



Reports

Questions as to professional conduct

Professional Conduct Department

Legislative change

The commencement of operation of the *Legal Profession Act 2004* and the *Legal Profession Regulation 2005* on 1 October 2005 brought forth a significant number of challenges over the last 12 months. The department devoted considerable energy and resources to preparing for the commencement of the new legislation and to informing members of the Bar Council and its professional conduct committees of the changes introduced by the legislation, and of new provisions which in some cases impose additional obligations on the council as well as practitioners. The department also assisted in the presentation of seminars on the new legislation to the Bar generally.

Whilst the *LPA 2004* and the *2005 Regulation* addressed a number of problems in the previous legislation, many of which had been highlighted through the council's experience in exercising its statutory obligations over the last few years, not surprisingly, in applying some provisions in the new legislation, difficulties emerged that require remedy by way of further amendment to the legislation. As in past years, the department has provided support to the executive director and the council in the formulation of proposals for amendments to the legislation.

A number of amendments to the legislation have already been made. Section 14 of the *LPA 2004* provided that a person must not engage in legal practice in New South Wales for fee, gain or reward unless the person is an Australian legal practitioner (that is, holds a current local or interstate practising certificate). Pursuant to clause 1 of schedule 2 of the *Legal Profession Amendment Act 2006*, which commenced on 2 June 2006, the words 'for fee, gain or reward' were omitted from section 14. This restored the position that existed under the *Legal Profession Act 1987* so that persons are prohibited from engaging in legal practice without being the holder of a current practising certificate, whether or not for fee, gain or reward. The amendment ensures that persons providing legal services hold a current practising certificate and as such are qualified lawyers who carry professional indemnity insurance and undertake continuing legal education: an important consumer protection.

Action against persons practising without holding a current practising certificate

The *Legal Profession Amendment Act 2006* also amended section 696 so that the council may investigate and prosecute offences committed by any person, including lay persons, under Part 2.2 of the *LPA 2004*, which deals with unqualified legal practice. In the 12 months to 30 June 2006, the department has spent considerable time in investigating an increasing number of instances where lawyers (admitted to the Supreme Court) who do not hold current practising certificates and lay persons (not admitted to the Supreme Court and who do not hold current practising certificates) have acted or held themselves out as a

barrister or engaged in legal practice in contravention of the *LPA 1987* or the *LPA 2004*.

Some of these matters were satisfactorily resolved with the provision of an undertaking to desist from engaging in the conduct of concern. In two cases, offending conduct by lay persons was referred to the prothonotary of the Supreme Court of New South Wales.

In October 2005, the Supreme Court heard an application made by the Bar Council for an injunction restraining William Roy Davison from practising as a barrister in contravention of the *LPA 2004*. At the time of the hearing, Mr Davison was a lawyer (admitted to the Supreme Court) but did not hold a practising certificate. The council had cancelled Mr Davison's practising certificate from midnight on 9 November 2001 and had instituted proceedings in the Administrative Decisions Tribunal against him which resulted in an order being made by the tribunal on 7 November 2005 that his name be removed from the roll of legal practitioners: *The Council of the New South Wales Bar Association v Davison* [2005] NSWADT 252. Mr Davison has appealed against the tribunal order.

Subsequent to the tribunal decision, the Supreme Court delivered its judgment in *The Council of The New South Wales Bar Association v Davison* [2006] NSWSC 65 on 28 February 2006. The court declared that, since on or about 10 November 2001 until 30 September 2005, Mr Davison practised as a barrister without being the holder of a current practising certificate in contravention of s25(1) of the *LPA 1987* and the court made an order pursuant to s720(1) of the *LPA 2004* restraining Mr Davison from practising as a barrister in contravention of s14(1) of the *LPA 2004*.

The court noted that in accordance with s14(3) of the *LPA 2004*, nothing in its order is intended to interfere with the performance of any general legal work by Mr Davison for the corporation by which he is employed, insofar as it is done by him in his capacity as an employee and in the ordinary course of his employment and for which he receives no fee, gain or reward for so doing other than his ordinary remuneration as an employee.

On 19 July 2006, in *The Council of the NSW Bar Association v Davison* [2006] NSWSC 699, the Supreme Court declared the conduct of Mr Davison was done wilfully and without reasonable excuse, and accordingly, Mr Davison was guilty of professional misconduct within the meaning of s25(4) of the *LPA 1987* from on or about 10 November 2001 until on or about 14 September 2005.

Access to the three *Davison* judgments is available on the association's web site. The judgment of the Supreme Court of 28 February 2006 contains a very useful review of what constitutes legal work.

In the annual report 2004-2005, a report was included on the decision of the Court of Appeal in *Prothonotary of the Supreme*

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Court of New South Wales v McCaffery [2004] NSWCA 470, in which the court declared McCaffery guilty of professional misconduct pursuant to s25(4) of the *LPA 1987* in that on 29 occasions, in a period of 16 months, he practised as a barrister whilst not holding a current practising certificate as a barrister in contravention of s25(1) of the *LPA 1987*.

Whilst most of the investigated incidents of persons either practising as a barrister or holding themselves out as a barrister without being the holder of a current practising certificate are not on the same scale as in *McCaffery or Davison*, the Bar Council regards any flouting of the statutory requirement to hold a practising certificate very seriously. There are important practical reasons for this, not the least of which is the need to comply with legislative requirements concerning compulsory professional indemnity insurance.

Integrity, good fame and character

The Bar Council appeared as contradictor in an application for admission as a lawyer made by Joseph Morrissey that was referred by the Legal Profession Admission Board to the Supreme Court for determination. The Bar Council was the appropriate professional body to assist the court as Mr Morrissey indicated that he intended, if his application for admission was successful, to apply for a practising certificate as a barrister. The decision in *Morrissey v The New South Wales Bar Association* [2006] NSWSC 323 was delivered on 26 April 2006. The court found Mr Morrissey is not a fit and proper person to be admitted as a legal practitioner and that his character is marked by wilful disobedience of court orders and rules, episodes of violence and a failure to make appropriate disclosure and a lack of candour when dealing with colleagues. The court also found that Mr Morrissey is not a person in whom the bench and legal practitioners could repose their trust. In particular, breaches of trust by Mr Morrissey in relation to those practitioners who were asked to provide references for him in support of his application for admission were so great that his application must be rejected.

The *Morrissey* judgment is a stark reminder of the need for ‘and obligation on all members of the profession to act with integrity and honesty’. This is essential for the legal profession to play its proper role in the judicial system and to retain the respect of the community it serves. Access to the judgment is available on the association’s web site.

Work of the department

As shown by the tables appearing at the end of this report, 62 conduct complaints were made in the year ended 30 June 2006. Of these, 55 conduct complaints were referred by the commissioner to the council for investigation and seven complaints were made by the council. Of the 32 notifications made to the council pursuant to the notification requirements under the *LPA 2004* and the *2005 Regulation*, 16 related to tax offences, acts of bankruptcy and indictable or serious offences

in respect of which the council is required to make a determination as to an applicant’s or barrister’s fitness and propriety to hold a practising certificate. The categories of conduct complaints and notifications and other statistical information are set out in the tables at the end of this report.

In the 12 months to 30 June 2006, four professional conduct committees met throughout the year to investigate complaints about conduct and notification matters. The work of the committees is reported upon later in this report.

In addition to facilitating the investigation of and reporting to the Bar Council on conduct complaints and notifications, the department has been closely involved in handling complaints against barristers referred by the council to the Administrative Decisions Tribunal, arising from conduct complaints made in previous years as well as in the current year. Tables setting out the results of disciplinary cases in the New South Wales Court of Appeal and the Supreme Court and proceedings brought by the council in the tribunal determined in the last four years appear at the end of this report.

Towards the end of the year, the department also reviewed all applications for renewal of practising certificates in relation to which conduct or discipline issues arose. Further, in some cases where barristers failed to complete 10 points of continuing professional development, practising certificates were issued subject to conditions requiring the outstanding points be completed by a certain date. The department monitors compliance with these conditions as well as compliance by barristers who have financial management and/or medical reporting conditions attached to their practising certificates. Just prior to 30 June 2006, 22 barristers held practising certificates subject to financial and/or medical reporting conditions requiring the provision to the council of quarterly reports from approved accountants in whose hands barristers have placed control of their financial affairs and/or reports from medical practitioners.

Listing on the web site of recent Bar Council, tribunal and court decisions

Under s577, the legal services commissioner must keep a register of disciplinary action taken against Australian legal practitioners which is to be made available for public inspection on the Internet. An Australian legal practitioner is an Australian lawyer (that is, a person admitted to the legal profession) who holds a current local or interstate practising certificate. Disciplinary action includes any decision to suspend, cancel or refuse to grant or renew a practising certificate, the removal of a name of a practitioner from an Australian roll, any orders made by a tribunal or court following a finding of unsatisfactory professional conduct or professional misconduct, and the reprimanding or making of a compensation order against a practitioner. The commissioner is required to identify the name of the person against whom disciplinary action was taken and to provide particulars of the action taken.

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Pursuant to s578 of the *LPA 2004*, the council may publicise disciplinary action taken against an Australian legal practitioner including the name and other identifying details of the person against whom the disciplinary action was taken. Disciplinary action taken against barristers is publicised by the council on the association's web site.

Ethical guidance for members

The council neither provides 'ethical rulings' nor advice to members. Rather, it assists members seeking guidance on ethical matters by referring the inquiring member to a silk on one of the professional conduct committees. Discussion with senior counsel is available to assist members in reaching a conclusion. Ultimately however the decision and responsibility must be that of the individual barrister. The department's staff is able to provide the names and telephone numbers of senior members of professional conduct committees who are able to give guidance on ethical matters. The names of senior counsel on committees are also available from the association's web site. As soon as practicable after speaking with senior counsel, a barrister wishing to have a record of his or her discussion with senior counsel should send a letter to the senior counsel recording the facts and guidance given. A copy of the letter may also be sent to the director, professional conduct. An article entitled *Urgent ethical guidance for members*, published in the February 2006 edition of *Bar Brief* (No. 129), is available on the association's web site.

Role of the department

The Bar Council has a statutory obligation to deal with all complaints and notification matters regarding barristers under the *Legal Profession Act 2004* and the *Legal Profession Regulation 2005*. The council's role is monitored by the commissioner, an independent overseer of the council's statutory duties, and ultimately by the attorney general. The association and the commissioner continue to work cooperatively in the referral, investigation and review of disciplinary matters.

The department facilitates the investigation of and reporting to the council on conduct complaints and notification matters. It provides advice and policy support to the council in respect of the administration and carrying out of the council's functions and the preparation of submissions to government on the disciplinary regime of the profession.

The department also facilitates the provision of guidance to members on ethical issues and responds, on a daily basis, to numerous inquiries from the public about the Bar and the conduct of barristers.

Responding to complaints

Members the subject of a complaint are urged to obtain independent advice before responding to any complaint or correspondence from the department and/or the legal services commissioner. Advice may be available through a professional indemnity insurer's solicitors but, if not, then a silk (who is not a member of a professional conduct committee or council) should be approached for advice. Most professional indemnity policies require a barrister to notify his or her insurer on receipt of a complaint.

The policy of the council is to require a barrister to personally sign any correspondence responding to enquiries from the department. Extensions of time will be granted for replies to complaints if such a need is established but the council expects barristers to give priority to responding to conduct complaints.

Members served with notices pursuant to s152 of the *LPA 1987* and s660 of the *LPA 2004* requiring the provision of information and production of documents necessary for the investigation of a conduct complaint made against them should respond to such notices promptly. A barrister who fails to comply with a s152 or s660 notice, without reasonable excuse, is guilty of professional misconduct: s152(4) *LPA 1987*/s676 *LPA 2004*. Such failure can lead to the council making a further complaint against the barrister which may ultimately be referred to the Administrative Decisions Tribunal. Decisions of the tribunal regarding the failure to respond to s152 notices are available on the association's website.

Further, under s672(5) of the *LPA 2004*, the council may on its own initiative, or must, if directed to do so by the commissioner, suspend a local legal practitioner's practising certificate while a failure by the practitioner to comply with a requirement in a notice issued under the *LPA 2004* continues.

Recommended reading for any barrister against whom a complaint is made is listed on the association's web site.

Community and academic members

Each of the investigating professional conduct committees has been privileged to have as participants both academic and community representative members. Three new community members were appointed at the start of 2006 to replace community members whose terms of appointment expired and to meet the number of community members required on each professional conduct committee under the *LPA 2004*.

On Professional Conduct Committee #1, John Freeman, David Kaye and Geraldine Walsh continued to serve as community members. Dorne Boniface from the University of New South Wales continued as the academic representative.

Michelle Sanson of the Faculty of Law at the University of Technology continued as the academic representative on Professional Conduct Committee #2. Michael Branagan, Bronwyn Preston and Mary Werick continued to serve as community members.

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Helga Esamie and Peter Cassuben joined Professional Conduct Committee #3 as community members at the start of 2006. Nicholle Nobel and Ian Fitzgerald continued to serve as community members and Bernard Dunne from the Faculty of Law at the University of Sydney continued as the academic representative.

Andrew Buck of Macquarie University, Division of Law, joined as the academic member on Professional Conduct Committee #4 in July 2005. John Girdwood and Lyndsay Connors continued as community members. Judith Butlin joined as a community member at the start of 2006.

The Bar Council and the association express their gratitude to all community and academic members. All have been enthusiastic participants in the deliberations of the professional conduct committees and their insight is greatly appreciated. The contribution the community and academic members make is integral in maintaining the quality of the Bar's complaint handling process.

Barrister members

The council again expresses its appreciation to all barrister members of the professional conduct committees. All have devoted many hours of their time on a voluntary basis. Their service demonstrates the continued commitment of the profession to ensuring complaints regarding the conduct of barristers are fully investigated and appropriate disciplinary action is taken in the interests of maintaining public confidence in the profession. The participation of barrister members in this process is vital to setting and maintaining appropriate standards and the work of barrister members in this regard is valued highly.



Barristers in Queens Square. Photo: Tamara Voninski/Fairfaxphotos

Committee workload

Notification matters

In the financial year to 30 June 2006, a total of 32 notifications were made. Sixteen notifications related to tax offences, acts of bankruptcy and indictable or serious offences requiring the council to make a determination under s38FC of the *LPA 1987* or s68(3) of the *LPA 2004*. Such determinations must be made by the council within three months of the date on which notification is given to the council. An extension of one month can be sought from the legal services commissioner.

A further 12 notifications were made to the Bar Council in the reporting year 2005-2006. These notifications are not included in the figures in Table 3 as in each case the offence notified was dealt with in the reporting year by way of dismissal under s19B(1)(c) of the *Crimes Act 1914* (Cth), s10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) or the former s556A(1)(a) of the *Crimes Act 1900* (NSW). Offences dealt with by way of dismissal under these provisions (as opposed to discharge) are not required to be disclosed. This is a matter on which the council has made submissions to the attorney general for amendments to be made to the *LPA 2004* and *2005 Regulation* to make this clear.

Conduct complaints

Of the 62 new complaints, 60 were referred to the professional conduct committees for investigation from 1 July 2005 to 30 June 2006 and two were referred back to the commissioner. During the year, the committees investigated and reported to the council in respect of 16 of the new conduct complaints, in addition to a further 40 complaints carried forward from the previous year. Of the total of 56 complaints dealt with by the council during the year, 39 complaints were dismissed pursuant to s155(4) *LPA 1987* or s539(1)(a) *LPA 2004* on the basis that there was no reasonable likelihood that the Administrative Decisions Tribunal would make a finding of unsatisfactory professional conduct or professional misconduct. Four complaints were withdrawn. Six complaints have been referred to the tribunal for hearing and determination. Of the 39 dismissed complaints, 12 have been the subject of an application for review by the legal services commissioner. As at 25 August 2005, the legal services commissioner has upheld the council's decisions in eight matters. No determination has yet been made in relation to the other four matters under review.

During the year, no consumer disputes were referred to mediation, no matters were referred to mediation under s336 or Division 5 of Part 4.3 and the council made no compensation orders under s540(2)(c).

Statistical information collated from the council's investigation of complaints is set out in the tables at the end of this report. The information contained here and in the tables is provided in accordance with ss597 & 700 of the *LPA 2004*.

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Applications to the Legal Profession Admission Board

Professional Conduct Committee #2 reports to the council on applications made to the LPAB for admission or re-admission as lawyers and applications for early declarations under s13 *LPA 1987/s26 LPA 2004*. The committee, having considered the application, makes a recommendation to council to oppose or not oppose the application. The LPAB is advised of the council's resolution and considers this prior to coming to its own conclusion. In 2006, PCC#2 reported to the council on three applications for re-admission and two s13 early declaration applications.

The educative value of the committees' work

The following aspects of a barrister's practice have been identified, via the complaints investigation process, as recurring problem areas.

❖ *Direct access matters*

Rules 74, 75, 76, 77 and 80 of the *New South Wales Barristers' Rules* are particularly relevant in direct access brief matters. The *New South Wales Barristers' Rules* are on the association's web site. The absence of a solicitor to file and serve documents necessitates more vigilance on the part of the barrister to ensure that the client or some other person files and serves court documents.

Direct access matters demand direct, effective and timely communication with clients about the nature of the work the barrister is able to perform, and what work might be better performed by a solicitor in light of the client's expectations. The council urges barristers undertaking direct access work to confirm in writing all telephone conversations with the client and all matters which are discussed in conference. Discussions with opponents should also be communicated to the client. Communication (whether oral or written) needs to be clear and expressed in plain language to avoid the possibility of misunderstandings arising.

It is also imperative that barristers comply with the requirements under the *LPA 2004* regarding costs disclosure to clients in direct access matters.

❖ *Communication with clients*

As always, clear communication and provision of quality service in all matters (whether instructed by a solicitor or acting directly) is likely to lead to fewer misunderstandings and, ultimately, to fewer complaints. One area of particular concern is failure to ensure terms of settlement accurately reflect the agreement reached between parties. Another is failure to ensure that the effect of the terms of settlement is properly explained to clients.

❖ *Courtesy*

Barristers should remain courteous at all times in their dealings with others including clients, other barristers, solicitors, mediators, arbitrators and judicial officers.

Fee recovery assistance

During the year the association received five requests to assist barristers in the recovery from solicitors of unpaid fees, compared to 14 requests in the previous year. A total of \$63,617 was recovered on behalf of members for the financial year ended 30 June 2006. The association was unable to recover fees in three of the 11 matters finalised. Two requests for assistance remain open.

The basis upon which the association can assist in members' fee recovery is set out in an article entitled 'Fee recovery assistance' which was published in the March 2006 edition of *Bar Brief* (No. 130) and which is available on the association's website. Where members were first instructed in a matter on or after 1 October 2005 (when the *LPA 2004* commenced operation), the provisions of Part 3.2 of the *LPA 2004* apply. Where members were first instructed in a matter before 1 October 2005, the provisions of Part 11 of the *LPA 1987* apply. Familiarity with the new costs disclosure provisions in the *LPA 2004* is essential. Members should be aware that the disclosure obligations under the *LPA 2004* are more onerous than under the *LPA 1987* and that infringement of the *LPA 2004* provisions may amount to professional misconduct or unsatisfactory professional conduct.

The association has a panel of solicitors to which members can be referred should the association's efforts be unsuccessful in recovering fees from solicitors. The panel undertakes fee recovery work for barristers at reduced rates. Enquiries about the rates charged and all enquiries about fee recovery should be made to the Professional Conduct Department.

Greg McNally as the fees convenor is consulted about difficult matters. The association is, as always, indebted to McNally for his continued assistance in this area.

Professional conduct statistics

Table 1

Results of disciplinary cases in the New South Wales Court of Appeal/Supreme Court determined in the years ended 30 June 2005 and 30 June 2006

New South Wales Court of Appeal / Supreme Court

Financial Year 2006		Orders
26.04.06	Morrissey, Joseph D	Morrissey's application for admission as a lawyer to Supreme Court of NSW rejected. 3.05.06: Morrissey declared not a fit and proper person for admission.
28.02.06	Davison, William R	Declaration Davison practised as a barrister without holding pc in breach of LPA. Injunction restraining Davison from acting as barrister. 19.07.06 Declaration Davison guilty of professional misconduct.
Financial Year 2005		Orders
21.02.05	Abdul-Karim, Michael S	Abdul-Karim's appeal against ADT decision of Appeal Panel (to dismiss his appeal against ADT order for removal of name from roll) dismissed.

Table 2

Results of disciplinary action taken by the Bar Council in the Administrative Decisions Tribunal determined in the years ended 30 June 2005 and 30 June 2006

Administrative Decisions Tribunal

Financial Year 2006		Previous Findings	Penalty
08.03.06	Meakes, Timothy	2 x upc	Reprimand. Appeal by the Bar Council to Court of Appeal.
03.02.06	Osei, Kofi A	pm & upc	No penalty orders yet made. Application by Osei to re-open case.
05.04.06	Hart, John P	pm & 4 x upc	Reprimand. Fine \$4,000.
07.11.05	Davison, William R	pm	Removal name from Roll. Appeal by Davison to Court of Appeal.
08.02.06	Sahade, Marcel V	pm	Reprimand & fined \$10,000. Appeal by the Bar Council to Court of Appeal, cross appeal by Sahade.
09.01.06	Santisi, Frank	upc	Reprimand & undertake modules Engagement, Management and Maximising Costs Recovery and Risk Awareness conducted by LawCover.
Financial Year 2005		Previous Findings	Penalty
08.09.04	Brezniak, Daniel James	upc	Reprimand.
31.08.04	Donnelly, Bruce Leicester	pm	PC not to issue before 26.02.05.

Professional conduct statistics - continued

Table 3

Notifications of offences and acts of bankruptcy made to the Bar Council between 1 July 2005 and 30 June 2006 (compared to previous year)

	2005-2006 (By barristers and applicants for pc)	2004-2005 (By barristers)
Tax offences	8*	8 [^]
Acts of bankruptcy	5 [#]	5
Indictable/serious offences	3	2
Prescribed concentration of alcohol	10 ^{^a}	6 ^{+‡}
Traffic offences	3	0
Fare evasion	1	0
Other	2 [~]	1
Total	32₋	22

* Of the eight notifications of tax offences, one was made by an applicant for a practising certificate. Of the remaining seven notifications made by barristers, one barrister notified the Council of eight tax offences and one barrister notified the Council of three tax offences. These have been treated as one notification of tax offences in each case.

Of the five notifications of acts of bankruptcy, two were made by applicants for a practising certificate. Of the remaining three notifications made by barristers, one barrister notified the Council of the execution of a s188 authority for the purposes of entering into a Part X agreement. The Part X proposal was rejected and the barrister then notified the Council of the presentation of a debtor's petition. This has been treated as one act of bankruptcy.

^a Of the 10 notifications of prescribed concentration of alcohol offences, four were made by applicants for a practising certificate. Of the remaining six notifications made by barristers, one barrister also notified the Council of three tax offences and another barrister also notified a tax offence and a traffic offence. These have been treated as separate notifications.

[~] Both notifications of other offences were made by applicants for a practising certificate.

- A further four notifications of tax offences (one of which was a notification of 6 tax offences), one notification of an indictable offence, three notifications of PCA offences, two notifications of traffic offences and two notifications of other offences were made to the Bar Council by barristers in the reporting year 2005-2006. These notifications are not included in the figures as in each case the offence notified was dealt with in the reporting year by way of dismissal under s19B(1)(c) of the *Crimes Act 1914* (Cth), s10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) or the former s556A(1)(a) of the *Crimes Act 1900* (NSW). Offences dealt with by way of dismissal under these provisions are not required to be disclosed.

[^] Of the eight notifications of tax offences, one barrister notified the Council of five tax offences, one barrister notified four tax offences, one barrister notified three tax offences and two barristers notified two tax offences. These have been treated as one notification of tax offences in each case. Two barristers made two notifications of tax offences on different dates. These have been treated as separate notifications.

^{+‡} Of the six notifications of prescribed concentration of alcohol offences, one barrister notified the Council of two PCA offences, an indictable offence and one other offence. These have been treated as separate notifications.

Table 4

Number of complaints received by complaint type between 1 July 2005 and 30 June 2006 (compared to previous year)

Complaint type	2005-2006	2004-2005
Acting contrary to/failure to carry out instructions	2	0
Acting without instructions	2	2
Breach of s152 <i>Legal Profession Act 1987</i>	2	1
Breach costs disclosure provisions Part 11 <i>Legal Profession Act 1987</i>	4	2
Breach of <i>Barristers' Rule 35</i> (Clyne case)	4	1
Breach of <i>Barristers' Rule</i> (Other)	10	2
Breach of confidentiality	3	2
Conflict of interest	1	1
Conspiracy to pervert course of justice	1	2
Delay/failure to provide chamber work	1	1
Failure to adduce evidence available	2	5
Failure to advise properly or at all	1	1
Failure to appear	1	2
Failure to explain terms of settlement (properly or at all)	3	1
Incompetence in court	3	1
Incompetence in & out of court	1	4
Incompetence out of court/in legal practice	1	2
Misleading conduct/dishonesty	11	6
Obstruct/delay proceedings	0	1
Other unethical conduct	3	3
Over zealous cross-examination (harranging a witness)	1	0
Overcharging and/or overservicing	2	2
Personal conduct	2	2
Practising without a practising certificate	0	1
Pressure to change plea/plead guilty/to settle	0	1
Rudeness/discourtesy	1	1
Total	62	47

Professional conduct statistics - continued

Table 5

Complaints received between 1 July 2005 and 30 June 2006 by complainant type (compared to previous year)

	2005-2006	2004-2005
Bar Council	7	4
Barrister	1	1
Client/former client	17	25
Instructing solicitor	6	2
Legal services commissioner	0	2
Government department/statutory body	1	0
Opposing client	11	6
Opposing solicitor	12	2
Witness	3	2
Police	0	1
Other	4	2
Total	62	47

Table 6

Total number of complaints remaining under investigation as at 30 June 2006 (compared to previous year)

	2005-2006	2004-2005
Less than six months	27	23
Between six and less than nine months	8	9
Between nine and less than twelve months	9	6
Between twelve and less than eighteen months	1	8
Between eighteen and less than twenty four months	3	4
Twenty four months and over	4	3
Total	52	53

Table 7

Results of investigations of complaints under Part 10 of the *Legal Profession Act 1987* and Chapter 4 of the *Legal Profession Act 2004* commenced and completed between 1 July 2005 and 30 June 2006 (compared to previous year)

	2005-2006	2004-2005
Result of investigation		
Complaint under investigation	44	38
Withdrawn – s140(1) <i>LPA 1987</i> /s512(1) <i>LPA 2004</i>	3	2
Dismiss – s139(1)(a) <i>LPA 1987</i>	1	0
Dismiss – s155(4) <i>LPA 1987</i> /s539(1)(a) <i>LPA 2004</i>	8*	7
Dismiss – s155(3)(b) <i>LPA 1987</i>	1	0
Refer to tribunal (pm) – s155(2) <i>LPA 1987</i>	1	0
Refer to tribunal (upc/pm) – s155(2) <i>LPA 1987</i>	1	0
Reprimand – s155(3)(a) <i>LPA 1987</i>	0	0
Caution – s540(2)(a) <i>LPA 2004</i>	1	0
Referred to LSC	2	0
Total	62	47

* As at 30 June 2006, no applications for review by the legal services commissioner were made in respect of decisions made by the Bar Council in 2005-2006 to dismiss a complaint pursuant to s155(4) *Legal Profession Act 1987* or s539(1)(a) *Legal Profession Act 2004*.

Professional conduct statistics - continued

Table 8

Results of investigations of complaints under Part 10 of the *Legal Profession Act 1987* and Chapter 4 of the *Legal Profession Act 2004* carried forward or commenced and completed between 1 July 2005 and 30 June 2006 (compared to previous year)

	2005-2006	2004-2005
Result of investigation		
Complaint under investigation	52	53
Withdrawn – s140(1) <i>LPA 1987</i> /s512(1) <i>LPA 2004</i>	4	6
Dismiss – s139(1)(a) <i>LPA 1987</i>	2	0
Dismiss – s155(4) <i>LPA 1987</i> /s539(1)(a) <i>LPA 2004</i>	39*	32+
Dismiss – s155(3)(b) <i>LPA 1987</i>	1	0
Dismiss – s155A <i>LPA 1987</i>	1	1
Refer to tribunal (pm) – s155(2) <i>LPA 1987</i>	1	2
Refer to tribunal (upc) – s155(2) <i>LPA 1987</i>	0	1
Refer to tribunal (upc/pm) – s155(2) <i>LPA 1987</i>	5	2
Reprimand – s155(3)(a) <i>LPA 1987</i>	2	4
Caution – s540(2)(a) <i>LPA 2004</i>	1	0
Total	108	101

* In the reporting period 2005-2006, 12 decisions made by the Bar Council in 2005-2006 to dismiss a complaint pursuant to s155(4) of the *Legal Profession Act 1987*/s539(1)(a) of the *Legal Profession Act 2004* were the subject of an application for review by the legal services commissioner. As at 30 June 2006, seven of those decisions were upheld by the LSC. After 30 June 2006, a further one of those decisions was upheld by the LSC. As at 25 August 2006, four decisions remain under review. In the reporting period 2005-2006, one application for review by the LSC was also made in respect of a decision made by the Bar Council in 2004-2005 to dismiss a complaint pursuant to s155(4). That decision was upheld by the LSC.

+ In the period 2004-2005, 12 decisions made by the Bar Council in 2004-2005 to dismiss a complaint pursuant to s155(4) of the *Legal Profession Act 1987* were the subject of an application for review by the legal services commissioner. As at 30 June 2005, four of those decisions were upheld by the LSC. In the reporting period 2005-2006, the remaining eight decisions were upheld by the LSC.

Table 9

Number and type of complaints in respect of which proceedings were instituted in the Administrative Decisions Tribunal by the Bar Council between 1 July 2005 and 30 June 2006 (compared to previous year)

	2005-2006	2004-2005
Proceedings instituted in the Tribunal by the Bar Council		
Conspiracy to pervert course of justice	1	1
Breach of s152 of <i>LPA 1987</i>	1	0
Breach of <i>Barristers' Rule 36</i>	1	0
Incompetence in court	0	1
Misleading conduct/dishonesty	1	0
Other unethical conduct	0	2
Overcharging	0	1
Professional misconduct arising from tax offences/bankruptcy	0	1
Total	4	6