

BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

Professional Conduct Department  
Performance Report 2010

March 2011

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## **Introduction**

- 1.1 This is the fourth year-end report for the Complaints Committee and Complaints and Hearings Teams (now known as the Professional Conduct Department) providing a summary of performance for the period 1 January to 31 December 2010. The report 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.

### **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') and the Legal Ombudsman (LeO) in 2010. 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 2010, whereas the "work completed" section covers all complaints closed in 2010 and therefore includes cases that were received in 2009 or before.
- 1.3 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**

- 1.4 The new complaints database has now been operational since February 2009, providing an increase in the level of information recorded on individual complaints. This report therefore covers the first full year of data, free from any data conversion issues that were highlighted in 2009.
- 1.5 The statistics in this report are based on data extracted from the database at the end of January 2011.

### **Strategic Review changes**

- 1.6 2010 was also the first full year during which the changes arising from the Strategic Review were fully operational having been introduced in March 2009. Such changes included: the introduction of a formal system for referring complaints capable of local resolution to chambers; the abolition of the Summary Hearing jurisdiction; and the introduction of three and five person Disciplinary Tribunal panels as well as the Determination by Consent procedure. The intention behind these changes was to streamline the processes and improve turn round times. As this report shows, those intentions appear to have been achieved.

### **Staffing**

- 1.7 Staffing within the Teams remained relatively static during 2010 following a year of high turnover in 2009. Three posts became vacant during the year but were

successfully covered by temporary staff resulting in only short periods of understaffing due to vacancies. The most significant staffing issue was the Complaints Commissioner's three month leave of absence from June to October due to the need to convalesce from major surgery. Against a backdrop of an unprecedented increase in external complaints received during the first quarter, it is encouraging that overall performance for the year did not deteriorate which is mainly thanks to the commitment of the staff in the Complaints Team and the assistance of the Complaints Committee.

## **Restructure**

- 1.8 During 2010 a significant amount of time was devoted to developing, and then implementing, detailed proposals for the restructure of the decision making processes and the staff Teams in light of the pending commencement of the Legal Ombudsman service. This intensive work unfortunately overlapped with the Commissioner's extended absence. Nevertheless nearly all preparations for the restructure were achieved by the end of the year including: substantial revisions to the Complaints Rules (Annex J to the Code); development of detailed written policies and procedures to support the Rules; significant adaptations to the database; changes to the job descriptions for all members of staff; and training for all members of the Complaints Committee.

## **Legal Ombudsman**

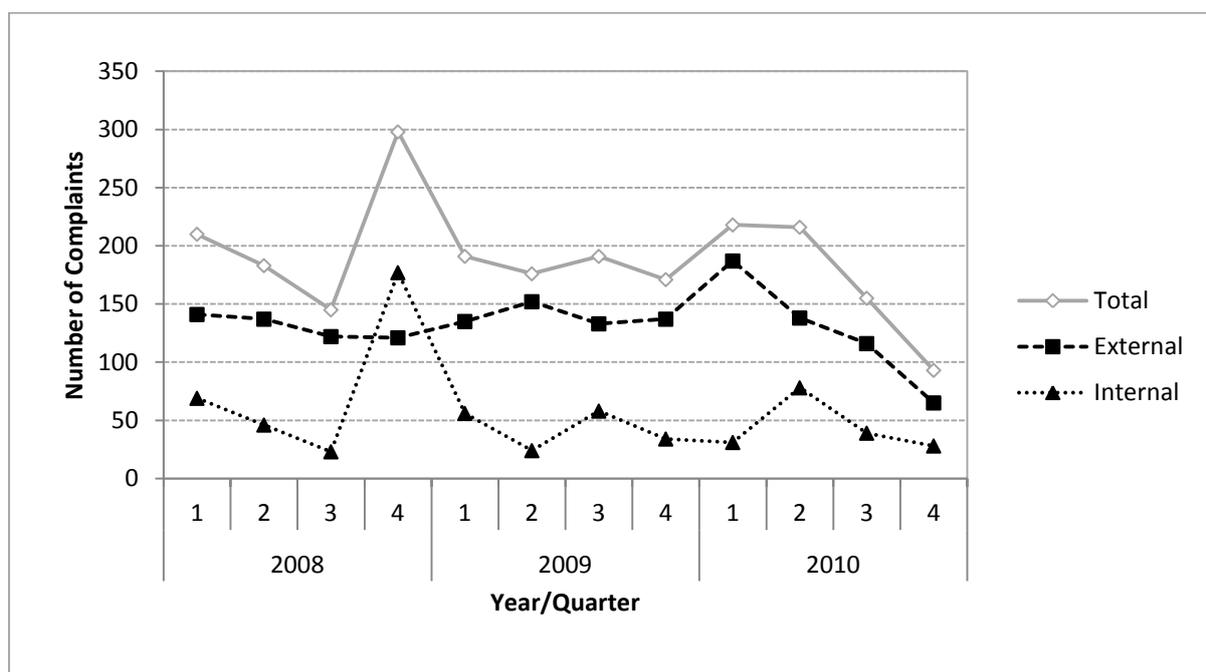
- 1.9 On 6 October 2010, the Legal Ombudsman's office (LeO) finally opened its doors and on that date the BSB's jurisdiction over new service complaints (i.e. complaints of "inadequate professional service" (IPS)) ceased. The BSB retains jurisdiction over IPS complaints received before 6 October 2010 but only until 31 March 2011 when any that remain outstanding will be transferred to an "Acting Legal Services Ombudsman" to complete at a charge.
- 1.10 Alongside the preparations for the internal restructure described above, a significant amount of time in the second half of 2010 was spent on developing a Memorandum of Understanding with the Legal Ombudsman as well as an Operational Protocol to support the MoU and written guidance for LeO staff on how to identify conduct complaints. Various members of management and Committee members provided training for LeO staff: in all over 250 staff members were "trained" in 2010.
- 1.11 The statistics in this report reflect the impact of the creation of the Legal Ombudsman and therefore show a significant drop in the number of complaints received in the fourth quarter. To a limited extent, the figures provide some indication of future trends.

## Work Received

### General

2.1 Overall the number of complaints raised or received in 2010 dropped by 6.4% (down from 729 in 2009 to 682). This reduction in numbers is entirely attributable to the removal of the BSB's jurisdiction over service complaints at the beginning of the fourth quarter. Therefore, as Figure 1 shows, having started the year with an unprecedented rise in external complaints received (up by 39% on the first quarter of 2009) the year ended with an unprecedented drop (46% lower than the fourth quarter of 2009).

Figure 1: Complaints opened - quarterly comparison 2008 to 2010

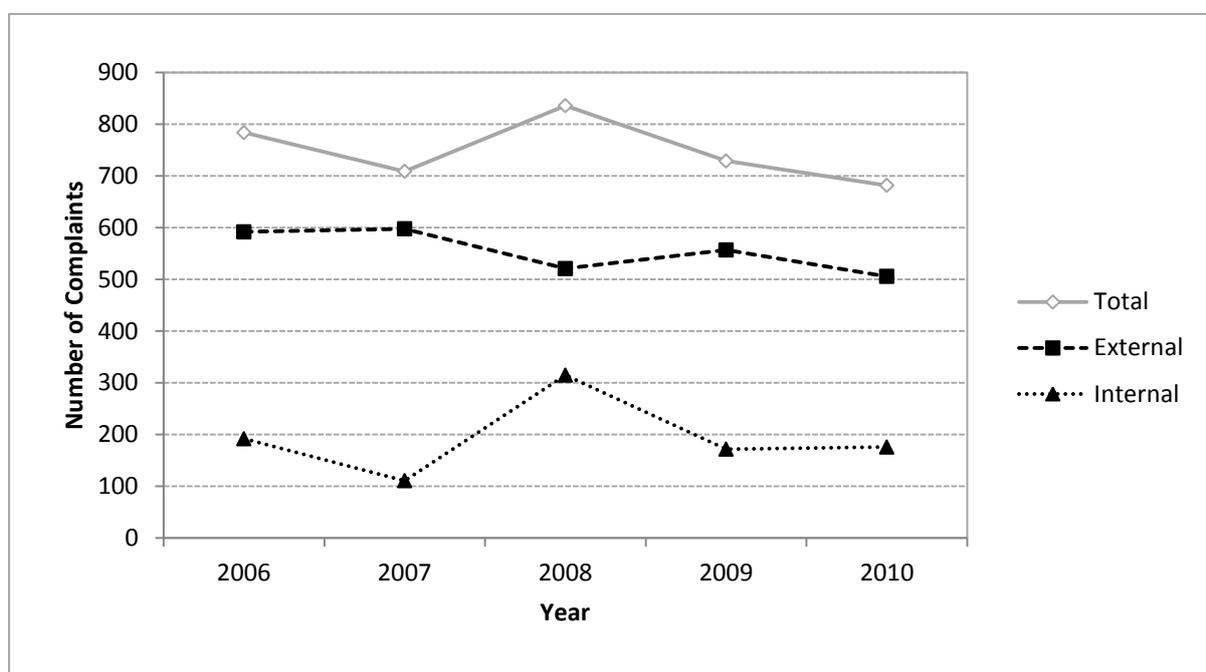


2.2 Table 1 and Figure 2 provide the annual figures for complaints opened. The overall figure for the year (682) represents a 6% decrease on 2009, and continues the downward trend from the peak of 836 in 2008. However, the trends from quarter to quarter in 2010 would indicate that, but for the introduction of LeO, the year end figure for 2010 would have been higher than previous years. This is supported by statistics provided by LeO which show that 80 complaints about barristers were received between 6 October and 31 December 2010.

**Table 1: Complaints opened - annual comparison 2006 to 2010**

Complaint Type	2006	2007	2008	2009	2010	% Change
External	592	598	521	557	506	-9.2%
Internal	192	111	315	172	176	+2.3%
<b>Total</b>	<b>784</b>	<b>709</b>	<b>836</b>	<b>729</b>	<b>682</b>	<b>-6.4%</b>

**Figure 2: Complaints opened - annual comparison 2006 to 2010**



### Internal complaints opened - analysis

2.3 Internal complaints are those raised by the BSB of its own motion rather than being generated by a complaint from an external source. They can be raised for any breach of the Code but mainly relate to breaches of the practising requirements, principally failures to complete CPD. The raising of internal complaints is therefore “seasonal” and should reflect the referral of cases from the Records Office and the CPD section which normally occur in April of each year. In relation to failures to complete CPD, in most cases an administrative fine of £300 will be imposed and it is only where a barrister continues to fail to comply and/or pay the fine that a formal internal complaint is raised. Figure 1 above clearly shows an annual peak occurring in each of the last three years. In 2010 this peak came in the second quarter as opposed to the third quarter in 2009. This demonstrates that complaints are generally being

raised sooner in the year thus indicating a level of improving efficiency in taking action following a lack of response to the “warnings and fines” system.

- 2.4 The annual figure for internal complaints raised remained static compared with 2009, following the high figure in 2008. The 2008 figure was noted as disproportionately high in the 2008 Performance Report, so it appears that an annual figure of around 170 can be expected under the current processes (however, see paragraph 2.6 below).
- 2.5 A total of 179 warnings and fines referrals were made in 2010, compared with 174 in 2009. Failure to comply, or late compliance, with CPD requirements made up a much larger percentage of the total in 2010 at 90% compared with 73% in 2009. This was mostly due to the decrease in referrals for failure to renew practising certificates which amounted to only 13 in 2010 as compared to 47 in 2009. The reduction in such referrals is testament to the hard work carried out by the Records Office in chasing non-payers and also probably reflects the extensive publicity in 2009 regarding the introduction of section 14 of the Legal Services Act 2007 which made it a criminal offence, as from April 2010, to carry out reserved legal activities without being authorised to do so. However, recent information from the Records Office indicates that the number of referrals in 2011 in relation to failures to pay the PCF for 2011 may be much higher.
- 2.6 In both the 2008 and 2009 reports, reference was made to the efficacy of the continued use of the “warnings and fines” system and whether it needed to be reviewed. While compliance following the imposition of a fine has improved since 2008, it is still a resource intensive system. However, review of its use was put on hold pending both the outcome of proposals for the Authorisation to Practise regime and the CPD review. These initiatives will be discussed in 2011 and it is inevitable that adaptations to the system for dealing with breaches of the practising requirements will be introduced.
- 2.7 Table 2 provides more detail about the nature of internal complaints opened over the last three years. Overall the most common “primary aspect”<sup>1</sup> continues to be failure to comply with CPD requirements whereas, as detailed above, the number of complaints about failure to renew practising certificates has halved. Failure to comply with disciplinary sentences (mainly non-payment of financial orders such as fines and costs) is now the second most frequent category with a 70% increase in complaints raised, albeit from a previously small number. This is a potentially worrying trend and could well be a reflection of the current economic climate as well as reductions in legal aid fees. The BSB has no powers to enforce payment of financial orders through the courts and therefore the only option available is to bring further disciplinary action for the non-compliance which could result in a suspension from practise. This is an area that will be monitored in 2011 and research may be

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<sup>1</sup> “Aspects” denote individual issues raised within one complaint. Therefore a complaint may consist of a number of aspects and the “primary aspect” relates to the main issue of complaint.

necessary to establish whether barristers' financial circumstances are causing increases in disciplinary action. In this regard, the proposals in relation to Authorisation to Practise are relevant as in some cases (albeit that they may be limited) "de-registration" rather than disciplinary action will become the mechanism to deal with breaches of the practising requirements.

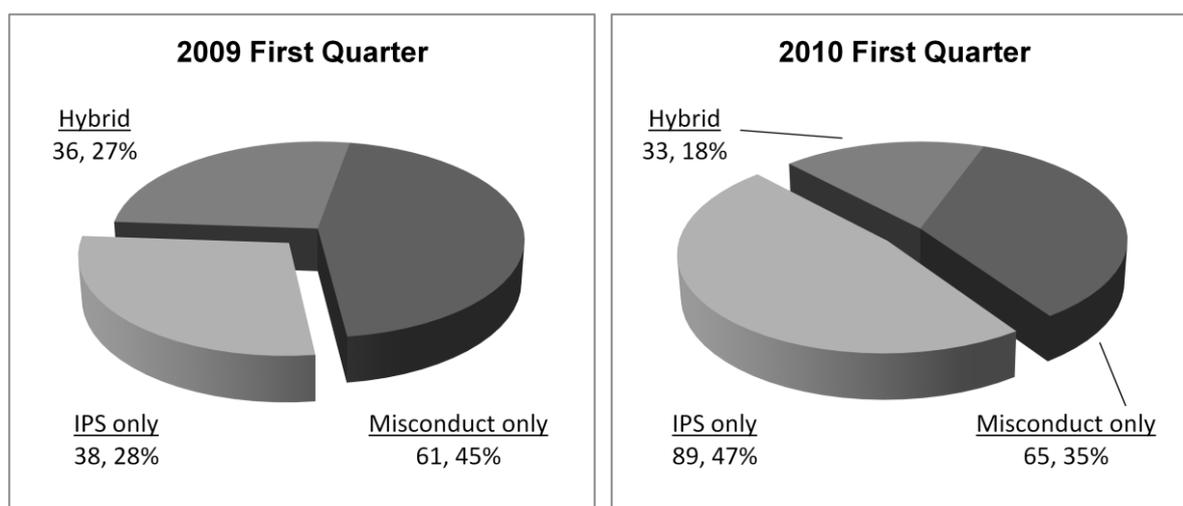
**Table 2: Primary aspects for internal complaints 2009 to 2010**

Aspect Description	2009	% Total	2010	% Total	% Change
Failure to comply with CPD requirements	73	42.9%	51	29.5%	-30.1%
Failure to comply with a sentence of a tribunal/panel	14	8.2%	24	13.9%	+71.4%
Failure to renew practising certificate	23	13.5%	11	6.4%	-52.2%
Criminal convictions(s) - other	5	2.9%	10	5.8%	+100.0%
Non-practising barrister holding out	8	4.7%	9	5.2%	+12.5%
Dishonesty/discreditable conduct	2	1.2%	9	5.2%	+350.0%
Criminal convictions(s) - drink driving	2	1.2%	8	4.6%	+300.0%
Failure to pay non-disciplinary fine	9	5.3%	7	4.0%	-22.2%
Other	7	4.1%	6	3.5%	-14.3%
HoC failing to administer chambers properly	2	1.2%	6	3.5%	+200.0%
Failing to register or have insurance with BMIF	8	4.7%	4	2.3%	-50.0%
Failure to report bankruptcy/IVA	3	1.8%	4	2.3%	+33.3%
Practising without a practising certificate	0	0.0%	4	2.3%	-
Failure to comply with Withdrawal of Credit Scheme	3	1.8%	2	1.2%	-33.3%
Breach of public access rules	1	0.6%	2	1.2%	+100.0%
Failure to comply with DBC	1	0.6%	2	1.2%	+100.0%
Failure to report criminal charges or convictions	1	0.6%	2	1.2%	+100.0%
Rudeness/misbehaviour in Court	0	0.0%	2	1.2%	-
Fee dispute	0	0.0%	2	1.2%	-
Acting uninstructed	1	0.6%	1	0.6%	0.0%
Other Aspects	7	4.1%	7	4.0%	0.0%
<b>Total</b>	<b>170</b>	<b>100.0%</b>	<b>173</b>	<b>100.0%</b>	<b>+1.8%</b>

## External complaints received - analysis

2.8 As was reported in the Performance Report for the first quarter of 2010, there was an unprecedented increase in the number of external complaints received in that quarter, up by 39% on the first quarter of 2009 and 37% over the last quarter of 2009. This was the highest number of external complaints recorded in a single quarter in the last ten years. The spike related in the main to an increase in the number of IPS only complaints which more than doubled as compared with the same quarter of 2009 as shown in Figure 3. Misconduct and hybrid complaints showed no significant difference in numbers from 2009.

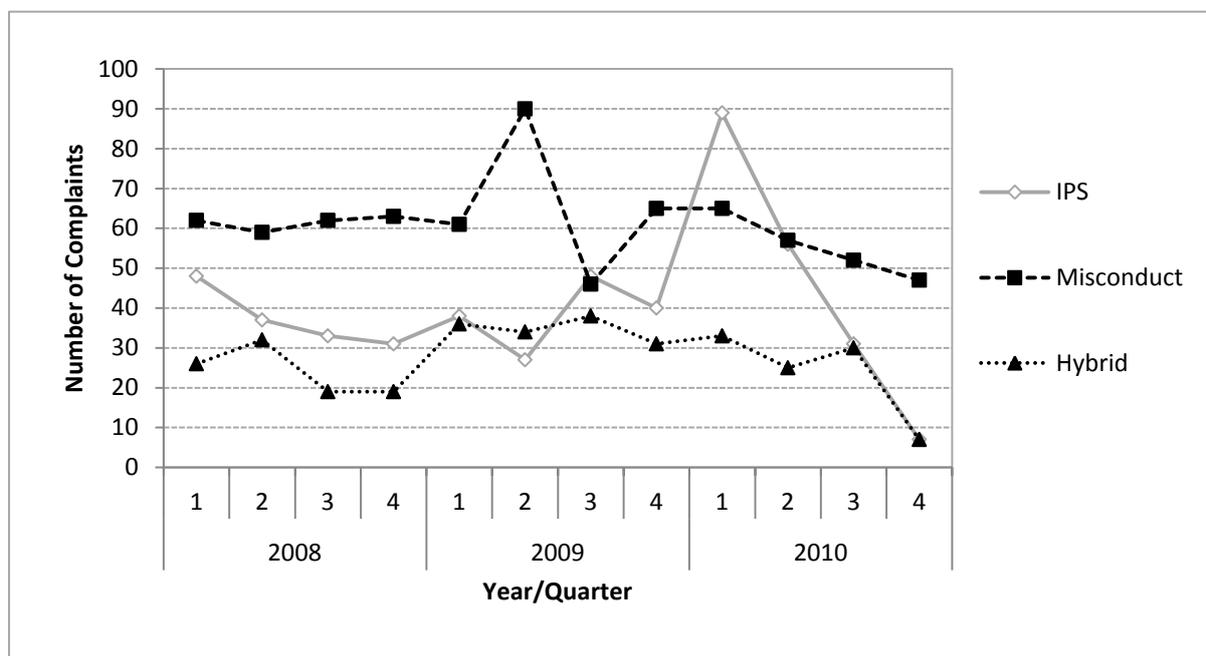
Figure 3: External complaints received by "classification" – first quarter comparison



- 2.9 The second and third quarters of 2010 returned to the usual level for external complaints but, with the opening of LeO's office, the fourth quarter saw an unprecedented decrease in the number of complaints received: down by over 50% on the same quarter of 2009 to the lowest figure for any quarter in the last ten years. This fourth quarter figure led to the annual figure decreasing by 9% on 2009 despite the exceptional number of complaints received in the first quarter.
- 2.10 It was anticipated, based on the statistics for 2009, that there would be an annual decrease in external complaints of about 30% but clearly early information indicates that this decrease may be much higher. It may be that the difference in the prediction and the current figures lies to some extent in the classification of complaints as the need to distinguish between IPS and misconduct was only introduced in 2009 in anticipation of the creation of LeO. Inevitably increasing focus was placed in 2010 on which complaints should be classed as IPS only and this may have led to more complaints falling into that category when previously they might have been classed as "hybrid".
- 2.11 Pure misconduct complaints, involving no service issues, showed a steady decline quarter on quarter as shown in Figure 4, with the annual figure decreasing by 16% on 2009. It is difficult to draw any conclusions from this trend as clearly the BSB has no control over the nature of complaints submitted and given the hundreds of thousands

of legal transactions involving barristers each year as compared to the very small number of complaints it may not be reasonable to do so. However, the paragraphs below provide some information about the subject matter of the complaints received.

**Figure 4: External complaints received by “classification” – quarterly comparison**



### Subject matter of complaints

2.12 Table 3 lists the number of complaints received by their subject matter according to their primary aspect. In terms of the trends in 2010, the high number of allegations of “incompetence” reported in the first quarter of 2010 (39% of all external complaints by primary aspect) decreased back to into line with the 2009 figures by the second quarter and became negligible by the fourth quarter. The significant drop in the fourth quarter is not surprising given that complaints of incompetence are generally submitted by clients of barristers and on the whole relate to the service received rather than professional misconduct. Therefore, from 6 October 2010, the large majority of these complaints concerning issues of incompetence will have been dealt with by LeO.

**Table 3: Primary aspects for external complaints 2009 to 2010**

Aspect Description	2009	% Total	2010	% Total	% Change
Incompetence	161	29.0%	142	28.6%	-11.8%
Dishonesty/discreditable conduct	10	1.8%	72	14.5%	+620.0%
Misleading the Court	55	9.9%	61	12.3%	+10.9%
Other	57	10.3%	30	6.0%	-47.4%
Not acting in the client's best interest	22	4.0%	29	5.8%	+31.8%
Fee dispute	22	4.0%	26	5.2%	+18.2%
Failure to follow instructions	31	5.6%	23	4.6%	-25.8%
Negligence	26	4.7%	23	4.6%	-11.5%
Rudeness/misbehaviour out of Court	37	6.7%	17	3.4%	-54.1%
Discrimination	1	0.2%	13	2.6%	+1200.0%
Rudeness/misbehaviour in Court	25	4.5%	12	2.4%	-52.0%
Undue pressure to accept settlement/plead guilty	10	1.8%	9	1.8%	-10.0%
Undue delay in dealing with papers	8	1.4%	9	1.8%	+12.5%
Conspiracy/Collusion	14	2.5%	5	1.0%	-64.3%
Non-practising barrister holding out	11	2.0%	5	1.0%	-54.5%
HoC failing to administer chambers properly	2	0.4%	5	1.0%	+150.0%
Conflict of interest	11	2.0%	4	0.8%	-63.6%
Late/unnecessary return of brief	7	1.3%	3	0.6%	-57.1%
Failure to comply with a Court Order	3	0.5%	2	0.4%	-33.3%
Acting uninstructed	7	1.3%	1	0.2%	-85.7%
Other Aspects	36	6.5%	6	1.2%	-83.3%
<b>Total</b>	<b>556</b>	<b>100.0%</b>	<b>497</b>	<b>100.0%</b>	<b>-10.6%</b>

2.13 Table 4 shows that to date 81% of the complaints classed as “incompetence” received in the first quarter have been dismissed, with 4% withdrawn and 15% ongoing. Based on current rates of outcome (see Table 14), it is expected that only 3% of these complaints will be upheld. Therefore, the high number of allegations received may only result in an additional 2 or 3 charges about complaints of incompetence being proved.

**Table 4: Current status of first quarter 2010 “incompetence” complaints**

Status	Complaints	% of Total
Dismissed-Chambers	17	23.6%
Dismissed-Commissioner	25	34.7%
Dismissed-Committee	3	4.2%
Dismissed-Out of Time	13	18.1%
Withdrawn	3	4.2%
Ongoing	11	15.3%
<b>Total</b>	<b>72</b>	<b>100.0%</b>

2.14 Tables 3 and 5 show that the high figures reported in the first quarter of 2010 for allegations of dishonesty or discreditable conduct continue and by the fourth quarter, when misconduct complaints dominate, this aspect accounts for a quarter of all external complaints received. Complaints in this category reflect potential breaches of paragraph 301 (a) of the Code and mostly relate to allegations about barristers behaviour outside their capacity as lawyers, for example in their private life or in an employed role unconnected with the provision of legal services. Based on the fourth quarter of 2010 when LeO was operational, this category is likely to be the most common type of complaint for the foreseeable future, followed by complaints of misleading the court. Experience shows that the latter type of complaints is frequently made by “clients” on either side who have lost their cases.

**Table 5: Primary aspects for external complaints - fourth quarter 2010**

Aspect Description	2010	% Total
Dishonesty/discreditable conduct	16	26.2%
Misleading the Court	10	16.4%
Other	6	9.8%
Rudeness/misbehaviour out of Court	6	9.8%
Not acting in the client’s best interest	5	8.2%
Incompetence	3	4.9%
Rudeness/misbehaviour in Court	3	4.9%
Conspiracy/Collusion	2	3.3%
Negligence	2	3.3%
Undue pressure to accept settlement/plead guilty	2	3.3%
Other Aspects	6	1.2%
<b>Total</b>	<b>61</b>	<b>12.3%</b>

## Types of complainant

2.15 In light of the commencement of the Legal Ombudsman, the annual trend across 2010 in relation to the types of complainant is no longer so relevant given that many complaints from clients will now be dealt with by LeO. However, Table 6 shows the figures for 2010 which indicate that “Civil Litigants” were the highest category of complainant at 26% followed very closely by internal complaints raised by the Bar Standards Board. The latter percentage remained the same as in 2009 but in 2009 “Civil Litigants” formed over 30% of the total. The number of complaints received from those involved in criminal proceedings in 2010 went up 13% to nearly 19% of the total and there was also a small increase in the number of complainants in the family category, up by 10%.

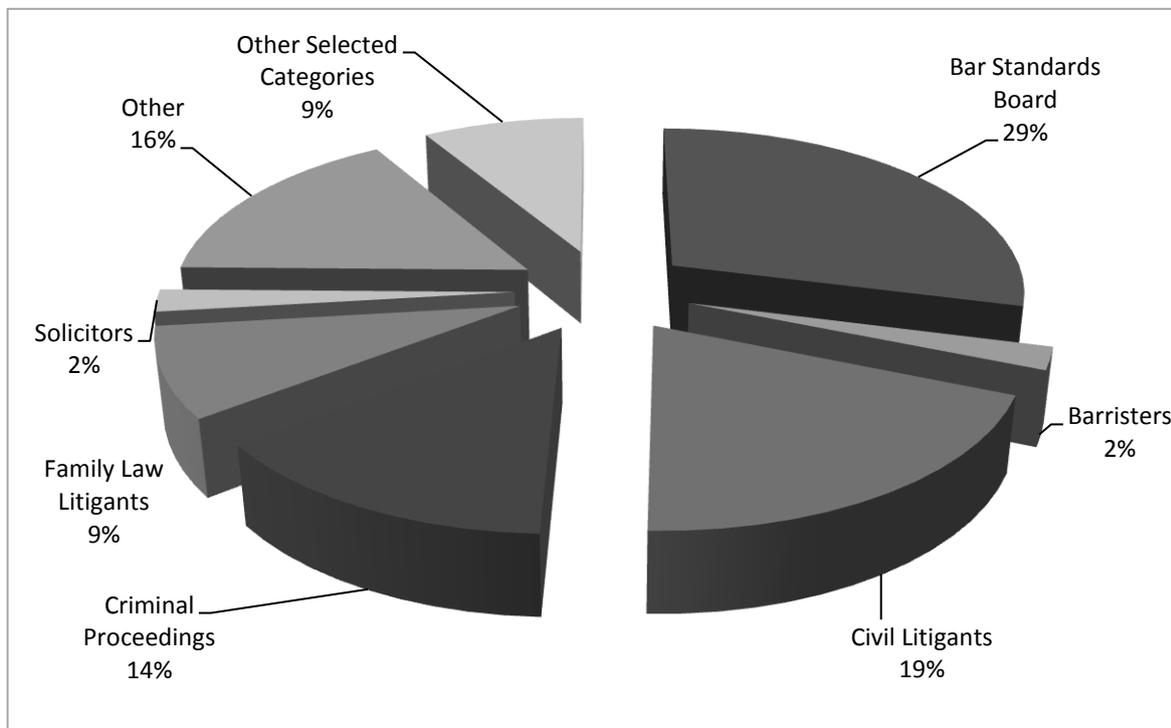
**Table 6: Complaints opened by complainant category - annual comparison**

Complainant Category	2008	% Total	2009	% Total	2010	% Total	% Change
Civil Litigant	154	18.4%	220	30.2%	177	26.0%	-19.5%
Bar Standards Board	309	37.0%	171	23.5%	169	24.8%	-1.2%
Criminal	143	17.1%	114	15.6%	129	18.9%	+13.2%
Family	62	7.4%	71	9.7%	78	11.4%	+9.9%
Other	79	9.4%	70	9.6%	51	7.5%	-27.1%
Solicitor(s)	37	4.4%	37	5.1%	41	6.0%	+10.8%
Barrister	21	2.5%	22	3.0%	11	1.6%	-50.0%
Immigration Services Commissioner	14	1.7%	3	0.4%	7	1.0%	+133.3%
No Category Selected	2	0.2%	0	0.0%	5	0.7%	-
Chambers Staff	1	0.1%	4	0.5%	4	0.6%	0.0%
Immigration client	5	0.6%	4	0.5%	4	0.6%	0.0%
Head of Chambers	0	0.0%	0	0.0%	2	0.3%	-
Judge (or official on his behalf)	9	1.1%	4	0.5%	1	0.1%	-75.0%
Licensed Access Complainant	0	0.0%	0	0.0%	1	0.1%	-
Magistrate/Clerk to the Justices	0	0.0%	0	0.0%	1	0.1%	-
Public Access complaint	0	0.0%	8	1.1%	1	0.1%	-87.5%
Asylum and Immigration Tribunal	0	0.0%	1	0.1%	0	0.0%	-100.0%
Ministry of Justice	0	0.0%	0	0.0%	0	0.0%	-
<b>Total</b>	<b>836</b>	<b>100.0%</b>	<b>729</b>	<b>100.0%</b>	<b>682</b>	<b>100.0%</b>	<b>-6.4%</b>

2.16 It will be of interest to see if the profile of complainants changes with the advent of LeO. Figure 5 below shows the profile for the fourth quarter when LeO was operational. The statistics should be treated with caution when assessing any trends as clearly the proportion of BSB complaints fluctuates quarter on quarter. Taking this into account, the early statistics indicate that generally the types of complainant did not change following the commencement of LeO with “civil litigants” remaining the highest category outside the BSB followed by those involved in criminal proceedings

and family law litigants. However, the interesting figure to note is the decline in the proportion of “civil litigants” which stood at 30% in 2009, 26% across 2010 and only 19% in the fourth quarter of 2010.

**Figure 5: Complaints opened in the fourth quarter of 2010 by complainant category**



2.17 The number of complainants categorised as ‘Other’ is also now showing a high percentage. Analysis of the fourth quarter figures shows that a third of the complainants categorised as ‘Other’ refer to complaints about barristers from people who have no legal connection with the barrister examples include a student on the Bar Vocational Course, a member of public complaining about the Attorney General and people complaining about a barrister’s behaviour in his/her life. It may be that consideration will need to be given to creating a separate category to cover such complaints.

### Further action

2.18 The number of complaints referred to further action by the Complaints Committee in 2010 declined significantly as compared with 2009: down by 42% as Table 7 shows. However, it should be noted that referrals in 2008 and 2009 went up each year by over 40% and 2009 produced an unusually high number of referrals. The total number of referrals in 2010 is therefore still higher than the figure for 2007 of 127. Further, account should be taken of the fact that in the last quarter of 2010 emphasis was placed on progressing outstanding IPS complaints and therefore a backlog developed by the end of the year in progressing internal complaints. At the close of 2010, 99 internal complaints were at the Complaints Committee stage or earlier in the process compared with 60 at the close of 2009. Given that over 90% of internal complaints are referred to further action, this backlog accounts for some of the reduction in the complaints referred in 2010. Taking this into account, as well as an

unusually high number of referrals in 2009, the overall trend in the last three years is towards an increase in the number of referrals.

**Table 7: Complaints referred for further action - annual comparison 2008 to 2010**

Referral Type	2008	% Total	2009	% Total	2010	% Total	% Change
Adjudication Panel	13	7.2%	6	2.4%	6	4.2%	0.0%
Determination by Consent	0	0.0%	36	14.5%	25	17.4%	-30.6%
Disciplinary 3 Person	0	0.0%	94	37.9%	68	47.2%	-27.7%
Disciplinary 5 Person	0	0.0%	51	20.6%	45	31.3%	-11.8%
Disciplinary Tribunal	50	27.8%	13	5.2%	0	0.0%	-100.0%
Summary Hearing	117	65.0%	48	19.4%	0	0.0%	-100.0%
<b>Total</b>	<b>180</b>	<b>100.0%</b>	<b>248</b>	<b>100.0%</b>	<b>144</b>	<b>100.0%</b>	<b>-41.9%</b>

- 2.19 Internal complaints made up 69% of referrals to further action in 2010, returning to the level of 2007 and 2008 after the high figure of 85% seen in 2009. However, as was reported in 2009, while by volume internal complaints represent the majority of complaints referred to disciplinary action, this masks the balance of time spent on dealing with external complaints (for more information, see paragraph 2.20 below). These continue to be the most complex and time consuming to deal with.
- 2.20 It was emphasised in the 2009 report that the increased involvement of BMIF in disciplinary cases has resulted in an increase in number of defendant barristers instructing solicitors and counsel on a fee paying basis. This has caused some parts of disciplinary work to become more akin to contested litigation. The solicitors used by BMIF are proving to be fairly litigious resulting in a disproportionate amount of time being spent dealing with solicitors' correspondence and challenges to the process. The statistics regarding the BSB's success in proving disciplinary charges (see paragraph 3.17 below) demonstrate that these challenges are rarely successful but nevertheless they have created a significant increase in work that is not revealed by the bare statistics on numbers of cases referred to, or heard by, Disciplinary Tribunals. The change in the nature of the work has resulted in greater emphasis being placed on employing legally qualified staff to deal with disciplinary work. Regardless of whether or not referrals decline, experience over the last two years indicates that workloads will remain high for this reason.
- 2.21 Table 7 above provides a breakdown of the complaints referred to further action by the type of action. Given the reduction in the number of complaints referred to further action, the percentage figures shown in the table are not necessarily representative of the overall profile in relation of referrals. While it is not specifically identified in Table 7, the breakdown of referrals to Disciplinary Tribunals remains relatively static between the two types with the division between three-person and five-person Tribunals being approximately 65/35. (35% of Tribunals in 2009 were five-person as compared to 40% in 2010). This is in line with the original intention that five person panels would be used far less often than three person panels as they are designed

for cases where the likely sentence (based on the Sentencing Guidance) may be more than a three month suspension from practise.

- 2.22 By proportion the use of the Determination by Consent procedure has gone up slightly from 14.5% in 2009 to 17.5% in 2010 which is encouraging. Without detailed case by case analysis it is difficult to know why the DBC procedure is not being used more for disposal of internal complaints which, as a matter of policy, form the bulk of referrals. However, the experience of the Committee suggests this is likely to be attributable to the number of barristers who fail to engage with the BSB and/or have had previous findings that take the potential appropriate sentence outside the Committee's powers, thereby making referral to DBC inappropriate.

## Work Completed and Turn Round Times

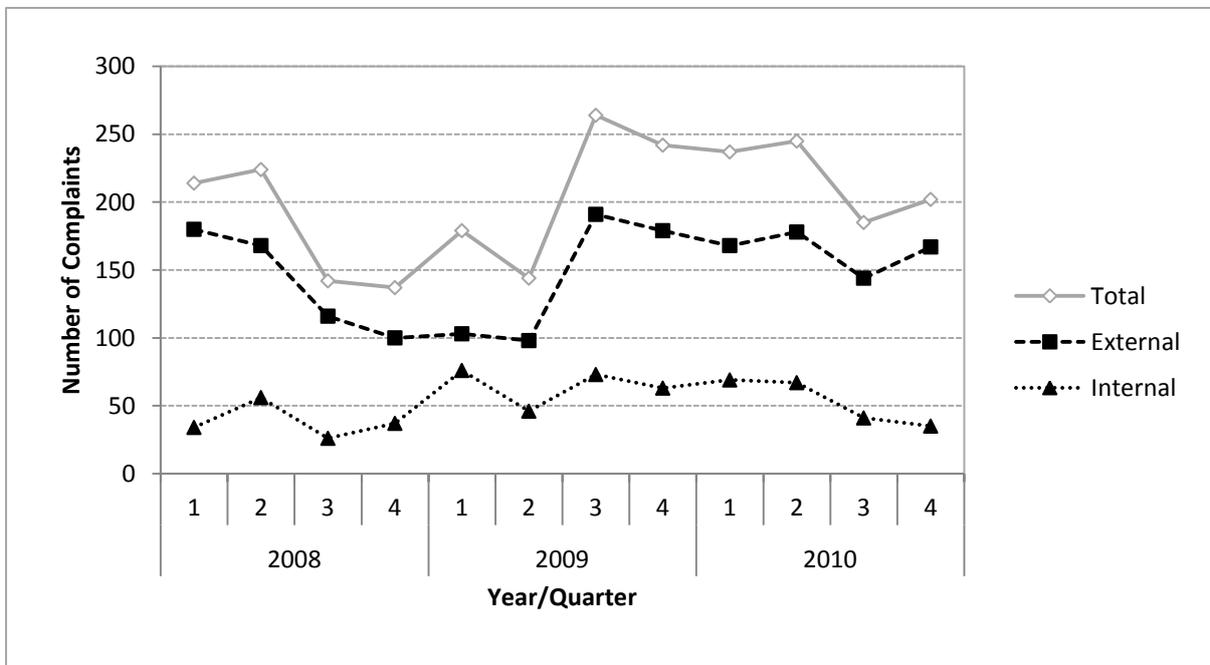
### General

3.1 This section deals with the number of complaints closed in 2010 and the time taken to close them. Against a background of a 6.4% decrease in overall complaints received/raised, the number of complaints closed in 2010 went up by 5%. This demonstrates that the strong performance seen in 2009 was maintained despite the Commissioner's absence for three months and the intensive work required, to implement the restructure of the staff Teams and the decision making processes. The staff and the Committee should therefore be commended for their performance in the face of difficult circumstances. Table 8 below shows the annual figures, while Figure 6 shows the quarterly picture.

**Table 8: Complaints closed - annual comparison 2006 to 2010**

Complaint Type	2006	2007	2008	2009	2010	% Change
External	575	582	564	571	657	+15.1%
Internal	275	147	153	258	212	-17.8%
<b>Total</b>	<b>850</b>	<b>729</b>	<b>717</b>	<b>829</b>	<b>869</b>	<b>+4.8%</b>

**Figure 6: Complaints closed - quarterly comparison 2008 to 2010**



3.2 The number of internal complaints closed decreased by 18% in 2010 due in part to the high closure figures in 2009 resulting from the large number of internal complaints raised in 2008 and in part to the backlog that built up during the last quarter of 2010.

## Overall turn round times

3.3 The overall turn round times for complaints closed in 2010 (including disciplinary cases) have improved compared with 2009 as demonstrated by Table 9. The percentage of complaints turned round in 2010 which were 0 – 3 months old at the time of closure, increased both in absolute numbers as well as percentage terms (339 in 2010 as compared to 255 in 2009 and 39% as compared to 31% in 2009). There was no percentage change in the 4-6 month period but with the 7-12 month period decreasing by 22%, this shows a general move towards faster turn round times although overall the percentage of complaints closed within 12 months remained static at 80%. The average time taken to close a complaint decreased to 138 days in 2010 which, along with 2008, is the joint lowest annual figure in the last 5 years.

**Table 9: Overall turn round times for all complaints - annual comparison 2008 to 2010**

Closure Period	2008	% Total	2009	% Total	2010	% Total	% Change
Under 3 Months	273	38.1%	255	30.8%	339	39.0%	+32.9%
4 - 6 Months	149	20.8%	157	18.9%	164	18.9%	+4.5%
7 - 12 Months	166	23.2%	255	30.8%	200	23.0%	-21.6%
13 - 18 Months	85	11.9%	106	12.8%	121	13.9%	+14.2%
19 - 24 Months	25	3.5%	38	4.6%	28	3.2%	-26.3%
Over 24 Months	19	2.6%	18	2.2%	17	2.0%	-5.6%
<b>Total</b>	<b>717</b>	<b>100.0%</b>	<b>829</b>	<b>100.0%</b>	<b>869</b>	<b>100.0%</b>	<b>+4.8%</b>

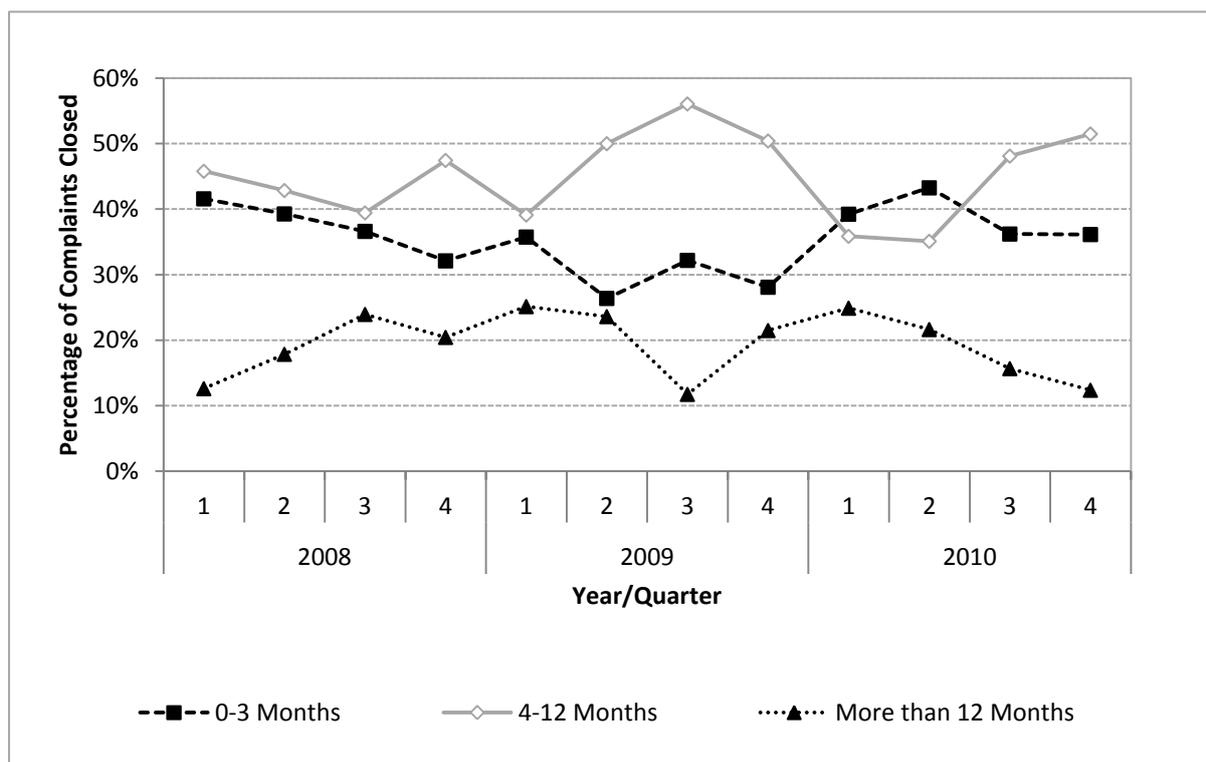
3.4 The large number of external complaints opened in the first quarter led in turn to a large number of complaints being dismissed without investigation in quarters 1 and 2 thereby boosting the annual figure for external complaints closed within 3 months to 49% of the total closures, as shown in Table 10. There was also a small increase in external complaints closed within 12 months, up from 85% in 2009 to 88% in 2010.

**Table 10: Overall turn round times for external complaints – annual comparison 2008 to 2010**

Closure Period	2008	% Total	2009	% Total	2010	% Total	% Change
Under 3 Months	236	41.8%	214	37.5%	322	49.0%	+50.5%
4 - 6 Months	133	23.6%	128	22.4%	140	21.3%	+9.4%
7 - 12 Months	134	23.8%	144	25.2%	117	17.8%	-18.8%
13 - 18 Months	44	7.8%	49	8.6%	44	6.7%	-10.2%
19 - 24 Months	11	2.0%	24	4.2%	18	2.7%	-25.0%
Over 24 Months	6	1.1%	12	2.1%	16	2.4%	+33.3%
<b>Total</b>	<b>564</b>	<b>100.0%</b>	<b>571</b>	<b>100.0%</b>	<b>657</b>	<b>100.0%</b>	<b>+15.1%</b>

- 3.5 Figure 7 below shows the quarterly trend in complaints closed over the last three years. The trend shows, not surprisingly, that most complaints are closed within the 4-12 month time period reflecting the time it takes to assess and determine complaints including, if necessary, carrying out a formal investigation. However, this trend changed during the first two quarters of 2010 when more complaints were closed in within 0-3 months than was seen in previous years. The change was inevitability due to the unprecedented increase in external complaints received in the first quarter, many of which were quickly dismissed because they did not reveal a breach of the Code or evidence of poor service. Nevertheless the percentage of complaints closed within three months remained relatively high for both the third and fourth quarters of 2010 and the percentage of complaints closed in the fourth quarter within three months increased by 29% as compared to 2009 thus indicating a sustained improvement in turning complaints round more quickly.
- 3.6 It is also apparent that the number of complaints which were more than 12 months old at the time of closure decreased quite significantly during the course of 2010 down from 21.5% in the fourth quarter of 2009 to 12.4% in 2010. This is probably attributable to more attention being paid to the older cases once the increased influx of new external complaints in early 2010 was dealt with.

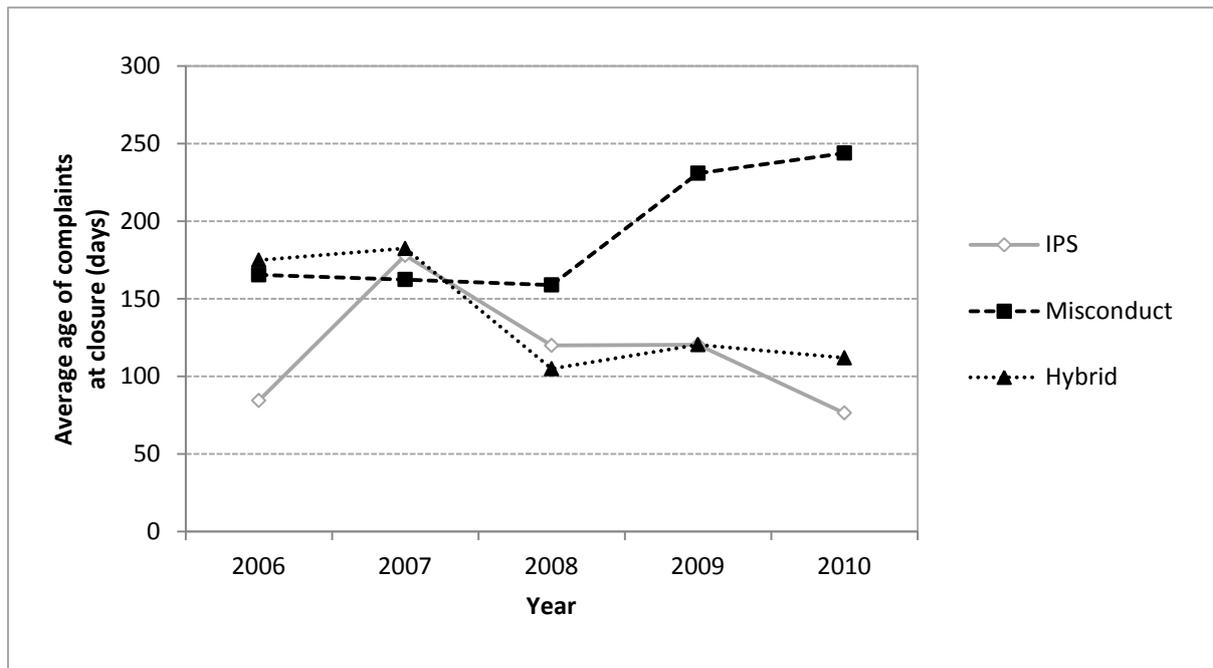
**Figure 7: Overall turn round times for all complaints - quarterly comparison 2008 to 2010**



- 3.7 With the introduction in 2009 of recording IPS, hybrid and misconduct complaints separately, it is now possible to assess how long it takes to close the individual types of complaints. Figure 8 provides data on this. However, it should be noted that the classification of complaints received prior to March 2009 was carried out by a global computer conversion and therefore is liable to significant inaccuracies. Thereafter, classification was a result of a staff assessment of the complaint and is more accurate. Figure 8 shows that IPS complaints are, on average, closed faster than

misconduct complaints. This may well have an impact on turn round times going forward now that IPS complaints fall under the jurisdiction of the Legal Ombudsman and, to some extent, supports the view that LeO will be able to close complaints in a relatively short timescale. It is interesting to note that the time taken to close misconduct complaints has increased substantially since 2008 which supports the view expressed elsewhere in this report that disciplinary cases are becoming more time intensive.

**Figure 8: Age of complaints at closure by aspect “classification”**



### Turn round times up to and including Committee

- 3.8 The overall statistics for turn round times do not necessarily reflect the time taken to dismiss complaints as compared to the time taken to conclude complaints following referral to further action. The overwhelming majority of complaints that are dismissed are dismissed before referral to further action by the Commissioner or the Committee. Table 11 shows the turn round times for complaints closed up to and including the Committee decision and includes cases where the Committee exercised discretion to impose an administrative warning or fine. Withdrawn complaints are also included but not complaints referred for further action or to Chambers.
- 3.9 The trend in turn round times for dismissals shows a similar pattern to the overall figures, with the percentage of complaints turned around within three months increasing by 19% in 2010 and the percentage in the 7-12 month period decreasing by 23% as compared with 2009: again, demonstrating an improvement in throughput.

**Table 11: Turn round times for all complaints closed up to Committee decision - annual comparison 2008 to 2010**

Closure Period	2008	% Total	2009	% Total	2010	% Total	% Change
Under 3 Months	269	46.3%	206	36.9%	238	43.8%	+15.5%
4 - 6 Months	143	24.6%	150	26.8%	142	26.1%	-5.3%
7 - 12 Months	128	22.0%	153	27.4%	114	21.0%	-25.5%
13 - 18 Months	35	6.0%	34	6.1%	32	5.9%	-5.9%
19 - 24 Months	4	0.7%	13	2.3%	6	1.1%	-53.8%
Over 24 Months	2	0.3%	3	0.5%	12	2.2%	+300.0%
<b>Total</b>	<b>581</b>	<b>100.0%</b>	<b>559</b>	<b>100.0%</b>	<b>544</b>	<b>100.0%</b>	<b>-2.7%</b>

3.10 The number of complaints closed at an age of greater than 24 months appears large at twelve complaints but includes two instances of complainants making multiple complaints against one or more barristers. These older complaints were complex and dogged by numerous delays arising from the need to clarify the complaint and/or from issues related to the BSB's ability to interact with the complainant. There were in fact only five individual complainants whose complaints were still open after 24 months without a decision having been taken as whether to refer them for further action: in each case there were good reasons for the longevity of the complaints.

#### **Turn round times – further action**

3.11 As Table 12 shows the total number of complaints closed following referral to further action decreased by 10% as compared to 2009 (the figures for 2009 and 2010 include the Determination by Consent procedure). This indicates a drop in efficiency given the significant decrease in new complaints referred to further action in 2010 which should have allowed for more time to be spent on closing existing cases. To a large extent this reduction in efficiency is attributable to the ever increasing time that is being devoted to the litigious nature of disciplinary cases (see paragraph 2.20). However, despite the lower number of cases closed, the statistics show that the percentage of complaints closed within 12 months exceeded 90% for the first time, compared with 82% in 2009 which indicates that, where it is possible to do so, complaints subject to disciplinary action are being closed more quickly. Further, since 2008, the percentage of cases that were over 18 months old at the time of closure has decreased from 9% to just over 2% (8 cases as compared to 2). Nevertheless, this is an area that will be closely monitored in 2011.

**Table 12: Turn round times for all complaints closed post Committee referral – annual comparison 2008 to 2010**

Closure Period	2008	% Total	2009	% Total	2010	% Total	% Change
Under 3 Months	3	2.4%	1	0.5%	2	1.1%	+100.0%
4 - 6 Months	31	25.0%	47	22.5%	43	22.9%	-8.5%
7 - 12 Months	52	41.9%	124	59.3%	125	66.5%	+0.8%
13 - 18 Months	27	21.8%	31	14.8%	14	7.4%	-54.8%
19 - 24 Months	3	2.4%	4	1.9%	2	1.1%	-50.0%
Over 24 Months	8	6.5%	2	1.0%	2	1.1%	0.0%
<b>Total</b>	<b>124</b>	<b>100.0%</b>	<b>209</b>	<b>100.0%</b>	<b>188</b>	<b>100.0%</b>	<b>-10.0%</b>

### Outcomes of closed cases

3.12 Table 13 shows the final outcomes of complaints closed in 2010. Where a complaint involves multiple aspects with multiple outcomes, the aspect that has progressed furthest through the disciplinary process denotes the outcome of the case. This reflects the fact that many complaints involve several issues some of which are dismissed while others warrant further action.

### Chambers referrals

3.13 2010 was the first full year in which the BSB's process for referring complaints to Chambers was operational and it saw Chamber dismissals making up 9% of total outcomes. The Chambers referral system was introduced in 2009 as a mechanism to try to ensure that those complaints that were appropriate for potential local resolution were passed to Chambers to address without the need for regulatory intervention. The mechanism was also designed to be a pre-cursor to the LeO regime which requires that all service complaints must first be considered under the local complaints procedure operated by chambers or the sole practitioner. Now that LeO has commenced operation, the number of referrals to chambers will reduce significantly as in most cases, chambers can only deal with service issues and it would be inappropriate for them to determine all but the most minor issues of misconduct.

3.14 Until the fourth quarter of 2010, a consistent figure of 15%-20% of all external complaints received per quarter were referred to Chambers. A total of 104 referrals in total were made in 2010, with 89 decisions being made by the Chambers. Of these, 38 complaints, 43% were subsequently reopened by the BSB while the remaining 51 complaints (57%) appear to have been resolved to the complainants' satisfaction.

**Table 13: Outcomes of closures - annual comparison 2009 to 2010**

Outcome	2009	% Total	2010	% Total	% Change
Dismissed-Chambers	22	2.7%	79	9.1%	+259.1%
Dismissed-Commissioner	320	38.6%	336	38.7%	+5.0%
Dismissed-Out of Time	83	10.0%	82	9.4%	-1.2%
Dismissed-Committee	71	8.6%	83	9.6%	+16.9%
<b>Up to Committee dismissal sub-total</b>	<b>496</b>	<b>59.8%</b>	<b>580</b>	<b>66.7%</b>	<b>+16.9%</b>
Dismissed	14	1.7%	14	1.6%	0.0%
Dismissed-Hearing	4	0.5%	0	0.0%	-100.0%
Dismissed on Appeal	2	0.2%	0	0.0%	-100.0%
<b>Further action dismissal sub-total</b>	<b>20</b>	<b>2.4%</b>	<b>14</b>	<b>1.6%</b>	<b>-30.0%</b>
NFA-Committee	54	6.5%	12	1.4%	-77.8%
NFA-Adjourned	6	0.7%	2	0.2%	-66.7%
<b>NFA sub-total</b>	<b>60</b>	<b>7.2%</b>	<b>14</b>	<b>1.6%</b>	<b>-76.7%</b>
Proved	176	21.2%	173	19.9%	-1.7%
Upheld	10	1.2%	1	0.1%	-90.0%
Upheld - Chambers	2	0.2%	2	0.2%	0.0%
Upheld on Appeal	2	0.2%	1	0.1%	-50.0%
Upheld-Fine-Committee	1	0.1%	0	0.0%	-100.0%
Upheld-Warning-Commissioner	1	0.1%	2	0.2%	+100.0%
Upheld-Warning-Committee	6	0.7%	9	1.0%	+50.0%
<b>Upheld sub-total</b>	<b>198</b>	<b>23.9%</b>	<b>188</b>	<b>21.6%</b>	<b>-5.1%</b>
Withdrawn	42	5.1%	45	5.2%	+7.1%
Struck Out	0	0.0%	2	0.2%	-
Other	13	1.6%	26	3.0%	+100.0%
<b>Total</b>	<b>829</b>	<b>100.0%</b>	<b>869</b>	<b>100.0%</b>	<b>+4.8%</b>

### Dismissed complaints

3.15 The percentage of complaints dismissed continues to remain high with nearly 67% being dismissed by either the Commissioner or the Committee (up from 60% in 2009). In the final year of the role, Commissioner dismissals made up 48% of the total outcomes which is a similar proportion to 2009 but a significant reduction on the rate of Commissioner dismissals seen in 2008. In 2008 Commissioner dismissals accounted for 63% of all closures. The substantial reduction in the Commissioner dismissal rate is due to two main factors. First, the introduction of the referral to chambers mechanism which reduced the need for the Commissioner to dismiss some complaints as they were dealt satisfactorily dealt with at the local level. Second, in both 2009 and 2010 more complaints were referred to the Committee to deal with. In 2009 this was due to a backlog in complaints awaiting the

Commissioner's attention and in 2010 it was due to the Commissioner's extended period out of the office. However, while the total dismissal rate for complaints has fluctuated over the last four years, the general trend is that 60-70% of complaints received each year will be dismissed without further action being taken. It remains to be seen if these figures will be affected by the creation of LeO and perhaps more importantly, whether LeO's "dismissal" rate for service complaints is similar to the BSB's. In this regard, LeO's stated approach of trying to settle complaints by agreement with the parties without ascribing blame or fault means that it will not necessarily be possible to compare directly BSB dismissal figures with LeO outcomes.

- 3.16 In terms of the subject matter of complaints that are dismissed, Table 14 shows the ten most frequently occurring "aspects" for external complaints closed in 2010 in relation to the outcome. It should be noted that "aspects" do not correlate directly to "complaints" as a complaint may include a number of "aspects" not all of which will result in further action. As previously stated the majority of aspects are dismissed and Table 14 demonstrates that the dismissal rate of in relation to "aspects" rather than "complaints" is at least 80%, with incompetence complaints being, by far, the largest category of dismissals in 2010 with 92% being dismissed and only 3% resulting in proved findings. Internal aspects, although not shown here, inevitably show a considerably lower "dismissal rate". This is because such complaints are only raised where there is clear evidence of a breach of the Code whereas external complaints are raised on the basis of allegations made regardless of their validity.

**Table 14: Outcomes of the ten most frequently occurring aspects for external complaints closed in 2010**

Aspect Description	Total Closed <sup>2</sup>	Dismissed %	Upheld %	NFA %	Withdrawn %	Other <sup>3</sup> %
Incompetence	246	91.9%	3.3%	0.0%	3.3%	1.6%
Not acting in the client's best interest	87	95.4%	0.0%	1.1%	1.1%	2.3%
Misleading the Court	66	95.5%	1.5%	0.0%	3.0%	0.0%
Dishonesty/discreditable conduct	63	88.9%	0.0%	0.0%	6.3%	4.8%
Other	57	80.7%	5.3%	0.0%	5.3%	8.8%
Negligence	57	91.2%	0.0%	0.0%	7.0%	1.8%
Failure to follow instructions	52	92.3%	0.0%	1.9%	3.8%	1.9%
Rudeness/misbehaviour out of Court	51	92.2%	3.9%	2.0%	2.0%	0.0%
Rudeness/misbehaviour in Court	37	86.5%	2.7%	2.7%	0.0%	8.1%
Fee dispute	34	85.3%	2.9%	0.0%	5.9%	5.9%

<sup>2</sup> Total Closed refers to the number of complaints with one or more of the aspect alleged

<sup>3</sup> "Other" includes aspects that are ongoing having been reopened

3.17 In terms of the outcomes of referrals to disciplinary action, Table 15 shows that the overall “success rate” in achieving disciplinary findings is improving year on year albeit that there are small fluctuations between the different types of referral. The Table shows that the overall “uphold” rate for further action cases has improved fairly dramatically in recent years from 76% in 2008 to 91% in 2010. This is a testament to the quality of the Committee analysis in reports and the casework carried out by staff and the pro bono prosecution panel even in the face of the challenges presented by the increasingly litigious nature of disciplinary action arising from external complaints. However, it may also indicate an increasing level of caution on behalf of the Committee when considering whether to refer cases. Whether not the Committee is being over-cautious is a matter the Chair will monitor during 2011.

3.18 A review of the “standard of proof” applied to misconduct allegations has been scheduled to commence later this year in order to consider whether the current criminal standard (“beyond reasonable doubt”) should be replaced with the civil standard (“balance of probabilities”). Amongst numerous other factors, there will be a need to consider whether such a change could result in more referrals to disciplinary action and whether the current high “uphold” rate will be affected.

**Table 15: Outcomes of closures of complaints referred for further action – annual comparison 2008 to 2010**

Referral Type	2008			2009			2010		
	Closed	Upheld	% Upheld	Closed	Upheld	% Upheld	Closed	Upheld	% Upheld
Adjudication Panel	16	6	37.5%	7	4	57.1%	11	6	54.5%
Determination by Consent	0	0	-	17	17	100.0%	15	15	100.0%
Disciplinary 3 Person	0	0	-	13	11	84.6%	113	104	92.0%
Disciplinary 5 Person	0	0	-	6	6	100.0%	43	41	95.3%
Disciplinary Tribunal	44	32	72.7%	63	54	85.7%	5	5	100.0%
Summary Hearing	64	56	87.5%	103	93	90.3%	0	0	-
<b>Total</b>	<b>124</b>	<b>94</b>	<b>75.8%</b>	<b>209</b>	<b>185</b>	<b>88.5%</b>	<b>187</b>	<b>171</b>	<b>91.4%</b>

3.19 Considering the high numbers of external complaints closed in 2010, only 14 complaints resulted in further action charges of IPS being brought, five of which were dismissed. The majority of charges continue to be brought in relation to internal complaints with a uniform 85% “upheld” rate. It is therefore anticipated that the transfer of client complaints to the Legal Ombudsman will have little impact on the number of complaints requiring further action by the BSB. Table 16 lists the ten most frequently occurring charges at further action for complaints closed in 2010. As can be seen, charges in relation to breaches of the practising requirements dominate, making up 81% of all charges in 2010.

**Table 16: Outcome of all further action complaints closed in 2010 – ten most frequently occurring charges**

Charge Description	Total Closed	Dismissed %	Upheld %	Withdrawn %	Other %
Failing to respond promptly to a complaint	95	8.4%	85.3%	5.3%	1.1%
Failure to complete CPD	85	5.9%	85.9%	7.1%	1.2%
Failing to pay non-disciplinary fine	79	3.8%	86.1%	10.1%	0.0%
Failure to renew practising certificate	27	14.8%	85.2%	0.0%	0.0%
Failing to comply with a sentence of a tribunal	19	5.3%	84.2%	10.5%	0.0%
Being dishonest or otherwise discreditable	14	0.0%	92.9%	7.1%	0.0%
Inadequate Professional Service	14	35.7%	64.3%	0.0%	0.0%
Holding out-Failure to comply with practising req	7	0.0%	85.7%	14.3%	0.0%
Acting in a manner likely to bring prof into disrepute	5	40.0%	60.0%	0.0%	0.0%
Failing to register or have insurance with BMIF	5	20.0%	80.0%	0.0%	0.0%

3.20 A total of 129 complaints closed after further action in 2010 resulted in costs orders against the defendant barrister being made, more than double the number in 2009. The number of suspensions ordered also increased from 31 in 2009 to 56 in 2010. Disbarments decreased slightly with 10 orders in 2010 as compared to 13 in 2009.

## Appeals

3.21 Appeals against decisions of Disciplinary Tribunals are made to the Visitors to the Inns of Court (the Visitors) which is a jurisdiction separate to the standard court system and involves Judges of the High Court sitting with lay and barrister members to consider appeals but with the Judges taking on the status of “Visitors” rather than sitting officially as Judges of the High Court. It has been accepted that this jurisdiction is an anachronism and should be replaced with appeals to the High Court in line with appeals from decisions of the Solicitors Disciplinary Tribunal. However, legislation is required to do this. On several occasions over the last three years, a suitable legislative opportunity has been found but unfortunately, for a variety of reasons, the inclusion in final legalisation has not come to fruition. Currently the BSB is back to square one and seeking a suitable legislative vehicle to make the changes. It is therefore likely that the Visitors jurisdiction will remain for several years to come.

3.22 In 2010, 29 appeals were submitted against Disciplinary Tribunal decisions which was an increase on the 17 submitted in 2009. However, the administration and scheduling of appeals is becoming increasingly difficult. In the last two years the number of appeals heard each year has gone down to just four per year as shown in Table 17, thus creating a significant backlog in appeals awaiting consideration. All appeals heard were against sentence rather than appeals against the actual findings of the Disciplinary Tribunals. Therefore, where an appeal is shown as allowed in 2010 it relates to a reduction in sentence e.g. six months’ suspension down to two months. Currently there are 32 appeals outstanding which is higher than any numbers seen in the last five years.

**Table 17: Appeals heard in 2009 and 2010**

Year	Appeal Decisions	Allowed	% Total	Dismissed	% Total
2009	4	2	50.0%	2	50.0%
2010	4	3	75.0%	1	25.0%
<b>Total</b>	<b>8</b>	<b>5</b>	<b>62.5%</b>	<b>3</b>	<b>37.5%</b>

3.23 The problem lies in the fact the Visitors jurisdiction is not part of the standard work of the Courts and therefore needs to be “tagged on” to the High Court schedules which are increasingly under pressure. The time taken by High Court judges to consider and hear appeals is funded through the Court system and not by the Bar Council/BSB. Therefore it is not surprising that allocation of time for Disciplinary Tribunal appeals takes a low priority in relation to other High Court work and backlogs are increasingly accumulating. Pressure has been brought to bear in previous years via the President of the Council of the Inns of Court which has resulted in more appeals being listed and it would be helpful if the Chair of the BSB could discuss the situation again with COIC. However, this will not address the fundamental nature of the current appeal system which can now only ultimately be resolved by legislation and the transfer of the jurisdiction to the High Court.

#### **Revenue arising from the complaints and disciplinary system**

3.24 Following the database upgrade in February 2009, 2010 was the first full year where the database could monitor financial information relating to complaints and disciplinary cases.

3.25 Fines and costs issued against barristers totalled £207K in 2010. This represents £55K in administrative fines, £106K in fines and £46K in costs.

3.26 In total £129K was received, covering fines and costs issued in 2010 and outstanding previous amounts. This exceeds the prediction of £100K set in May 2009.

## Work in Progress

### General

4.1 This section covers the complaints that remained open at the end of 2010. In total 457 complaints were active at the close of the fourth quarter of 2010, a decrease of 19% on the number of complaints open at the end of 2009. While some decrease would be expected given the overall reduction in complaints across the year of 6.4%, the substantial decrease indicates an improvement in throughput of cases as compared to 2009. Table 18 shows that the number of complaints at pre-investigation and investigation stages open at the end of the year did not change significantly from 2009, but the number of complaints with Committee members increased substantially probably due to the knock on effect of the Commissioner's absence. However, Disciplinary Tribunal cases decreased by 37%, which was in part due to the decrease in internal complaints awaiting hearing following the high number referred in 2009 but mainly due to the slow down progressing internal complaints towards the end of 2010.

**Table 18: Work in progress at year end by stage - annual comparison 2009 to 2010**

Complaint Stage	2009	% Total	2010	% Total	% Change
Referred to Chamber	19	3.4%	7	1.5%	-63.2%
Pre-Investigation <sup>4</sup>	164	29.2%	135	29.5%	-17.7%
Investigation <sup>5</sup>	165	29.4%	148	32.4%	-10.3%
Complaints Committee	29	5.2%	43	9.4%	+48.3%
Disciplinary Tribunal	156	27.8%	98	21.4%	-37.2%
Other	29	5.2%	26	5.7%	-10.3%
<b>Total</b>	<b>562</b>	<b>100.0%</b>	<b>457</b>	<b>100.0%</b>	<b>-18.7%</b>

### Age profile of open complaints

4.2 Overall figures for the age profile of complaints depend on when the annual peak in internal complaints arises. Table 19 shows that for external complaints, the close of 2010 saw the expected decrease in complaints less than 3 months old as the number of new complaints received decreased. Over time the age profile will settle down to a new baseline of figures excluding complaints of IPS.

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<sup>4</sup> Including pre-investigation complaints with the Commissioner

<sup>5</sup> Including investigation complaints with the Commissioner

4.3 The number of external complaints more than 24 months old at the close of 2010 has decreased significantly, down by 38% on 2009, indicating that the attention paid to older cases in 2010 proved to be successful in clearing them. However, the number of complaints at the 13 – 24 month ranges has increased which may reflect the additional work created in relation to disciplinary cases arising from increased representation but is nevertheless an area that should be monitored to ensure that complaints are closed as soon as it is possible.

**Table 19: Age profile of active external complaints at close of year - annual comparison 2008 to 2010**

Closure Period	2008	% Total	2009	% Total	2010	% Total	% Change
Under 3 Months	142	42.9%	154	43.5%	71	25.4%	-53.9%
4 - 6 Months	69	20.8%	71	20.1%	60	21.5%	-15.5%
7 - 12 Months	59	17.8%	74	20.9%	86	30.8%	+16.2%
13 - 18 Months	23	6.9%	25	7.1%	30	10.8%	+20.0%
19 - 24 Months	18	5.4%	6	1.7%	17	6.1%	+183.3%
Over 24 Months	20	6.0%	24	6.8%	15	5.4%	-37.5%
<b>Total</b>	<b>331</b>	<b>100.0%</b>	<b>354</b>	<b>100.0%</b>	<b>279</b>	<b>100.0%</b>	<b>-21.2%</b>

4.4 The number of internal complaints which were more than 12 months old decreased by 50%, showing that the spike in internal complaints opened in the fourth quarter of 2008 has now been cleared.

## Complaints Referred to the Legal Services Ombudsman

- 5.1 The statistics in this section are based on information provided by the Legal Services Ombudsman (LSO) rather than the BSB database. In light of the pressures on the LSO in the run up to the closure of the Office in Manchester and the transfer of LSO's responsibilities to an Acting LSO based in the LeO offices in Birmingham, it has not been possible to obtain the level of detail regarding LSO decisions as was provided in previous reports. This section of the report is therefore based on broad figures.
- 5.2 In 2010, complaints referred to the LSO increased by 31% on the 2009 figure, but this was still 20% lower than the 2008 figure. The percentage of complaints where the LSO made a recommendation decreased to 16%, resulting in an overall "satisfaction rate" of 84%, the highest in four years as is shown by Table 20.

**Table 20: Outcome of LSO investigations - annual comparison 2008 to 2010**

LSO Outcome	2008	% Total	2009	% Total	2010	% Total	% Change
No recommendation made	159	80.3%	94	78.3%	132	84.1%	+40.4%
Recommendation made	39	19.7%	26	21.7%	25	15.9%	-3.8%
<b>Grand Total</b>	<b>198</b>	<b>100.0%</b>	<b>120</b>	<b>100.0%</b>	<b>157</b>	<b>100.0%</b>	<b>+30.8%</b>

- 5.3 The breakdown in Table 21 of Commissioner and Committee decisions shows that the percentage of cases where the LSO was satisfied with the case handling has increased over 2009 for both Commissioner and Committee decisions. For the Committee this represents the second annual increase in satisfaction. This is very encouraging and leaves the BSB with a good legacy given that this is the last year in which full statistics in relation to the LSO will be available as the role is gradually being wound down and will cease to exist at the end of 2011.
- 5.4 It should be noted that the remit of LeO is very different to the LSO. The LSO had the power to review the way in which the BSB handled any complaint whether of service or misconduct and whether or not the concerns were raised by a client or non-client of a barrister. The LSO could formally criticise the handling of a complaint by the BSB, ask the BSB to reconsider a complaint or recommend payment of compensation to a complainant for failures in the BSB's complaints service (as opposed to the barrister's service). The "satisfaction rate" outlined above reflects the frequency at which the LSO made such recommendations.
- 5.5 In contrast LeO has no jurisdiction at all in overseeing the manner in which the BSB handles complaints and can only deal with client complaints. Therefore an important level of oversight has been lost with the demise of the LSO. There were occasions where it may be argued that the LSO's scrutiny was too pedantic or perhaps based on an incomplete understanding of the nature of the investigation and this in itself created a level of delay as a result of the pressure on regulators to address every detail of a complaint to avoid criticism or recommendations to reconsider. Nevertheless the knowledge that the LSO was "looking over our shoulder" was a powerful incentive in maintaining standards and the demise of the role is not

necessarily beneficial to internal complaints handling by regulators. To a very limited extent the BSB's Independent Observer (IO) can replace the LSO's independent oversight and the intention is that the newly appointed IO will be tasked with reviewing a percentage of complaints files each quarter. Nevertheless any mechanism the BSB introduces will be not a substitute for the level of truly independent scrutiny that the LSO represented. This is a matter of which the Complaints Committee, its Officers and the PCD are very much aware and all recognise the need to be vigilant to maintain the high standards achieved during the period of the LSO's supervision.

**Table 21: Outcome of LSO investigations - annual breakdown by decision source 2008 to 2010**

Decision Source	Outcome	2008	% Total	2009	% Total	2010	% Total
<b>Complaints Commissioner</b>	No recommendation	142	88.8%	84	80.0%	106	85.5%
	Formal criticism	7	4.4%	9	8.6%	2	1.6%
	Pay compensation	1	0.6%	1	1.0%	8	6.5%
	Reconsider	10	6.3%	10	9.5%	8	6.5%
	Reconsider and pay compensation	0	0.0%	1	1.0%	0	0.0%
<b>Complaints Commissioner sub-total</b>		<b>160</b>	<b>80.8%</b>	<b>105</b>	<b>87.5%</b>	<b>124</b>	<b>79.0%</b>
<b>Complaints Committee</b>	No recommendation	17	44.7%	10	66.7%	21	77.8%
	Formal criticism	6	15.8%	1	6.7%	1	3.7%
	Pay compensation	7	18.4%	2	13.3%	1	3.7%
	Reconsider	8	21.1%	2	13.3%	3	11.1%
	Reconsider and pay compensation	0	0.0%	0	0.0%	1	3.7%
<b>Complaints Committee sub-total</b>		<b>38</b>	<b>19.2%</b>	<b>15</b>	<b>12.5%</b>	<b>27</b>	<b>17.2%</b>
<b>Adjudication Panel</b>	No recommendation	0	-	0	-	2	100.0%
<b>Adjudication Panel sub-total</b>		<b>0</b>	<b>0.0%</b>	<b>0</b>	<b>0.0%</b>	<b>2</b>	<b>1.3%</b>
<b>Chambers</b>	No recommendation	0	-	0	-	2	100.0%
<b>Chambers sub-total</b>		<b>0</b>	<b>0.0%</b>	<b>0</b>	<b>0.0%</b>	<b>2</b>	<b>1.3%</b>
<b>Disciplinary Tribunal</b>	No recommendation	0	-	0	-	1	50.0%
	Formal criticism	0	-	0	-	1	50.0%
<b>Disciplinary Tribunal sub-total</b>		<b>0</b>	<b>0.0%</b>	<b>0</b>	<b>0.0%</b>	<b>2</b>	<b>1.3%</b>

## Legal Ombudsman

- 6.1 As has been referred to in numerous places in this report, the Legal Ombudsman went “live” on 6 October 2010 and at that point the BSB lost its jurisdiction over “service complaints”. For a limited period the BSB retains jurisdiction over service complaints submitted before 6 October 2010 but only until 31 March 2011 when any outstanding complaints of IPS (or IPS elements of hybrid complaints) will be transferred to an Acting LSO to complete at a charge.
- 6.2 Table 22 shows the status of the 112 complaints LeO received against barristers up to 31 December 2010. A total of 32 were considered to be “premature” and referred to Chambers. Of the remaining 80 complaints, 4 were referred to the BSB to address potential issues of misconduct.

**Table 22: Status of complaints received by the Legal Ombudsman 06 October 2010 to 31 December 2010**

Status	Complaints
Misconduct Cases	3
Cases Accepted for resolution	56
Complaints not Yet Accepted for resolution	5
Complaints Not Accepted for resolution	16
Premature Cases / Complaints	32
<b>Total</b>	<b>112</b>

- 6.3 The creation of LeO has already had a significant effect on the BSB’s complaints handling regime. The need to accommodate the change in the complaints landscape was predicted by the BSB and therefore a fundamental restructure of the decision making processes, as well as the staff teams, was initially proposed back in December 2009 and came to fruition in January 2011. Given the timing of the introduction of the restructure, the statistics in this report are not affected, but nevertheless the early impact of the creation of LeO can be seen, to some extent, in the statistics set out above in relation to the fourth quarter of 2010. In particular the reduction of 50% in external complaints received is entirely attributable to the creation of LeO.
- 6.4 The BSB has agreed a Memorandum of Agreement with LeO which is supported by a more detailed Operational Protocol and by a written document giving guidance to LeO staff on the types of complaint that the BSB is content can be treated as “service only” and do not need to be referred to the BSB for consideration as conduct matters.
- 6.5 The surprising figure is the very low level of “hybrid” complaints received by LeO. The prediction had been that 25% or more of complaints received by LeO about barristers would involve “hybrid issues” (i.e. a combination of both service and conduct matters). However, the number of conduct referrals by LeO has been very

low (four in the period 6 October to 31 December). Based on LeO statistics for complaints received, the level of referrals on conduct issues is only about 5% of the total complaints received about barristers: far less than was predicted (4 out of 80).

- 6.6 The low number of referrals does not appear to be attributable to deficiencies in conduct assessments made by LeO staff. In order to ensure such assessments are accurate, the Complaints Committee provided LeO with a list of the types of complaints that the BSB is satisfied can be treated as “service” issues only and therefore do not need to be referred to the BSB. Training has also been provided by the BSB for LeO staff on how to identify conduct complaints. Further a temporary arrangement is in place whereby all complaints received by LeO are forwarded to the BSB to allow the BSB to check whether the assessments made by LeO are appropriate. By this means it has been possible to establish that, despite the very small level of formal referrals on conduct issues, LeO’s assessments on conduct issues are accurate and there are no concerns that LeO is failing to pick up on such issues.
- 6.7 Clearly it is early days and trends from one quarter during a transition period should not be relied on. However, all indications in these early stages are that the reduction in complaints numbers as result of the creation of LeO will be greater than anticipated.

## Other work within the Department

- 7.1 As well as dealing with the day to day work of handling complaints, the Committee and the staff Teams have to address any matters of policy and procedure that arise in the course of any year. Over the last three years this work has been immense.
- 7.2 In 2008/2009, intensive work was required to implement the 65 recommendations made by Robert Behrens in his Strategic Review report of 2007 which resulted in fundamental changes particularly to the disciplinary system. Nearly all the recommendations were implemented in March 2009 less than 18 months after they were accepted by the Board. Alongside this, a new version of the complaints database was developed and implemented in February 2009. Then in mid-2009 consideration started to be given to the adaptations that might be needed to accommodate and reflect the creation of the Legal Ombudsman. As a result the restructure of the decision making processes, as well as the staff Teams, was carried out during the second half of 2010.
- 7.3 The level of intensive work required to develop and implement these various changes should not be underestimated. While staffing levels have increased over the years this has mainly been in relation to casework capacity and limited dedicated resources have been provided to assist with implementing the changes. The Committee and the staff Teams are therefore to be commended for the successful completion of all the additional work while maintaining performance in complaints handling.
- 7.4 The new staff restructure, developed in 2010 and implemented in January 2011, has not reduced the staff numbers in the department which might have been expected given the anticipated reduction in complaints as a result of the creation of LeO. Instead resources have been transferred into “support work”. By this means it is hoped that the department will be able to cope with the increasing number of additional areas of work that are arising. Nevertheless, the intention was that 2011 would be a year of “consolidation” for staff as well as the Committee: however, this is not going to be the case.
- 7.5 Various initiatives both inside and outside the department will require significant input from the new department and the Committee. At this early stage of 2011 the scheduled additional work includes: assisting with developing the disciplinary aspects of Entity Regulation as well as implementation of the Authorisation to Practise regime; assisting with developing the disciplinary aspects of the CPD review; taking the lead on the standard of proof review; reviewing the Sentencing Guidance; amending the Fitness to Practise Rules; reviewing the Disciplinary Tribunal Regulations and finally participating in the creation of the new Core Database for the organisation which is likely to involve creating a completely new Complaints Database using different software.

## Conclusions

- 8.1 2010 has been a year of contrasts: it started with an unprecedented increase in receipt of external complaints for no apparent reason and ended with an unprecedented decrease in such complaints directly attributable to the creation of the Legal Ombudsman. In the time between, the Commissioner was out of the office for three months and the department was involved in the intensive work required to restructure both the complaints decision making processes as well as the staff Teams. It is testament to both the staff and the Committee as well as Sue Carr's excellent leadership that against this background performance overall was maintained and in some areas improved.
- 8.2 2010 was also the final year of Sue Carr QC's three year tenure as Chair of the Complaints Committee. As the report demonstrates she once again presided over a year of improved performance despite the intense work required to restructure the department and prepare for the commencement of the Legal Ombudsman. Sue's excellent leadership over the three years steered the department and the Committee through an unprecedented, but highly successful, period of change which has seen a transformation in the way complaints are handled. The staff and the Committee are grateful for her dedication and support.
- 8.3 The headline trends from 2010 were:
- a) generally efficiency in complaints handling has improved with overall turn round times reducing and throughput going up. However, there were a couple of areas where performance has not improved i.e. in relation to the progression of internal complaints about failures to complete CPD where a backlog has built up due to the emphasis on progressing IPS complaints and in relation to the drop in the number of disciplinary cases closed which is likely to be due to the increasingly litigious nature of such work;
  - b) internal complaints continue to dominate the disciplinary system and the question still remains as to whether the disciplinary system should be so heavily weighted to dealing with practising requirement infringements. In this regard changes are likely to be made as a result of the proposed new "Authorisation to Practise" regime and the CPD review;
  - c) internal complaints raised for failures to comply with financial orders of Disciplinary Tribunals have gone up by over 70% albeit from a low number in 2009 (up to from 14 to 24). This may indicate that the current economic climate and the reduction in legal aid fees are causing more barristers to be subject to disciplinary action. Further research in this area in 2011/12 may be necessary if the trend continues;
  - d) the number of external complaints received in the fourth quarter of 2010 was down by 50% as a result of LeO becoming operational. This reduction is much higher than the predicted 30% and represents the lowest level of internal complaints received in one quarter for the last ten years;
  - e) the continued increase in members of the Bar who are able to access paid representation for disciplinary cases via BMIF insurance is creating additional work for the Department as a result of the increasingly litigious nature of disciplinary

proceedings and the increased number of, mostly unsuccessful, challenges to the process. This has caused some parts of disciplinary work to become more akin to contested litigation;

- f) the drop in the number of complaints referred to further action (down by 42%). When this is compared to the decrease in the number of such complaints “closed” in 2010, it superficially indicates a potential reduction in efficiency. However, the statistics mask the amount of time that is being devoted to dealing with the increasingly litigious nature of disciplinary proceedings (see (e) above);
- g) the percentage of disciplinary cases closed within 12 months exceeded 90% for the first time (up from 82% in 2009) thus indicating that, where it is possible, disciplinary cases are being closed more quickly;
- h) the “uphold” (success) rate in relation to disciplinary proceedings has gone up over the last three years from 76% in 2008 to 91% in 2010. This is testament to the quality of work of the Committee, staff and the pro bono prosecution panel. However, it may also indicate that the Committee is becoming more cautious in its approach to referrals which is an issue that will be monitored by the Chair of the Committee during 2011;
- i) the appeals system continues to be a problem with ongoing difficulties in scheduling hearings due to the nature of the “Visitors” jurisdiction. The number of appeals submitted in 2010 went up from 17 in 2009 to 29. However, only 4 appeals were heard in 2010 and there is now a backlog of 32 appeals awaiting consideration: the highest number for the last five years. It has been agreed, in principle, that the Visitors’ jurisdiction should be abolished and transferred to the High Court. However, primary legislation is required to do this and attempts to include provisions in various Bills have been thwarted over the last three years for different reasons.

8.4 While the overall trends for 2010 are interesting, and remain mostly relevant, the commencement of the operation of the Legal Ombudsman in October 2010 has had a profound effect on the complaints system. The landscape has changed fundamentally with the creation of LeO and the issue now is “how will complaints handling be affected in forthcoming months and years?” The only information the BSB currently has to assess this is the statistics for the fourth quarter of 2010. These clearly must be treated with caution given the time it takes for any revisions to a system to bed down. Nevertheless, the early indications are that the creation of LeO will result in a larger reduction in external complaints received than was originally anticipated and is likely to create a significant change in the nature of the complaints the BSB has to address.

8.5 It should also be noted that, with the demise of the Legal Services Ombudsman (LSO), the BSB is losing an effective level of independent oversight which has previously helped to maintain standards in complaints handling. While the role of the BSB’s Independent Observer will go some limited way to replacing the LSO, it will be important that greater internal vigilance is exercised by the Committee and staff in maintaining standards of complaints handling.

8.6 Another important issue is the increase in work arising from the growing numbers of barristers who are being funded by BMIF to defend disciplinary proceedings. This is

broadly to be welcomed but nevertheless is creating additional work for the BSB that is not necessarily warranted by the nature of the cases. Further, the levels of “policy work” the department needs to address, alongside the casework, is increasing by the day.

- 8.7 These are therefore interesting times where the fundamental nature of complaints and disciplinary work is shifting to a different level and wider “policy/project” work is becoming an integral part of the department/Committee’s work. There was a hope that 2011 would be a year of consolidation following three years of substantial change but it is apparent that this will not be the case: wider BSB initiatives will impact significantly in 2011 on the need for involvement from the Committee and staff Teams. Nevertheless, the Committee and staff are confident that they will meet the challenges presented with the same commitment as has been demonstrated on many occasions over the past 12 months.

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