



**REPORT OF THE  
ILEX INVESTIGATING COMMITTEE,  
APPEALS COMMITTEE,  
DISCIPLINARY TRIBUNAL AND  
APPEALS TRIBUNAL  
2008**

**REPORT OF THE  
INVESTIGATING COMMITTEE**

## **PREFACE**

The Investigating Committee has had another busy year. It has had regular meetings at which it has seen a steady flow of cases.

This year had seen a rise in the number of investigations commenced by ILEX into the conduct of members, mostly during ILEX examinations. The Committee considered many cases which involved serious conduct matters that had to be referred to the Disciplinary Tribunal. In appropriate cases the Committee continued to use the disciplinary powers available to it.

The Committee considered a regular number of prior conduct matters that were referred to it. Towards the end of the year it saw an increase in the number of declarations involving financial orders made against members.

Overall, the Committee remained satisfied with the investigation of cases. It finds the covering report helpful in considering complaint and misconduct cases. The lay members also confirm that they remain satisfied with the operation of the Investigating Committee procedures and there are no matters to which they would wish to draw the attention of Council or ILEX Professional Standards Ltd.

In October 2008 ILEX delegated its regulatory functions to ILEX Professional Standards Ltd. Therefore responsibility for the complaints handling and disciplinary work has moved to ILEX Professional Standards Ltd.

Mr John Wells  
Chair

## **INTRODUCTION TO ILEX AND IPS**

### ***ILEX***

1. The Institute of Legal Executives (ILEX) is the professional and regulatory body which represents Legal Executives and trainee Legal Executives and enhances their role and standing in the legal profession. ILEX is a leading provider of comprehensive legal education and influences law reform. In October 2008 ILEX delegated its regulatory responsibilities to a subsidiary company, ILEX Professional Standards Ltd (IPS).
2. A person will enrol with ILEX as a student member. Upon completion of the ILEX qualification they become a Member of ILEX. Once they have gained 5 years qualifying employment of which 2 years must be gained after reaching Membership they become a Fellow of ILEX. Fellows are referred to as Legal Executives and they are Commissioners of Oaths. ILEX is an authorised body for the purposes of awarding rights of audience in civil, criminal and family proceedings to suitably qualified members. In October 2008 ILEX became the regulatory body for Associate Prosecutors employed by the Crown Prosecution Service. Associate Prosecutors began applying for membership of ILEX since this date into a new grade of Associate Prosecutor member of ILEX.
3. All members of ILEX are governed by its Code of Conduct and Guide to Good Practice. In addition under the Guide to Good Practice members must observe the Solicitors Code of Conduct and Solicitors Accounts Rules. Associate Prosecutor members of ILEX must comply with relevant Crown Prosecution Service Codes.
4. As at December 2008 ILEX had 22,533 members of which 7,503 were Fellows. 45 Fellows were also Legal Executive Advocates.

## **REPORT OF THE WORK OF THE ILEX INVESTIGATING COMMITTEE IN 2008**

### ***Introduction to the Investigating Committee***

5. The Investigating Committee ('the Committee') is a standing committee of the ILEX Council. The Committee was set up under the ILEX Investigation, Disciplinary and Appeals Rules (IDAR).
6. This work undertaken by the Investigating Committee during the calendar year 2008 has been summarised in this report.

### ***Membership of the Committee***

7. The Committee comprises 6 council members and 3 lay members. The quorum for meetings has been set at 5, including at least 1 lay member. The Committee was served by the Officers who undertook the investigation of cases.
8. The Committee members during 2008 were:
  - John Wells – council member & Chair (vice-chair until July 2008)
  - David Hogg – council member & Chair (until July 2008)
  - Celia Bennett – lay member
  - Mary French – council member
  - Stephen Gowland – council member (until July 2008)
  - Lesley Graham – (appointed July 2008)
  - Alan Kershaw – lay member (until May 2008)
  - Rachael Palmer – council member
  - Larry Shaw – council member (vice-chair from July 2008)
  - Toby Simon – lay member
  - Rick Tompkins – lay member (appointed July 2008)

### ***The role of the Investigating Committee***

9. The Committee is responsible for considering complaints or allegations of misconduct made against ILEX members and declarations of prior conduct made by members of ILEX or persons applying to join ILEX.
10. Where a complaint or allegation of misconduct is made against a member of ILEX the Committee is responsible for deciding whether a prima facie case has been made out to substantiate the allegations and, if it has, what action to take.
11. Where a member or an applicant applying to join ILEX has made a declaration of prior conduct the Committee is asked to decide whether or not to allow that person to join membership or, if they are currently in membership, to decide what action to take against them.
12. The Committee was scheduled to meet once each month. The Committee set meeting dates at the start of the calendar year. Meetings took place provided there were cases for the Committee to consider. In 2008 the Investigating Committee met on 11 occasions.

### ***Powers of the Investigating Committee***

13. The IDAR set out the powers available to the Committee, separated between complaints and declarations of prior conduct.
14. Where a complaint or allegation of misconduct is made against a member the Committee has the power under rule 31 of IDAR to accept the member's response and decide to take no further action; decide that the matter concerns issues which are beyond the jurisdiction of ILEX; call for further information or evidence; request the member to provide references from employers or others as to his character and professional conduct; defer a decision so that legal advice can be taken; reject a complaint, allegation or issue of misconduct. The IDAR also grants some limited disciplinary powers to the Committee. The Committee

has the power to request a member to give undertakings as to his future conduct; impose conditions on a member in respect of his conduct or in regard to his employment that it might think appropriate; and admonish, reprimand or warn the member as to his future conduct. If the Committee finds that a complaint or issue of misconduct raised is of a serious nature it must refer the matter to the Disciplinary Tribunal which has further disciplinary powers in addition to those available to the Investigating Committee.

15. The powers available to the Committee where a declaration of prior conduct is made by a member of ILEX or person applying to join ILEX are set out in rule 22 of the IDAR. The Committee has the power to request a member or applicant to provide references as to his conduct and suitability to become a member of ILEX; accept or refuse an application for enrolment; accept or refuse an application for upgrading of membership; impose conditions on a member or applicant in respect of his conduct or in regard to his employment that it may think appropriate; request a member or applicant to give an undertaking as to his future conduct; warn, reprimand or admonish a member; decide to take no further action or refer a case to the Disciplinary Tribunal.

***Independent lay members on the Investigating Committee***

16. The ILEX members of the Committee continue to find that the independent lay members provide an invaluable input and viewpoint on cases. The lay members confirmed that they remained satisfied with the operation of the Investigating Committee procedures and there were no matters to which they would wish to draw the attention of Council or IPS.

## **COMPLAINTS ABOUT CONDUCT**

### ***CASES CONSIDERED BY THE INVESTIGATING COMMITTEE***

17. The Investigating Committee considered a total of 26 cases where complaints had been made against ILEX members compared to 29 cases considered by the Investigating Committee in 2007.
  
18. The above cases included complaints made against ILEX members and issues of misconduct which ILEX had itself decided to investigate. It also included one case where an inspection had been ordered into the management of a practice run by an ILEX member and 2 cases where the committee was asked to consider whether complaints that were over twelve months old should be investigated.
  
19. The Committee was able to consider complaints made by the client of the ILEX member, by the member's employer or by a third party. Usually third party complaints were made by the opposing party to legal proceedings. The Committee also considered complaints referred to it by the Office of the Immigration Services Commissioner (OISC), Legal Complaints Service (LCS) and the Solicitors Regulation Authority (SRA).
  
20. The Committee considered complaints or issues of misconduct against all grades of member who were in current membership. It had no powers to deal with the conduct of non-members or persons whose membership of ILEX had ceased before the complaint was made. However, under the Articles of Association where a complaint had been received about any member or any disciplinary proceedings had been commenced against any member a resignation tendered by such a member could not be accepted until the final determination of those matters (and the expiration of any time allowed for appeals there from).

21. The Committee used the ILEX Code of Conduct and Guide to Good Practice as a measure to establish whether a prima facie case had been made out to substantiate a complaint or allegation of misconduct against a member.
22. The investigation and consideration of complaints involved the following procedure. The Officer investigated the case and the Committee received a copy of the information and evidence supplied by the member and complainant. Additionally the investigating officer prepared a report for each case which was provided to the Committee. The member and complainant had an opportunity to comment upon the report. The report summarised the case and analysed the issues. The Committee members generally received the agenda containing the investigating cases due for consideration at least 10 days in advance of the meeting. At the meeting the members discussed the case and decided whether there was a prima facie case to substantiate the allegations, and if so, what action to take. The powers available to the Committee in these instances are set out earlier in this report.
23. The Committee considered the following cases.

#### ***REFERRALS TO THE DISCIPLINARY TRIBUNAL***

24. The Committee referred 11 cases to the ILEX Disciplinary Tribunal in 2008. In 2007 the Committee referred 7 cases to the Disciplinary Tribunal.
25. Referrals to the Disciplinary Tribunal were made where the Committee found that there was a prima facie case to substantiate the allegations and the matter was of a serious nature and therefore the Committee found that its powers were insufficient to deal with the matter. All 11 cases involved misconduct investigations commenced by ILEX. 7 of them involved allegations that ILEX members were involved in misconduct during ILEX examinations, 2 cases involved referrals made by the SRA to ILEX because orders had been made against the members under s43 Solicitors Act 1974. 1 case involved a referral

made by the OISC and 1 case involved matters arising from an inspection undertaken by ILEX into the management of a practice of an immigration advisor.

### ***DISCIPLINARY POWERS EXERCISED BY THE INVESTIGATING COMMITTEE***

26. The Investigating Committee exercised the disciplinary powers available to it where it found that there was a prima facie case to substantiate the complaint or issues of misconduct raised against the member. The Committee could admonish, reprimand, warn, seek Undertakings from members and impose conditions upon members in respect of their conduct or in regard to their employment as it thought appropriate. These powers were exercised by the Investigating Committee where it found that a referral to the Disciplinary Tribunal was not necessary.
27. In 2008 the Investigating Committee decided in 6 cases that there was a prima facie case to substantiate the allegations made against members and that its own disciplinary powers were sufficient to deal with the matter. In 2007 the Investigating Committee had exercised its powers in 11 cases.
28. The Committee reprimanded members in 2 cases and admonished members in 4 cases.

#### ***Admonished***

29. The Investigating Committee admonished 4 members. 3 cases involved investigations commenced by ILEX into members' conduct during ILEX examinations. The fourth case involved a complaint made by a client of a member that the member had failed to carry out the client's instructions.

#### ***Reprimanded***

30. As stated above in 2 cases the Committee reprimanded members for their conduct. 1 case involved an investigation commenced by ILEX following notification by the Law Society and 1 case involved an investigation commenced

by ILEX following an investigation into the conduct of an ILEX member during an ILEX examination.

### ***REJECTED CASES***

31. The Committee rejected 6 complaints on the basis that there was no prima facie case to substantiate the allegations. In 2007 the Investigating Committee had rejected 11 cases.
32. All 6 cases involved complaints made by third parties. In each case the Investigating Committee found that there was no prima facie case to substantiate the complaints.
33. The Committee often found that it had received complaints from third parties who had used the ILEX procedure to address issues which they believed had not been resolved to their satisfaction in other proceedings. These matters had often been the subject of substantial litigation before they were referred to ILEX as a complaint against an ILEX member.

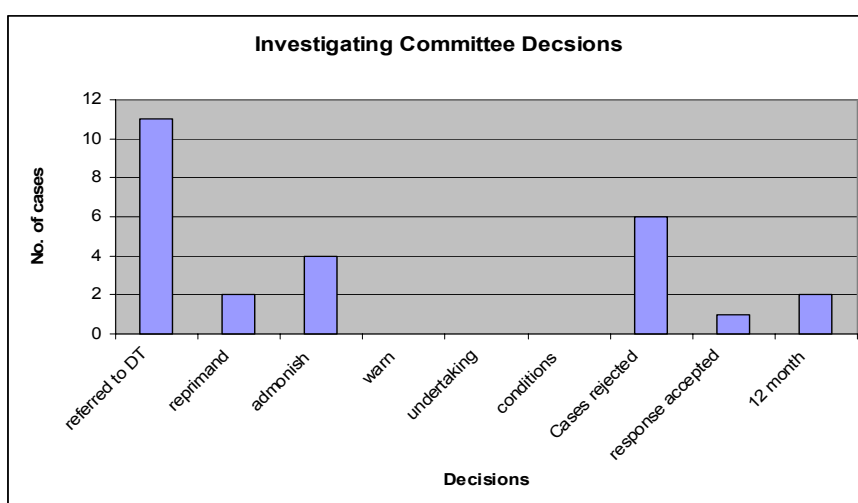
### ***NO ACTION***

34. In 1 case the Committee decided to accept an apology a member had made in response to a complaint that had been made against them. The Committee decided that it did not need to take any further action against the member. The case had commenced as a complaint made by a third party, who withdrew their complaint when it was due to be referred to the Committee. In the absence of the complainant the case was brought to the attention of the Committee as a misconduct matter.

### ***OVER TWELVE MONTH CASES***

35. Under the ILEX rules the Investigating Committee was asked on two occasions to decide whether or not cases where the cause for complaint arose over 12 months ago should be investigated. In these cases the Committee considered why the

complainant had not made their complaint earlier. The Committee decided that one case should be investigated because it was concerned about the conduct of the member. In the other case the Committee decided that the case should not be investigated and this decision was upheld on appeal. The Committee found in that case that the matters which were the subject of the complaint had been litigated substantially and they did not raise any concerns about the conduct of the member who acted for the opposing party in those litigation proceedings.



<b>Comparison of decisions of the Investigating Committee</b>						
<b>Decision</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>No. cases</b>
<i>Cases rejected</i>	18	37	18	31	23	6
<i>Warned(including with other orders)</i>	18	10	21	19	0	0
<i>Admonished</i>	14	0	11	6	15	4
<i>Reprimanded</i>	14	24	24	14	8	2
<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	11
<i>Waiting more information</i>	9	0	0	0	0	0
<i>Response accepted</i>	-	-	-	-	4	1
<i>12 month</i>	-	-	-	-	8	2

## **AREAS OF LAW IN WHICH THE COMPLAINTS AROSE**

36. The following table analyses the areas of law that complaints related to over a 5 year period. In 2008 there had been a large increase in misconduct investigations commenced by ILEX, most of which arose from breaches of examination regulations. There had been a significant decrease in the number of complaints involving immigration advisors.

<b>Areas of law complaints arose in 2004 to 2008</b>					
<b>Area of law</b>	<b>2008 %</b>	<b>2007 %</b>	<b>2006 %</b>	<b>2005 %</b>	<b>2004 %</b>
<i>Civil litigation</i>	19	21	23	16	19
<i>Conveyancing</i>	8	10	20	12	31
<i>Crime</i>	0	3	10	4	6
<i>Employer/employee disputes</i>	0	0	0	8	6
<i>Employment Law</i>	0	3	0	0	0
<i>Family / matrimonial</i>	8	21	3	12	13
<i>Immigration</i>	8	32	23	24	13
<i>Private / non legal matters</i>	0	0	7	12	6
<i>Trust/probate</i>	8	7	7	4	6
<i>ILEX misconduct</i>	49	3	7	8	0
<b>Total</b>	100%	100%	100%	100%	100%

## **ISSUES ARISING IN COMPLAINTS**

37. The Committee found that there were some recurring themes in the complaints that it considered. An analysis was undertaken of these and the table below provided a count of the heads of complaint raised by complainants in the 26 cases considered by the Committee. The table also compared complaints considered between 2004 and 2008. It was not possible to undertake a meaningful comparison due to the small number of cases involved.

38. In some cases there was more than one head of complaint or more than one issue raised under one head of complaint. Each of these was 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>2008 %</b>	<b>2007 %</b>	<b>2006%</b>	<b>2005%</b>	<b>2004%</b>
Acting in a conflict situation	2	1	3	4	2.5
Acting without or not following instructions	13	14	11	11	7.5
Client not kept updated on case progress	2	11	11	9	2.5
Delay	7	7	6	4	5
Duress	2	0	1	0	0
Failure to advise client adequately	9	5	5	8	7.5
Failure to send client care letter	0	6	3	4	5
Financial irregularities	2	4	9	6	5
Holding out as solicitor & conducted litigation	4	0	1	0	12.5
Holding out as legal executive or failure to inform client of status as ILEX member	2	1	5	2	5
Improper/incorrect advice or action taken	7	13	10	15	0
Inadequate service	2	5	3	6	0
Inadequate costs information given to client	0	5	4	2	2.5
Introduction / referral breaches	0	0	0	2	2.5
Lost client files or documents	4	1	1	2	0
Misleading client or court	4	11	15	9	12.5
Private or personal disputes	0	4	1	0	10
Work or office related disputes	0	3	0	2	0
Breaches of SPR or legislation	2	4	1	9	10
Forgery	9	1	4	0	7.5
ILEX matters including practice management issues	29	4	6	6	2.5
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

39. The issues that caused concern for the Investigating Committee during 2008 were matters that were the subject of misconduct investigations commenced by ILEX. The majority of these related to breaches of the examination regulations, a large proportion of which had arisen in combined proceedings against a group of members.

## **TIME SCALES**

40. 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 ILEX to determination of the case by the Investigating Committee. It also compares case completion times over a four year period from 2005 to 2008.
41. The cases which were completed quickly were those where the complainant and member provided all the information from the outset. Those cases which took longer were more complex and involved in-depth investigations into allegations made against ILEX members.
42. Delays in some cases occurred while ILEX waited for information from complainants or members or while ILEX waited for the investigation into the same issues to be concluded by another organisation. The Legal Services Ombudsman had recommended that ILEX should not count these dormant periods which were outside of its control as part of the time taken to complete a case. Periods while other organisations investigated the same complaint were therefore disregarded. However, the time taken by the parties to respond to ILEX had added to the time taken to conclude cases and these periods are included within the case completion times.
43. In 2005 an analysis was undertaken to establish how long an investigation would take under the ILEX procedures. It showed that complaints which progressed smoothly through the ILEX complaints handling process, allowing the parties two weeks to reply to ILEX, took 4 ½ months to complete. The case completion time was extended if the parties took longer to respond to queries or where ILEX had to make additional enquiries.

44. In 2008 ILEX was able to complete 9 cases within 3 months. In some of these cases the matter had been raised by ILEX and therefore there was no complainant in the process. The investigation therefore eliminated part of the process involved in client complaints and reduced the case completion time. In other cases the complainant provided clear evidence with the complaint and the member provided an immediate and full response to the complaint which reduced the amount of correspondence undertaken with the parties and therefore the time that was taken to deal with the case.
45. ILEX completed the investigation into 5 cases within 6 months. Some of these cases involved complex matters but the parties had provided prompt responses to the issues raised with them by ILEX which helped to reduce the investigation time.
46. A further 3 cases took between 7 and 9 months to complete. These cases involved detailed and complex issues which required an in-depth investigation by ILEX. They often required a number of enquiries to be made of the complainant and member to enable ILEX to gather sufficient evidence to support or counter the assertions that had been made in those cases. The cases also included instances where the parties delayed in responding to enquiries made by ILEX.
47. There were 6 cases which took between 10 and 12 months to investigate. The cases were linked investigations into the conduct of 6 members during ILEX examinations. They took a long time to investigate because ILEX had experienced significant delays in obtaining evidence during the course of the investigation.
48. Another 3 cases took over 12 months to investigate. Two of these cases involved a large number of complaints made by third parties where there were other litigation proceedings ongoing between the parties. This caused delay to the parties in providing responses to issues raised with them by ILEX. In the third

case the member delayed in responding to ILEX enquiries due to health problems.

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

## **DECLARATIONS OF PRIOR CONDUCT**

49. The Investigating Committee has responsibility for making decisions on declarations of prior conduct. Prior conduct declarations must be made by existing members and by persons seeking to join ILEX. They must declare if they have any of the following:
- County Court Judgments
  - Bankruptcy orders or individual voluntary arrangements
  - Criminal convictions
  - An order against them under s43 Solicitors Act 1974
  - Any order made against them by another professional body.
50. Every person seeking to become a member of ILEX must declare whether they have any of the above. Existing members of ILEX are required to make the same declaration on their annual subscription return and on applications to upgrade their membership of ILEX from Student to Member and from Member to Fellow.
51. Where a declaration was 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, whether conditions should be imposed upon their membership, whether the matter should be referred to the Disciplinary Tribunal or whether it should be dealt with under the powers available to the Investigating Committee. The powers available to the Investigating Committee in relation to declarations of prior conduct are set out earlier in this report.
52. The Investigating Committee has delegated to the Officer the power to deal with specified matters under a procedure known as the 'expedited procedure'. This procedure allows the Officer to approve applications where the declaration relates to certain driving offences, spent convictions, outstanding judgments, or where a bankruptcy order has been discharged or an individual voluntary arrangement has been completed.

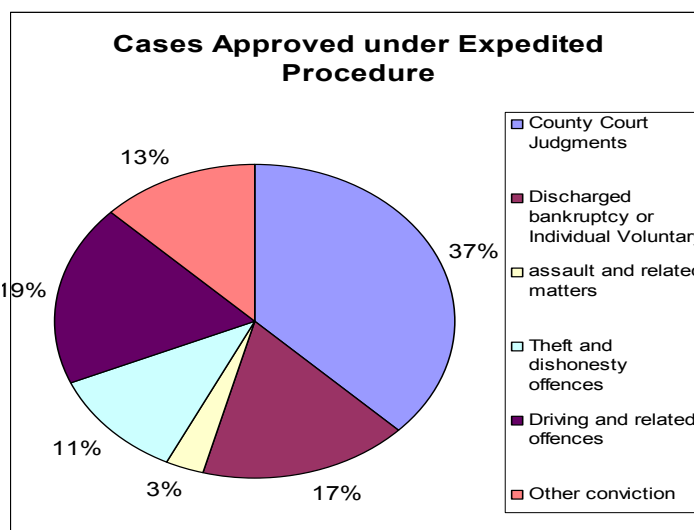
53. ILEX became an exempt body under the Rehabilitation of Offenders Act 1974. Therefore all Fellows are required to declare any convictions they have including those that are spent. The Committee made a resolution under the IDAR that some of these cases should be dealt with under the expedited procedure.
54. All expedited decisions were reported to the Investigating Committee. The Investigating Committee was able to request further details on such decisions. Any case that could not be expedited was referred to the Investigating Committee for consideration.
55. In 2008 ILEX received a total of 114 declarations of prior conduct. Of these 70 declarations were dealt with under the expedited process and 44 were considered by the Investigating Committee. In 2007 there were 58 declarations dealt with under the expedited process and 35 declarations considered by the Committee.

***Expedited cases***

56. The cases which were approved under the expedited procedure comprised the following.

Nature of Matter	Number of cases per year				
	2008	2007	2006	2005	2004
County Court Judgments	26	22	23	19	31
Discharged bankruptcy or Individual Voluntary Arrangement that had been completed	12	6	12	8	11
Convictions – assault and related matters	2	8	4	2	5
Convictions – driving and related offences	13	11	13	18	26
Convictions - theft & dishonesty offences	8	10	4	12	12
Other	9	1	2	16	10
<b>TOTAL</b>	<b>70</b>	<b>58</b>	<b>58</b>	<b>75</b>	<b>95</b>

57. The analysis indicates that ILEX received a regular number of applications where the applicant had a County Court Judgment or driving convictions which could be approved under the expedited procedure.
58. In many instances where applicants declared that they had County Court Judgments it actually transpired that they had made arrangements to repay debts but no County Court Order had been made in respect of it.
59. ILEX also received many declarations from applicants who previously had bankruptcy orders which had been discharged or individual voluntary arrangements which had been completed. Orders or agreements which had been discharged or completed did not need to be referred to the Investigating Committee.
60. 63 declarations were made by persons applying to enrol as Students of ILEX, 3 declarations were made by existing Students and 1 by an existing Member of ILEX. 2 declarations were made by Students seeking to upgrade to Members of ILEX and 1 declaration was made by a person seeking to enrol as an Associate Prosecutor member of ILEX.



**Prior conduct cases considered by the Investigating Committee**

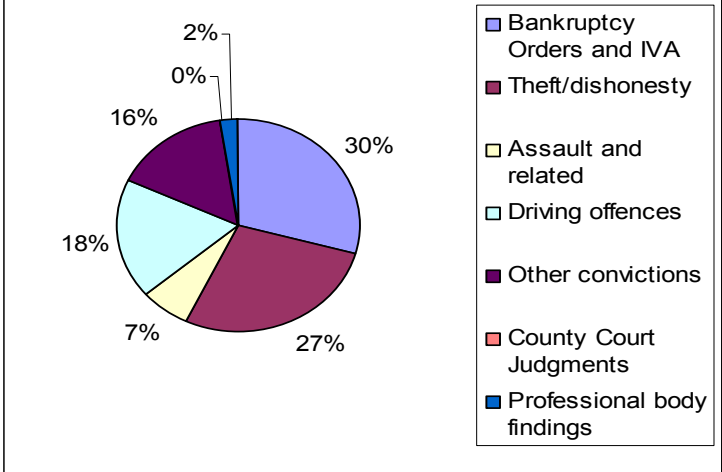
61. The 44 cases which were considered by the Investigating Committee comprised the following.

<i>Nature of Matter</i>	<i>2008</i>			Total cases 2007	Total cases 2006	Total cases 2005
	No cases approved	No cases not approved	Total			
County Court Judgments	0	0	0	0	1	0
Bankruptcy Orders & IVA	11	2	13	9	12	9
Convictions theft/dishonesty	9	3	12	5	5	3
Convictions Assault and related	3	0	3	1	2	0
Convictions Driving offences	7	1	8	10	8	6
Other convictions	6	1	7	4	5	18
Prof. body findings	0	1	1	6	4	3
<b>Total</b>	<b>36</b>	<b>8</b>	<b>44</b>	<b>35</b>	<b>37</b>	<b>39</b>

62. The Committee approved 36 declarations. There were 8 declarations that were not approved. Those that were not approved included 5 cases where the Committee had sought further information from the applicants or members. The other 3 cases were rejected by the committee. The rejected cases included one case where the person who sought to reinstate as a Fellow of ILEX had findings made against them by another professional body. The other two rejected cases involved applicants with criminal convictions.

63. 29 of these prior conduct declarations were made by persons applying for Student membership of ILEX, 2 declarations were made by existing Student members, 6 declarations were made by Fellows, 3 by persons upgrading to Fellows, 3 by persons seeking to reinstate as Fellows of ILEX and 1 declaration was made on an application to upgrade to become a Member of ILEX.

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



**BB/IC/08**

**REPORT OF THE  
APPEALS COMMITTEE,  
DISCIPLINARY TRIBUNAL AND  
APPEALS TRIBUNAL**

**REPORT OF THE WORK OF THE ILEX  
APPEALS COMMITTEE, DISCIPLINARY TRIBUNAL  
AND APPEALS TRIBUNAL IN 2008**

**Introduction**

1. The ILEX Investigation, Disciplinary and Appeals Rules (IDAR) set up the Appeals Committee, Disciplinary Tribunal and Appeals Tribunal.
2. This report summarises the work undertaken by these bodies during the calendar year 2008.

**Membership of the Committee and Tribunals**

***Appeals Committee***

3. The Appeals Committee comprises 2 council members and lay members selected from the panel of lay members. An appeal must be heard by 1 council member and 2 lay members.

***Disciplinary Tribunal***

4. The Disciplinary Tribunal comprises 4 council members and the lay members selected from the panel of lay members. The referrals to the Disciplinary Tribunal must be heard by 1 council member and 2 lay members.

***Appeals Tribunal***

5. The Appeals Tribunal comprises the President and Vice President of ILEX and the lay members selected from the panel of lay members. Appeals to the Appeals Tribunal must be heard by the President or Vice President and 2 lay members.

***Disciplinary lay panel***

6. The lay members for the Appeals Committee, Disciplinary Tribunal and Appeals Tribunal must be selected from the lay panel appointed by the Master of the Rolls.

7. Annex 1 sets out the members of the lay panel and the council members on the Appeals Committee, Disciplinary Tribunal and Appeals Tribunal.

## **APPEALS COMMITTEE**

### **The role of the Appeals Committee**

8. The Appeals Committee is responsible for considering appeals made against decisions of the Investigating Committee. An appeal can be made in a case involving a complaint or a prior conduct declaration.
  
9. A member or complainant can appeal against a decision made by the Investigating Committee except a decision to refer a matter to the Disciplinary Tribunal. An appeal must be made within 15 working days of the appellant being notified of the decision of the Investigating Committee.
  
10. The Appeals Committee has the power to confirm or vary a decision of the Investigating Committee or order the Investigating Committee to reconsider the case.
  
11. In deciding whether to vary a decision of the Investigating Committee, the Appeals Committee has available to it the same powers as the Investigating Committee. If the matter concerns a complaint made against a member it can accept the member's response and decide to take no further action; decide that the matter concerned issues which were beyond the jurisdiction of ILEX; call for further information or evidence; request the member to provide references from employers or others as to his character and professional conduct; defer a decision so that legal advice could be taken; or reject a complaint, allegation or issue of misconduct. The IDAR also grants some limited disciplinary powers to the Committee. The Committee has the power to request a member to give undertakings as to his future conduct; impose conditions on a member in respect of his conduct or in regard to his employment; and admonish, reprimand or warn the member as to his future conduct. If the Committee finds that a complaint or issue of misconduct raised was of a serious nature it should refer the matter to the Disciplinary Tribunal.

12. The Appeals Committee also hears appeals made against decisions of the Investigating Committee in prior conduct cases. In these cases the Investigating Committee has the power to request a member or applicant to provide references as to his conduct and suitability to become a member of ILEX; accept or refuse an application for enrolment; accept or refuse an application for upgrading of membership; impose any conditions on a member or applicant in respect of his conduct or in regard to his employment that it thinks appropriate; request a member or applicant to give an undertaking as to his future conduct; warn, reprimand or admonish a member; decide to take no further action or refer a case to the Disciplinary Tribunal. All of these powers are available to the Appeals Committee.

### **Procedure**

13. An appeal must be made by an appellant on the grounds of appeal set out in rule 47 IDAR. Essentially the grounds in Rule 47 require that the Investigating Committee must have acted improperly in considering the case, that it did not follow its rules, or that there was new evidence which it had not considered.
14. Where an appeal is made the Appeals Committee has to consider whether the appellant has shown grounds for appeal. Where the Appeals Committee finds that grounds for appeal have been made out it considers the case itself. Where it finds grounds of appeal have not been made out it rejects the appeal.
15. The appellant and, with leave of the Appeals Committee, any other party to the appeal has the opportunity to attend the hearing and be represented at the hearing. ILEX is able to decide in each case whether it should also be represented at the hearing.

### **Cases considered by the Appeals Committee**

16. In 2008 the Appeals Committee considered 3 appeals made against decisions of the Investigating Committee. Two cases involved appeals made by complainants and one case involved an appeal made by an applicant who had made a prior conduct declaration.
17. In two cases the Committee found that the appellant had shown grounds of appeal. Both cases had involved appeals made by complainants. In one of these cases the Appeals Committee varied the decision of the Investigating Committee. In the other case it decided nevertheless to affirm the decision of the Investigating Committee. In the third case the Appeals Committee found that the appellant had not shown any grounds for appeal.
18. In the case where the Committee varied the decision of the Investigating Committee it found that the appellant had shown a ground of appeal that the making of the decision by the Investigating Committee was an improper exercise of the power conferred by the rules. The appellant had also relied on other grounds of appeal which the Appeals Committee found were not made out.
19. In one case the Appeals Committee found that the appellant had shown grounds of appeal but that it did not affect the decision reached by the Investigating Committee in the case. The case involved an appeal made against the decision of the Investigating Committee to not accept a complaint that was made out of time. The Appeals Committee found that the appellant had shown a ground of appeal that the procedures that were required by the Rules to be observed in connection with the making of the decision were substantially not observed and on the ground that there was fresh evidence that could not reasonably have been brought to the attention of the Investigating Committee.
20. One appeal was made by an applicant who had made prior conduct declarations on an application to reinstate as a Fellow of ILEX. The Investigating Committee

had refused the application. The appellant appealed on the grounds that there was fresh evidence and that there was no evidence or other material to justify the making of the decision. The Appeals Committee found that the grounds of appeal had not been made out.

### **Timescales**

21. Under the Rules the Appeals Committee should hear cases within 30 working days (6 weeks) of the appeal being made. The cases were heard within 5, 7 and 8 weeks of the appeals being made.
  
22. The delays occurred in the cases which took 7 and 8 weeks because the parties were represented and their representatives had been unable to attend earlier proposed hearing dates.

**BB/AC/08**

## **DISCIPLINARY TRIBUNAL**

### **The role of the Disciplinary Tribunal**

23. The Disciplinary Tribunal considers cases referred to it by the Investigating Committee.
24. Referrals are made to the Disciplinary Tribunal if the matter is of a serious nature and / or the powers of the Investigating Committee are insufficient to deal with the matter.
25. The powers available to the Disciplinary Tribunal are set out in the IDAR. The Disciplinary Tribunal has the power to exclude a person from membership of ILEX for such period as it should decide, or to admonish or reprimand a member, and to order a member to pay a fine, costs to ILEX and compensation to the complainant. The maximum level of fine and costs that may be ordered has been set by the ILEX Council at £3000.

### **Procedure**

26. Where a case is referred to the Disciplinary Tribunal charges are laid against the member. In addition ILEX obtains witness statements and evidence that it intends to rely upon. The charges, statements and evidence are served upon the member with the various forms required by the Rules. The member is asked to indicate which witness evidence they accept and provide to ILEX information about what witnesses and evidence they intend to adduce at the hearing. In practice ILEX finds that the member rarely complies with this procedure. A member may be represented in the proceedings.
27. The Panel appointed to hear each case receives the bundle of documents for the hearing in advance of the hearing date. In all of the cases considered in 2008 the Panel announced its Findings and penalty to the member at the conclusion of the hearing.

### **Cases considered by the Disciplinary Tribunal**

28. The Disciplinary Tribunal heard 8 cases during 2008, three of which involved the same member. Two cases considered by the Disciplinary Tribunal were applications to withdraw proceedings.

### ***Disciplinary powers exercised by the Disciplinary Tribunal***

29. The Disciplinary Tribunal found the charges proved in the 6 cases which it heard.

30. In three of these cases the Disciplinary Tribunal excluded the members from membership of ILEX for varying periods and in one case it admonished the member. In two cases which were brought against the same member and considered at the same time it fined the member.

31. In two cases members were ordered to pay compensation to the original complainants. In all six cases the members were ordered to pay costs to ILEX.

### ***Applications to withdraw***

32. ILEX had to make applications to withdraw two cases because the witnesses in both cases, who had originally made the complaints, refused to co-operate with the proceedings by providing witness statements. ILEX was unable to continue with the cases in the absence of the evidence of the witnesses. In the circumstances the Disciplinary Tribunal accepted the applications to withdraw.

### ***Timescales***

33. Under the Rules the Disciplinary Tribunal should hear cases within 3 months of a referral being made by the Investigating Committee. Two cases were considered in less than 3 months. The other cases took longer to bring before the Disciplinary Tribunal. The delay had occurred in those cases because ILEX had to obtain witness statements before the cases could proceed and in some

instances the member or their representative was unable to attend earlier hearings.

34. Two cases were also heard as preliminary matters before their final conclusion. Two of the cases which took over 12 months to conclude were matters which were subject to the applications to withdraw. The members in those cases had been kept updated on the progress of those matters. One application to withdraw was delayed to avoid prejudice to a member who was subject to other proceedings before the Tribunal. In that case ILEX waiting for the conclusion of these proceedings before making the application to withdraw.
35. The table below sets out the time taken by the Disciplinary Tribunal to consider cases, measured from the date the matter was referred by the Investigating Committee to the Disciplinary Tribunal to the date that the Disciplinary Tribunal concluded the matter.

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

**BB/DT/08**

## **APPEALS TRIBUNAL**

36. The Appeals Tribunal is responsible for considering appeals made against decisions of the Disciplinary Tribunal. Appeals may be made on the grounds set out in the Investigation, Disciplinary and Appeals Rules. Where the Appeals Tribunal finds that the grounds of appeal are made out it must consider the matter that was before the Disciplinary Tribunal. The Appeals Tribunal has available to it the same powers that were available to the Disciplinary Tribunal.
  
37. In 2008 there were no appeals made to the Appeals Tribunal.

**BB/AT/08**

**Membership of the Committee and Tribunals**

1. The council members on the Appeals Committee during 2008 were:

David McGrady  
Martin Callan (until July 2008)  
Dawn Slow (appointed July 2008)

2. The council members on the Disciplinary Tribunal in 2008 were:

- Sandra Barton (until July 2008)
- Keith Barrett
- Nick Hanning
- Kevin McCarthy (appointed July 2008)
- Sarah Sharman (until July 2008)
- Susan Silver (appointed July 2008)

3. The post holders during 2008 for the Appeals Tribunal were:

- President – Mark Bishop from July 2008  
Lesley Graham until July 2008
- Vice-President - Judith Gordon-Nicholls from July 2008  
Mark Bishop until July 2008

4. The lay members in 2008 were:

- Ged Fisher
- David Gilbertson
- Vicki Harris
- Roy Male
- Diana Ratzer (retired December 2008)
- Tony Swabe
- Rick Tompkins (until July 2008)