, in terms of the 1986 Financial Services Act. It has two areas of jurisdiction, the first of which is a mandatory jurisdiction in relation to complaints about matters regulated by the 1986 Act. The second is a voluntary jurisdiction which extends the schemes to cover complaints about claims and administration of policies and investment contracts.
However, before a complaint can be dealt with by the Bureau, the regulated firm must first deal with the complaint internally. This is similar to the current procedures relating to solicitors in England and Wales, and also to our proposals regarding a client care rule.

While we would wish to see such a model introduced to deal with complaints against solicitors in Scotland, we recognise that another possible route would be a non-statutory ‘arms-length’ scheme. Such a scheme would be funded by the legal profession, in a similar manner to the voluntary jurisdiction scheme run by the Bureau.

We recognise that such a scheme has the advantage that it would be quicker and easier to implement than a system which would require new legislation to be enacted. However, we would have concerns regarding the voluntary nature of such a scheme, as this would require the agreement and co-operation of the entire legal profession. Moreover, it would lack the authority which a statutory system would have.

Were such an arms-length scheme to be introduced, however, it is essential that this scheme should be seen to be transparent, fair and, above all, independent.

Whatever system is to be adopted, we would recommend to a Scottish parliament that all possible options should be carefully considered. The parliament should carry out a thorough review of the current system before any firm decisions are taken.

3.16 Conclusion

This report provides considerable evidence of consumer dissatisfaction with the way in which complaints against solicitors are presently handled in Scotland, both by solicitors and by the Law Society. We believe that there is an urgent need for both to adopt a more client-oriented approach to dealing with complaints. Solicitors must embrace the concept of client care, which would help to reduce complaints, while at the same time ensuring a better deal for clients.

The Law Society’s procedure contains many major flaws, and we have suggested a number of ways in which these could be remedied. Were these changes to be carried out, this would go some way towards improving the lot of consumers who complain about solicitors.
However, such changes would not go far enough. It is essential that complaints are dealt with by a body which is seen to be independent and impartial. Those who complain must be able to feel that their complaint has been fairly dealt with. It is clear that the fundamental root of the problem from the consumer’s point of view is that the Law Society is seen as being on the side of the solicitor. The only effective solution to the problem is the establishment of an independent review body to deal with complaints against solicitors in Scotland.

CHAPTER 4   RECOMMENDATIONS

4.1 TO A SCOTTISH PARLIAMENT

1. A Scottish Parliament should establish a review of the Law Society of Scotland’s complaints procedure, with a view to establishing an independent complaints body to deal with consumer complaints against solicitors in Scotland.

We believe that such a review should be an urgent priority for a Scottish Parliament, in the interests of consumer protection. This review should involve an examination of best practice in complaints handling in other fields. All possible options, including statutory regulation and a non-statutory ‘arms-length’ scheme, should be carefully considered by the parliament.

In the meantime, until the parliament is in place, we make the following recommendations to the Law Society of Scotland as to how it might improve its existing complaints handling procedure:-

4.2 TO THE LAW SOCIETY OF SCOTLAND

2. The Law Society of Scotland should issue a practice rule making the use of letters of engagement by solicitors compulsory.

The Scottish Legal Services Ombudsman has advocated the use of letters of engagement for some years. In his most recent annual report, he recognised that the Law Society remained unconvinced that a practice rule should be issued making their use compulsory. He therefore recommended that as a first step the Law Society should introduce a practice rule requiring solicitors to advise their clients in writing at the outset of a transaction, detailing the fees to be charged, or
While we would endorse the ombudsman’s recommendation, this does not, in our view, go far enough. We believe that the Law Society must implement a practice rule requiring solicitors to issue full letters of engagement. This should require solicitors, after the first interview with a client, to send to that client a letter confirming the instructions given by the client and setting out the next steps to be taken. Where the client will be paying the solicitor’s fee, the letter should also advise as to the likely total cost of the services to be provided.

3. The Law Society of Scotland should implement a client care practice rule, and carry out an education programme for its members as to the benefits of such a rule.

We believe that the findings of our survey demonstrate that a compulsory client care rule is urgently required. This rule should require each solicitors’ firm to have a written in-house procedure for dealing with complaints. It should also require each firm to nominate a specific person to deal with complaints.

The introduction of this rule should be accompanied by an education programme for solicitors, emphasising the benefits which improved client care can bring to their business.

4. The Law Society of Scotland should produce a clearly written formal complaints procedure.

As we have shown, the present procedure is very complex and difficult to understand. Lay people must be able to understand how the procedure works. It is also extremely important that complainers feel the procedure has been followed properly and fairly, once the complaint has been dealt with. A written procedure which is easy to understand should go some way towards ensuring that people feel their complaint has been dealt with in a fair manner.

5. The Law Society of Scotland should ensure that the barriers to complaining which exist within its complaints procedure are removed. In particular, the Society should accept oral complaints as well as those made in writing.

The Conveyancing and Executry Services Board accepts oral complaints, in accordance with the Service First Charter guide How to deal with complaints. We can see no good reason why the Law Society should not follow suit. A complaint should be registered once an initial telephone enquiry is received, and the details written onto a help form. The written investigation could then be activated on receipt of the signed help form by the Law Society.
6. The Law Society of Scotland should produce a clearly written information leaflet for complainers about its complaints procedure.

This leaflet should accompany the new written procedure, explaining the categories of complaint and various steps followed for each category, in clear, easy to follow language. The new leaflet should provide much more detail about the procedure than the Law Society’s existing leaflet, ‘Dissatisfied with your solicitor?’ The leaflet should be sent to everyone who makes a complaint to the Law Society, whether orally or in writing.

7. The Law Society of Scotland should issue a help form to everyone who wishes to make a complaint, and use of the form should be mandatory for complainers.

We believe that use of a help form in every case would benefit complainers, while also speeding up the complaints process. The form should, however, be re-designed in a clearer, better quality format, along the lines of that issued by the Office for the Supervision of Solicitors in England.

8. The Law Society of Scotland should offer the services of the complaints investigator to all complainers on first contact with the Society, either by telephone or in writing.

We believe that all complainers should be offered a personal interview with the investigator to help them make their complaint, and to explain the complaints process to them, if necessary. The offer of an interview with the investigator should be made on the complainer’s first contact with the Law Society, either in writing or by telephone.

9. The Law Society of Scotland should publish performance targets for each stage of its complaints process. If targets cannot be met, complainers should be kept well informed as to the progress of their complaint.

These targets should be printed in the explanatory leaflet about the Law Society’s complaints procedure. If, for any reason, the targets cannot be met, the Law Society should contact the complainer at regular intervals to update them as to the progress of their complaint.
4.3 **TO SOLICITORS**

10. Solicitors should, after the first interview with a client, send to the client a letter confirming the instructions given, and setting out the next steps to be taken. Where the client will be paying the solicitor’s fee, this letter should also advise as to the likely total cost of the services to be provided.

In our 1995 survey, we found that only one-fifth of solicitor respondents always sent out a ‘letter of engagement’ to their clients after the initial appointment.

The use of letters of engagement is, in our view, an essential first step towards achieving an efficient client care and complaints handling system.

11. Solicitors should inform clients at the beginning of the solicitor-client relationship what they should do if they are dissatisfied with any aspect of the service provided.

The provision of this information to clients is an important aspect of client care. It is not necessary for the solicitor to give a lot of detailed information to clients. Simply advising the client to speak first to their own solicitor, and giving them the name of the client relations partner, if there is one, should be sufficient.

12. Every solicitors’ firm should have a written internal complaints process. A specific solicitor within each firm should be nominated to deal with complaints.

As we have seen from our survey, many complaints to the Law Society might have been avoided, had the firm in question dealt with the matter more efficiently. If solicitors’ firms had more adequate complaints handling procedures, it is likely that fewer complaints would be made to the Society. An important aspect of the complaints process is the appointment of a nominated complaints or client relations partner.
REFERENCES


2. Solicitors' (Scotland) Practice Rules 1986, rule 3


4. Law Society of Scotland 1997 Annual Report

5. See eg ‘Background Papers to Council Wide Approaches to Complaints Handling and Resolution'; Glasgow City Council, December 1997


9. At para 6.1-6.3

10. Solicitors’ Practice Rule 15


12. Section 42A Solicitors (Scotland) Act 1980


15. Section 65 Solicitors (Scotland) Act 1980

16. Section 42C Solicitors (Scotland) Act 1980

17. Section 33 Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

18. Section 53 Solicitors (Scotland) Act 1980

COMPLAINTS ABOUT SOLICITORS


21. Section 34A Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, as amended by section 2, Scottish Legal Services Ombudsman


24. Small Claims in the Sheriff Court in Scotland - an assessment of the use and operation of the procedure; Scottish Office Central Research Unit Papers, 1991

25. See note 24, at page 110

26. at para 2.3


28. Consumer Dissatisfaction; A report on surveys undertaken for the Office of Fair Trading; OFT, 1986

29. at para 6.2


31. Service First- the new Charter programme -How to deal with Complaints, the Cabinet Office, 1998, at page 8

32. ‘Unhappy with your qualified conveyancer or executry practitioner?’; published by the Scottish Conveyancing and Executry Services Board


34. Scottish Legal Services Ombudsman Annual Report 1996
35. ‘Can we help?’, produced by the Office for the Supervision of Solicitors

THE BASIC PRINCIPLES OF AN EFFECTIVE COMPLAINTS SYSTEM

- **Definition** - what is a complaint? This should be the most relevant, least restrictive definition possible. The definition must be applied consistently, and understood by all staff and users of the service. If someone believes they have a complaint, then it is a complaint, whatever the service provider may think.

- **Accessibility** - the procedure must be easily accessible, and well publicised. It should be ensured that people know how to complain. In particular, people should be told at the outset what to do if dissatisfied with the service provided. There must be a member/s of staff whose duty is to assist people in making a complaint. This should be publicised to all users.

- **Barriers to complaining should be removed to ensure access for all.**

- **Procedure** - there must be a formal written procedure for dealing with complaints. This should be in clear language, simple to understand and use. People should be informed as to the various stages of the procedure.

- **Speed** - the emphasis should be on resolving complaints quickly. There should be publicly stated time standards for acknowledging and responding to complaints, and keeping complainers informed of progress at regular intervals if deadlines cannot be met.

- **Fairness** - all complaints must be dealt with impartially. The complaints procedure must be fair, open, and understood by all involved.

- **Effectiveness** - the procedure must be effective, dealing with all points raised, and providing suitable remedies.

- **Recording of complaints** - a system should be established to capture and record complaints whether dealt with formally or informally, by phone or in writing.

- **Regular monitoring and auditing** - the procedure should be regularly monitored and audited, to make sure that it is effective and improved.

- **Review** - a review system must be independent. The public must see the reviewer as independent.

*Taken from Service First - the new Charter Programme, produced by the Cabinet Office (1998 - How to Deal with Complaints). This updates and replaces the Good Practice Appendix*
8. CONCLUSION AND RECOMMENDATIONS

(I) the machinery for dealing with consumer complaints against solicitors should be independent of the Law Society.

(II) remedies for complainers and the discipline of solicitors should be distinguished and largely dealt with separately.

(III) the primary aim of the complaints process should be to obtain redress for the client; the discipline of solicitors should continue to be dealt with by the Law Society and the statutory Discipline Tribunal.

(IV) the complaints procedure should be able to deal with all complaints whether legal aid or non-legal aid and whether involving negligence or professional misconduct. The new procedure should not however be exclusive - the client should continue to be able to take a case for negligence to the ordinary courts if s/he so wishes.

(V) the Law Society should in consultation with consumer organisations draw up a code of conduct for solicitors. This will, as far as possible, set out what the client can reasonably expect of his solicitor.

(VI) the broad structure of the complaints procedure should be as follows:

   i) An investigatory stage. Within this stage meetings with complainers should be an important part of the procedure.

   ii) Emphasis on conciliation to resolve the problem, although this should never to forced upon the complainer.

   iii) An adjudication stage for complaints not otherwise resolved. A tribunal is proposed with a wide range of remedies available.

   iv) A monitoring and reviewing level - a Council is proposed.

(VII) at both the adjudication stage (the ‘tribunal’) and the monitoring and reviewing level (the ‘Council’) a majority of the membership of the bodies involved should be lay.

(VIII) the complaints procedure should be mainly funded by a levy on the legal profession.
# HELPFORM

**Ref:** (for Office Use Only) ........................

**YOUR COMPLAINT**

Answer as much as you can and send this form back to the address at the end of this form. Attach a separate sheet of paper if you have more to add.

## PLEASE PRINT CLEARLY

<table>
<thead>
<tr>
<th>Your Name</th>
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<tr>
<td>Your Address</td>
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<table>
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<tr>
<th>Post Code</th>
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<tr>
<th>Telephone (home)</th>
<th>Telephone (work)</th>
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**WE MAY REQUIRE TO CONTACT YOU BY TELEPHONE. PLEASE ADVISE WHICH NUMBER SHOULD BE USED TO CONTACT YOU BETWEEN 9.00AM AND 5.00PM ON WEEK DAYS**

## WHO ARE THE SOLICITOR(S) YOU ARE COMPLAINING ABOUT?

<table>
<thead>
<tr>
<th>Firm Name</th>
</tr>
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<tr>
<td>Firm Address</td>
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<table>
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<tr>
<th>Name of person dealing with the case</th>
<th>Telephone</th>
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**COMPLAINTS ABOUT SOLICITORS**

**PLEASE GIVE BRIEF DETAILS OF YOUR COMPLAINT**

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When did you first instruct the solicitor? Date:

<table>
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<tr>
<th>YES</th>
<th>NO</th>
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<tbody>
<tr>
<td>Is the matter finished?</td>
<td></td>
</tr>
<tr>
<td>IF YES, when did it finish? Date:</td>
<td></td>
</tr>
<tr>
<td>IF NO;</td>
<td></td>
</tr>
<tr>
<td>Have you complained to the solicitor?</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>What was the name of the person you contacted?</td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
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</table>

**GIVE DETAILS OF ANY SOLICITOR NOW ACTING FOR YOU**

(If different to the solicitor you are complaining about)

| Firm name: |
| Firm Address: |

Person dealing with the case? Name:

**WHAT TYPE OF WORK IS IT?**

<table>
<thead>
<tr>
<th>Conveyancing</th>
<th>Matrimonial &amp; Family</th>
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<tbody>
<tr>
<td>Court Proceedings</td>
<td>Trust/Executive</td>
</tr>
<tr>
<td>Personal Injuries</td>
<td>Other (Please specify):</td>
</tr>
</tbody>
</table>

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**Appendix 3**
## COMPLAINTS ABOUT SOLICITORS

### HAS THE REASON FOR YOUR COMPLAINT MEANT THAT -

<table>
<thead>
<tr>
<th>Reason</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>You have suffered financial loss?</td>
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<td></td>
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<tr>
<td>You have had extra expense?</td>
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<tr>
<td>You have been put to inconvenience?</td>
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If “Yes” to any of these please give brief details:

### IF YOUR COMPLAINT IS ABOUT A COURT ACTION PLEASE STATE WHICH:

- Court/Tribunal:
- Date of the next hearing:

Are you on Legal Aid? | Yes | No |

### IF YOUR COMPLAINT IS ABOUT THE WAY A DECEASED PERSON'S ESTATE IS BEING DEALT WITH:

1. Please name the Executor(s) appointed to deal with the estate:

2. Are you a beneficiary (entitled to a share in the estate)? | Yes | No |

In response to your complaint what have the solicitors offered to do?
<table>
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<tr>
<th>Why are you not satisfied with this?</th>
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<th>WHAT WOULD YOU LIKE THE FIRM TO DO?</th>
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<thead>
<tr>
<th>Has the solicitor asked you to pay fees?</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has the solicitor asked you to pay outlays?</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>If YES, how much?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outlays</td>
<td></td>
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</tr>
<tr>
<td>How much have you paid?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outlays</td>
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</table>

It would be helpful if you could let us have a copy of any accounts or fee notes forwarded from the solicitor.

I understand that a copy of this form may be sent to the solicitor.

Signed: ........................................ Date: .............................

Please return completed form to:

The Client Relations and Complaints Office,
The Law Society of Scotland,
26 Drumshagh Gardens,
Edinburgh, EH3 7YR
QUESTIONNAIRE
COMPLAINTS AGAINST SOLICITORS TO THE LAW SOCIETY

Please answer as many questions as you can. Your answers will be kept confidential and will only be seen by research staff employed by the Scottish Consumer Council. Responded questionnaires will not be seen by any member of the Law Society of Scotland.

Most questions can be answered with a tick, but there is space for your comments as well.

SECTION 1: YOUR CASE

Q1. What legal work did you ask your solicitor to do for you?
(please tick one box only)
- Claiming damages for personal injury (e.g. you were injured in a road accident) __________
- Claiming compensation for something not involving personal injury (e.g. someone has failed to provide a service such as building work and you have lost out as a result) __________
- Wills / executry (either in connection with your own will, or in connection with the property of someone who has died) __________
- Conveyancing (house purchase or sale) __________
- Family (e.g. divorce, or custody of children) __________
- Criminal __________
- Debt / money problems __________
- Other, please specify __________

Q2. What were the reasons for you being unhappy with the service provided by your solicitor?
(If there was more than one reason, please rate in order of importance using a scale from 1 to 3 being: 1=most important; 2=second most important; 3=third most important)
- Please give number __________
- Instead of __________
- Delay __________
- Dishonesty __________
- Overcharging __________
- Poor advice __________
- Lack of communication __________
- Incompetence __________
- Failure to follow instructions __________
- Solicitor’s behaviour __________
- Other __________
- Please specify __________

Q3. When you first went to your solicitor, were you told of what you could do if you were unhappy with the service provided?
- yes □
- no □

Q4. To whom did you complain first?
- My solicitor ____________________________________ (go to Q5)
- Someone else in my solicitor’s firm (e.g. receptionist, Complaints partner) __________ (go to Q5)
- The Law Society of Scotland __________________________ (go to Q5)
- A solicitor in another solicitor’s firm ____________________ (go to Q7)
- An advice agency (e.g. Citizens Advice Bureau) __________ (go to Q7)
- Other, please specify ____________________________________________________________ (go to Q7)

Q5. What, if anything, did she/he/they do about it?
- Accepted my complaint was justified, and made amends __________
- Accepted my complaint was justified, but did not make amends __________
- Investigated my complaint but did not accept my complaint was justified __________
- Refused to investigate my complaint __________
- Other, please specify ____________________________________________________________

Q6. What did you think of the answer you received?

Please answer as many questions as you can. Your answers will be kept confidential and will only be seen by research staff employed by the Scottish Consumer Council. Responded questionnaires will not be seen by any member of the Law Society of Scotland.

Most questions can be answered with a tick, but there is space for your comments as well.

SECTION 1: YOUR CASE

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(please tick one box only)
- Claiming damages for personal injury (e.g. you were injured in a road accident) __________
- Claiming compensation for something not involving personal injury (e.g. someone has failed to provide a service such as building work and you have lost out as a result) __________
- Wills / executry (either in connection with your own will, or in connection with the property of someone who has died) __________
- Conveyancing (house purchase or sale) __________
- Family (e.g. divorce, or custody of children) __________
- Criminal __________
- Debt / money problems __________
- Other, please specify __________

Q2. What were the reasons for you being unhappy with the service provided by your solicitor?
(If there was more than one reason, please rate in order of importance using a scale from 1 to 3 being: 1=most important; 2=second most important; 3=third most important)
- Please give number __________
- Instead of __________
- Delay __________
- Dishonesty __________
- Overcharging __________
- Poor advice __________
- Lack of communication __________
- Incompetence __________
- Failure to follow instructions __________
- Solicitor’s behaviour __________
- Other __________
- Please specify __________

Q3. When you first went to your solicitor, were you told of what you could do if you were unhappy with the service provided?
- yes □
- no □

Q4. To whom did you complain first?
- My solicitor ____________________________________ (go to Q5)
- Someone else in my solicitor’s firm (e.g. receptionist, Complaints partner) __________ (go to Q5)
- The Law Society of Scotland __________________________ (go to Q5)
- A solicitor in another solicitor’s firm ____________________ (go to Q7)
- An advice agency (e.g. Citizens Advice Bureau) __________ (go to Q7)
- Other, please specify ____________________________________________________________ (go to Q7)

Q5. What, if anything, did she/he/they do about it?
- Accepted my complaint was justified, and made amends __________
- Accepted my complaint was justified, but did not make amends __________
- Investigated my complaint but did not accept my complaint was justified __________
- Refused to investigate my complaint __________
- Other, please specify ____________________________________________________________

Q6. What did you think of the answer you received?
Q7. Did the Law Society advise you to take your complaint back to your solicitor/solicitor’s firm before they agreed to investigate it?

yes ☐ (go to Q8)
no ☐ (go to Q9)

Q8. What did you think of this advice?

☐ blank

Q9. How did you find out about complaining to the Law Society?

Through my solicitor / solicitor’s firm 
Through a solicitor in another solicitor’s firm 
Through the Law Society’s leaflet ‘Dissatisfied with your Solicitor?’ 
Through an advice agency (e.g. Citizens Advice Bureau) 
Through a friend / family member 
I already knew about it 
Other, please specify

Q10. If you have seen the leaflet ‘Dissatisfied with your solicitor’, where did you get it?

The leaflet was displayed at my solicitor’s office
My solicitor / solicitor’s firm gave me the leaflet, after I mentioned I wanted to complain
From an advice agency (e.g. Citizens Advice Bureau)
Directly from the Law Society of Scotland
I don’t remember seeing the leaflet
Other, please specify

Q11. Please briefly describe what you think of the leaflet.

☐ blank

SECTION 2: HOW THE LAW SOCIETY DEALT WITH YOUR COMPLAINT

Your initial approach to the Law Society of Scotland

Q12. How did you first contact the Law Society about your complaint?

By phone 
In writing 
In person 
Someone else contacted The Law Society on my behalf 
Other, please specify

Q13. Did you have difficulties in making initial contact with the Law Society’s staff to make the complaint?

yes ☐ (go to Q14)
no ☐ (go to Q15)
Q14. Please briefly describe what was the problem.

Q15. At the beginning, did the Law Society give you any written information on how your complaint would be handled (apart from the leaflet ‘Dissatisfied with your Solicitor?’)?
   - yes ☐ (go to Q16)
   - no ☐ (go to Q17)

Q16. How clear was the information you received?
   - The information was very clear, and I understood it all. ☐
   - The information was clear, and I understood most things. ☐
   - The information was confusing, and I did not understand a great deal. ☐
   - The information was very confusing, and I did not understand it. ☐

Q17. Overall, how well informed did the Law Society keep you throughout your complaint?
   - very well informed ☐
   - well informed ☐
   - neither well nor badly informed ☐
   - badly informed ☐
   - very badly informed ☐

Q18. Overall, how clear were the letters you received from the Law Society?
   - very clear ☐
   - clear ☐
   - neither clear nor unclear ☐
   - unclear ☐
   - very unclear ☐

The handling of your complaint

Q19. Did the Law Society suggest a way of resolving your complaint informally?
   - yes ☐ (go to Q20)
   - no ☐ (go to Q22)
   - don’t know ☐ (go to Q22)

Q20. Did it involve:
   - the client relations partner / senior partner of the solicitor’s firm ☐
   - somebody from the Law Society ☐

Q21. Was this process helpful?
   - yes ☐
   - no ☐

Q22. Did you use the Law Society’s HELP FORM to make your complaint?
   - yes ☐
   - no ☐ (go to Q25)

Q23. Did the HELP FORM assist you in putting your complaint in writing?
   - yes ☐
   - no ☐

Q24. Please briefly tell us what you thought of the HELP FORM.

Q14. Please briefly describe what was the problem.

Q15. At the beginning, did the Law Society give you any written information on how your complaint would be handled (apart from the leaflet ‘Dissatisfied with your Solicitor?’)?
   - yes ☐ (go to Q16)
   - no ☐ (go to Q17)

Q16. How clear was the information you received?
   - The information was very clear, and I understood it all. ☐
   - The information was clear, and I understood most things. ☐
   - The information was confusing, and I did not understand a great deal. ☐
   - The information was very confusing, and I did not understand it. ☐

Q17. Overall, how well informed did the Law Society keep you throughout your complaint?
   - very well informed ☐
   - well informed ☐
   - neither well nor badly informed ☐
   - badly informed ☐
   - very badly informed ☐

Q18. Overall, how clear were the letters you received from the Law Society?
   - very clear ☐
   - clear ☐
   - neither clear nor unclear ☐
   - unclear ☐
   - very unclear ☐

The handling of your complaint

Q19. Did the Law Society suggest a way of resolving your complaint informally?
   - yes ☐ (go to Q20)
   - no ☐ (go to Q22)
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Q20. Did it involve:
   - the client relations partner / senior partner of the solicitor’s firm ☐
   - somebody from the Law Society ☐

Q21. Was this process helpful?
   - yes ☐
   - no ☐

Q22. Did you use the Law Society’s HELP FORM to make your complaint?
   - yes ☐
   - no ☐ (go to Q25)

Q23. Did the HELP FORM assist you in putting your complaint in writing?
   - yes ☐
   - no ☐

Q24. Please briefly tell us what you thought of the HELP FORM.
Q25. Did you use the services of the Law Society’s complaints investigator?  
(The complaints investigator helps complainers to put their case in writing. He/she can visit complainers at home or see them in the Law Society’s office.)  
- yes □ (go to Q26)  
- no □ (go to Q27)  
- don’t know □ (go to Q27)  

Q26. How helpful was the complaints investigator?  
- very helpful □  
- helpful □  
- neither helpful nor unhelpful □  
- unhelpful □  
- very unhelpful □  

Q27. What did you want to happen as a result of your complaint?  
(Please tick all that apply)  
- An apology from my solicitor / solicitor’s firm □  
- An explanation about what went wrong □  
- The mistakes made put right □  
- An assurance that what went wrong would not happen again □  
- My fees reduced / waived □  
- Financial compensation □  
- A disciplinary action taken against the solicitor □  
- Don’t know □  
- Other, please specify □  

Q28. How long did it take from first approaching the Law Society with your complaint until it was closed?  
- less than 6 months □  
- 6 months to 1 year □  
- 1 to 2 years □  
- more than 2 years □  

Q29. Did you consider this a reasonable time?  
- yes □  
- no □  

Q30. How does this time compare with your initial expectations?  
- A lot less than I expected initially □  
- Less than I expected initially □  
- Approximately what I expected initially □  
- More than I expected initially □  
- A lot more than I expected initially □  

SECTION 3: THE OUTCOME OF YOUR COMPLAINT

Q31. Which of the following best describes the settlement of your complaint?  
(Please tick all that apply)  
- I received an apology from the solicitor / solicitor’s firm. □  
- I received an explanation about what went wrong. □  
- The solicitor’s fees were refunded. □  
- The fees I had to pay to the solicitor / solicitor’s firm were reduced. □  
- The solicitor/solicitor’s firm did/paid for some work to be done to put things right □  
- I received a payment of compensation from the solicitor / solicitor’s firm. □  
- Disciplinary action was taken against my solicitor. □  
- My complaint was not upheld. □  
- Other, please specify. □  

Q32. Thinking about your answer in Q27 [what you wanted to happen as a result of your complaint], how happy were you with the outcome of your complaint?  
- very happy □  
- happy □  
- indifferent □  
- unhappy □  
- very unhappy □  

Q33. Do you think your complaint was handled fairly?  
- yes □  
- no □
Q34. Please briefly explain your answer to Q33.

[Blank space for answer]

Q35. Did you have an adequate chance to put your views forward?

- Yes □
- No □

Q36. Please briefly say why.

[Blank space for answer]

Q37. Overall, how satisfied were you with the way the Law Society dealt with your complaint?

- Very satisfied □
- Satisfied □
- Indifferent □
- Dissatisfied □
- Very dissatisfied □

Q38. Should you experience, in the future, another problem with a solicitor, how likely would you be to approach the Law Society of Scotland again?

- Very likely □
- Likely □
- Unlikely □
- Very unlikely □
- Don't know □

SECTION 4: FURTHER ACTION

Q39. Did you take your complaint any further?

- Yes □ (go to Q40)
- No □ (go to Q47)

Q40. Did you take your complaint to the Scottish Legal Services Ombudsman?

- Yes □ (go to Q41)
- No □ (go to Q46)

Q41. Why did you take your complaint to the Ombudsman?

(Please tick all that apply)

- I was unhappy with the way The Law Society handled my complaint. □
- I was unhappy with the outcome of my complaint. □
- The Law Society was unwilling to investigate my complaint. □
- Other, please specify □

Q42. What happened after you took your complaint to the Ombudsman?

- The Ombudsman considered my complaint and referred it back to the Law Society, recommending further action. □ (go to Q44)
- The Ombudsman considered my complaint, but no further action was recommended. □ (go to Q43)
- Other, please specify □ (go to Q43)

Q43. If your complaint was not upheld, were you given a satisfactory explanation?

- Yes □
- No □

Q44. Were you satisfied with the Ombudsman's decision?

- Yes □
- No □
Q45. Did you at this stage take your complaint to anyone else?
   - yes □ (go to Q46)
   - no □ (go to Q47)

Q46. What did you do?

Q47. Which of the following statements best describes what you think the Ombudsman does?
   - Handles complaints from members of the public about how solicitors deal with their cases. □
   - Examines people’s complaints about how the Law Society handles complaints against solicitors and makes recommendations. □
   - Examines people’s complaints about how the Law Society handles complaints against solicitors and imposes a decision. □
   - Don’t know. □

Q48. Please use this space to write any comments which relate to your experiences with the Law Society or the Ombudsman.
(Please write on a separate piece of paper, if necessary)

SECTION 5: ABOUT YOURSELF

Q49. Were you on Legal Aid?
   - yes □
   - no □

Q50. Your age?
   - 16 - 25 □
   - 26 - 40 □
   - 41 - 60 □
   - over 60 □

Q51. Are you male or female?
   - male □
   - female □
METHODOLOGY

Pearson Chi-Square tests were used to test for the likelihood of association between answers given, for example, between the time it took for a complaint to be closed and respondents’ initial expectations of the time they thought it would take. The Chi-Square test tells us how likely it is that an observed set of values occurs simply by chance. If the probability (p) is small enough (usually less than 0.05 in social research) the hypothesis that the two variables are independent (the null hypothesis) is rejected. Accordingly, in this study the null hypotheses were rejected at the 5% level.

Due to the fact that the Chi-Square test may be inaccurate when the expected count of cells is less than five, data were grouped when appropriate. For example, in relation to the time it took for cases to be closed, data were grouped into two categories (less than one year and more than one year), so that tests of association could be made.
DISSATISFIED with your Solicitor?

The Law Society deals with complaints against Solicitors

- The reasons that you may wish to complain
  1. Your Solicitor’s behaviour. For example, the Solicitor may be unreasonable or act where there is a conflict of interest.
  2. Your Solicitor’s service. The Solicitor may not deal with your work reasonably quickly; may not get in touch with you often enough; may not carry out the job that you expected.

- What should you do?
  1. Always give the Solicitor the chance to put things right. If the Solicitor does not, contact the Complaints Partner or Senior Partner in the firm.
  2. If that does not work, speak to the Law Society.

- What can the Society do?
  1. We will listen to what you have to say. If we can help with information or explanation, we shall do so.
  2. If you appear to have a complaint, we will investigate. We have trained and experienced staff who will contact the Solicitor and attempt to get to the root of the matter.
  3. The Society may find that you have been provided with a less than adequate service. If so, the Society may order a reduction or refund of fees, the correction of mistakes, or even compensation (within a limit of £1,000, for work carried out on or after 3 June 1991).
  4. The Society may find that the Solicitor has been guilty of unprofessional conduct or misconduct. If so, the Society may regret or deplore the Solicitor’s conduct or reprimand the Solicitor.
  5. In the most serious cases, the Law Society will prosecute the Solicitor before the Scottish Solicitors’ Discipline Tribunal. The Tribunal, which is separate from the Law Society, may fine a Solicitor or remove his right to practice.
What the Law Society cannot do
1. Give legal advice.
2. Order your Solicitor to deliver papers to you when you have not paid his correct fees and outlays.
3. Decide the correct fee where you are satisfied with the service.
4. Compel your Solicitor to compensate for his negligence. If negligence is an issue, the Solicitor can be sued through the Courts in the normal way. Before considering this course of action, the advice of an independent Solicitor should be sought.
5. Comment on your Solicitor’s professional judgement, e.g. how he handled a case in Court.
6. Investigate a complaint you may feel you have against someone else’s Solicitor. (Such an investigation may be justified in exceptional circumstances and you should consult your own Solicitor or the Law Society to ascertain what these are.

Do only Solicitors look at your complaint?-No
There are non-Solicitor members on all Complaints Committees.

The Scottish Legal Services Ombudsman
If you think the Law Society has not handled your complaint properly, you can write to the Scottish Legal Services Ombudsman. He is an independent person appointed by the Government. He can be contacted at: 2 Greenside Lane, Edinburgh, EH1 3AH. Telephone 0131-556 5574.

Dishonesty
If your Solicitor has been dishonest and you have lost money which you cannot get back, then you can make a claim against the Society’s Guarantee Fund. Ask us for a claim form.

Addresses
Client Relations & Complaints Office
The Law Society of Scotland
26 Drumsheugh Gardens
 EDINBURGH  EH3 7YR.
Tel. 0131-226 7411.

The Scottish Legal Services Ombudsman
2 Greenside Lane
 EDINBURGH  EH1 3AH.
Tel. 0131-556 5574.

August, 1995
Complaint Against

Thank you for your letter regarding your solicitor.

The Law Society has found that when a client is dissatisfied with the service provided by a solicitor it is often possible to resolve matters quite quickly by direct discussion between the client and the firm.

I have therefore written to Messrs [blank] to ask their Client Relations Partner (an experienced solicitor appointed from within the firm) to look into your complaint and to arrange a meeting with you. It may of course be more suitable for your solicitors to try to resolve the matter through correspondence or by telephone.

If you do not hear from the firm within the next fourteen days or if you feel unable to have direct contact with them please get in touch with me.

I shall then reconsider how to take matters forward.
Appendix 8

Complaints about Solicitors

I thank you for your recent letter and note your complaint against the above named firm.

As I understand your letter, your complaints are XXXXXXXXXX. If I am mistaken, can you please let me know as soon as possible. If appropriate, would you also let me have the name of the individual solicitor about whom you are complaining.

I am investigating your complaint and have passed a copy of your letter to the firm for their comments. I will send you a copy of their reply as soon as it is available.

In the meantime, I enclose a copy of the pamphlet “Dissatisfied with your Solicitor?” which details the extent of the powers of the Law Society in handling complaints.