

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Complaints and Hearings Teams Performance Report 2009

March 2010

Contents

| | |
|------------------------------------------------------------------|----|
| Introduction | 5 |
| Format of the Report | 5 |
| The Complaints Database | 5 |
| Staffing..... | 6 |
| Strategic Review Changes | 6 |
| Work Received..... | 8 |
| Complaints Team | 8 |
| General..... | 8 |
| Internal complaints opened - analysis..... | 10 |
| External complaints received - analysis..... | 12 |
| Types of complainant | 15 |
| Chambers referrals | 17 |
| Hearings Team..... | 18 |
| Work Completed and Turn round Times | 21 |
| General | 21 |
| Overall Turn round times | 22 |
| Complaints Team – Turn round times..... | 26 |
| Hearings Team – Turn round Times | 28 |
| Outcomes of closed cases..... | 29 |
| Outcome of further action cases | 30 |
| Appeals | 33 |
| Income arising from the complaints and disciplinary system | 34 |
| Work in Progress | 35 |

| | |
|----------------------------------------------------------|----|
| Complaints Referred to the Legal Services Ombudsman..... | 37 |
| Conclusions..... | 41 |

Tables

| | |
|----------------------------------------------------------------------------------------------------------------------------|----|
| Table 1: Complaints opened - annual comparison 2005 to 2009 | 8 |
| Table 2: Complaints opened in 2009 - quarterly comparison | 9 |
| Table 3: Analysis of internal complaints by primary aspect - 2007 to 2009..... | 11 |
| Table 4: Analysis of external complaints opened by primary aspect - 2008 to 2009 | 14 |
| Table 5: Complaints opened from 2007 to 2009 by complainant category | 16 |
| Table 6: Initial outcome of complaints referred to Chambers in 2009 | 17 |
| Table 7: Complaints referred for further action - annual comparison 2007 to 2009 | 18 |
| Table 8: All complaints referred for further action in 2009 – quarterly comparison | 20 |
| Table 9: Complaints closed – annual comparison 2005 to 2009 | 21 |
| Table 10: Complaints closed in 2009 - quarterly comparison..... | 21 |
| Table 11: Overall turn round times for all complaints – annual comparison 2005 to 2009..... | 24 |
| Table 12: Overall turn round times for external complaints only – annual comparison 2005 to 2009.. | 24 |
| Table 13: Overall turn round times for internal complaints only – annual comparison 2005 to 2009... | 24 |
| Table 14: Turn round times for all complaints closed up to Committee decision – annual comparison | 26 |
| Table 15: Turn round times for internal complaints closed up to Committee decision – annual comparison..... | 27 |
| Table 16: Turn round times for external complaints closed up to Committee decision – annual comparison..... | 28 |
| Table 17: Turn round times for complaints closed post Committee referral - annual comparison 2007 to 2009 | 29 |
| Table 18: Outcome of closures – annual comparison 2008 vs 2009..... | 30 |
| Table 19: Analysis of outcomes of closures in 2009 of complaints referred for further action | 31 |
| Table 20: Analysis of outcomes of closures of complaints referred for further action – annual comparison 2007 to 2009..... | 31 |
| Table 21: Sanctions imposed by disciplinary panels and tribunals in 2008 and 2009..... | 32 |
| Table 22: Outcomes of appeals – annual comparison 2008 and 2009 | 33 |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------|----|
| Table 23: Outcomes of LSO investigations – annual comparison 2007 to 2009 Work in progress – Annual comparison 2008 to 2009 | 37 |
| Table 24: Breakdown of LSO recommendations and reasons – annual comparison 2007 to 2009 | 39 |
| Table 25: Breakdown of LSO compensation awards – annual comparison 2007 to 2009..... | 40 |

Figures

| | |
|------------------------------------------------------------------------------|----|
| Figure 1: Complaints opened - annual comparison 2005 to 2009 | 8 |
| Figure 2: Complaints opened - quarterly comparison 2008 and 2009..... | 9 |
| Figure 3: External complaints opened in 2009 – all aspects by ‘style’ | 13 |
| Figure 4: Complaints opened in 2009 by complainant category | 15 |
| Figure 5: Complaints closed – quarterly comparison 2008 and 2009 | 22 |
| Figure 6: Work in progress at year end – annual comparison 2007 to 2009..... | 35 |
| Figure 7: Age profile of live cases as at 31 December 2009 | 36 |

Introduction

- 1.1 This is the third year-end report for the Complaints and Hearings Teams, providing a summary of performance for the period 1 January to 31 December 2009. It is primarily intended for internal use and is designed to assist staff, management, the Complaints Committee ('the Committee') and the Board in identifying trends and potential improvements in the complaints and disciplinary system. It is not intended to replace the Annual Report of the Complaints Commissioner ('the Commissioner') however, inevitably there will be some overlap.

Format of the Report

- 1.2 The report is divided into three main sections: work received, work completed and work in progress. It also includes information on complaints submitted to the Legal Services Ombudsman ('the LSO') in 2009. As each section relates to a different pool of cases, it is not possible to cross-reference the sections despite there being some overlap in subject matter. For example, the "work received" section covers only those complaints that were received in 2009, whereas the "work completed" section covers all complaints closed in 2009 and therefore includes cases that were received in 2008 or before.
- 1.3 The report provides quarterly as well as annual comparisons and shows the performance of each Team separately where appropriate. For the purposes of this report, the statistics relating to the "Complaints Team" cover decisions made by the Commissioner and the Committee (excluding final decisions on Determination by Consent cases which are classed as "further action" and are included under the Hearings Team statistics).
- 1.4 Complaints are generally broken down according to the source of the complaint i.e. 'internal' complaints raised by the Bar Standards Board ('the BSB') of its own motion, and 'external' complaints received from clients, members of the public, solicitors or other professionals and organisations.

The Complaints Database

- 1.5 As stated in the January to September Performance Report¹, the new complaints database was successfully implemented on 23 February 2009. This has resulted in a number of improvements to the system both in terms of staff efficiency and in the level of information that can now be recorded on individual complaints. For example, the categorisation of complaints by their nature and type is more detailed, with the ability to record service complaints and track multiple 'aspects' of an individual complaint separately through the system.
- 1.6 The disciplinary process has benefitted most from the introduction of the new database as it is now possible to record and track individual charges brought against

¹ *Complaints and Hearings Teams Performance Report January to September 2009*

barristers and to monitor the hearings process, including the payment of financial penalties and compliance with other sentences imposed.

- 1.7 While the data conversion process from the old to the new system enabled the majority of existing complaints to be successfully re-categorised, there were inevitably some complaints where it was not possible to achieve an exact conversion into the new categories. Where a direct comparison with previous years is affected by a data conversion issue, this is highlighted in the text or in notes to the statistical tables. The statistics in this report are based on data extracted from the database at the end of January 2010.

Strategic Review Changes

- 1.8 On 31 March 2009, substantial changes to the complaints and disciplinary system were introduced as a consequence of Robert Behrens' Strategic Review.² In some areas this produced wholesale changes in case handling, particularly in the Hearings Team. For the Complaints Team, the changes involved new processes for referring complaints back to chambers and agreeing complaints with complainants as well as the introduction of a new telephone Information Help Line. For the Hearings Team, the changes included the abolition of the Summary jurisdiction, the introduction of both three and five person Disciplinary Tribunal panels and a new process for agreeing Directions on paper. Further, both Teams, as well as the Committee, had to get to grips with the new Determination by Consent process which allows the Committee to make final determinations in disciplinary cases with barristers' consent.
- 1.9 The Strategic Review changes were designed to streamline the processes but inevitably in the transition period, they caused a significant amount of additional work particularly in understanding how the processes operated and developing the underlying detailed procedures. All staff rose to the challenge and it is a testament to their commitment and hard work that the new processes have been successfully adopted and are operating effectively. As this report shows, improvements in case handling have already been seen most noticeably within the Hearings Team.

Staffing

- 1.10 After several years of high staff turnover in the Complaints Team, 2009 was a more stable year. There were a number of internal changes within the Team which created a high level of movement but the reality was that only two substantive posts became vacant. In total, the Team carried vacancies for a total of approximately five months (with overlapping periods). This does not appear to have adversely affected performance and the Team is to be commended for this. The majority of the Complaints Team (seven out of 10) remained on short term contracts throughout the year pending the creation of the Office for Legal Complaints (OLC). While this does not appear to have been a significant factor in staff turnover, it remains the case that employment stability within the Team needs to be addressed in 2010.

² *Strategic Review of the Complaints and Disciplinary Processes – Report by Robert Behrens, former Complaints Commissioner July 2007*

- 1.11 In contrast, the Hearings Team saw three out of its four experienced Case Officers leave in the second quarter of the year including the Officer with policy responsibility. The moves were entirely coincidental and were not representative of any structural problems (one Officer returned home after five years in the UK, another went on maternity leave and the third was promoted internally). Unfortunately, the turnover coincided with the introduction of the Strategic Review changes and an increase in the volume of work. Nevertheless, as this report shows, performance within the Team improved significantly during the year for which the Team is to be highly commended.
- 1.12 Due to the increase in the volume and complexity of work in the Hearings Team, additional casework resources were allocated which assisted in maintaining and improving throughput. Further, agreement was obtained in May 2009 to recruit a Hearings Team Manager, relieving the burden on the Head of Complaints and Hearings and providing much needed support in policy areas. Unfortunately, the post was not filled until 2010 and therefore the benefits of this increase in resources were not felt in 2009.

Work Received

Complaints Team

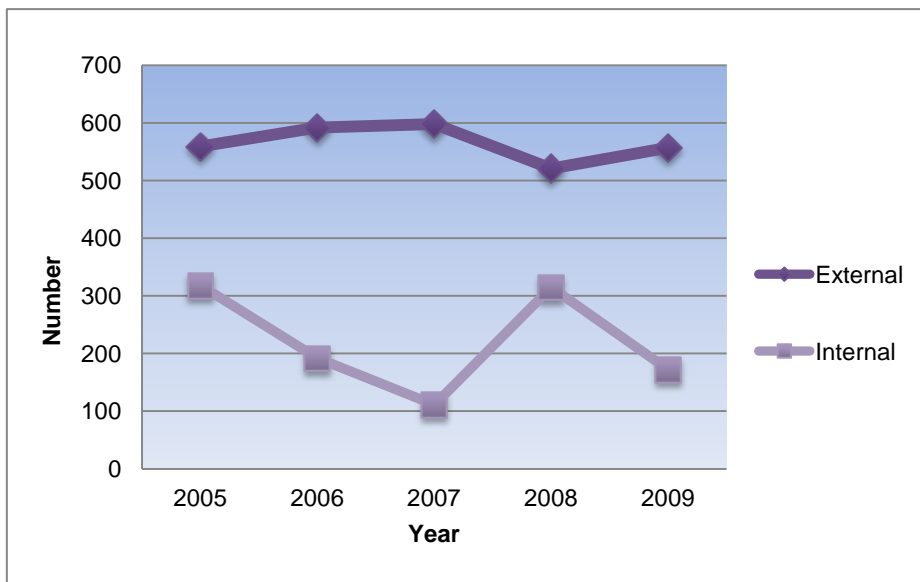
General

2.1 Tables 1 and 2, and Figures 1 and 2, provide annual and quarterly comparisons of the number of complaints opened in 2009. As Table 1 shows, there was a 13% overall decrease in the total number of new complaints opened in 2009 in comparison with 2008. The decrease related solely to the number of internal complaints opened, which reduced by 45% in 2009.

Table 1: Complaints opened - annual comparison 2005 to 2009

| Complaint Type | 2005 | 2006 | 2007 | % change | 2008 | % change | 2009 | % change |
|----------------|------------|------------|------------|--------------|------------|---------------|------------|---------------|
| External | 559 | 592 | 598 | +1.0% | 521 | -12.9% | 557 | +6.9% |
| Internal | 318 | 192 | 111 | -42.2% | 315 | +183.8% | 172 | -45.4% |
| Total | 877 | 784 | 709 | -9.6% | 836 | +17.9% | 729 | -12.8% |

Figure 1: Complaints opened - annual comparison 2005 to 2009



2.2 In contrast, the number of external complaints received has remained relatively consistent over the last five years at an average of 565 per year. The 13% dip in 2008 to 521 complaints has now been followed by an increase of 7% and a year-end total of 557 in 2009 (see Table 1). However, the level of external complaints opened remains lower than the levels seen in 2006 and 2007 and the pattern over the last

two years shows a downward trend. As was pointed out in the 2008 Performance Report, the most likely explanation for this is the emphasis the BSB has put on chambers complaints in recent years and the continuing impact of the mandatory Code requirements in relation to chambers' complaints handling.

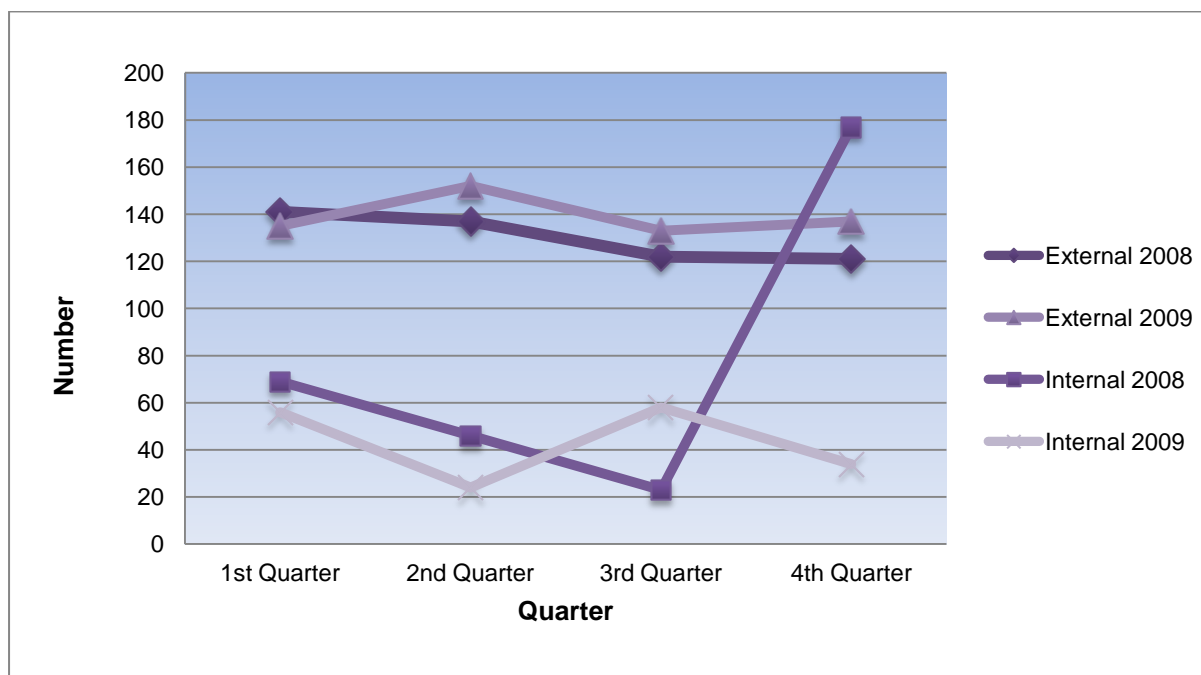
2.3 Table 2 provides a quarterly breakdown of the new complaints opened in 2009. It shows the greatest fluctuation in the Complaints Team's workload to have occurred in the second quarter of the year, where the highest number of external complaints and the lowest number of internal complaints were opened (i.e. 152 and 24 respectively).

2.4 Figure 2 compares the workload pattern in 2009 with the previous year and shows that while the number of external complaints received remained at a similar level in both years, there have been considerable fluctuations in relation to internal complaints.

Table 2: Complaints opened in 2009 - quarterly comparison

| Complaint Type | 1st Qtr | % Total | % Change | 2nd Qtr | % Total | % Change | 3rd Qtr | % Total | % Change | 4th Qtr | % Total | % Change |
|----------------|------------|---------------|---------------|------------|---------------|--------------|------------|---------------|-------------|------------|---------------|---------------|
| External | 135 | 70.7% | +11.6% | 152 | 86.4% | +12.6% | 133 | 69.6% | -12.5% | 137 | 80.1% | +3.0% |
| Internal | 56 | 29.3% | -68.4% | 24 | 13.6% | -57.1% | 58 | 30.4% | +141.7% | 34 | 19.9% | -41.4% |
| Total | 191 | 100.0% | -35.9% | 176 | 100.0% | -7.9% | 191 | 100.0% | 8.5% | 171 | 100.0% | -10.5% |

Figure 2: Complaints opened - quarterly comparison 2008 and 2009



Internal complaints opened - analysis

- 2.5 The pattern of internal complaints opened is now, five years after the introduction of the warnings and fines system, starting to reflect more accurately the “seasonal” nature of disciplinary action arising from breaches of the practising requirements which form the bulk of internal complaints. Referrals of breaches from the CPD and Records sections are made in the second quarter of each year and, if the system is operating effectively, any cases arising from a continued failure to comply following the imposition of a fine, should start to be raised as formal complaints in the third and fourth quarters of the year. This pattern is now starting to emerge and would indicate increased efficiency in processing warnings and fines cases.
- 2.6 As was noted in the 2008 Performance Report, the number of internal complaints opened in that year (315) was disproportionately high and the 2009 total of 172 shows a return to a level similar to that seen following the introduction of the warnings and fines system in 2005 (see Table 1).
- 2.7 Table 3 provides more detail about the nature of internal complaints opened over the last three years and shows that failures to comply with the practising requirements continue to account for the majority of internal complaints raised. In 2008, 81% of the internal complaints opened had a ‘primary aspect’ relating to non-compliance with the practising requirements but this decreased to 63% in 2009.
- 2.8 While 172 individual internal complaint records were opened in 2009, these included a total of 281 aspects, 25% (70) of which concerned failures to pay the non-disciplinary fine and 14 % (40) related to failures to respond to BSB communications. This reflects the fact that such complaints often involve more than one breach of the Code and can have multiple ‘aspects’.
- 2.9 The new ‘Warnings and Fines’ module on the complaints database shows that a total of 174 referrals were made in 2009, with 73% relating to failures to comply, or late compliance with the CPD requirements and 27% relating to failures to renew practising certificates. Of these 174 referrals, 90 barristers complied with the requirements following the imposition of a fine, 12 were outstanding the year-end and 71 (41%) resulted in a formal complaint being raised.
- 2.10 These statistics demonstrate a significant improvement in compliance with practising requirements as compared to 2008. In that year, there were 366 referrals with 230 (62%) resulting in formal complaints being raised. The reduction of 52% in the number of referrals reflects the hard work carried out by the CPD section of the BSB and the Records section of the Bar Council in encouraging compliance. Further, the reduction in the percentage of referrals resulting in formal complaints indicates that the warnings and fines system is becoming more effective in achieving compliance without recourse to disciplinary action.
- 2.11 In the 2008 report, questions were raised about the efficacy of the Warnings and Fines system and a review was recommended. The need for this now appears less pressing but, in any event, the review has been put on hold pending the outcome of the consultation on a new authorisation regime, which could result in the Warnings and Fines system coming to an end.

Table 3: Analysis of internal complaints by primary aspect - 2007 to 2009

| Aspect Description | 2007 | % Total | 2008 | % Total | 2009 | % Total |
|-------------------------------------------------------|------------|---------------|------------|---------------|------------|---------------|
| Breach of practise rules ³ | 37 | 33.3% | 176 | 55.9% | 2 | 1.2% |
| Failure to comply with CPD requirements | 2 | 1.8% | 63 | 20.0% | 74 | 43.0% |
| Failure to renew practising certificate | 0 | 0.0% | 12 | 3.8% | 23 | 13.4% |
| Failing to register or have insurance with BMIF | 0 | 0.0% | 3 | 1.0% | 9 | 5.2% |
| Failure to comply with a sentence of a tribunal/panel | 0 | 0.0% | 3 | 1.0% | 14 | 8.1% |
| Other ⁴ | 59 | 53.2% | 28 | 8.9% | 10 | 5.8% |
| Failure to pay non-disciplinary fine | 1 | 0.9% | 4 | 1.3% | 9 | 5.2% |
| Non-practising barrister holding out | 1 | 0.9% | 1 | 0.3% | 8 | 4.7% |
| Criminal convictions(s) - other | 7 | 6.3% | 11 | 3.5% | 5 | 2.9% |
| Failure to comply with Withdrawal of Credit Scheme | 0 | 0.0% | 4 | 1.3% | 3 | 1.7% |
| Failure to report bankruptcy/IVA | 0 | 0.0% | 2 | 0.6% | 3 | 1.7% |
| Criminal convictions(s) - drink driving | 0 | 0.0% | 4 | 1.3% | 2 | 1.2% |
| H of C failing to administer chambers properly | 0 | 0.0% | 0 | 0.0% | 2 | 1.2% |
| Acting uninstructed | 0 | 0.0% | 0 | 0.0% | 1 | 0.6% |
| Dishonesty/discreditable conduct | 0 | 0.0% | 0 | 0.0% | 1 | 0.6% |
| Failure to comply with DBC | n/a | n/a | n/a | n/a | 1 | 0.6% |
| Failure to follow instructions | 1 | 0.9% | 0 | 0.0% | 1 | 0.6% |
| Failure to report criminal charges or convictions | 0 | 0.0% | 1 | 0.3% | 1 | 0.6% |
| False declarations on Call | 0 | 0.0% | 0 | 0.0% | 1 | 0.6% |
| Late compliance with CPD requirements | 0 | 0.0% | 0 | 0.0% | 1 | 0.6% |
| Misleading the Court | 2 | 1.8% | 1 | 0.3% | 1 | 0.6% |
| Civil debt (including clerks) or bankruptcy | 1 | 0.9% | 1 | 0.3% | 0 | 0.0% |
| Failure to properly administer practice | 0 | 0.0% | 1 | 0.3% | 0 | 0.0% |
| Failure to respond to BSB communications | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Total | 111 | 100.0% | 315 | 100.0% | 172 | 100.0% |

External complaints received - analysis

2.12 The number of external complaints received increased by 6.9% from 521 in 2008 to 557 in 2009. Of the 557 complaints opened in 2009, 76 were referred to the

³ Prior to the introduction of the new complaints database in February 2009 all breaches of the practising requirements were included in this category

⁴ The high number of 'Other' complaints in 2007 and 2008 is largely due to data corruption and conversion issues with the old database

barrister's Chambers to deal with under the new procedure introduced in March 2009. Further details about chambers referrals can be found at paragraphs 2.18 – 2.23.

- 2.13 In terms of the subject matter of external complaints received, a total of 806 aspects were registered against the 557 complaints opened in 2009. The database now allows the aspects of complaints to be categorised according to their 'type' as illustrated in Figure 3. That chart shows that almost half (45%) of all complaints involved misconduct, 27% related to inadequate professional service (IPS) and 128 (23%) involved an element of both IPS and misconduct ('hybrid' complaints). In 30 cases, the aspect type has been recorded as 'Unknown' due to data conversion issues.
- 2.14 2009 was the first year that statistics have been available regarding the type of complaints received. The figures provide a better indication of the potential impact of the creation of the Legal Ombudsman service on the BSB's work than was previously the case. However, they should be treated with a level of caution as staff are still getting used to categorising complaints in this way and the conversion from the old to the new database may have created inaccurate data. Nevertheless, it would appear that somewhere in the region of a quarter of complaints the BSB currently receives will be dealt with by the Legal Ombudsman service once it becomes operational. A further quarter may need to be addressed by both the Legal Ombudsman and the BSB as matters of both service and conduct ("hybrids"). This figure is based on the BSB's current system of classification, but it could well be that the level of hybrids will be significantly higher as the concept of service complaints, as set out in the Legal Services Act 2007, is much broader than the BSB's definition of inadequate professional service.
- 2.15 Table 4 details the 'primary aspect' of external complaints opened in 2008 and 2009 and shows that the largest category of complaints related to incompetence (around 30%) followed by rudeness/misbehaviour both inside and outside court and misleading the court, each of which accounted for an average of around 10% of the total. Failures to follow instructions, fee disputes, negligence and not acting in a client's best interests produced over 20 complaints in 2009 in each of these categories. However, the profile of complaints received has changed since 2008 with a large increase in complaints about barristers not acting in a client's best interest (up from 1 in 2008 to 21 in 2009) and a reduction by half in the number of complaints received about "undue pressure" (down from 21 to 10).

Figure 3: External complaints opened in 2009 by 'style'

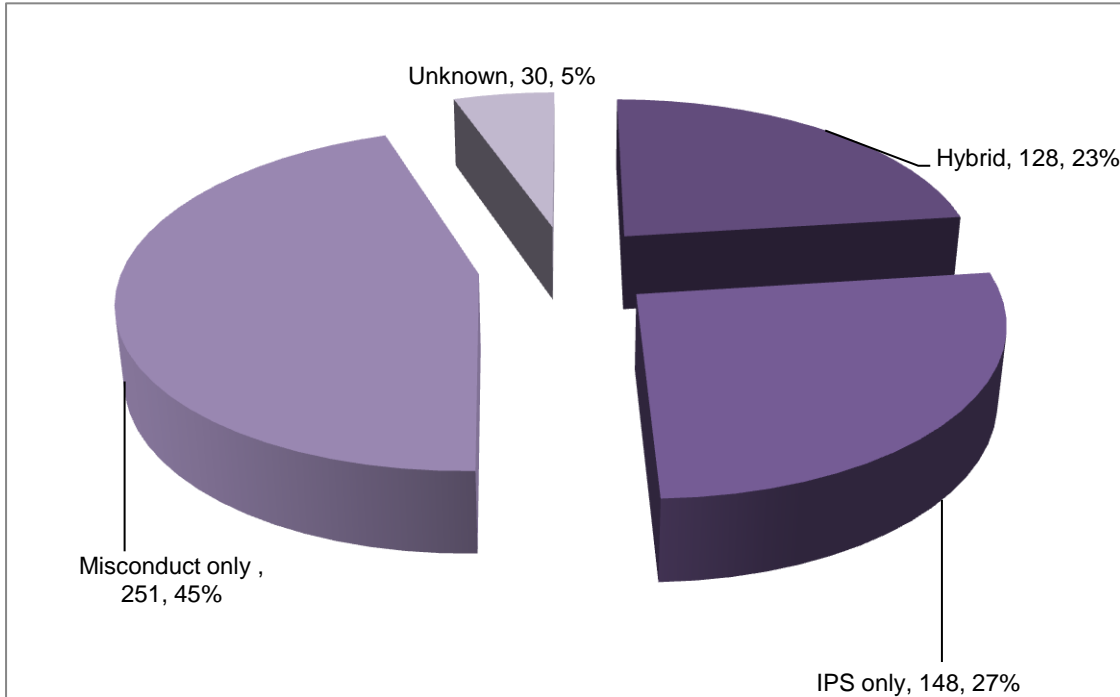


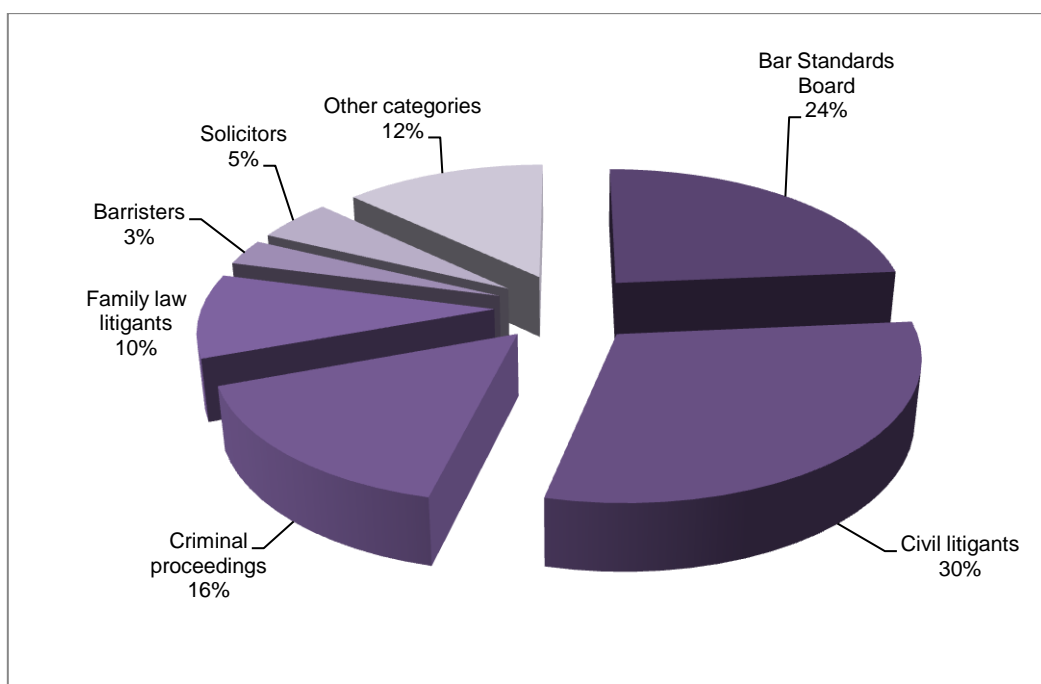
Table 4: Analysis of external complaints opened by primary aspect - 2008 to 2009

| Aspect Description | 2008 | % Total | 2009 | % Total | % Previous Year Change |
|-----------------------------------------------------------|------------|---------------|------------|---------------|------------------------|
| Incompetence | 156 | 29.9% | 161 | 28.9% | +3.2% |
| Other | 82 | 15.7% | 63 | 11.3% | -23.2% |
| Misleading the Court | 72 | 13.8% | 55 | 9.9% | -23.6% |
| Rudeness/misbehaviour out of Court | 34 | 6.5% | 38 | 6.8% | +11.8% |
| Failure to follow instructions | 47 | 9.0% | 31 | 5.6% | -34.0% |
| Negligence (included in 'Incompetence' category pre-2009) | 0 | 0.0% | 27 | 4.8% | +100.0% |
| Fee dispute | 19 | 3.6% | 23 | 4.1% | +21.1% |
| Rudeness/misbehaviour in Court | 34 | 6.5% | 23 | 4.1% | -32.4% |
| Not acting in the client's best interest | 1 | 0.2% | 22 | 3.9% | +2100.0% |
| Conspiracy/Collusion | 5 | 1.0% | 14 | 2.5% | +180.0% |
| Conflict of interest | 6 | 1.2% | 11 | 2.0% | +83.3% |
| Non-practising barrister holding out | 16 | 3.1% | 11 | 2.0% | -31.3% |
| Undue pressure to accept settlement/plead guilty | 21 | 4.0% | 10 | 1.8% | -52.4% |
| Dishonesty/discreditable conduct | 0 | 0.0% | 8 | 1.4% | +100.0% |
| Undue delay in dealing with papers | 10 | 1.9% | 8 | 1.4% | -20.0% |
| Acting uninstructed | 0 | 0.0% | 7 | 1.3% | +100.0% |
| Inappropriately drafting pleadings | 0 | 0.0% | 7 | 1.3% | +100.0% |
| Late/unnecessary return of brief | 3 | 0.6% | 6 | 1.1% | +100.0% |
| Inappropriately remaining in/or withdrawing from a case | 0 | 0.0% | 5 | 0.9% | +100.0% |
| Civil debt (including clerks) or bankruptcy | 4 | 0.8% | 3 | 0.5% | -25.0% |
| Failure to comply with a Court Order | 0 | 0.0% | 3 | 0.5% | +100.0% |
| Failure to preserve client confidentiality | 0 | 0.0% | 3 | 0.5% | +100.0% |
| Head of Chambers failing to administer chambers properly | 1 | 0.2% | 3 | 0.5% | +200.0% |
| Management of lay client's affairs | 0 | 0.0% | 3 | 0.5% | +100.0% |
| Acting outside role as self-employed barrister | 1 | 0.2% | 2 | 0.4% | +100.0% |
| Breach of legal aid regulations | 1 | 0.2% | 2 | 0.4% | +100.0% |
| Misbehaviour in/debt to Chambers/other barristers | 5 | 1.0% | 2 | 0.4% | -60.0% |
| Receipt of gifts/inappropriate payments/handling client | 2 | 0.4% | 2 | 0.4% | 0.0% |
| Failure to act appropriately towards pupil | 0 | 0.0% | 1 | 0.2% | +100.0% |
| Failure to comply with a sentence of a tribunal/panel | 0 | 0.0% | 1 | 0.2% | +100.0% |
| Failure to properly administer practice | 1 | 0.2% | 1 | 0.2% | 0.0% |
| Making inappropriate media comments | 0 | 0.0% | 1 | 0.2% | +100.0% |
| Total | 521 | 100.0% | 557 | 100.0% | +6.9% |

Types of complainant

2.16 Figure 4 below illustrates the main categories of complainant in 2009 and Table 5 provides a breakdown over the last three years of all the complainant categories. The figures show that the main categories of external complainants are: civil litigants; those involved in criminal proceedings (including defendants and prisoners); and family law litigants. The BSB is now no longer the largest category of complainant in the system, only accounting for 24% of the total complaints opened in 2009 as compared with 37% in 2008.

Figure 4: Complaints opened in 2009 by complainant category



2.17 As was noted in the January to September 2009 Performance Report, in recent years there have been fluctuations in the balance of external complainant categories. For example, the proportion of complaints from civil litigants was 18% in 2008 but increased to 30% in 2009. In contrast, the proportion of complaints from those involved in criminal proceedings has reduced over the years: down from 20% in 2007 to 16% in 2008 and 2009. Complaints from family law litigants still remain one of the larger complainant categories but the proportion continues to fluctuate falling from 12% in 2007 to 8% in 2008 and increasing again to 10% in 2009.

Table 5: Complaints opened from 2007 to 2009 by complainant category

| Complainant category | 2007 | % Total | 2008 | % Total | 2009 | % Total | % Previous Year Change |
|--------------------------------------|------------|---------------|------------|---------------|------------|---------------|------------------------|
| Bar Standards Board | 111 | 15.7% | 309 | 37.0% | 172 | 23.6% | -44.3% |
| Civil litigant | 176 | 24.8% | 153 | 18.3% | 198 | 27.2% | +29.4% |
| Civil litigant - litigant in person* | 0 | 0.0% | 1 | 0.1% | 21 | 2.9% | +2000.0% |
| Criminal defendant | 140 | 19.7% | 55 | 6.6% | 49 | 6.7% | -10.9% |
| Criminal - non-defendant* | 1 | 0.1% | 19 | 2.3% | 7 | 1.0% | -63.2% |
| Criminal - defendant prisoner* | 0 | 0.0% | 68 | 8.1% | 58 | 8.0% | -14.7% |
| Family - ancillary relief* | 0 | 0.0% | 11 | 1.3% | 32 | 4.4% | +190.9% |
| Family - child proceedings* | 1 | 0.1% | 9 | 1.1% | 28 | 3.8% | +211.1% |
| Family - other | 86 | 12.1% | 43 | 5.1% | 11 | 1.5% | -74.4% |
| Barrister | 20 | 2.8% | 21 | 2.5% | 22 | 3.0% | +4.8% |
| Solicitor(s) on lay client's behalf | 11 | 1.6% | 9 | 1.1% | 17 | 2.3% | +88.9% |
| Solicitor(s) on own behalf | 14 | 2.0% | 28 | 3.3% | 19 | 2.6% | -32.1% |
| Chambers staff* | 0 | 0.0% | 1 | 0.1% | 4 | 0.5% | +300.0% |
| Head of Chambers* | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0.0% |
| Judge (or official on their behalf) | 7 | 1.0% | 9 | 1.1% | 4 | 0.5% | -55.6% |
| Magistrates/Clerk to the Justices | 1 | 0.1% | 0 | 0.0% | 0 | 0.0% | 0.0% |
| Legal Services Commission | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0.0% |
| Ministry of Justice | 1 | 0.1% | 0 | 0.0% | 0 | 0.0% | 0.0% |
| Immigration client | 0 | 0.0% | 5 | 0.6% | 5 | 0.7% | 0.0% |
| Asylum and Immigration Tribunal | 1 | 0.1% | 0 | 0.0% | 1 | 0.1% | 0.0% |
| OISC | 4 | 0.6% | 14 | 1.7% | 1 | 0.1% | -92.9% |
| Other | 135 | 19.0% | 81 | 9.7% | 80 | 11.0% | -1.2% |
| Total | 709 | 100.0% | 836 | 100.0% | 729 | 100.0% | -12.8% |

Note: Complainant categories marked as * were introduced in 2008/09

Chambers referrals

2.18 As mentioned in paragraph 2.12, a total of 76 complaints received in 2009 were immediately referred to the barrister's chambers for investigation and possible resolution under the new procedure introduced on 31 March 2009. The vast majority of the complainants (47%) were civil litigants, followed by family law litigants and those involved in criminal proceedings (22% each).

2.19 The table below shows the initial outcome of the 76 referrals as at the year end.

Table 6: Initial outcome of complaints referred to Chambers in 2009

| Status | Number | % Total |
|---------------------------|-----------|---------------|
| Chambers decision awaited | 18 | 23.8% |
| Dismissed - Chambers | 53 | 69.7% |
| Upheld - Chambers | 3 | 3.9% |
| Withdrawn by complainant | 1 | 1.3% |
| Referral rescinded by BSB | 1 | 1.3% |
| Grand total | 76 | 100.0% |

2.20 Of the 56 complaints dealt with by the barristers' chambers, 24 would appear to have been resolved to the complainant's satisfaction as there was no reference back to the BSB. However, it is interesting to note that 53 of the 56 cases (94.6%) were dismissed by Chambers. This compares with a BSB dismissal rate in 2009 (excluding chambers' dismissals) of 61.2%. 32 complaints were referred back to the BSB and the Complaints Commissioner subsequently dismissed 12 of the reopened complaints while 20 complaints were under consideration as at 31 December 2009, with one awaiting the Committee's decision and one referred to a Disciplinary Tribunal for disciplinary action.

2.21 In summary, 18% of all external complaints opened since the introduction of the scheme have resulted in a referral to the barrister's Chambers for investigation. Of the referrals that had been considered by the Chambers by the year end, 43% resulted in an outcome satisfactory to the complainant and were closed without any investigation by the BSB. However, the other 57% resulted in the matter being referred back to the BSB by the complainant.

2.22 As the Chambers referral procedure is still relatively new and the number of complaints referred to Chambers is comparatively small, it would be premature to draw any general conclusions at this stage. It is however, interesting that of the 14 reopened complaints 12 (86%) were dismissed by the Commissioner: again a much higher dismissal rate than the norm.

2.23 Four of the complaints that were dismissed by both the Chambers and the Commissioner have since been referred by the complainants to the LSO. No reports had been issued on these complaints as at the year end and it will be interesting to see the LSO's views on the handling of these cases.

Hearings Team

2.24 Table 7 shows the number of complaints referred by the Complaints Committee to the Hearings Team over the last three years, broken down by the type of hearing referral. It should be noted that on 31 March 2009, as a result of the Strategic Review changes, the Summary Hearing jurisdiction was abolished and the Disciplinary Tribunal jurisdiction was divided with the creation of three-person and five-person Disciplinary Tribunals. In addition, the Determination by Consent procedure was introduced, primarily to deal with internal complaints relating to breaches of the practising requirements.

Table 7: Complaints referred for further action - annual comparison 2007 to 2009

| Referral Type | 2007 | % Total | % Change | 2008 | % Total | % Change | 2009 | % Total | % Change |
|--------------------------------|------------|---------------|--------------|------------|---------------|---------------|------------|---------------|---------------|
| Adjudication Panel | 16 | 12.6% | -30.4% | 13 | 7.2% | -18.8% | 6 | 2.4% | -53.8% |
| Determination by Consent | n/a | n/a | n/a | n/a | n/a | n/a | 43 | 16.9% | 0.0% |
| 3 Person Disciplinary Tribunal | n/a | n/a | n/a | n/a | n/a | n/a | 94 | 36.9% | 0.0% |
| 5 Person Disciplinary Tribunal | n/a | n/a | n/a | n/a | n/a | n/a | 51 | 20.0% | 0.0% |
| Disciplinary Tribunal | 34 | 26.8% | -45.2% | 50 | 27.8% | +47.1% | 13 | 5.1% | -74.0% |
| Summary Hearing | 77 | 60.6% | +71.1% | 117 | 65.0% | +51.9% | 48 | 18.8% | -59.0% |
| Total | 127 | 100.0% | -2.3% | 180 | 100.0% | +41.7% | 255 | 100.0% | +41.7% |

2.25 Due to the changes to the referral types it is difficult to make direct comparisons with previous years. However, as the figures in Table 7 show the number of referrals to the Hearings Team has increased by almost 42% in each of the last two years and is now double the level referred in 2007 (up from 127 in 2007 to 255 in 2009).

2.26 The increase is almost entirely attributable to referrals in relation to internal complaints, mainly in relation to practising requirements breaches. In 2006, internal complaint referrals stood at 58 but they have increased substantially year on year with 86 in 2007, 124 in 2008 and 219 in 2009. In comparison referrals arising from external complaints have, on the whole, been decreasing. In 2006, they stood at 72, fell to 40 in 2007, rose again in 2008 to 56 and fell once again in 2009 to 36.

2.27 Therefore the vast majority (86%) of the Hearings Team's workload by volume consists of disciplinary cases arising from internal complaints about practising requirements. However, these statistics belie the proportion of time the Senior Case Officers spend on external complaints which tend to be the most complex and time consuming. In recent years, the number of barristers instructing solicitors and counsel on a fee paying basis to defend disciplinary cases has increased substantially. This has led to a significant change in approach whereby managing disciplinary cases arising from external complaints has become similar to conducting litigation with increasing challenges to the processes. It is a credit to the quality of

the Officers and our prosecution panel that these challenges are, in most cases, successfully resisted.

- 2.28 The new DBC procedure accounted for 17% of all referrals in 2009. This process was a replacement, in part, for the Summary hearing jurisdiction and has proved to be highly successful in terms of reducing the time taken to conclude disciplinary cases arising from practising requirement breaches. It would also appear to have been a success with barristers as, during 2009, all the barristers offered the option of their case being dealt with under the procedure, willingly accepted it, co-operated with the process and readily accepted the Committee's decisions.
- 2.29 It had been hoped that more cases would be referred to the DBC procedure than is currently the case. In 2008, 95 cases were referred to the Summary jurisdiction whereas, despite the substantial increase in disciplinary referrals in 2009, only 86 cases were referred to either the Summary jurisdiction (before it was abolished) or DBC. The reason for this appears to be the restriction in the sentencing options available to the Committee under the DBC process. The Committee can only impose a maximum sentence of a fine whereas Summary panels had the power to impose suspensions from practise for up to three months. Therefore, if the Committee considers, in line with the Sentencing Guidance introduced by the Council of the Inns of Court in April 2009, a period of suspension may be warranted if the charges are proved, it has no choice but to refer the matter to a Disciplinary Tribunal. It may be that the restrictions on sentencing will need to be revisited but the statistics in this report relate only to the first nine months of the new referral system and it is perhaps premature to consider any changes.
- 2.30 Referrals to Adjudication Panels (which deal with complaints of IPS only) have continued to decline in recent years. In 2009 only six complaints were referred by the Committee to an Adjudication Panel: a reduction of 54% on the previous year. While the Adjudication Panel jurisdiction will come to end following the commencement of the new Legal Ombudsman service in 2010, the low level of referrals in relation to IPS complaints, as compared to the proportion of IPS complaints received, could be an area for concern and may be one that would be beneficial for the Independent Observer to look at in more detail.
- 2.31 Table 8 shows the number of charges laid against barristers in respect of complaints referred by the Committee for further action in 2009. It demonstrates the level of multiple charges in disciplinary cases with approximately 250 cases resulting in 770 charges. Given the nature of the referrals, it is not surprising that the three main charges raised relate to failure to complete CPD (21%); failure to respond promptly to a complaint (20.5%) and failing to pay a non-disciplinary fine (18.6%). As the old database did not record charges it is not possible to provide a comparison with previous years.

Table 8: Charges raised on complaints referred for further action in 2009

| Charge description | 2009 | % Total |
|-----------------------------------------------------------------------|------------|---------------|
| Failure to complete CPD | 162 | 21.0% |
| Failing to respond promptly to a complaint | 158 | 20.5% |
| Failing to pay non-disciplinary fine | 143 | 18.6% |
| Being dishonest or otherwise discreditable | 42 | 5.5% |
| Failure to renew practising certificate | 33 | 4.3% |
| Acting in a manner likely to bring profession into disrepute | 23 | 3.0% |
| Failing to comply with a sentence of a tribunal | 22 | 2.9% |
| General | 19 | 2.5% |
| Inadequate professional service | 18 | 2.3% |
| Failing to act courteously/competently or wasting court's time | 14 | 1.8% |
| Failure to comply with practising requirements following warning/fine | 14 | 1.8% |
| Head of Chambers - failing to administer chambers properly | 13 | 1.7% |
| Failing to report promptly bankruptcy proceedings | 12 | 1.6% |
| Holding out - Failure to comply with practising requirements | 11 | 1.4% |
| Acting uninstructed | 9 | 1.2% |
| Failing to register or have insurance with BMIF | 8 | 1.0% |
| Failing to report criminal charges or convictions | 7 | 0.9% |
| Acting in a manner prejudicial to administration of justice | 6 | 0.8% |
| Failing to respond promptly to attend tribunal hearing | 6 | 0.8% |
| Knowingly or recklessly misleading the court | 6 | 0.8% |
| Failing to act appropriately towards the court | 5 | 0.6% |
| Failure to comply with other provision of Code | 5 | 0.6% |
| False declarations on Call | 5 | 0.6% |
| Failing to administer practice properly | 4 | 0.5% |
| Acting outside competence or time available | 3 | 0.4% |
| Failing to promote the lay client's best interests | 3 | 0.4% |
| Giving/receipt of gifts/payments/handling client money | 3 | 0.4% |
| Accepting instructions when professionally embarrassed | 2 | 0.3% |
| Failing to preserve confidentiality | 2 | 0.3% |
| Inappropriately failing to withdraw from a case | 2 | 0.3% |
| Returning instructions in inappropriate circumstances | 2 | 0.3% |
| Undertaking work inappropriate to self-employed barrister | 2 | 0.3% |
| Devising/drafting pleadings based on facts not supported | 1 | 0.1% |
| Employed barristers - providing services outside status | 1 | 0.1% |
| Failing to respond promptly to enquiries about practice | 1 | 0.1% |
| Failure to comply with insurance requirements | 1 | 0.1% |
| Holding out - Failure to comply with rights of audience requirements | 1 | 0.1% |
| Pupil supervisors - breach of obligations | 1 | 0.1% |
| Total | 770 | 100.0% |

Work Completed and Turn round Times

General

3.1 This section of the report deals with the number of complaints closed by both the Complaints and Hearings Teams in 2009 and therefore covers the volume of work carried out by the Teams during the year as well as the time taken to complete that work. It should be noted that the statistics do not cover the work the Complaints Team, Commissioner and Committee carry out in relation to processing applications for waivers from relevant Code provisions and Fitness to Practise cases. 3.2

Table 9 shows the number of complaints closed in each of the last five years and the percentage change in each year from 2007 to 2009. As can be seen, there was an increase of 15% in the number of complaints closed during 2009 in comparison with 2008 (up from 717 to 824). This increase is almost wholly accounted for by the number of internal complaints closed by the Hearings Team.

Table 9: Complaints closed - annual comparison 2005 to 2009

| Complaint Type | 2005 | 2006 | 2007 | % change | 2008 | % change | 2009 | % change |
|----------------|------------|------------|------------|---------------|------------|--------------|------------|---------------|
| External | 483 | 575 | 582 | +1.2% | 564 | -3.1% | 569 | +0.9% |
| Internal | 225 | 275 | 147 | -46.5% | 153 | +4.1% | 255 | +66.7% |
| Total | 708 | 850 | 729 | -14.2% | 717 | -1.6% | 824 | +14.9% |

3.3 Table 10 provides a quarterly breakdown of the complaints closed in 2009 and shows that the greatest variation in the throughput of work occurred in the third and fourth quarters of the year, when almost twice as many external complaints were closed in comparison with the previous two quarters (up from 103/97 to 181/188).

Table 10: Complaints closed in 2009 - quarterly comparison

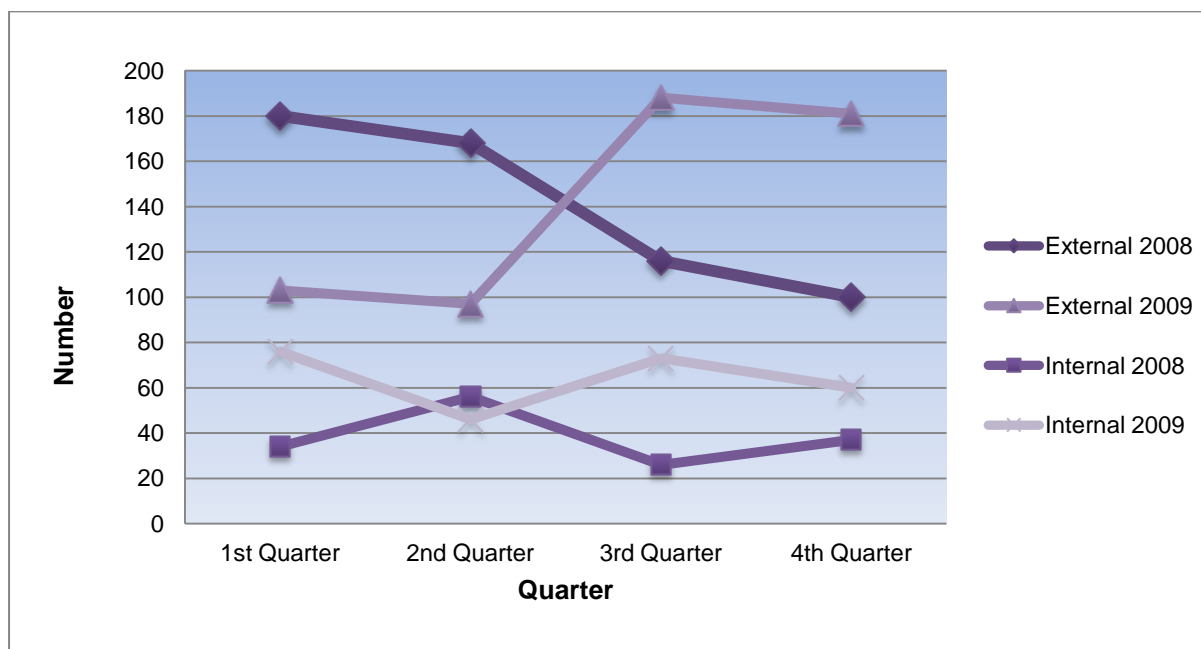
| Complaint Type | 1st Qtr | % Total | % Change | 2nd Qtr | % Total | % Change | 3rd Qtr | % Total | % Change | 4th Qtr | % Total | % Change |
|----------------|------------|---------------|---------------|------------|---------------|---------------|------------|---------------|---------------|------------|---------------|--------------|
| External | 103 | 57.5% | +3.0% | 97 | 67.8% | -5.8% | 188 | 72.0% | +93.8% | 181 | 75.1% | -3.7% |
| Internal | 76 | 42.5% | +105.4% | 46 | 32.2% | -39.5% | 73 | 28.0% | +58.7% | 60 | 24.9% | -17.8% |
| Total | 179 | 100.0% | +30.7% | 143 | 100.0% | -20.1% | 261 | 100.0% | +82.5% | 241 | 100.0% | -7.7% |

3.4 Figure 5 shows the fluctuations in throughput of work across both Teams over the last year in comparison with 2008. As was noted in the January to September

Performance Report for 2009, and is illustrated in the chart below, there was a marked decrease in the number of external complaints closed during the first two quarters of 2009 in comparison with the previous year, followed by a very sharp increase in the third quarter.

- 3.5 With the exception of the second quarter of 2009, internal complaint closures exceeded the closure rates in 2008 and by the year end were up by 67% (see Figure 5 and Table 9). In the main, internal complaints are closed after the conclusion of disciplinary action whereas the large majority of external complaint closures result from dismissals by the Commissioner or the Committee. The dip in internal complaints closures in the second quarter of 2009 is likely to reflect the staff turnover in the Hearings Team which occurred at that time. In contrast, there was only a difference of 1% (5 cases) between the total external complaint closures in 2009 as compared with the previous year.

Figure 5: Complaints closed – quarterly comparison 2008 and 2009



Overall Turn round times

- 3.6 Table 11 shows the overall turn round times for all complaints closed in 2009, with separate tables for external and internal complaints (Tables 12 and 13). The figures in Table 11 show that there have been considerable fluctuations in the percentage of complaints closed in each age bracket. For example, in 2005 53.5% of complaints were closed within three months compared with 30.8% in 2009, which is the lowest 0-3 month closure rate in the last five years. Comparison of performance according to the proportion of complaints closed in each year in each time period is a useful indicator. However, it does not take into account the volume of work and this shows a slightly different picture.

- 3.7 The volume of external complaint closures in 2008 and 2009 was almost the same (564 and 569 respectively), therefore it is evident that there was a decline in the

speed of resolution of external complaints in 2009 in comparison with the previous year, particularly in the 0-3 month category where the rate was 37.4% in 2009 compared with 41.8% in 2008. The figures also show a reduction of around 6% in the number of external complaints closed within six months as well as an increase in the number of cases over 12 months old as at the closure date: up from 17 cases in 2008 to 37 cases in 2009. As the paragraphs below show, these figures represent different pictures in relation to performance when broken down into the work covered by each of the Teams.

Table 11: Overall turn round times for all complaints – annual comparison 2005 to 2009

| Closure Period | 2005 | % Total | % Change | 2006 | % Total | % Change | 2007 | % Total | % Change | 2008 | % Total | % Change | 2009 | % Total | % Change |
|----------------|------------|---------------|--------------|------------|---------------|---------------|------------|---------------|---------------|------------|---------------|--------------|------------|---------------|---------------|
| Under 3 Months | 379 | 53.5% | +12.1% | 303 | 35.6% | -20.1% | 227 | 31.1% | -25.1% | 273 | 38.1% | +20.3% | 254 | 30.8% | -7.0% |
| 4 - 6 Months | 148 | 20.9% | +16.5% | 175 | 20.6% | +18.2% | 168 | 23.0% | -4.0% | 149 | 20.8% | -11.3% | 156 | 18.9% | +4.7% |
| 7 - 12 Months | 84 | 11.9% | -39.1% | 191 | 22.5% | +127.4% | 244 | 33.5% | +27.7% | 166 | 23.2% | -32.0% | 253 | 30.7% | +52.4% |
| 13 - 18 Months | 38 | 5.4% | -13.6% | 105 | 12.4% | +176.3% | 60 | 8.2% | -42.9% | 85 | 11.9% | +41.7% | 105 | 12.7% | +23.5% |
| 19 - 24 Months | 18 | 2.5% | -14.3% | 36 | 4.2% | +100.0% | 15 | 2.1% | -58.3% | 25 | 3.5% | +66.7% | 38 | 4.6% | +52.0% |
| Over 24 Months | 41 | 5.8% | +115.8% | 40 | 4.7% | -2.4% | 15 | 2.1% | -62.5% | 19 | 2.6% | +26.7% | 18 | 2.2% | -5.3% |
| Total | 708 | 100.0% | +3.1% | 850 | 100.0% | +20.1% | 729 | 100.0% | -14.2% | 717 | 100.0% | -1.6% | 824 | 100.0% | +14.9% |

Table 12: Overall turn round times for external complaints only – annual comparison 2005 to 2009

| Closure Period | 2005 | % Total | % Change | 2006 | % Total | % Change | 2007 | % Total | % Change | 2008 | % Total | % Change | 2009 | % Total | % Change |
|----------------|------------|---------------|---------------|------------|---------------|---------------|------------|---------------|--------------|------------|---------------|--------------|------------|---------------|--------------|
| Under 3 Months | 286 | 59.2% | -6.2% | 267 | 46.4% | -6.6% | 199 | 34.2% | -25.5% | 236 | 41.8% | +18.6% | 213 | 37.4% | -9.7% |
| 4 - 6 Months | 88 | 18.2% | -12.0% | 136 | 23.7% | +54.5% | 151 | 25.9% | +11.0% | 133 | 23.6% | -11.9% | 127 | 22.3% | -4.5% |
| 7 - 12 Months | 61 | 12.6% | -31.5% | 88 | 15.3% | +44.3% | 166 | 28.5% | +88.6% | 134 | 23.8% | -19.3% | 144 | 25.3% | +7.5% |
| 13 - 18 Months | 19 | 3.9% | -44.1% | 39 | 6.8% | +105.3% | 44 | 7.6% | +12.8% | 44 | 7.8% | +0.0% | 48 | 8.4% | +9.1% |
| 19 - 24 Months | 10 | 2.1% | +25.0% | 24 | 4.2% | +140.0% | 10 | 1.7% | -58.3% | 11 | 2.0% | +10.0% | 25 | 4.4% | +127.3% |
| Over 24 Months | 19 | 3.9% | +72.7% | 21 | 3.7% | +10.5% | 12 | 2.1% | -42.9% | 6 | 1.1% | -50.0% | 12 | 2.1% | +100.0% |
| Total | 483 | 100.0% | -11.7% | 575 | 100.0% | +19.0% | 582 | 100.0% | +1.2% | 564 | 100.0% | -3.1% | 569 | 100.0% | +0.9% |

Table 13: Overall turn round times for internal complaints only – annual comparison 2005 to 2009

| Closure Period | 2005 | % Total | % Change | 2006 | % Total | % Change | 2007 | % Total | % Change | 2008 | % Total | % Change | 2009 | % Total | % Change |
|----------------|------------|---------------|---------------|------------|---------------|---------------|------------|---------------|---------------|------------|---------------|--------------|------------|---------------|---------------|
| Under 3 Months | 93 | 41.3% | +181.8% | 36 | 13.1% | -61.3% | 28 | 19.0% | -22.2% | 37 | 24.2% | +32.1% | 41 | 16.1% | +10.8% |
| 4 - 6 Months | 60 | 26.7% | +122.2% | 39 | 14.2% | -35.0% | 17 | 11.6% | -56.4% | 16 | 10.5% | -5.9% | 29 | 11.4% | +81.3% |
| 7 - 12 Months | 23 | 10.2% | -53.1% | 103 | 37.5% | +347.8% | 78 | 53.1% | -24.3% | 32 | 20.9% | -59.0% | 109 | 42.7% | +240.6% |
| 13 - 18 Months | 19 | 8.4% | +90.0% | 66 | 24.0% | +247.4% | 16 | 10.9% | -75.8% | 41 | 26.8% | +156.3% | 57 | 22.4% | +39.0% |
| 19 - 24 Months | 8 | 3.6% | -38.5% | 12 | 4.4% | +50.0% | 5 | 3.4% | -58.3% | 14 | 9.2% | +180.0% | 13 | 5.1% | -7.1% |
| Over 24 Months | 22 | 9.8% | +175.0% | 19 | 6.9% | -13.6% | 3 | 2.0% | -84.2% | 13 | 8.5% | +333.3% | 6 | 2.4% | -53.8% |
| Total | 225 | 100.0% | +60.7% | 275 | 100.0% | +22.2% | 147 | 100.0% | -46.5% | 153 | 100.0% | +4.1% | 255 | 100.0% | +66.7% |

Complaints Team – Turn round times

3.8 Table 14 shows the turn round times for complaints closed up to and including the Committee decision and reflects the work of the Complaints Team, the Commissioner and, to a large degree, the Committee. The figures include cases closed following decisions by either the Commissioner or the Committee to dismiss a complaint or to exercise their powers to impose an administrative warning or fine. Withdrawn complaints are also included, but not complaints referred to disciplinary action or those referred back to the barrister's Chambers under the new procedure introduced at the end of March 2009.

Table 14: Turn round times for all complaints closed up to Committee decision – annual comparison

| Closure Period | 2007 | % Total | % Previous Year Change | 2008 | % Total | % Previous Year Change | 2009 | % Total | % Previous Year Change |
|----------------|------------|---------------|------------------------|------------|---------------|------------------------|------------|---------------|------------------------|
| 0 - 3 months | 225 | 38.1% | -24.7% | 268 | 46.2% | 19.1% | 206 | 36.5% | -23.1% |
| 4 - 6 months | 167 | 28.3% | +9.9% | 143 | 24.7% | -14.4% | 151 | 26.8% | +5.6% |
| 7 - 12 months | 171 | 29.0% | +128.0% | 128 | 22.1% | -25.1% | 156 | 27.7% | +21.9% |
| 13 - 18 months | 26 | 4.4% | +85.7% | 35 | 6.0% | +34.6% | 33 | 5.9% | -5.7% |
| 19 - 24 months | 1 | 0.2% | -83.3% | 4 | 0.7% | +300.0% | 14 | 2.5% | +250.0% |
| Over 24 months | 0 | 0.0% | -100.0% | 2 | 0.3% | +100.0% | 4 | 0.7% | +100.0% |
| Total | 590 | 100.0% | +7.9% | 580 | 100.0% | -1.7% | 564 | 100.0% | -2.8% |

3.9 The figures show that in 2009 36.5% of complaints, up to and including the Committee decision, were closed in under three months: 63.3% were closed within six months and just over 3% of cases were over 18 months old as at the date of conclusion. For the same periods in 2008 the figures were 46.2%, 70.9% and 1% respectively. It should also be noted that there was a 3% reduction in the total number of closures in 2009 (down from 580 in 2008 to 564). Therefore it is evident that there was a slow-down in the throughput of work up to and including the Committee decision stage particularly in the 0-3 month time period.

3.10 Internal complaints accounted for 17% (94) of the closures in 2009 (Table 15) and only 3.2% of these were older than 12 months as at the date of closure. The large majority of these closures (56%) were as a result of the Committee deciding to take no further action rather than refer the case to a disciplinary action, despite there being sufficient evidence of a breach. The reasons for such decisions usually relate to the individual circumstances of the barrister which make further action disproportionate or against the public interest.

3.11 Also, nearly 30% (26) of the internal complaint closures up to the Committee stage were as a result of complaints being withdrawn due to problems in the process. In the main these problems related to issues regarding the barrister's correspondence address and reflect the difficulties that occur if correspondence has been sent to an old address. In many cases the barrister contends that the BSB or Bar Council was informed of the change of address and while the notification might not have been

received, it is difficult to prove that it was not sent. The large majority of these problems arise in relation to practising requirement cases and, if the barristers are able to prove they complied with their obligations within the due time, the complaint is withdrawn. To prevent this level of withdrawals, further checks on addresses have been put in place at the warnings and fines stage in cases where barristers are not responding.

Table 15: Turn round times for internal complaints closed up to Committee decision – annual comparison

| Closure Period | 2007 | % Total | % Previous Year Change | 2008 | % Total | % Previous Year Change | 2009 | % Total | % Previous Year Change |
|----------------|-----------|---------------|------------------------|-----------|---------------|------------------------|-----------|---------------|------------------------|
| 0 - 3 months | 27 | 37.5% | -18.2% | 33 | 50.0% | +22.2% | 41 | 43.6% | +24.2% |
| 4 - 6 months | 16 | 22.2% | -5.9% | 12 | 18.2% | -25.0% | 29 | 30.9% | +141.7% |
| 7 - 12 months | 28 | 38.9% | +366.7% | 9 | 13.6% | -67.9% | 21 | 22.3% | +133.3% |
| 13 - 18 months | 1 | 1.4% | -83.3% | 10 | 15.2% | +900.0% | 2 | 2.1% | -80.0% |
| 19 - 24 months | 0 | 0.0% | -100.0% | 1 | 1.5% | +100.0% | 1 | 1.1% | 0.0% |
| Over 24 months | 0 | 0.0% | +100.0% | 1 | 1.5% | +100.0% | 0 | 0.0% | -100.0% |
| Total | 72 | 100.0% | +12.5% | 66 | 100.0% | -8.3% | 94 | 100.0% | +42.4% |

3.12 The figures in Table 16 indicate that the most significant slowdown has been in relation to the closure of external complaints, with a decline of around 10% in the turn round times for complaints closed in under six months. In 2008, 71% of external complaints were concluded within this timeframe, but this has fallen to 61% in 2009. There has also been a marked increase in the number of complaints over 18 months old (up from four in 2008 to 17 in 2009). The only significant and identifiable factor in the slowdown was the backlog in complaints awaiting the Commissioner's consideration which at one stage in 2009 led to some complaints taking up to three months to be considered by the Commissioner. However, this backlog was, to a large extent, cleared in the closing months of 2009 and such delays are unlikely to be seen again in 2010.

Table 16: Turn round times for external complaints closed up to Committee decision – annual comparison

| Closure Period | 2007 | % Total | % Previous Year Change | 2008 | % Total | % Previous Year Change | 2009 | % Total | % Previous Year Change |
|----------------|------------|---------------|------------------------|------------|---------------|------------------------|------------|---------------|------------------------|
| 0 - 3 months | 198 | 38.2% | -25.6% | 235 | 45.7% | +18.7% | 165 | 35.1% | -29.8% |
| 4 - 6 months | 151 | 29.2% | +11.9% | 131 | 25.5% | -13.2% | 122 | 26.0% | -6.9% |
| 7 - 12 months | 143 | 27.6% | +107.2% | 119 | 23.2% | -16.8% | 135 | 28.7% | +13.4% |
| 13 - 18 months | 25 | 4.8% | +212.5% | 25 | 4.9% | 0.0% | 31 | 6.6% | +24.0% |
| 19 - 24 months | 1 | 0.2% | -75.0% | 3 | 0.6% | +200.0% | 13 | 2.8% | +333.3% |
| Over 24 months | 0 | 0.0% | -100.0% | 1 | 0.2% | +100.0% | 4 | 0.9% | +300.0% |
| Total | 518 | 100.0% | +7.2% | 514 | 100.0% | -0.8% | 470 | 100.0% | -8.6% |

Hearings Team – Turn round Times

- 3.13 Table 17 provides an annual comparison of the number of cases closed by the Hearings Team over the last three years following a Committee referral for further action. The figures for 2009 include the new Determination by Consent procedure. The statistics show a substantial increase of over 65% in the number of further action cases concluded in 2009 in comparison with 2008. When comparing the percentage changes in each age bracket with previous years it should be borne in mind that the introduction of the new referral types in the second quarter of 2009 will inevitably affect the analysis and the ability to make direct comparisons.
- 3.14 The statistical tables in this section cover all complaints and separate tables for internal and external complaints are not included. This is because, as already noted in the “work received” section, almost 90% of the Hearings Team’s workload is made up of internal complaints. Information on quarterly performance is also not provided in this section as the numbers involved are relatively small and the year end figures provide a better indication of performance.
- 3.15 As can be seen from Table 17, only 3% of cases were over 18 months old at the date of closure, which is an improvement of almost 6% on the 2008 figure. The majority of complaints were closed within the 7-12 month age bracket, which reflects the fact that complaints must be investigated and considered by the Committee before a referral can be made: the subsequent disciplinary action usually takes several months to conclude. The figures indicate a huge improvement in performance compared with 2008. Not only did the number of complaints closed increase by 65.3% in 2009, the percentage closed within six months went up from 70% to 83%. Some of the improvement is due to the streamlining of the processes but the majority of it is down to the hard work of the Hearings Team members.
- 3.16 Figures for the DBC cases alone show that 11 (65%) were closed within 4-6 months and six (35%) were closed within 7-12 months. A further analysis of the data shows

that the six cases exceeding 18 months in 2009 were all cases that were referred to the former Disciplinary Tribunals under the old regime, four of which were external complaints. In each case, the length of time to conclude the case was related to either delays or challenges to the process by the barrister. However, in all cases the charges were eventually proved.

Table 17: Turn round times for all complaints closed post Committee referral - annual comparison 2007 to 2009

| Closure Period | 2007 | % Total | % Change | 2008 | % Total | % Change | 2009 | % Total | % Change |
|----------------|------------|---------------|---------------|------------|---------------|--------------|------------|---------------|---------------|
| Under 3 Months | 0 | 0.0% | -100.0% | 3 | 2.4% | +0.0% | 1 | 0.5% | -66.7% |
| 4 - 6 Months | 44 | 34.1% | -51.1% | 31 | 25.0% | -29.5% | 47 | 22.9% | +51.6% |
| 7 - 12 Months | 58 | 45.0% | -49.6% | 52 | 41.9% | -10.3% | 122 | 59.5% | +134.6% |
| 13 - 18 Months | 18 | 14.0% | -59.1% | 27 | 21.8% | +50.0% | 29 | 14.1% | +7.4% |
| 19 - 24 Months | 7 | 5.4% | -22.2% | 3 | 2.4% | -57.1% | 4 | 2.0% | +33.3% |
| Over 24 Months | 2 | 1.6% | -92.3% | 8 | 6.5% | +300.0% | 2 | 1.0% | -75.0% |
| Total | 129 | 100.0% | -56.1% | 124 | 100.0% | -3.9% | 205 | 100.0% | +65.3% |

Outcomes of closed cases

- 3.17 Table 18 sets out the final outcomes of complaints closed in 2008 and 2009 along with the change from the previous year⁵. Again, the introduction of new procedures such as Chambers referrals, DBC and the Commissioner's and Committee's powers to impose an administrative warning or fine from 31 March 2009, has a bearing on the statistics and makes it difficult to make direct comparisons with preceding years.
- 3.18 The figures show that although the total number of complaints dismissed was the same in each year (516), there was a marked decrease in the number of complaints dismissed by the Commissioner. In 2008, Commissioner dismissals accounted for 63% of all closures, while in 2009 the total (including out of time dismissals) fell by 15% to 48%. This decrease is attributable to the introduction of the Chambers referral procedure and also the steps that were taken to assist the Commissioner in dealing with the backlog, which included more cases being referred to the Committee to decide. The latter factor is reflected in the 32% increase in the number of complaints considered and dismissed by the Committee. However, overall the numbers of complaints being dismissed has reduced and the number of referrals to disciplinary action has increased.

⁵ Reopened complaints are excluded from these statistics (4 in 2008 and 4 in 2009)

Table 18: Outcome of closures – annual comparison 2008 vs 2009

| Outcome | 2008 | % Total | 2009 | % Total | % Change |
|--------------------------------------------|------------|---------------|------------|---------------|---------------|
| Dismissed - Chambers | 0 | 0.0% | 35 | 4.3% | 0.0% |
| Dismissed - Commissioner | 452 | 63.4% | 315 | 38.4% | -30.3% |
| Dismissed - Out of Time ⁶ | 0 | 0.0% | 82 | 10.0% | 0.0% |
| Dismissed - Committee | 50 | 7.0% | 66 | 8.0% | +32.0% |
| Up to Committee dismissal sub-total | 502 | 70.4% | 498 | 60.7% | -0.8% |
| Dismissed - Hearing | 11 | 1.5% | 17 | 2.1% | +54.5% |
| Dismissed on Appeal | 3 | 0.4% | 1 | 0.1% | -66.7% |
| Further action dismissal sub-total | 14 | 2.0% | 18 | 2.2% | +28.6% |
| NFA - Adjourned ⁷ | 0 | 0.0% | 6 | 0.7% | 0.0% |
| NFA - Committee | 44 | 6.2% | 55 | 6.7% | +25.0% |
| NFA sub-total | 44 | 6.2% | 61 | 7.4% | +38.6% |
| Proved/upheld - Further action | 105 | 14.7% | 183 | 22.3% | +74.3% |
| Upheld - Chambers | 0 | 0.0% | 3 | 0.4% | 0.0% |
| Upheld - Fine - Commissioner | 0 | 0.0% | 0 | 0.0% | 0.0% |
| Upheld - Warning - Commissioner | 0 | 0.0% | 1 | 0.1% | 0.0% |
| Upheld - Fine - Committee | 0 | 0.0% | 1 | 0.1% | 0.0% |
| Upheld - Warning - Committee | 0 | 0.0% | 5 | 0.6% | 0.0% |
| Upheld on Appeal | 2 | 0.3% | 1 | 0.1% | -50.0% |
| Upheld sub-total | 107 | 15.0% | 194 | 23.7% | +81.3% |
| Withdrawn/struck out | 44 | 6.2% | 43 | 5.2% | -2.3% |
| Other | 2 | 0.3% | 6 | 0.7% | +200.0% |
| Total | 713 | 100.0% | 820 | 100.0% | +15.0% |

Outcome of further action cases

3.19 Table 19 shows the outcome of cases referred by the Committee for further action in 2009. The changes to the referral types from the second quarter of 2009 only allow a

⁶ This category was introduced in February 2009 to enable out of time dismissals to be distinguished from those dismissed by the Commissioner for other reasons

⁷ This category was introduced in June 2009 to enable decisions by the Committee to take “no further action” to be categorised according to whether the decision was final or where it was one where a case could be reopened if the barrister was located.

direct comparison with previous years' figures to be made for Adjudication Panel, Summary Hearing and Disciplinary Tribunal cases, and these figures are shown in Table 20.

Table 19: Analysis of outcomes of closures in 2009 of complaints referred for further action

| Referral Type | Upheld | Dismissed | Withdrawn / Struck Out | Total Closed | % Success Rate | % Previous Year Change |
|--------------------------------|------------|-----------|------------------------|--------------|----------------|------------------------|
| Adjudication Panel | 4 | 3 | 0 | 7 | 57.1% | +21.4% |
| Determination by Consent | 17 | 0 | 0 | 17 | 100.0% | n/a |
| 3-Person Disciplinary Tribunal | 11 | 1 | 1 | 13 | 84.6% | n/a |
| 5-Person Disciplinary Tribunal | 6 | 0 | 0 | 6 | 100.0% | n/a |
| Disciplinary Tribunal | 52 | 5 | 2 | 59 | 88.1% | +13.5% |
| Summary Hearing | 94 | 8 | 1 | 103 | 91.3% | +1.3% |
| Total | 184 | 17 | 4 | 205 | 89.8% | +14.6% |

3.20 From the figures in Table 19 we can see that 17 DBC cases were successfully dealt with and that the six complaints considered by the new five -person Disciplinary Tribunal jurisdiction were all upheld. The “uphold” rate was also high for the new three person Disciplinary Tribunals and the former Summary Procedure Panels and Disciplinary Tribunals: even the Adjudication Panel upheld rate of 57.1% was an improvement on previous years (see Table 20). Therefore, overall there has been an improvement in the uphold rates of complaints referred for further action, which stood at just under 90% as at the end of 2009 compared with 85% in 2008.

Table 20: Analysis of outcomes of closures of complaints referred for further action – annual comparison 2007 to 2009

| Referral Type | 2007 | | | 2008 | | | 2009 | | |
|-----------------------|------------|-----------|---------------|------------|-----------|---------------|------------|------------|---------------|
| | Closed | Upheld | % Uphold Rate | Closed | Upheld | % Uphold Rate | Closed | Upheld | % Uphold Rate |
| Adjudication Panel | 19 | 10 | 52.6% | 14 | 5 | 35.7% | 7 | 4 | 57.1% |
| Summary Hearing | 52 | 51 | 98.1% | 40 | 36 | 90.0% | 103 | 94 | 91.3% |
| Disciplinary Tribunal | 58 | 38 | 65.5% | 59 | 44 | 74.6% | 59 | 52 | 88.1% |
| Total | 129 | 99 | 76.7% | 113 | 85 | 75.2% | 169 | 150 | 88.8% |

3.21 Table 21 provides details of the sanctions imposed by panels and tribunals in respect of complaints heard in 2009. Although figures are given for sentences imposed in 2008, it should be remembered that the ability to record sentences in the old

complaints database was more limited and that data conversion issues may affect the comparability of those figures with the 2009 records. The figures should also be read bearing in mind that, as a result of the Strategic Review recommendations, COIC issued Sentencing Guidance for the first time in April 2009. An analysis of the effect of this guidance on sentences imposed will take place after April 2010 when the guidance has been in place for a full year.

3.22 Nevertheless, it is apparent that the most common sanctions are fines, followed by advice/reprimands and suspensions. In 2009 there were 11 disbarments in comparison with 15 in 2008.

Table 21: Sanctions imposed by disciplinary panels and tribunals – annual comparison 2008 and 2009

| Hearing Type | Sentence Type | 2008 | % Total | 2009 | % Total |
|---------------------------------------------|----------------------------------------------|-----------|--------------|------------|--------------|
| Adjudication Panel | Apologise | 1 | 0.6% | 4 | 1.2% |
| | Compensation | 2 | 1.3% | 3 | 0.9% |
| | Complete CPD | 0 | 0.0% | 1 | 0.3% |
| | Forego/repay fees | 3 | 1.9% | 1 | 0.3% |
| | No further action | 2 | 1.3% | 0 | 0.0% |
| Adjudication Panel total | | 8 | 5.0% | 9 | 2.8% |
| Disciplinary Tribunal | Advised | 4 | 2.5% | 9 | 2.8% |
| | Attend on nominated person to be reprimanded | 0 | 0.0% | 2 | 0.6% |
| | Complete CPD | 4 | 2.5% | 11 | 3.4% |
| | Costs order against defendant | 33 | 20.6% | 33 | 10.1% |
| | Disbarred | 15 | 9.4% | 7 | 2.1% |
| | Fined | 16 | 10.0% | 21 | 6.4% |
| | No separate penalty | 0 | 0.0% | 5 | 1.5% |
| | Other | 0 | 0.0% | 3 | 0.9% |
| | Reprimanded | 11 | 6.9% | 9 | 2.8% |
| Suspended | 13 | 8.1% | 15 | 4.6% | |
| Disciplinary Tribunal total | | 96 | 60.0% | 115 | 35.3% |
| 3-Person Disciplinary Tribunal | Complete CPD | 0 | 0.0% | 6 | 1.8% |
| | Costs order against defendant | 0 | 0.0% | 7 | 2.1% |
| | Fined | 0 | 0.0% | 7 | 2.1% |
| | No separate penalty | 0 | 0.0% | 1 | 0.3% |
| | Reprimanded | 0 | 0.0% | 3 | 0.9% |
| Suspended | 0 | 0.0% | 4 | 1.2% | |
| 3-Person Disciplinary Tribunal total | | 0 | 0.0% | 28 | 8.6% |
| 5-Person Disciplinary Tribunal | Costs order against defendant | 0 | 0.0% | 8 | 2.5% |
| | Disbarred | 0 | 0.0% | 4 | 1.2% |
| | Fined | 0 | 0.0% | 1 | 0.3% |
| | No separate penalty | 0 | 0.0% | 1 | 0.3% |

| | | | | | |
|---------------------------------------------|----------------------------------------------|------------|---------------|------------|---------------|
| | Reprimanded | 0 | 0.0% | 1 | 0.3% |
| | Suspended | 0 | 0.0% | 3 | 0.9% |
| 5-Person Disciplinary Tribunal total | | 0 | 0.0% | 18 | 5.5% |
| Summary Hearing | Advised | 10 | 6.3% | 13 | 4.0% |
| | Apologise | 3 | 1.9% | 1 | 0.3% |
| | Attend on nominated person for advice | 0 | 0.0% | 5 | 1.5% |
| | Attend on nominated person to be reprimanded | 0 | 0.0% | 2 | 0.6% |
| | Complete CPD | 0 | 0.0% | 22 | 6.7% |
| | Costs order against defendant | 0 | 0.0% | 1 | 0.3% |
| | Fined | 18 | 11.3% | 58 | 17.8% |
| | Forego/repay fees | 1 | 0.6% | 0 | 0.0% |
| | No further action | 8 | 5.0% | 4 | 1.2% |
| | No separate penalty | 0 | 0.0% | 1 | 0.3% |
| | Other | 0 | 0.0% | 7 | 2.1% |
| | Reprimanded | 14 | 8.8% | 31 | 9.5% |
| | Suspended | 2 | 1.3% | 11 | 3.4% |
| Summary Hearing total | | 56 | 35.0% | 156 | 47.9% |
| Grand Total | | 160 | 100.0% | 326 | 100.0% |

Appeals

3.23 Table 22 shows the outcome of appeals heard in 2009 against the finding and/or sentence of a disciplinary panel or tribunal. It also shows the success rate for the BSB at appeals i.e. the number of appeals that were dismissed.

Table 22: Outcomes of appeals – annual comparison 2008 and 2009

| Hearing Type | 2008 | | | | | 2009 | | | | |
|-----------------------|----------------|------------------|-----------------|---------------|----------------|----------------|------------------|-----------------|---------------|----------------|
| | Appeal Allowed | Appeal Dismissed | Sentence Varied | Total Appeals | Success Rate % | Appeal Allowed | Appeal Dismissed | Sentence Varied | Total Appeals | Success Rate % |
| Adjudication Panel | 1 | 1 | 0 | 2 | 50.0% | 2 | 0 | 0 | 2 | 0.0% |
| Summary Hearing | 0 | 0 | 0 | 0 | 0.0% | 0 | 0 | 1 | 1 | 0.0% |
| Disciplinary Tribunal | 2 | 5 | 4 | 11 | 45.5% | 0 | 1 | 2 | 3 | 33.3% |
| Total | 3 | 6 | 4 | 13 | 46.2% | 2 | 1 | 3 | 6 | 16.7% |

3.24 Overall, the number of appeals heard has reduced by 54% from 13 in 2008 to six cases in 2009. There remained, however, 18 outstanding appeals against Tribunal decisions at the end of 2009 six of which were submitted prior to 2009, thus demonstrating the level of delay in the Visitors scheduling and hearing appeals. The

issues have been taken up with COIC and we will continue to press for appeals to be scheduled in a timelier manner.

- 3.25 Of these six appeals heard in 2009, two related to internal Adjudication Panel decisions, both of which were allowed. This is worrying given the low number of cases referred to Adjudication Panels but in both cases the view of the Committee was that the cases were properly brought and the original decision was correct. Of the three successful appeals in relation to Disciplinary Tribunals, two were reductions in sentence rather than a quashing of the findings.

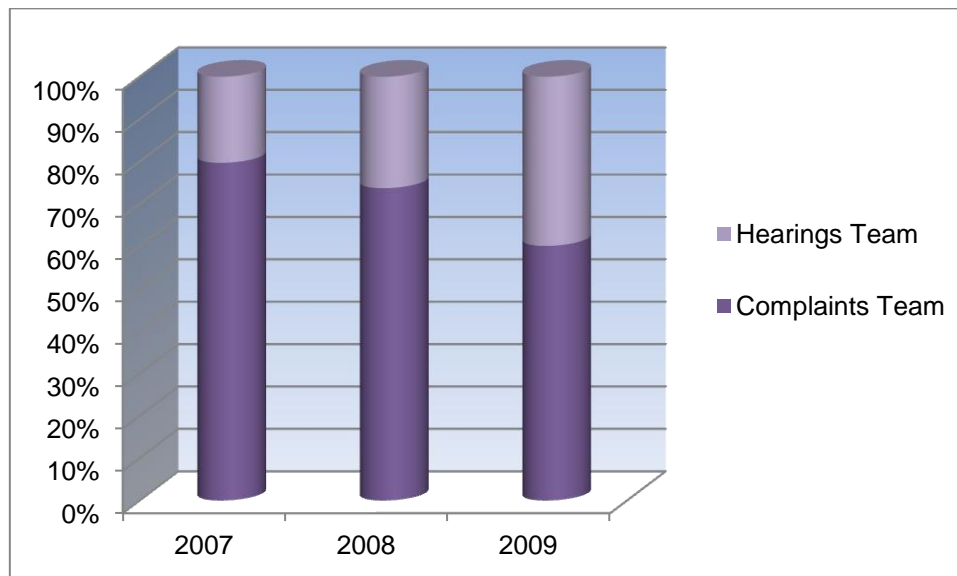
Income arising from the complaints and disciplinary system

- 3.26 The new database is capable of monitoring all financial information related to complaints and disciplinary cases but, as it was only introduced part way through 2009, the analysis in this section is based on information provided by the Finance Section of the Bar Council.
- 3.27 In total £164.5k was received in 2009 in relation to the work of the two Teams. This represents: £49k from administration fines in relation to practising requirement breaches; nearly £92k from fines imposed by disciplinary panels; and £23.5 from costs orders. The total revenue is significantly above that received in 2008 (£85k). Also, the 2009 revenue from fines and costs far exceeded the prediction for the year of £70k.
- 3.28 The increase in revenue is due to the application of the new Sentencing Guidance introduced by COIC in April 2009 as a consequence of a Strategic Review recommendation. That guidance provides for “starting points” for the most common breaches of Code and recommends higher levels of fines than may have been previously imposed. It would appear that the Guidance has been successful in creating greater consistency in the application of sanctions but a detailed review of the sentences imposed by Tribunals needs to be carried out after April 2010 when the Guidance will have been in place for year.
- 3.29 The prediction of revenue from fines and costs for 2010 was made in May 2009 and was set at £100k. However, based on the 2009 figures, the revenue is likely to be much higher.

Work in Progress

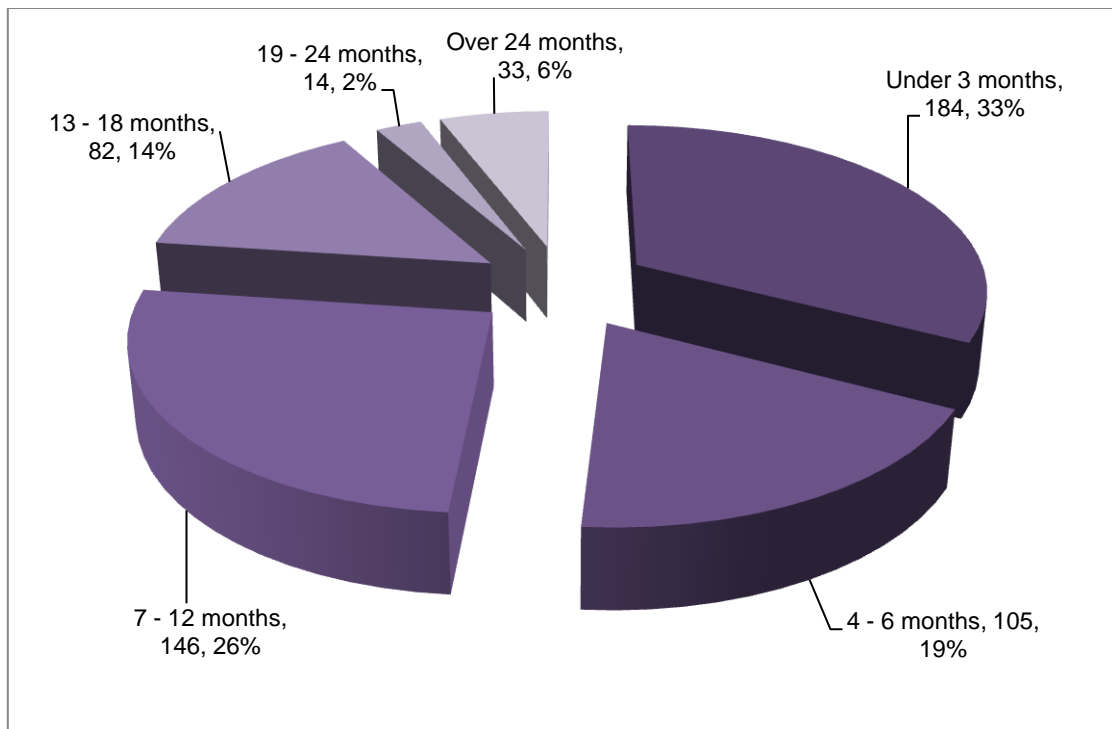
- 4.1 This section deals with the number of cases that remained open at the end of 2009. In total 654 cases were open: 393 (60%) were with the Complaints Team, Committee or Commissioner and 261 (40%) were with the Hearings Team.
- 4.2 In relation to the Complaints Team's workload (393 complaints), 54% of these were under investigation and almost 18% were with the Complaints Commissioner for review - either pre- or post-investigation. Fifteen per cent of cases had been adjourned and 8% were awaiting consideration by the Committee.
- 4.3 For the Hearings Team, the majority of the 261 outstanding cases were awaiting a Disciplinary Tribunal (61%), with ten cases in progress under the DBC procedure. The cases within the 'Closed' sub-category (25%) are those where the hearing has taken place and either the final report of the tribunal or compliance with the sentence was awaited.
- 4.4 Figure 6 below illustrates the changes in the overall totals of outstanding work in both Teams over the last three years and shows that the volume of outstanding work in the Hearings Team has increased year on year. This is not surprising given the doubling of referrals made to the Team from 2007-2009.

Figure 6: Work in progress at year end – annual comparison 2007 to 2009



- 4.5 Figure 7 below shows the age of the outstanding cases as at the year end. The number of cases less than three months old had decreased by almost 15% since 2008 but the number exceeding twelve months in age had increased by 5% to 22%. An analysis of the complaints which were over 24 months old indicate there are good reasons in each case for the longevity. Nevertheless, attention needs to be paid in 2010 to these older cases to ensure that they are concluded as soon as possible.

Figure 7: Age profile of live cases as at 31 December 2009



Complaints Referred to the Legal Services Ombudsman

- 5.1 The statistics in this section are based on information provided by the LSO rather than the BSB complaints database. Tables 24 to 26 show the number and outcomes of complaints referred to LSO during 2009 in comparison with the previous two years, with separate breakdowns for Commissioner and Committee decisions. The figures in Table 27 show that although there was a 39% reduction in the number of complaints made to the LSO in 2009 (down from 198 in 2008 to 120), the percentage of complaints where the LSO made a recommendation increased by 2% overall: up from 19.7% to 21.7%. Unfortunately, while the percentage is small, this represents a decrease in the overall LSO “satisfaction” rate as compared with previous years, with the rate dropping from 81.6% in 2007 to 78.3% in 2009.
- 5.2 The breakdown by Commissioner and Committee decisions shows that the percentage of the total cases considered by the LSO, where she was satisfied with the case handling in relation to decisions made by the Committee, increased from 44.7% in 2008 to 66.7% in 2009. However, satisfaction in relation to Commissioner decisions decreased from 88.8% to 80%.

Table 23: Outcome of LSO investigations – annual comparison 2007 to 2009

| Decision source | Outcome | 2007 | % Total | 2008 | % Total | 2009 | % Total |
|------------------------------------------|---------------------------------|------------|---------------|------------|---------------|------------|---------------|
| Complaints Commissioner | No recommendation | 60 | 83.3% | 142 | 88.8% | 84 | 80.0% |
| | Formal criticism | 4 | 5.6% | 7 | 4.4% | 9 | 8.5% |
| | Pay compensation | 2 | 2.8% | 1 | 0.6% | 1 | 1.0% |
| | Reconsider | 6 | 8.3% | 10 | 6.2% | 10 | 9.5% |
| | Reconsider and pay compensation | 0 | 2.4% | 0 | 0.0% | 1 | 1.0% |
| Complaints Commissioner sub-total | | 72 | 63.2% | 160 | 80.8% | 105 | 87.5% |
| Complaints Committee | No recommendation | 33 | 78.6% | 17 | 44.7% | 10 | 66.7% |
| | Formal criticism | 1 | 2.4% | 6 | 15.8% | 1 | 6.7% |
| | Pay compensation | 3 | 7.1% | 7 | 18.4% | 2 | 13.3% |
| | Reconsider | 4 | 9.5% | 8 | 21.1% | 2 | 13.3% |
| | Reconsider and pay compensation | 1 | 2.4% | 0 | 0.0% | 0 | 0.0% |
| Complaints Committee sub-total | | 42 | 36.8% | 38 | 19.2% | 15 | 12.5% |
| No recommendation total | | 93 | 81.6% | 159 | 80.3% | 94 | 78.3% |
| Recommendation total | | 21 | 18.4% | 39 | 19.7% | 26 | 21.7% |
| Grand Total | | 114 | 100.0% | 198 | 100.0% | 120 | 100.0% |

- 5.3 Table 25 provides a detailed breakdown of the recommendations made by the LSO and the reasons for the recommendations (the table excludes formal criticism). Given the small number cases where a recommendation or criticism was made by the LSO, it is difficult to identify any clear trends. However, the figures indicate that the most common reasons for recommendations are delays, issues not being considered and decisions either being unreasonable or poorly justified.
- 5.4 A breakdown of the compensation awards recommended by the LSO is detailed in Table 26. The figures show that both the number and total amount of awards decreased substantially in 2009 with only four awards in 2009 compared with eight in 2008. However, the level of individual awards has increased, indicating that in the very few cases where the LSO determined that there was a delay, the length of that delay increased in 2009.

Table 24: Breakdown of LSO recommendations and reasons – annual comparison 2007 to 2009

| Decision source | Recommendation | Reason for Recommendation | 2007 | % Total | 2008 | % Total | 2009 | % Total |
|------------------------------------------|--------------------------------------------|---------------------------------------------|-----------|---------------|-----------|---------------|-----------|---------------|
| Complaints Commissioner | Pay compensation | Delay during investigation | 1 | 12.5% | 0 | 0.0% | 1 | 8.3% |
| | | Other poor administration | 1 | 12.5% | 0 | 0.0% | 0 | 0.0% |
| | | File delay | 0 | 0.0% | 1 | 9.1% | 0 | 0.0% |
| | Reconsider | Decision unreasonable/poor explanation | 1 | 12.5% | 2 | 18.2% | 0 | 0.0% |
| | | Other poor decision | 0 | 0.0% | 0 | 0.0% | 2 | 16.7% |
| | | Other poor service | 0 | 0.0% | 0 | 0.0% | 1 | 8.3% |
| | | Issues not considered | 3 | 37.5% | 3 | 27.3% | 3 | 25.0% |
| | | Information/evidence overlooked | 2 | 25.0% | 1 | 9.1% | 1 | 8.3% |
| | | Inappropriate rejection | 0 | 0.0% | 2 | 18.2% | 2 | 16.7% |
| | | Investigation prematurely closed | 0 | 0.0% | 1 | 9.1% | 1 | 8.3% |
| | | Inadequate reply to letters/telephone calls | 0 | 0.0% | 1 | 9.1% | 0 | 0.0% |
| | Reconsiderer & pay compensation | Losing files/correspondence | 0 | 0.0% | 0 | 0.0% | 1 | 8.3% |
| Complaints Commissioner sub-total | | | 8 | 50.0% | 11 | 42.3% | 12 | 75.0% |
| Complaints Committee | Pay compensation | Delay during investigation | 1 | 12.5% | 4 | 26.7% | 2 | 50.0% |
| | | File delay | 1 | 12.5% | 2 | 13.3% | 0 | 0.0% |
| | | Complainant not kept informed | 1 | 12.5% | 0 | 0.0% | 0 | 0.0% |
| | | Losing files/correspondence | 0 | 0.0% | 1 | 6.7% | 0 | 0.0% |
| | Reconsider | Issues not considered | 2 | 25.0% | 5 | 33.3% | 1 | 25.0% |
| | | Information/evidence overlooked | 1 | 12.5% | 1 | 6.7% | 0 | 0.0% |
| | | Decision unreasonable/poor explanation | 1 | 12.5% | 2 | 13.3% | 1 | 25.0% |
| | Reconsiderer & pay compensation | Issues not considered | 1 | 12.5% | 0 | 0.0% | 0 | 0.0% |
| Complaints Committee sub-total | | | 8 | 50.0% | 15 | 57.7% | 4 | 25.0% |
| Grand Total | | | 16 | 100.0% | 26 | 100.0% | 16 | 100.0% |

Table 25: Breakdown of LSO compensation awards – annual comparison 2007 to 2009

| Compensation Awards | 2007 | 2008 | 2009 |
|------------------------|-----------|-----------|-----------|
| Total awarded | £1,450.00 | £1,600.00 | £1,200.00 |
| Highest award | £500.00 | £350.00 | £650.00 |
| Lowest award | £150.00 | £100.00 | £150.00 |
| Average award | £241.67 | £200.00 | £300.00 |
| Total number of awards | 6 | 8 | 4 |

Conclusions

- 6.1 As this report has shown, 2009 was a year of fundamental and extensive change in relation to the work of the Complaints and Hearings Team. The introduction of the new database in February, followed five weeks later by the Strategic Review changes, inevitably caused substantial disruption and placed significant pressure on staff. However, both the staff and the Committee coped admirably with these changes and indeed, there were improvements in performance particularly in relation to the throughput of disciplinary cases.
- 6.2 The headline trends that emerged in 2009 were:
- a) The improvement in the efficacy of the warnings and fines system in encouraging compliance with the practising requirements;
 - b) The slowdown in throughput of cases up to the Committee decision stage;
 - c) The continuing decline in cases referred to Adjudication Panels;
 - d) The significant improvements in the throughput of disciplinary cases against a background of increased referrals;
 - e) The success of the Determination by Consent procedure in reducing the time taken to process disciplinary cases arising from practising requirement breaches; and
 - f) The continued dominance of disciplinary cases arising from breaches of the practising requirements in the workload of the Hearings Team.
- 6.3 To some extent the concerns raised in the 2008 Performance Report remain i.e. the level of resources being expended on dealing with internal complaints and disciplinary action in relation to breaches of practising requirements. The question therefore remains as to whether these types of cases represent the greatest risk to the public and warrant the level of resources currently being expended on processing them. In 2008, the issue was more pressing but the volume of complaints in this area has decreased. Further, the BSB is actively considering creating a different authorisation regime which may have a significant impact. In light of this, there is little point in making substantive changes to the disciplinary processes for dealing with practising requirement breaches. The Committee intends to await the outcome of this consultation on the proposed new authorisation regime before considering further whether adaptations to the complaints procedures need to be made.
- 6.4 The slowdown in throughput of complaints which result in a dismissal is of concern but now that the backlog in complaints awaiting the Commissioner's consideration has, to a large extent, been cleared, it is hoped that 2010 will see a substantial improvement in this area.
- 6.5 The continuing decline in the level of referrals of poor service complaints to Adjudication Panels may be an area for concern. On the other hand, it could be an indication that standards of service at the Bar are improving. This is an area that might benefit from a more detailed examination by the Independent Observer although it should be borne in mind that the jurisdiction will cease once the new Legal Ombudsman service is fully operational in Autumn 2010.
- 6.5 The Hearings Team has coped admirably with the substantial increase in its workload. While the disciplinary work is becoming more complex due to increased involvement of legal representatives, the significant improvements in throughput of

disciplinary cases demonstrate that the Team, with the support of the prosecution panel, has been able to handle the work very successfully.

- 6.6 The DBC procedure has proved to be a very effective addition to the range of mechanisms available to deal with disciplinary cases. It has required a huge learning curve for the Complaints Committee but it has adapted well and welcomes the increase in its remit. The use of the procedure will be kept under review and, if necessary, consideration may need to be given to extending the sanctions available to the Committee.
- 6.7 After a year of enormous change, it would be good for the Teams and the Committee to have a period of stability. However, the pending commencement of the new Legal Ombudsman service does not allow for this. It will be necessary to adapt the complaints processes to accommodate the removal of the BSB's responsibility for complaints about poor service. Therefore, it is clear that 2010 will be another year of substantial change with a major restructure of the staff teams and the decision making processes already in the planning.

Sara Down
Head of Complaints and Hearings

Sue Carr QC
Chair of the Complaints Committee

March 2010