

# **ANNUAL REPORT OF THE INVESTIGATING AND DISCIPLINARY COMMITTEES 2009**

## **INTRODUCTION**

ILEX Professional Standards Ltd (IPS), the regulatory body for members of ILEX, is responsible for dealing with complaints and allegations of misconduct made against them. IPS is also responsible for receiving and determining what action to take in relation to prior conduct declarations made by ILEX members and applicants wishing to become members of IPS.

Complaints, allegations of misconduct and prior conduct declarations are investigated and dealt with in accordance with the rules set out under the Investigation, Disciplinary and Appeal Rules (IDAR).

All members of ILEX are governed by a Code of Conduct and Guide to Good Practice. In addition members must observe relevant codes applicable to their employers, if they work as employees. Their conduct is measured against these codes and guides.

The IDAR set up the Investigating Committee, which is the first tier Committee that receives and determines complaints, allegations of misconduct and prior conduct declarations. The IDAR also sets up the Disciplinary Tribunal to which the Investigating Committee may refer matters. Appeals against Investigating decisions are heard by an Appeal Committee set up under the rules and appeals against Disciplinary Tribunal decisions are heard by an Appeal Tribunal set up under the rules.

## **INVESTIGATING COMMITTEE**

The Investigating Committee comprises 6 members of the ILEX Council and 3 independent lay members. The Committee is responsible for considering complaints or allegations of misconduct made against ILEX members and prior conduct declarations made by members of ILEX and applicants wishing to join ILEX.

Where a complaint or allegation of misconduct is made against a member of ILEX the Committee is responsible for determining whether a prima facie case has been made out to substantiate the allegations and, if it has, what action to take. Where a prior conduct declaration is made the Committee determines whether or not to allow that person to join membership of ILEX or, if they are currently registered to decide what action to take against them.

The IDAR set out the powers available to the Committee, which are separated between complaints and prior conduct declarations.

## **Complaints and Allegations of Misconduct**

The Investigating Committee received and considered a total of 18 cases where complaints or allegations of misconduct had been made against ILEX members. The cases were referred to the Committee after full investigation.

There were 11 other cases which were not referred to the Committee. Of these 6 were cases where investigations had been commenced but the member had been excluded from membership of ILEX prior to the referral of these 6 other matters. In the other five cases no investigation was commenced either because the person was no longer a member of ILEX or the complainant had raised issues which had already been investigated and adjudicated upon.

The following analysis was carried out of the 18 cases that were considered by the Investigating Committee

The Investigating Committee referred 4 cases to the Disciplinary Tribunal. Referrals to the Disciplinary Tribunal were made where the Investigating Committee had found that there was a prima facie case to substantiate the allegations made against the member and they were of a serious nature.

In 5 cases the Committee found that there was a prima facie case to substantiate the allegations and that its own disciplinary powers were sufficient to deal with the matter. Of these 5 cases in one instance a member was admonished for their conduct, in 2 cases members were reprimanded and in 2 cases they were reprimanded and warned about their future conduct.

In 1 case the Committee found that there was a prima facie case to substantiate the allegations but decided to take no disciplinary action against the member.

In 7 cases the Committee found that there was no prima facie case to substantiate the allegations made against the member. All 7 cases involved complaints made against ILEX members by third parties.

In 1 case the Committee decided not to accept a complaint made out of time. The complaint related to matters which were over 12 months old. In such instances the Investigating Committee is asked to determine whether or not to accept the complaint made out of time.

**Comparison of decisions of the Investigating Committee**

<b>Decision</b>	<b>2004 %</b>	<b>2005 %</b>	<b>2006 %</b>	<b>2007 %</b>	<b>2008 %</b>	<b>2009 %</b>
<i>Cases rejected</i>	18	37	18	31	23	33
<i>Warned(including with other orders)</i>	18	10	21	19	0	11
<i>Admonished</i>	14	0	11	6	15	6
<i>Reprimanded</i>	14	24	24	14	8	11
<i>Conditions</i>	0	0	0	11	0	0
<i>Undertaking</i>	9	5	0	0	0	0
<i>Referred to Tribunal</i>	18	24	26	19	42	22
<i>Waiting more information</i>	9	0	0	0	0	0
<i>Response accepted</i>	-	-	-	-	4	6
<i>12 month</i>	-	-	-	-	8	11

**Areas of law in which complaints arose**

The following table analyses the areas of law in which complaints arose. It shows that there has been a dramatic increase in the number of complaints made relating to trust and probate cases.

**Areas of law complaints arose**

<b>Area of law</b>	<b>2009 %</b>	<b>2008 %</b>	<b>2007 %</b>	<b>2006 %</b>	<b>2005 %</b>	<b>2004 %</b>
<i>Civil litigation</i>	17	19	21	23	16	19
<i>Conveyancing</i>	11	8	10	20	12	31
<i>Crime</i>	0	0	3	10	4	6
<i>Employment disputes</i>	0	0	0	0	8	6
<i>Employment Law</i>	5	0	3	0	0	0
<i>Family / matrimonial</i>	11	8	21	3	12	13
<i>Immigration</i>	17	8	32	23	24	13
<i>Private / non legal matters</i>	0	0	0	7	12	6
<i>Trust/probate</i>	28	8	7	7	4	6
<i>ILEX misconduct</i>	11	49	3	7	8	0

**Issues arising in complaints**

The Committee found that there were some recurring themes in the complaints that it considered. An analysis has been undertaken and appears in the table below.

In some cases there was more than one head of complaint or more than one issue raised. Each of these has been counted individually. It should be noted that not all of the allegations were found proved by the Committee.

<b>TYPES OF COMPLAINT CONSIDERED</b>					
<b>Head of complaint</b>	<b>2009 %</b>	<b>2008 %</b>	<b>2007 %</b>	<b>2006 %</b>	<b>2005 %</b>
Acting in a conflict situation	1	2	1	3	4
Acting without or not following instructions	4	13	14	11	11
Client not kept updated on case progress	6	2	11	11	9
Delay	4	7	7	6	4
Duress	1	2	0	1	0
Failure to advise client adequately	7	9	5	5	8
Failure to send client care letter	6	0	6	3	4
Financial irregularities	7	2	4	9	6
Holding out as solicitor & reserved activity	6	4	0	1	0
Holding out as legal executive/ failure to inform of status	1	2	1	5	2
Improper/incorrect advice or action taken	22	7	13	10	15
Inadequate service	4	2	5	3	6
Inadequate costs information given to client	6	0	5	4	2
Introduction / referral breaches	0	0	0	0	2
Lost client files or documents	4	4	1	1	2
Misleading client or court	7	4	11	15	9
Private or personal disputes	0	0	4	1	0
Work or office related disputes	4	0	3	0	2
Breaches of SPR or legislation	1	2	4	1	9
Forgery	1	9	1	4	0
ILEX matters	4	29	4	6	6

### **Timescales**

An analysis was undertaken of the time taken to consider complaints. The table below sets out the time taken to deal with complaints measured from receipt of the complaint at IPS to determination of the case by the Investigating Committee.

The cases which took a long time to complete involved complex and in depth investigations into allegations made against members. Some required information to be obtained from third parties and others. They involved delays caused by members and complainants in making responses to IPS.

<b>Time scale</b>	<b>Number of cases</b>				
	<b>2009</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>
<b>0 – 3 mths</b>	4 (22%)	9 (35%)	7 (24%)	2 (7%)	3 (17%)
<b>4 – 6 mths</b>	7 (61%)	5 (54%)	8 (52%)	11 (43%)	12 (83%)
<b>7 – 9 mths</b>	3 (78%)	3 (65%)	10 (86%)	12 (83%)	3 (100%)
<b>10 – 12 mths</b>	2 (89%)	6 (89%)	0	4 (97%)	0
<b>Over 12 mths</b>	2 (100%)	3 (100%)	4 (100%)	1 (100%)	0

## Declarations of Prior Conduct

The Investigating Committee has responsibility for making decisions on declarations of prior conduct. Prior conduct declarations must be made by existing members and by applicants wishing to join ILEX. Declarations must be made on applications to join ILEX, applications to upgrade membership of ILEX and on the annual subscription return. They must declare if they have any of the following:

- County Court Judgments
- Bankruptcy Orders or Individual Voluntary Arrangements
- Criminal Convictions
- An Order made under S.43 Solicitors Act 1974
- An Order made against them by another professional body.

Where a declaration is made the Investigating Committee is asked to decide whether or not to allow a person into membership of ILEX or, in the case of existing members, what action to take against them. The powers available to the Investigating Committee are set out under the IDAR.

The Investigating Committee has delegated to the Officer the power to deal with specified matters under a procedure known as the expedited procedure. This allows the Officer to approve declarations relating to certain driving offences, spent convictions or outstanding judgments. All expedited decisions are reported to the Investigating Committee.

In 2009, IPS received a total of 108 declarations of prior conduct of which 57 were dealt with under the expedited process and 51 were considered by the Investigating Committee.

### Expedited Cases

The table below breaks down the cases which were considered under the expedited process.

Nature of Matter	Number of cases per year					
	2009	2008	2007	2006	2005	2004
County Court Judgments	14	26	22	23	19	31
Discharged bankruptcy or completed Individual Voluntary Arrangement	9	12	6	12	8	11
Convictions	33	23	29	21	32	43
Other	1	9	1	2	16	10
<b>TOTAL</b>	<b>57</b>	<b>70</b>	<b>58</b>	<b>58</b>	<b>75</b>	<b>95</b>

Of the declarations considered under the expedited procedure 48 involved declarations made by applicants for student membership of ILEX, 1 by an

applicant for Associate Prosecutor membership of ILEX, 1 by an applicant to enrol onto the Graduate Entry Diploma scheme, 1 by an applicant to enrol into the Associate member grade, 3 by Members of ILEX and 3 by Fellows of ILEX.

### **Prior Conduct cases considered by the Investigating Committee**

The following table breaks down the prior conduct cases considered by the Investigating Committee.

<i>Nature of Matter</i>	Total cases 2009	Total cases 2008	Total cases 2007	Total cases 2006	Total cases 2005
County Court Judgments	0	0	0	1	0
Bankruptcy Orders & IVA	29	13	9	12	9
Convictions theft/dishonesty	18	23	16	15	9
Other convictions	0	7	4	5	18
Prof. body findings / s43	4	1	6	4	3
<b>Total</b>	<b>51</b>	<b>44</b>	<b>35</b>	<b>37</b>	<b>39</b>

The Committee approved 49 declarations, it referred 1 case to the Disciplinary Tribunal and rejected 1 application for student membership.

Of the declarations considered by the Committee 30 were made by applicants wishing to become student members of ILEX, 4 by applicants to become Associate Prosecutor members of ILEX, 14 by Fellows of ILEX, 2 by Associate Prosecutor members of ILEX and 1 by an applicant to enrol onto the Graduate Entry Diploma scheme.

### **APPEALS COMMITTEE**

The IDAR set up an Appeals Committee which is responsible for considering appeals made against decisions of the Investigating Committee. The Appeals Committee sits as a panel of 3 members of which 2 are lay and 1 is a member of the ILEX Council. It has the power to confirm or vary a decision of the Investigating Committee or order the Investigating Committee to re-consider a case. In deciding whether to vary a decision of the Investigating Committee the Appeals Committee has available to it all the powers available to the Investigating Committee. Appeals must be made under the grounds of appeal set out in the IDAR.

In 2009 the Appeals Committee considered 2 appeals made against decisions of the Investigating Committee. In both cases the appeals were made by third party complainants.

In one case the Committee found that the appellant had not shown grounds of appeal and the appeal was dismissed. It concluded the appeal was made without merit and confirmed the decision of the Investigating Committee.

In the second case the appeal was made by a complainant whose complaints had been rejected by the Investigating Committee. The Appeal Committee found that the appellant had shown one ground of appeal, which was that there was no evidence or other material to justify the making of the decision by the Investigating Committee in respect of two of the five complaints made by the appellant. The Appeal Committee referred the conduct of the ILEX member to the Disciplinary Tribunal.

Both appeals were heard within the 30 day time limit for considering appeals.

## **DISCIPLINARY TRIBUNAL**

The Disciplinary Tribunal is responsible for considering cases referred to it by the Investigating Committee or, in the case of appeals, by the Appeals Committee. The Tribunal sits as a panel of 3 members of which 2 are lay and 1 is a member of the ILEX Council.

During 2009 the Disciplinary Tribunal heard charges brought against 10 members of ILEX. Of these in one matter charges were brought against 6 members as joint proceedings.

The Disciplinary Tribunal found the charges proved against 9 members. In the group action it found charges not proved against one of the members. In each case where charges were proved the Tribunal found that the matter was serious and excluded the members from membership of ILEX. The periods of exclusion ranged from fixed periods of 1 and 3 years to minimum periods of 2 to 5 years.

In two cases members were ordered to pay costs of £1000 and £2645 respectively. In the group action the 5 members against whom charges were found proved were ordered to make a contribution to costs of £1700 each.

In 1 case a member was also ordered to pay compensation of £300 to the complainant, who was the client of the member.

Three of the cases were heard by the Disciplinary Tribunal within 4 months of referral and one was heard within 6 months of referral. The case involving a joint action against 6 members was heard within 9 months of referral. Delay occurred in that case due to a number of witness statements and amount of evidence required to be collated in readiness for the hearing.

<i>Time scale for considering case</i>	<i>Number of cases</i>				
	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<i>0 – 3 months</i>	1	6	1	2	0
<i>4 – 6 months</i>	1	1	3	1	4
<i>7 – 9 months</i>	1	0	0	1	6
<i>10 – 12 months</i>	0	0	0	1	0
<i>Over 12 months</i>	0	0	0	3	0

## **APPEAL TRIBUNAL**

The Appeal Tribunal is responsible for considering appeals made against Disciplinary Tribunal decisions. Appeal Tribunal cases are heard by two independent lay members and either the President or the Vice-President of ILEX.

During 2009 the Appeal Tribunal met to consider 2 appeals. One appeal involved appeals made by two members in a group action before the Disciplinary Tribunal.

In one case the Appeal Tribunal found that the appellant had shown grounds of appeal but refused the appeal itself and therefore upheld the decision of the Disciplinary Tribunal. The appellant was ordered to pay a contribution of £1000 to the costs of ILEX in respect of the appeal.

In the second case the Appeal Tribunal found that the appellant had not shown any grounds of appeal and dismissed the appeal. The appellants were ordered to pay a total of £4643.70 as a contribution to the costs of ILEX, to be apportioned equally.

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