

**REPORT OF THE
ILEX INVESTIGATING COMMITTEE,
APPEALS COMMITTEE,
DISCIPLINARY TRIBUNAL AND
APPEALS TRIBUNAL
2007**

**REPORT OF THE
INVESTIGATING COMMITTEE**

PREFACE

The Investigating Committee has dealt with a range of varied cases over the last 12 months. This includes declarations of prior conduct, complaints and investigations commenced by ILEX into the conduct of ILEX members.

Some members, against whom complaints had been made, exercised their right to attend before the Committee, sometimes with representation from counsel or a senior partner of their employing firm. The Committee found that these attendances provided an invaluable opportunity for the member to bring out matters in oral representations and it provided the Committee with an opportunity to clarify matters with members.

This year the Committee has considered a number of cases where members were operating independent practices providing immigration advice and services. It ordered some of these practices to be inspected. The inspections led the Committee to impose conditions on members aimed at improving the management of their practices.

The Committee received some complaints where the events occurred over 12 months ago. The Committee decided that these complaints should not be investigated due to the age of the matters involved.

The Committee continues to be composed of 6 Council members and 3 lay members. Lay members provide a balanced perspective on cases ensuring that decisions continue to be unbiased and consistent. The Committee also benefits from the expertise that members bring in various areas of legal practice which can have a bearing on the subject matter of a complaint.

Overall, the Committee remains satisfied with the investigation of complaints and finds the covering report helpful in considering complaints. 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

Mr David Hogg
Chair

REPORT OF THE WORK OF THE ILEX INVESTIGATING COMMITTEE IN 2007

INTRODUCTION

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.
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.
3. All members of ILEX are governed by its Code of Conduct and Guide to Good Practice. In addition the Guide to Good Practice requires ILEX members to observe the Solicitors Practice Rules, Solicitors Accounts Rules, The Solicitors Act and Guide to the Professional Conduct of Solicitors.
4. As at December 2007 ILEX had 23,140 members of which 7,371 were Fellows. 19 Fellows were also Legal Executive Advocates.

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 report provides a summary of the work undertaken by the Investigating Committee during the calendar year 2007.

Membership of the Committee

7. The Committee is made up of 6 council members and 3 lay members. The quorum for meetings is 5, including at least 1 lay member. The Committee is served by the Officers who undertake the investigation of cases.

8. The Committee members during 2007 were:
 - David Hogg – council member & Chair
 - John Wells – council member & Vice-Chair
 - Celia Bennett – lay member
 - Mark Bishop - council member (committee member until July 2007)
 - Mary French – council member
 - Stephen Gowland – council member
 - Alan Kershaw – lay member
 - Rachael Palmer – council member (appointed July 2007)
 - Larry Shaw – council member
 - Toby Simon – lay member.

The role of the Investigating Committee

9. The Committee considers complaints or allegations of misconduct made against 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's main responsibility is to decide whether a prima facie case has been made out to substantiate the allegations and, if it has, to decide what action to take.

11. Where a member or an applicant applying to join ILEX has made a declaration of prior conduct the Committee's role is 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 is scheduled to meet once each month. The Committee sets meeting dates at the start of the calendar year. Meetings take place provided there are cases for the Committee to consider. In 2007 the Investigating Committee met on 11 occasions.

Powers of the Investigating Committee

13. The powers of the Committee are set out in the IDAR. They are separated according to whether the Committee is dealing with a complaint or declaration 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 may be taken; reject a complaint, allegation or issue of misconduct. The IDAR also grant 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; 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 will 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 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

COMPLAINTS ABOUT CONDUCT

CASES CONSIDERED BY THE INVESTIGATING COMMITTEE

17. The Investigating Committee considered a total of 29 cases where complaints had been made against ILEX members compared to 30 cases considered by the Investigating Committee in 2006.
18. The above cases would include complaints made against ILEX members and issues of misconduct which ILEX had itself decided to investigate. It also included 4 cases where an inspection had been ordered into the management of practices run by ILEX members and 2 cases where the committee was asked to consider whether complaints that were over twelve months old should be investigated.
19. ILEX considers complaints made by the client of the ILEX member, by the member's employers or by a third party. Usually third party complaints are made by the opposing party to an action. ILEX also considers complaints referred to it by the OISC and Law Society which can be classed as third party complaints.
20. ILEX considers complaints or issues of misconduct against all grades of member who are in current membership. ILEX does not have any powers against non-members or persons whose membership of ILEX has ceased. However, a resignation tendered by a member will not be valid if a complaint had been received about that member or any disciplinary proceedings had been commenced against that member, until the final determination of these matters (and the expiration of any time allowed for appeals there from).
21. The Committee uses the ILEX Code of Conduct and Guide to Good Practice as a measure to establish whether there is a prima facie case to substantiate a complaint or allegation of misconduct against a member. Under the ILEX Guide to Good Practice members are required to comply with The Solicitors Act, The

Solicitors Practice Rules, The Solicitors Accounts Rules and the Guide to the Professional Conduct of Solicitors.

22. The Committee will receive a copy of the information and evidence supplied by the member and complainant. Additionally the investigating officer will have prepared a report for each case which is provided to the Committee. The member and complainant will have had an opportunity to comment upon the report. The report summarises the case and analyses the issues. The Officer would have investigated the case before it is referred to the Committee. The Committee members generally receive the agenda containing the investigating cases due for consideration at least 10 days in advance of the meeting. At the meeting the members discuss the case and decide whether there is a prima facie case to substantiate the allegations, and if so, what action to take. The Committee's powers in these instances have been set out earlier.
23. This report has been divided into cases which the Committee rejected, used its disciplinary powers or referred to the Disciplinary Tribunal.

REFERRALS TO THE DISCIPLINARY TRIBUNAL

24. The Committee referred 7 cases to the ILEX Disciplinary Tribunal in 2007. In 2006 the committee referred 10 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.
26. In three cases the complaints were made by the clients of the ILEX members. All three client complaints involved the manner in which the ILEX members had acted for clients and included a catalogue of failures to follow client instructions.

27. Three cases referred to the Disciplinary Tribunal involved complaints made by third parties. Two of these cases were referrals made by the Law Society where orders had been made against the ILEX members under s43 Solicitors Act 1974 for misappropriation of client monies during the course of their employment. The third case involved mismanagement of financial responsibilities.
28. The final case referred to the Disciplinary Tribunal involved an investigation that had been commenced by ILEX into the management of a practice by a member who was providing immigration advice and services. The Investigating Committee had originally imposed conditions but the member failed to comply. The Committee then referred the case to the Disciplinary Tribunal.

DISCIPLINARY POWERS EXERCISED BY THE INVESTIGATING COMMITTEE

29. The disciplinary powers available to the Committee are to admonish, reprimand, warn, seek Undertakings and to impose conditions upon a member in respect of his conduct or in regard to his employment that it might think appropriate where it has found that there was a prima facie case to substantiate the complaint or issues of misconduct raised against the member. These powers are exercised by the Investigating Committee where it does not find that a referral to the Disciplinary Tribunal is necessary.
30. In 2007 the Investigating Committee decided in 11 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 2006 the Investigating Committee had exercised its powers in 13 cases.
31. In 5 cases the Committee reprimanded and warned members against their future conduct, in 1 case the Committee warned a member, in 1 case the Committee admonished and warned a member against their future conduct, in another 1 case the Committee admonished a member and in 3 cases the Committee

Reprimanded and warned

32. As stated above in 5 cases the Committee reprimanded members for their conduct and warned them about their future conduct. In 1 of these cases the Committee also imposed conditions on the member. 2 of these cases involved complaints made by clients, 1 case involved an investigation commenced by ILEX, 1 case involved a complaint made by the former employer of the ILEX member and 1 case involved a complaint made by a third party.
33. The client complaints involved poor service issues. In one of these cases ILEX had also commenced a separate investigation into whether the work being undertaken by the member breached the Solicitors Act 1974. The member received a warning and reprimand for that issue as well.
34. The third party complaint was made by the beneficiary to a Will and related to the conduct of the ILEX member in obtaining instructions from his client when the Will was made.
35. The complaint made by the former employer of an ILEX member involved breaches of the Solicitors Accounts Rules. The Committee also placed conditions on the member's future employment in the legal profession.

Warned against future conduct

36. In one case the Investigating Committee warned a member about their future conduct. The complaint was made by the opposing party in litigation proceedings and involved allegations made about the manner in which a member communicated with the complainant who was a litigant in person.

Admonished and warned

37. The Investigating Committee admonished and warned one member about their future conduct. The case involved a complaint made by a client about the handling of the client's case in litigation proceedings.

Admonished

38. The Investigating Committee admonished one member. The case involved an investigation commenced by ILEX into a member's conduct during an ILEX examination.

Conditions

39. In three cases the Investigating Committee imposed conditions in relation to members' employment. All three cases involved investigations commenced by ILEX into the manner in which members were managing immigration practices. The conditions related to improvements that the members were required to make to the management of their practices. Compliance with the conditions was monitored and in two cases the advisors closed their practices. Further conditions were imposed on these members controlling their employment and practice management in the future. The third case was referred to the Disciplinary Tribunal for non-compliance with the conditions.

REJECTED CASES

40. The Committee rejected 11 of the complaints on the basis that there was no prima facie case to substantiate the allegations. In 2007 the Investigating Committee had rejected 7 cases.
41. Three of these cases involved complaints made by clients of the ILEX members and five cases involved complaints by third parties.
42. Two client complaints involved complaints made in immigration matters. The third case involved litigation matters. All three cases involved allegations about

poor service, delay and failure to carry out instructions. The Investigating Committee found the allegations were not proved in any of these cases.

43. Eight cases involved party complaints. In six of these cases the complaints were made by the opposing parties in litigation proceedings. One case involved a complaint made by a beneficiary under a Will where the ILEX member was administering the estate. The other case involved a complaint made by the police relating to the conduct of an ILEX member in representing clients at police interviews. The Committee found that the allegations were not proved in these cases.

Comparison of decisions of the Investigating Committee						
Decision	2003	2004	2005	2006	2007	
	%	%	%	%	%	No. cases
<i>Cases rejected</i>	41	18	37	18	31	11
<i>Warned (including with other orders)</i>	7	18	10	21	19	7
<i>Admonished</i>	4	14	0	11	6	2
<i>Reprimanded</i>	4	14	24	24	14	5
<i>Conditions*</i>	0	0	0	0	11	4
<i>Undertaking</i>	0	9	5	0	0	0
<i>Referred to Tribunal</i>	33	18	24	26	19	7
<i>Advice sought</i>	0	0	0	0	0	0
<i>Waiting more information</i>	4	9	0	0	0	0
<i>Membership ended</i>	7	0	0	0	0	0

* In some cases a conditions were place on a member in addition to other orders

AREAS OF LAW IN WHICH THE COMPLAINTS AROSE

44. An analysis was undertaken of the 29 cases considered by the Investigating Committee to establish what areas of law they related to. The analysis showed that 32% of the cases involved immigration matters, 21% of the cases involved civil litigation matters and another 21% involved family law matters.
45. The following table provides a breakdown of all the areas of law that the complaints related to. It indicates that the trends remain similar with a fair proportion of complaints arising in civil litigation and immigration law each year. This year there had been an increase in the amount of complaints relating to family law cases compared to previous years.

Areas of law complaints arose in 2003 to 2007					
Area of law	2007 %	2006 %	2005 %	2004 %	2003 %
<i>Civil litigation</i>	21	23	16	19	25
<i>Conveyancing</i>	10	20	12	31	11
<i>Crime</i>	3	10	4	6	4
<i>Employer/employee disputes</i>	0	0	8	6	11
<i>Employment Law</i>	3	0	0	0	15
<i>Family / matrimonial</i>	21	3	12	13	15
<i>Immigration</i>	32	23	24	13	4
<i>Private / non legal matters</i>	0	7	12	6	4
<i>Trust/probate</i>	7	7	4	6	11
<i>ILEX misconduct</i>	3	7	8	0	0
Total	100%	100%	100%	100%	100%

ISSUES ARISING IN COMPLAINTS

46. There are some recurring themes that the Committee found in the complaints that it considered. An analysis was undertaken of these and the table below provides a count of the heads of complaint raised by complainants in the 29 cases considered by the Committee. The table also compares complaints considered between 2003 and 2007. It has been difficult to undertake a meaningful comparison due to the small number of cases involved.

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

48. The issues that caused concern for the Investigating Committee during 2007 were the failures by ILEX members to follow instructions, acting without client instructions, misleading clients and not keeping clients informed about the progress of their cases. The majority of these allegations related to a small number of cases. Within those cases there have been a number of similar allegations which have been recorded individually for these purposes. The majority of these cases resulted in referrals to the Disciplinary Tribunal or the Investigating Committee exercising its own disciplinary powers against the ILEX member. It should also be noted that in a number of these cases the Committee found that the complaints were not proved.

TYPES OF COMPLAINT CONSIDERED					
Head of complaint	2007 %	2006 %	2005 %	2004 %	2003 %
Acting in a conflict situation	1	3	4	2.5	3.5
Acting without or not following instructions	14	11	11	7.5	23.5
Client not kept updated on case progress	11	11	9	2.5	8
Delay	7	6	4	5	8
Duress	0	1	0	0	0
Failure to advise client adequately	5	5	8	7.5	1
Failure to send client care letter	6	3	4	5	2
Financial irregularities	4	9	6	5	7
Holding out as solicitor & conducted litigation	0	1	0	12.5	3.5
Holding out as legal executive or failure to inform client of status as ILEX member	1	5	2	5	3.5
Improper/incorrect advice or action taken	13	10	15	0	12
Inadequate service	5	3	6	0	0
Inadequate costs information given to client	5	4	2	2.5	7
Introduction / referral breaches	0	0	2	2.5	0
Lost client files or documents	1	1	2	0	1
Misleading client or court	11	15	9	12.5	13
Private or personal disputes	4	1	0	10	3.5
Work or office related disputes	3	0	2	0	3.5
Breaches of SPR or legislation	4	1	9	10	0
Forgery	1	4	0	7.5	0
ILEX matters including practice management issues	4	6	6	2.5	0
TOTAL	100%	100%	100%	100%	100%

TIME SCALES

49. An analysis was undertaken of the time taken to consider complaints. The table below sets out the time taken to deal with complaints from when the initial letter

raising the complaint was received at ILEX to when the case was considered by the Investigating Committee.

50. Some cases took a shorter time where the complainant and member provided all the information from the outset. Other cases took longer, especially if they were complex and ILEX had to contact the parties for more information.
51. Delays had 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 OLSO recommended that ILEX should not count these dormant periods which were outside of its control. Periods while other organisations investigated the same complaint were therefore disregarded.
52. In 2005 an analysis was undertaken which showed that complaints which progressed through the ILEX complaints handling process without any difficulties took 4 ½ months to complete.
53. ILEX was able to complete 7 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 investigations eliminated part of the process involved in client complaints. In other cases the complainant provided clear evidence with the complaint and the member provided a prompt response to the complaint and that reduced the amount of correspondence that needed to be undertaken with the parties.
54. ILEX completed the investigation into 8 cases within 6 months. Some of these cases involved complex matters but the parties provided timely responses to the issues raised with them by ILEX.
55. A further 10 cases took between 7 and 9 months to complete. These cases involved detailed and complex issues which required an in-depth investigation by

ILEX, often requiring a number of enquiries to be made of the complainant and member to enable ILEX to gather sufficient evidence to support the assertions they made in the cases.

56. Another 4 cases took over 12 months to investigate. All four cases involved a large number of complaints where there were other litigation proceedings ongoing between the parties. This caused delays to the parties in providing responses to issues raised with them by ILEX.

<i>Time scale for considering case</i>	<i>Number of cases 2007</i>	<i>Number of cases 2006</i>	<i>Number of cases 2005</i>	<i>Number of cases 2004</i>
<i>0 – 3 months</i>	7 (24%)	2 (7%)	3 (17%)	3 (21%)
<i>4 – 6 months</i>	8 (52%)	11 (43%)	12 (83%)	8 (79%)
<i>7 – 9 months</i>	10 (86%)	12 (83%)	3 (100%)	2 (93%)
<i>10 – 12 months</i>	0	4 (97%)	0	0 (93%)
<i>Over 12 months</i>	4 (100%)	1 (100%)	0	1 (100%)

CASES NOT REFERRED TO THE INVESTIGATING COMMITTEE

57. ILEX commenced investigations into other cases during 2007 which were not referred to the Investigating Committee. The following is an analysis of the cases that were not referred to the Investigating Committee.
58. In 17 cases the investigation was ongoing and the cases should be put to the Committee when that investigation is concluded.
59. In a further 9 cases the investigating officer wrote to the complainants requested further information but did not receive any replies or the complainants responded and withdrew their complaint. ILEX was unable to investigate the allegations in the absence of information from the complainant to substantiate their complaints. Therefore these cases were closed without any referral to the Investigating Committee.
60. There were also 6 cases where the substance of the complaint was not an issue that ILEX would investigate (eg private or personal disputes not connected with membership of ILEX), 16 cases where the complaint did not relate to a member of ILEX and 1 case where the complainant made a complaint about a matter that ILEX had previously investigated when he made an earlier complaint. Therefore no investigation was commenced into these cases.
61. In 3 cases ILEX had decided to wait for investigations by other bodies (eg the Law Society or police) to conclude before commencing its action. Those other investigations related to the same allegations that were before ILEX. It had been decided that in each case the other investigation should take priority before ILEX considered the complaints. It was likely that evidence will come out of those investigations that would assist ILEX.

62. There were 5 cases where ILEX was informed that members of ILEX were holding themselves out to be Fellows or members of ILEX whereas they were not. The title Fellow of ILEX and designatory letters F.Inst.L.Ex. denote that a person is a current Fellow of ILEX and therefore regulated by ILEX. These cases had been resolved and the persons concerned apologised and confirmed that they would not hold themselves out as Fellows of ILEX when they were not.

DECLARATIONS OF PRIOR CONDUCT

63. The Investigating Committee also has responsibility for making decisions on declarations of prior conduct. Prior conduct declarations are 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.
64. Everyone seeking to join ILEX must declare whether they have any of the above. The same declaration is made by existing members of ILEX when they complete their annual subscription return and when they upgrade their membership of ILEX from student to Member and from Member to Fellow.
65. Where a declaration has been made the Investigating Committee will 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 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 have been set out earlier in this report.
66. The Investigating Committee has delegated to the officers 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.

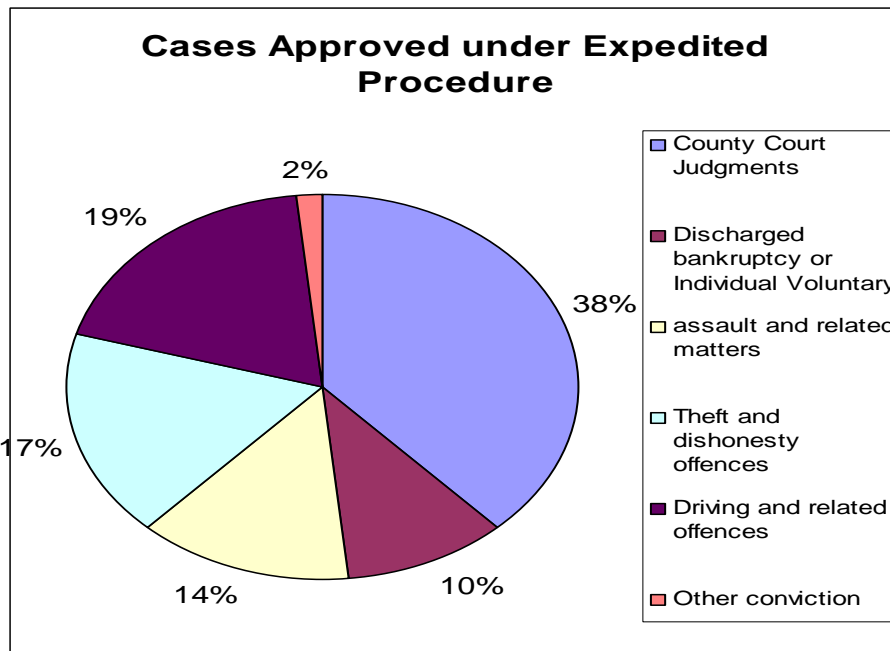
67. ILEX is an exempt body under the Rehabilitation of Offenders Act 1974. As a result all Fellows must declare any convictions that they had including those that are spent. The Committee has made a resolution under the IDAR that some of these cases should be dealt with under the expedited procedure.
68. All expedited decisions are reported to the Investigating Committee. The Investigating Committee can request further details on such decisions. Any case that cannot be expedited is referred to the Investigating Committee for consideration.
69. In 2007 ILEX received a total of 93 declarations of prior conduct. Of these 58 cases were dealt with under the expedited process and 35 were considered by the Investigating Committee. In 2006 there were 58 declarations dealt with under the expedited process and 37 declarations considered by the Committee.

Expedited cases

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

Nature of Matter	Number of cases per year				
	2007	2006	2005	2004	2003
County Court Judgments	22	23	19	31	36
Discharged bankruptcy or Individual Voluntary Arrangement that had been completed	6	12	8	11	7
Convictions – assault and related matters	8	4	2	5	6
Convictions – driving and related offences	11	13	18	26	26
Convictions - theft & dishonesty offences	10	4	12	12	7
Other	1	2	16	10	18
TOTAL	58	58	75	95	100

71. The analysis indicated that ILEX received a regular amount of applications where the applicant has a County Court Judgment or driving convictions which could be approved under the expedited procedure.
72. In many instances where applicants declared that they had County Court Judgments it actually transpired that they had arrangements to make repayments which were not supported by a County Court Judgment.
73. ILEX also received many declarations from applicants who previously had bankruptcy orders which have been discharged or individual voluntary arrangements which had been completed. Where those orders or agreements had been discharged or completed at the time the applicant applied for ILEX membership they did not need to be referred to the Investigating Committee.
74. 55 declarations were made by persons applying to enrol as Students of ILEX, 2 declarations were made on subscription returns by existing Members of ILEX and 1 declaration was made by a Fellow of ILEX.



Prior conduct cases considered by the Investigating Committee

75. The 35 cases which were considered by the Investigating Committee comprised the following.

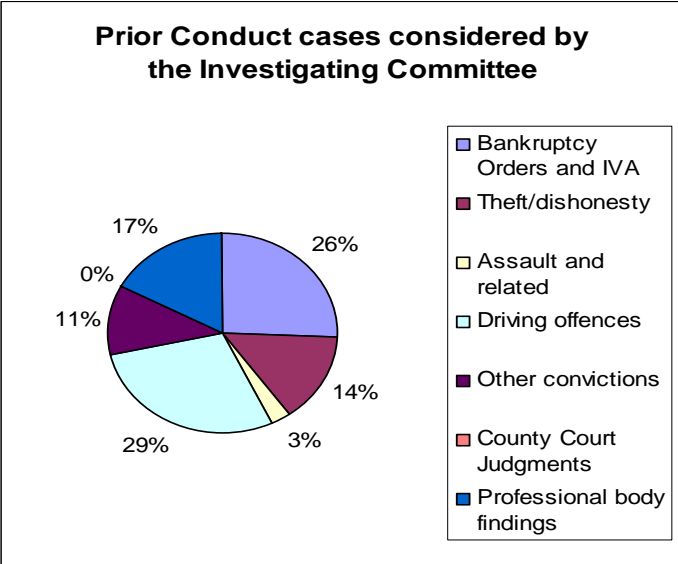
Nature of Matter	2007			Total cases 2006	Total cases 2005	Total cases 2004
	No cases approved	No cases not approved	Total			
County Court Judgments	0	0	0	1	0	2
Bankruptcy Orders & IVA	9	0	9	12	9	5
Convictions theft/dishonesty	5	0	5	5	3	5
Convictions Assault and related	1	0	1	2	0	9
Convictions Driving offences	10	0	10	8	6	13
Other convictions	4	0	4	5	18	9
Prof. body findings	4	2	6	4	3	0
Total	33	2	35	37	39	43

76. In one case where a member of ILEX had declared that they had been convicted of a theft or dishonesty offence the Investigating Committee formally warned the member about their future conduct.

77. The Committee rejected two applications to reinstate as members of ILEX. In both cases orders had been made against the applicants by the ILEX Disciplinary Tribunal.

78. 18 of these prior conduct declarations were made by persons applying for student membership of ILEX, 5 declarations were made by existing student members, 3 declarations were made by Fellows, 5 by persons upgrading to Fellows, 2 by

persons seeking to reinstate as members of ILEX and 2 declarations were made by members applying to upgrade to Members of ILEX.



OTHER BUSINESS UNDERTAKEN BY THE COMMITTEE DURING 2007

79. The Committee had discussed and raised various issues at their meetings which are summarised below.

Customer feedback

80. In 2006 a benchmarking project had led to ILEX developing customer feedback forms. The project was implemented in 2007 and feedback forms were sent to all members and complainants who were asked to provide feedback on their experience of the complaints handling process.

81. During 2007 feedback forms were received back from 2 complainants and from 6 members against whom complaints had been made. From the responses 5 members and 1 complainant were 'very satisfied' with the complaints handling process, 1 complainant was 'fairly satisfied' and 1 member found the process 'acceptable'.

82. In their feedback the members commented that ILEX should have informed them earlier that a complaint had been made against them and they should be provided with a guidance and support service to help them deal with the complaint. The members commented that ILEX should have a procedure to filter out vexatious complaints and deal with cases in a shorter timescale.

Information on ending membership

83. The committee raised a concern that persons whose membership of ILEX ended were not informed that they could not hold themselves out to be members or Fellows of ILEX. Revisions were made to the letters sent out to persons when they ended their membership of ILEX to confirm this information to them.

BB/150308

**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 2007**

Introduction

1. The ILEX Investigation, Disciplinary and Appeals Rules (IDAR) sets up the Appeals Committee, Disciplinary Tribunal and Appeals Tribunal.
2. This report provides a summary of the work undertaken by these bodies during the calendar year 2007.

Membership of the Committee and Tribunals

Appeals Committee

3. The Appeals Committee is made up of 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. The Committee is served by the Officers who undertake the investigation of cases.

Disciplinary Tribunal

4. The Disciplinary Tribunal is made up of 4 council members and the lay members forming the disciplinary panel. The referrals to the Disciplinary Tribunal are heard by 1 council member and 2 lay members.

Appeals Tribunal

5. The Appeals Tribunal is made up of the President and Vice President of ILEX and the lay members forming the disciplinary panel. Appeals to the Appeals Tribunal are 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 are selected from the lay panel. The lay members are selected to hear

an equal number of cases for each committee. The current panel was appointed by the Master of the Rolls in 2005.

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 considers appeals against decisions of the Investigating Committee. An appeal can be made against a decision of the Investigating Committee in response to a complaint or a prior conduct declaration.
9. A member or complainant may appeal against any decision of the Investigating Committee except a decision to refer a matter to the Disciplinary Tribunal. The appellant must make an appeal within 15 working days of being notified of the decision of the Investigating Committee.
10. The powers of the Appeals Committee are set out in the IDAR. The Committee has the power to confirm or vary the 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 against a member it can 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 may be taken; reject a complaint, allegation or issue of misconduct. The IDAR also grant 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 should refer the matter to the Disciplinary Tribunal.

12. The Appeals Committee also hears appeals against any decisions of the Investigating Committee regarding declarations of prior conduct. Prior conduct declarations are required to be made by existing members and by persons seeking to join ILEX in respect of the following: County Court Judgments; bankruptcy orders or individual voluntary arrangements; criminal convictions; an order against them under s43 Solicitors Act 1974; or any order made against them by another professional body.
13. 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 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. All of these powers are available to the Appeals Committee.

Procedure

14. In order to appeal an appellant must show grounds of appeal. The grounds for an appeal which the Appeals Committee can consider are set out in rule 47 IDAR. Essentially the grounds in Rule 47 require that the Committee must have acted improperly in considering the case, that it did not follow its rules, or that there is new evidence which it did not consider.
15. The Appeals Committee adopts a two stage process when hearing appeals. The first stage is for the appellant to show that he has grounds of appeal. If the Committee finds grounds of appeal made out it will then consider the substance of the case.

16. The appellant and, with leave of the Appeals Committee, any other party to the appeal has the opportunity to attend the hearing and or be represented at the hearing. ILEX can also choose to be represented at the hearing.
17. The Appeals Committee can only consider the evidence that was before the Investigating Committee. If the parties wish to introduce any fresh evidence they must satisfy the Appeals Committee that such evidence could not have been produced to the Investigating Committee and that it would have been capable of affecting the decision of the Investigating Committee and it is credible.

Cases considered by the Appeals Committee

18. The Appeals Committee considered 2 appeals against decisions of the Investigating Committee in 2007 this compares to 4 cases considered in 2006.
19. In both cases considered in 2007 the appeals were made by the complainant against the decision of the Investigating Committee.
20. In one case the appeal was made against a decision of the Investigating Committee not to consider a complaint that was made out of time. The Appeals Committee found that one aspect of the complaint involved matters that were not out of time and, on its interpretation of the rules, ordered the full case to be investigated. The appellant had relied on a number of grounds of appeal. The Committee found that the appeal was made out on grounds that the making of the decision by the Investigating Committee was an improper exercise of the power conferred by the Rules on the basis that the Investigating Committee failed to take a relevant consideration into account in the exercise of its power and that it had exercised a discretionary power in accordance with a rule or policy without regard to the merits of the particular case.
21. In the other case the Appeals Committee found that there were no grounds made out to substantiate the appeal. The Investigating Committee had reprimanded

and warned the ILEX member in relation to one of the complaints and found no prima facie case to substantiate the other complaints. The complainant appealed against a decision of the Investigating Committee. The Appeals Committee found that the appeal was without merit and affirmed the decision of the Investigating Committee.

Timescales

22. Under the Rules the Appeals Committee should hear cases within 30 working days of the appeal being made. The cases were heard within 29 and 38 days of the appeals being made.

23. The delays occurred in the case which took 38 days because the appellant instructed solicitors after making the appeal. The solicitors wished to make submissions before the hearing was scheduled. Therefore the hearing of the matter had to be delayed while the solicitors took instructions and made representations in support of the appeal.

BB/AC

DISCIPLINARY TRIBUNAL

The role of the Disciplinary Tribunal

24. The Disciplinary Tribunal considers cases referred to it by the Investigating Committee or Appeals Committee.
25. Referrals are generally made if the matter is of a serious nature and / or the powers of the Investigating Committee are insufficient to deal with the matter.
26. The powers of 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 shall 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. Currently the maximum level of the fine and costs is set by the ILEX Council at £3000.

Procedure

27. ILEX or its representative will lay charges against the member. In addition ILEX will obtain witness statements from the witnesses it intends to rely upon and obtain the evidence it intends to rely upon. These are served on the member with the various forms required by the Rules to be used for the purposes of the Disciplinary Tribunal hearing. The member can be represented at the hearing. The member should indicate which witness evidence he accepts and provide to ILEX information about what witnesses and evidence he intends to adduce at the hearing. In practice ILEX has found that the member rarely complies with this procedure.
28. The Panel appointed to hear a case will receive a bundle of documents for the hearing in advance of the hearing date. A Tribunal Panel comprises two lay members and one council member. Any member may chair the hearing. In all of the cases considered in 2007 the Panel announced its Findings and penalty to

the member at the conclusion of the hearing. However, it does have power to defer its decision.

Cases considered by the Disciplinary Tribunal

29. The Disciplinary Tribunal heard 5 cases during 2007. In one of these cases there have been two preliminary hearings. The case has been adjourned while ILEX undertakes a separate investigation. The Tribunal hearing will be resumed after that other investigation has concluded. The other 4 cases heard by the Disciplinary Tribunal are discussed in detail below.

Disciplinary powers exercised by the Disciplinary Tribunal

30. As stated earlier the Disciplinary Tribunal has the power to exclude a person from membership of ILEX for such period as it shall decide, or admonish or reprimand a member, and order a member to pay a fine, costs to ILEX and compensation to the complainant.
31. In the 4 concluded cases the Disciplinary Tribunal found the charges proved and excluded the members from membership of ILEX for varying periods. In some cases it also made orders against the members of a financial nature.
32. In 3 cases members were permanently excluded from membership of ILEX. In one case the member was also ordered to pay costs of £500 and in another case the member was fined £3000. The members in each of these cases had misappropriated client monies. The Solicitors Disciplinary Tribunal had also made orders against these members under s43 Solicitors Act 1974.
33. In the fourth case the member had been excluded from membership of ILEX for a minimum period of 1 year. The case involved misrepresentations made by the member to clients in the provision of conveyancing services and acting where there was a conflict of interest.

Timescales

34. Under the Rules the Disciplinary Tribunal should hear cases within 3 months of the referral being made by the Investigating Committee. One case was considered in less than 3 months. Two cases took 3½ months to consider and one case took 4½ months to consider.
35. The table below sets out the time taken by ILEX measured from the date the matter was referred 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>		
	2005	2006	2007
<i>0 – 3 months</i>	1	6	1
<i>4 – 6 months</i>	1	1	3
<i>7 – 9 months</i>	1	0	0
<i>10 – 12 months</i>	0	0	0
<i>Over 12 months</i>	0	0	0

BB/DT

APPEALS TRIBUNAL

36. The Appeals Tribunal considers appeals against decisions of the Disciplinary Tribunal. Appeals are made on the grounds set out in the Investigation, Disciplinary and Appeals Rules. If the Appeals Tribunal finds grounds of appeal made out it will then consider the complaint itself. The Appeals Tribunal has available to it the same powers that are available to the Disciplinary Tribunal.
37. In 2007 the Appeals Tribunal considered two cases where appeals had been made against decisions of the Disciplinary Tribunal. Both cases involved immigration advisors who were members of ILEX but were not authorised by ILEX to provide immigration advice and services. The charges were that they had provided immigration advice and services in contravention of the Immigration and Asylum Act 1999. The Disciplinary Tribunal had found the charges proved and permanently excluded them from membership of ILEX. Both members were ordered to pay costs and one member was also fined.
38. The Appeals Tribunal found that the grounds of appeal were not made out in either case and rejected the appeals. In both cases the Appeals Tribunal ordered the members to pay costs of the appeal. In one case the order was made for the sum of £1800 and in the other case the order was made for the sum of £1200.
39. In one case the appeal was heard within 3 weeks of the appeal being made and in the other case the appeal was heard within 7 weeks of the appeal being made.

BB/AT

Membership of the Committee and Tribunals

1. The council members on the Appeals Committee during 2007 were:

David McGrady

Martin Callan

2. The council members on the Disciplinary Tribunal in 2007 were:

- Sandra Barton
- Nick Hanning
- Sarah Sharman
- Keith Barrett

3. The post holders during 2007 for the Appeals Tribunal were:

- President – Lesley Graham from July 2007
Alan Caig until July 2007
- Vice-President - Mark Bishop from July 2007
Lesley Graham until July 2007

4. The lay members in 2007 were:

- Ged Fisher
- David Gilbertson
- Vicki Harris
- Roy Male
- Diana Ratzer
- Tony Swabe
- Rick Tompkins.