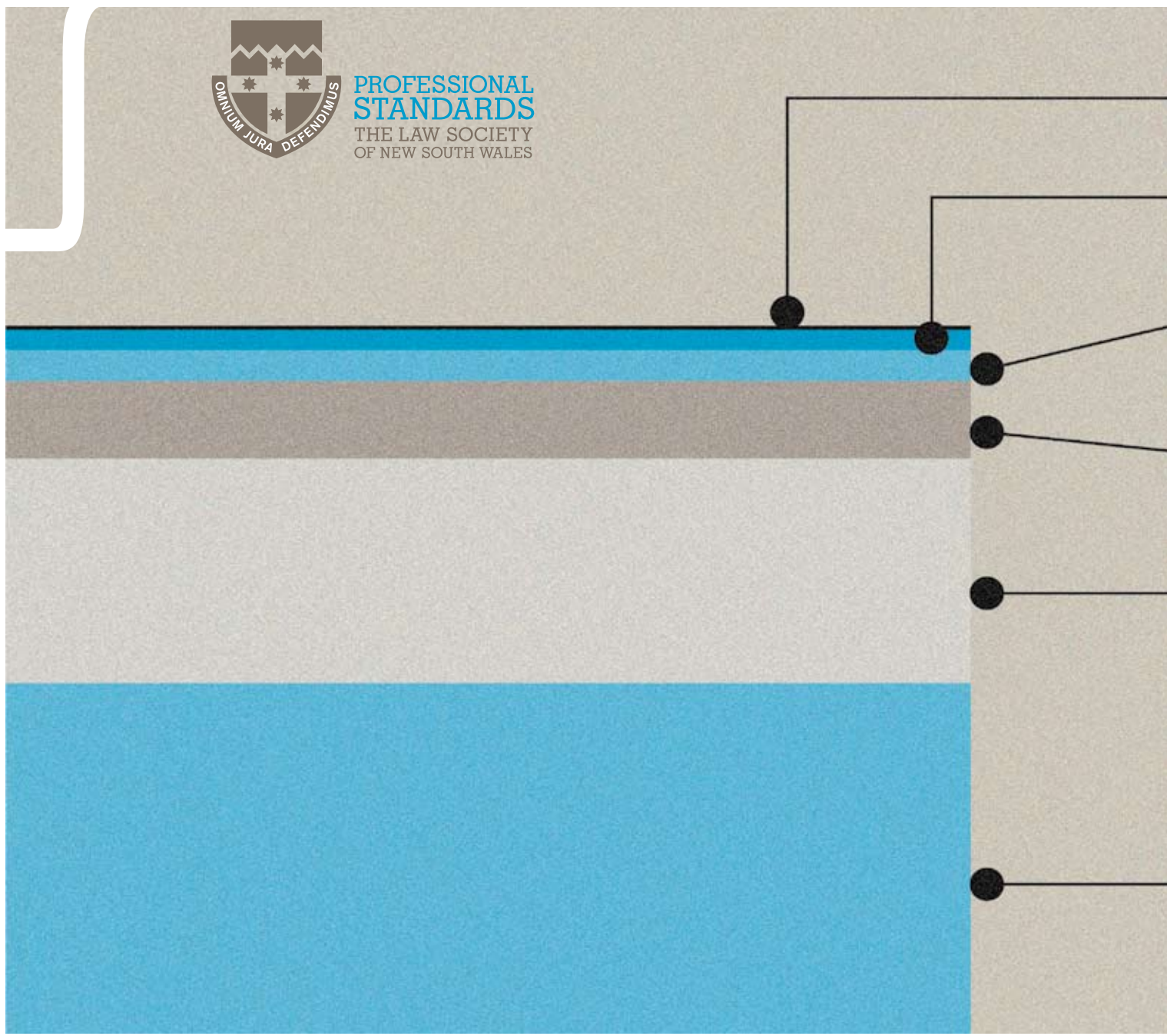


Professional Standards 2010 Annual Report



**PROFESSIONAL
STANDARDS**
THE LAW SOCIETY
OF NEW SOUTH WALES



Professional Standards 2010 Annual Report



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STANDARDS**
THE LAW SOCIETY
OF NEW SOUTH WALES



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**PROFESSIONAL
STANDARDS**
THE LAW SOCIETY
OF NEW SOUTH WALES



CONTENTS

4	Introduction
6	President's Message
8	The Year in Review
11	A Statistical Overview
12	Complaints Received
19	Complaint Resolution and Investigation
22	Reviews by the Legal Services Commissioner
23	Complaint Management and Performance Indicators
25	Disciplinary Action and Intervention
34	Unqualified Practice
36	Disclosure and Show-Cause Events
38	Legal Costs
41	Ethics
44	Regulatory Compliance Support
47	Appendix
48	Table 1 Complaints opened, by type of complaint, 2007 - 2010
49	Table 2 Complaints opened, by type of complainant, 2007 - 2010
49	Table 3 Complaints opened, by solicitor type, 2007 - 2010
50	Table 4 Complaints opened, by practice region
51	Table 5 Complaints closed, by result, 2007 - 2010
52	Table 6 Complaints opened and closed within the same period
53	Table 7 Detailed breakdown of closures for key complaint categories
54	Table 8 Number and type of proceedings instituted at the Administrative Decisions Tribunal
57	Table 9 Tribunal orders given in disciplinary proceedings
57	Table 10 Active solicitor statistics at 30 June 2010
58	Table 11 Amounts expended by the Public Purpose Fund and Fidelity Fund on Regulation

INTRODUCTION

*“Promoting values of integrity, ethics
and rigorous professional standards”*

The Law Society of New South Wales, together with the Legal Services Commissioner, works within the statutory requirements of the *Legal Profession Act 2004* (LPA 2004) to co-regulate the solicitors of New South Wales. Regulation of the profession has a twofold effect. Not only does it help preserve and promote the professional standards of the legal profession, it also serves to protect consumers of legal services, ensuring they receive quality legal service.

Under its powers found in Chapter 4 and Part 2.2 of the LPA 2004, the Law Society's Professional Standards Department (PSD) investigates complaints which have been made against solicitors and associates of law practices and investigates allegations of unqualified practice. Many of the complaints dealt with by the PSD involve serious or complex conduct issues and necessitate thorough, detailed investigation and reporting to the Professional Conduct Committee (PCC). Other matters referred from the Legal Services Commissioner can be of a consumer nature as opposed to conduct issues where seeking a resolution of the complaint is the more appropriate option. Sometimes facilitating a meeting between the complainant and the solicitor to discuss resolution, or facilitating negotiations between the complainant and the solicitor by correspondence, is sufficient to have the issue resolved. The Department also performs an important litigation role should a solicitor be referred to the Administrative Decisions Tribunal or Court. In undertaking these tasks, the Department adheres to the essential elements of investigation: that it be fair and open, impartial, expeditious and thorough.

The work of the PSD is much wider than just investigation and litigation of complaints; it also provides advice, assistance and education to the profession through its ethics, costs and regulatory compliance sections. It deals with show-cause events, external intervention, the recovery of regulatory costs and has a role in monitoring compliance. Under the co-regulatory regime, the Department works closely with the Office of the Legal Services Commissioner (OLSC) on complaints, reviews, policy development and streamlining the internal administrative processes of both offices to ensure compatibility.

The PSD, as part of its statutory reporting obligations under s.700 of the LPA 2004, presents its Annual Report for 2009/2010. The report provides an overview of the work undertaken by the Department in relation to each of its key result areas. The statistical analysis in this report relates to data collected and maintained by the Law Society and the PSD and as such provides a reliable, informative account of conduct issues affecting the legal profession in New South Wales. It also assists management in developing effective strategies for complaint handling, practice management, education and policy development.

While the complaints data reported upon by the Law Society is a good indication of complaint trends within the profession it should be read with caution in respect to making any generalised statements about the “health” of the legal profession. These statistics should be read in conjunction with those published by the Legal Services Commissioner in his Annual Report in order to obtain a more comprehensive and accurate picture of complaints regarding the legal profession within New South Wales.

Our Mission

The mission of the Professional Standards Department is to:

- Promote and improve professional standards
- Regulate solicitors
- Implement the law relating to professional standards
- Conduct timely and impartial investigations
- Resolve conflict
- Protect the public
- Provide timely and practical guidance to the profession

Our Values

- Integrity
- Personal and professional effectiveness
- Teamwork
- Motivation to achieve

What We Do

The Department has five major tasks: investigation, resolution, prosecution, education and support, which it undertakes by:

- Meeting the constraints of the PSD annual budget for Physical and Human Resources and the requirements of the Trustees of the Public Purpose Fund.
- Conforming to the requirements of the Legal Profession Act.
- Active practice and case management within statutory timeframes.
- Reporting to the Attorney General and public of New South Wales.
- Constantly reviewing its operation and performance.
- Working cooperatively with the Office of the Legal Services Commissioner and corresponding authorities in other jurisdictions.
- Providing timely support and education in the areas of Costs, Ethics and Regulatory Compliance.

Core Business Activities

- Management and Policy
- Complaint (Chapter 4) Investigation
- Litigation
- Unqualified Practice (Part 2.2) Investigation
- Disclosures
- Intervention
- Education, Information and Support
 - Ethics
 - Costs
 - Regulatory Compliance
 - Administrative Support

PRESIDENT'S MESSAGE

A central and vital raison d'être of the Law Society of New South Wales is to educate solicitors and enforce the regulatory obligations that ensure they maintain high professional standards. The maintenance of high professional standards is important and essential to solicitors retaining the continued confidence of the community. The Professional Standards Department (PSD) plays an important role in carrying out the Law Society's statutory role.



Mary Macken

PSD not only educates solicitors on topics including ethical behaviour and their legal obligations, it also investigates complaints made to the Legal Services Commissioner by persons who may be dissatisfied with a solicitor's conduct.

During 2009/2010, the PSD has excelled in this role.

Its outstanding commitment has helped ensure the profession continues to maintain the trust of the general community and the Courts.

As shown in this report, the past year has been one of considerable activity for the PSD. While complaints against solicitors, received by the Legal Services Commissioner, fell by some 6.5% compared to last year, the proportion of these complaints that the Commissioner referred to the Law Society for investigation increased over the same period. As a result, complaints investigated by the Professional Standards Department went up by 6% to a total of 680 for the year. The diligent work of the PSD staff has ensured that completed complaints (closed files) also increased over the year, up 20% over the previous year.

On the other hand, I would point out that there appears to be a need for some solicitors to improve their communicating arrangements with clients. There was, as reflected by the statistics in this report, a substantial increase in the number of complaints relating to issues of failing to communicate adequately with their clients.

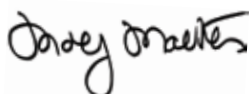
It is of concern that any solicitor suffers the ultimate professional indignity of having their name struck from the roll of local lawyers. In the last year the names of two solicitors were struck; a reduction from the previous year. I hope that the PSD statistics contained in this report will act as a reminder to the community of the Law Society's commitment to maintain the highest ethical standards within our profession. They should also reinforce to solicitors the need for compliance with their statutory, ethical and personal obligations, so that the integrity and high standing of the profession cannot be challenged.

Debate regarding the proposed national reform of the legal profession reached its zenith this year and was complemented by the excellent work of the regulatory staff of the Law Society under the Director, Statutory Obligations, Charles Cawley and Professional Standards Manager, Ray Collins.

Further on the topic of national reform, the Law Society's Ethics Committee and the Rules Sub-committee made a substantial and invaluable contribution to a new draft set of National Rules. These Rules could well govern the behaviour of the legal profession nationally long into the future.

At this time, when the legal profession is facing ever-increasing scrutiny, it is appropriate to remind solicitors of the necessity for all of us to be vigilant and to continue to work to the highest ethical standard to maintain our high reputation in the community.

I congratulate you on a good year.



Mary Macken
President
The Law Society of New South Wales

THE YEAR IN REVIEW

“In anticipation of national legislation – embarking on a process of preparation, information and advocacy”

National Law and National Conduct Rules

The past year has marked significant involvement by staff of the Professional Standards Department in relation to the draft National Law which was published for consultation in May 2010. The National Law aims to promote simplification, uniformity and consistency in regulation across all jurisdictions. The contribution by the PSD involved discussion, review and advocating recommendations on behalf of the Law Society of New South Wales. It also involved close scrutiny of the draft legislation and making submissions as to amendments.

Work by the Ethics Rules sub-committee also continued in preparation for the introduction of the National Model Rules (Practice Conduct Rules). Numerous submissions were made and extensive work undertaken to ensure that a set of rules is developed that is appropriate and applicable across all jurisdictions. Work continues in relation to consultation on the published draft rules.

Complaint Investigations

Notwithstanding that the number of written complaints about solicitors received by the OLSC fell by 6.5% over the past year, complaints referred to the PSD by the OLSC increased as a proportion during the period. This year, of the complaints received by the OLSC, 23% were referred to the Law Society. Last year, 19% of complaints received into that office were referred to the Law Society. Overall, the number of complaints investigated by the Law Society (including those complaints made by the Law Society) has gradually increased over the past four years, up 26% since 2007.

Complaints that have shown the most significant increase over the past year relate to areas of communication and service, with failing to carry out a client's instructions accounting for the vast majority of complaints within this category.

Cost and payment issues have also contributed to the increase in complaints investigated, and covered such conduct as overcharging, failing to provide a detailed account and providing no costs disclosure to the client.

Complaint Closures Increase

Though the number of complaints opened in the Department increased, the number of complaints closed increased by an even higher rate. This year the PSD closed 20% more files than last year and reversed the trend of last year by closing 33 more complaint files than it opened. Some noteworthy trends in the way complaints were handled this year include a 109% growth in cautions issued to solicitors (up from 11 to 23).

While the practice of cautioning a solicitor has steadily increased since this option was introduced in the *Legal Profession Act 2004*, the issue of a reprimand has decreased over the corresponding time.

Also increasing over the past five years has been the number of complaints summarily dismissed under s.511 of the LPA 2004. These are complaints dismissed by the Professional Conduct Committee (PCC) for reasons such as they are deemed vexatious, frivolous or lacking in substance, they are satisfied that it is not in the public interest to pursue the complaint (e.g. the solicitor may already have been struck off) or where further particulars of the complaint are not forthcoming.

Last year 36 complaints were dealt with in this manner; this year 57 such complaints were summarily dismissed (up 58%).

Recovery of Regulatory Costs

The PSD has had another successful year in recovering costs related to costs orders made by the Courts and Tribunals and costs associated with Investigators' and Receivers' fees. This year a total of \$401,543.03 was recovered. The majority of recovered money related to external interventions (\$271,919.46) with the bulk of these arising from the recovery of Receivers' Fees and Investigators' Fees (\$123,032.91 and \$107,871.31 respectively). Court costs owed to the Law Society also made up a substantial amount of the recovered money, \$101,142.90, while fines recovered to 30 June 2010 amounted to \$22,000.

A formal process of continual monitoring and assessment of costs and the establishment of individual payment arrangements for some solicitors has contributed to the regular acquisition of outstanding costs. To expedite the payment of outstanding costs in some instances, a Deed was entered into; 13 such new Deeds were entered into over the 2009/2010 year, with 30 Deeds or payment arrangements in place as at 30 June 2010.

Regulatory Compliance Support Unit

The Regulatory Compliance Support Unit provides an invaluable support service to legal practitioners, addressing all regulatory and compliance enquiries by providing information, assistance and support on a confidential basis. The work of the Unit continues to expand and this year was no exception. Enquiries handled by the two Regulatory Compliance solicitors went up by 12% to 1403 for the year; this included 73 field visits to law practices. In addition to this, 26 law practices sought a Compliance Analysis Review conducted by a Regulatory Compliance solicitor, confidentially and free of charge.

The reviews provide practical assistance and guidance in the areas of management systems and compliance strategies and cover a broad range of issues that law practices deal with on a daily basis. Feedback from those who participated has been positive with practitioners commenting on the relevance of the programme, the usefulness of suggestions made, with recommendations having been implemented, and the non-threatening approach which allowed solicitors to review their practice without feeling judged.

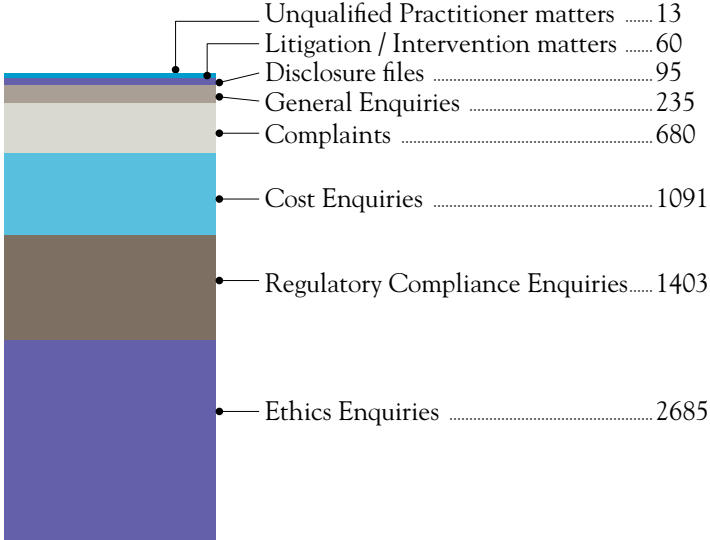
In addition to this, the Regulatory Compliance Solicitors presented 35 seminars across the State, many to regional solicitors who appreciate the personal assistance and practical guidance offered by the Unit.

Move to New Premises

Apart from the usual business activities that signified a productive year, the Department was involved in moving to new off-site premises while the Law Society building in Phillip Street undergoes major refurbishment. The lead-up to the relocation presented an opportunity to review years of material. It was a major undertaking with upwards of 500 boxes archived, recorded and sent to off-site storage.

The new office arrangements have also encouraged the PSD to review its work processes. It was a period of great change and readjustment but staff adapted to the new work environment and contributed to a productive year.

Work undertaken by PSD 2009 – 2010



A STATISTICAL OVERVIEW

- 643 complaint files were opened, 10% more than the previous year.
- 680 complaint files were opened, 6% more than the previous year.
- Of the 680 complaint files opened, 608 related to issues of conduct and 72 were consumer disputes which did not raise misconduct as an issue.
- 570 (84%) of the 680 complaints opened were referred from the Office of the Legal Services Commissioner (OLSC).
- The Law Society made 110 complaints under s.504 of the *Legal Profession Act 2004*, down 18% from last year.
- The OLSC received 2467 written complaints against solicitors, 174 (6.5%) less than the previous year. 570 (23%) of these were referred to the Law Society for investigation or resolution; up from 19% referred in the previous year.
- A total of 713 complaints were finalised over the year, 20% more than the previous year.
- 436 of the complaints closed were dealt with by the Professional Conduct Committee (PCC). 271 (62%) were dismissed by the Committee on the basis that there was no finding of professional misconduct (PM) or unsatisfactory professional conduct (UPC); 107 (24.5%) resulted in a finding of PM or UPC for which the solicitor was cautioned, reprimanded or referred to the Tribunal.
- Average turnaround time for complaint investigation was 9.8 months and the number of files over two years old at 30 June 2010 was 45, up by 1 compared to last year.
- 10 solicitors were reprimanded, 27 were referred to the Administrative Decisions Tribunal and 9 solicitors had their practising certificate refused, cancelled or suspended.
- 2 solicitors had their names removed from the Local Roll by order of the ADT.
- 2685 solicitor enquiries were taken by the Ethics Section, up 8%.
- 1091 solicitor enquiries were dealt with by the Legal Costs Solicitor, up 2%.
- 1403 solicitor enquiries were directed to the Regulatory Compliance Unit, up 12%.

COMPLAINTS RECEIVED

“Though the number of complaints against solicitors received by the OLSC fell over the year, the proportion of these referred to the Law Society for investigation increased”

The Process

When dealing with complaints against solicitors, the Law Society works within the regulatory framework set out in Chapter 4 of the *Legal Profession Act 2004* (LPA 2004). This legislation dictates the making and determination of complaints.

The majority of complaints that are referred to the PSD generally involve more serious or complex conduct issues that require a detailed investigation and report to the Professional Conduct Committee.

Though the vast majority of complaints referred to the Law Society are those that require investigation into conduct allegations, the Legal Services Commissioner can also make the decision to retain and investigate complaints in that Office. Similarly, he may choose to refer consumer-based complaints to the Law Society for resolution rather than investigation.

Where the conduct complained of is such that resolution of the complaint is an appropriate option, then this course of action is preferred. Often facilitating negotiations between the complainant and the solicitor is sufficient to have the issue resolved without resorting to a lengthy investigation or a formal mediation. These are usually matters of a consumer nature (referred by the OLSC as consumer disputes) as opposed to conduct complaints; though some conduct complaints do result in a resolution or a withdrawal of the complaint.

The Department’s solicitors investigate conduct complaints and report the facts and evidence disclosed by the investigation to the PCC which acts as the delegate of the Council of the Law Society in the complaints process.

The standard of proof applied by the Administrative Decisions Tribunal is that of “reasonable satisfaction” that the legal practitioner is guilty of the allegations of unsatisfactory professional conduct or professional misconduct. The PSD solicitors must investigate to this standard.

The essential elements of an investigation are that it must be fair and open, impartial, expeditious and thorough. The complaints dealt with by the Department fall into two main categories: those made by the public and referred by the OLSC, and complaints made by the Law Society under s.504 of the LPA 2004.

Complaints referred from the Office of the Legal Services Commissioner and Law Society Complaints

The OLSC, in the first instance, receives written complaints regarding the conduct of practitioners. The majority of complaints referred from the OLSC to the Society are those involving the more complex conduct issues that require investigation under Chapter 4 of the Act; however, a number of consumer disputes are also referred for attempted resolution.

The Law Society will make a complaint under Section 504 of the LPA when possible issues of conduct, which may not have been raised in the original complaint, appear in the course of an investigation.

Matters referred by the Law Society Registry may be investigated as Law Society complaints under s.504, particularly where there appears to have been a breach of an undertaking, or a solicitor practising outside the conditions placed on their

certificate. Matters raised by Judicial Officers or Court Registrars regarding the conduct of a solicitor may also be dealt with by the initiation of a Law Society complaint.

Matters referred from the Law Society's Trust Account Department may also be investigated as Law Society complaints. Most commonly these arise from an apparent failure to account or failure to comply with the record-keeping requirements of the LPA and Regulation. Over the year 84 such reports were forwarded to the PSD for further action.

STATISTICS

- Complaints against solicitors made to the OLSC fell this year by 6.5%. Between 1 July 2009 and 30 June 2010 the OLSC received a total of 2467 written complaints.
- Of the complaints received by the OLSC, 570 or 23% were referred to the Law Society. Overall this is an increase from the 19% referred the previous year. 608 complaints were forwarded for investigation into conduct and 72 were referred as consumer disputes.
- Of the 680 complaints opened by the Law Society, those referred by the OLSC constituted 84%. Last year they constituted 79% of all complaints. As complaints made to the OLSC fell generally, the increased proportion can be attributed to the fact that the OLSC dealt with less of the complaints received and referred more conduct complaints for investigation by the Law Society.
- Following from the above observation, the proportion of consumer disputes (of complaints referred by the OLSC) dropped this year to 13%. Last year they constituted 15% and the year before 19% of total complaints referred.
- Over the year, the Society returned 48 complaints to the OLSC. These included complaints for which the Society had no jurisdiction, complaints deemed to be out of time or matters for which it would be more appropriate for the OLSC to conduct the investigation.
- Over the period 2009/2010 Law Society complaints fell by 17% to 110 complaints, which accounted for 16% of total complaints. The large number of complaints made last year was not repeated this year. Those issues of conduct which may lead to a Law Society complaint being made, breaches of an undertaking given to the Society or practising without a certificate, fell generally. Additionally, there were 28% less complaints relating to trust account breaches of the Legal Profession Act, these also being a catalyst for complaints made by the Law Society.

Types of Complaint

For a broader analysis, the complaints received are grouped into five major areas of conduct – personal conduct, cost/payment issues, communication/service, non-compliance and trust account issues. A detailed list of each can be found at Table 1 in the Appendix.

Personal Conduct

Complaints categorised as “personal conduct” encompass such things as conflict of interest, misleading behaviour, breaching confidentiality, negligence and general unethical behaviour. 45% of complaints opened in the 2009/2010 period related to conduct falling within this category.

The top three areas of complaint after “unethical conduct” (a catch-all category used to cover a variety of issues raised which do not fit into any of the existing classifications and which accounts for 24% of total complaints) were misleading behaviour (7% of total complaints), negligence (6%) and conflict of interest (4%). While there was an increase in complaints about breach of confidentiality (up from 2 to 8), complaints relating to communicating with a client of another solicitor halved (from 10 to 5) and complaints of threatening behaviour dropped from 7 to only 1 this year.

Communication and Service

These complaints range from failing to communicate with clients, to discourtesy and delay, and make up 14% of total complaints this year. As a group, this category accounted for the largest increase in complaints made, up 40% from last year, the majority of these arising from a significant growth in complaints relating to the solicitor failing to carry out the client’s instruction. These went up from 14 to 39 complaints over the 2009/2010 period and account for 6% of all complaints.

Costs and Payment

Complaints relating to costs and payment issues, including failure to pay third party, overcharging, providing no costs disclosure and no detailed account, accounted for 11.2% of complaint investigations. Compared to last year these complaints increased 29%. Within this category the two areas that showed the greatest increase were complaints relating to a solicitor failing to provide a detailed account increasing from 4 to 12 for the year, while overcharging complaints rose from 8 to 14.

Non-compliance

Non-compliance complaints cover such issues as solicitors not complying with an undertaking, not complying with a s.660 (LPA) Notice, practising without a practising certificate or some other form of non-compliance with the Legal Profession Act or Regulations. Together these complaints totalled 69, representing 10% of all complaints. As a group, though, they have increased 7.8% since the last reporting period. Not complying with an undertaking remains the most common grounds for complaint though numbers did fall this year from 29 to 20. Practising without Certificate complaints also fell, by 25% to 12 for the year. Conversely, complaints about solicitors investigated for general non-compliance of the Legal Profession Act rose from 8 to 15.

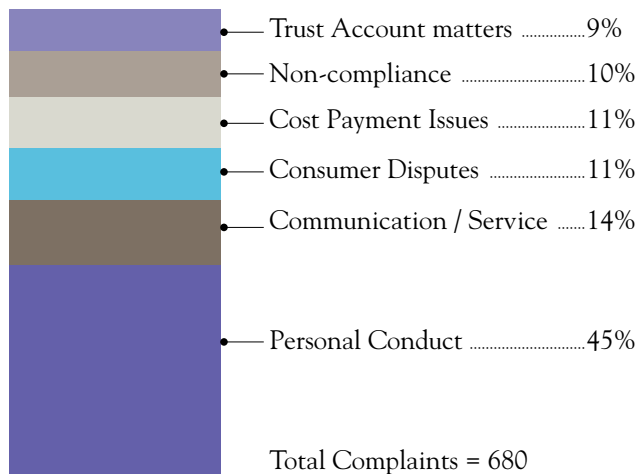
Trust Accounts

Trust account matters (including breaches of the sections of the Legal Profession Act and Regulations relating to trust accounts and misappropriation) ranked fifth and contributed to 9% of complaints. While complaints of misappropriation almost doubled to 17 for the year, encouragingly complaints arising out of trust money breaches and a failure to account both fell by 28% and 35% respectively. As a total of all complaints received, this category of complaint fell overall, by 14%, which also reflects the drop in Law Society complaints made as many do arise out of trust breaches identified by the Society’s Trust Account Department.

Consumer Disputes

72 files were opened as consumer disputes, matters which did not raise issues of conduct and are considered capable of early resolution. Such things as third-party payment disputes and delays in communication can often be resolved by informal mediation, as simple as a phone call, without the need to undertake a formal investigation. Facilitating an outcome to the satisfaction of the disputing parties negates the need for a protracted investigation and often an apology or explanation can resolve the dispute before it escalates. As a proportion of complaints handled by the Law Society, consumer disputes fell from 11.6% last year to 10.5% of total complaints this year.

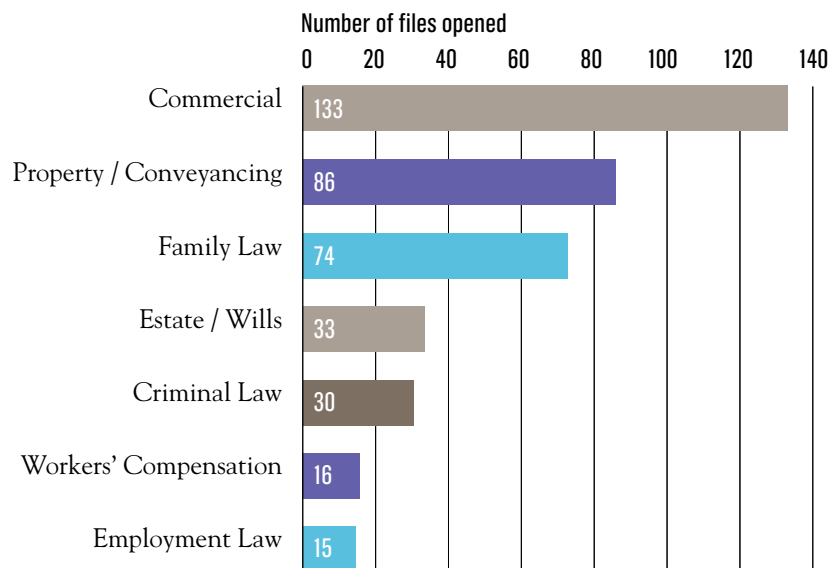
Major Complaint Categories



From the identification of conduct issues, several areas of practice emerge as the areas which give rise to most complaints. The chart below illustrates the main types of legal matters that generate the complaints. Commercial law continues to be the dominant area of law from which most complaints arise, followed by property and conveyancing and family law, and this generally reflects the practice of law. The 2009/2010 practising certificate survey undertaken by the Law Society indicated that the most dominant areas of practice overall were Commercial Law (30.5%) and Conveyancing/Real Property (28.9%). Family Law ranked the seventh most common area of practice (15.9%).

However, the survey also looked at firm size and area of practice and these statistics more closely reflected the situation relating to complaint numbers. In firms with fewer than five partners (i.e. those which attract the majority of complaints), the areas of practice most commonly reported were Conveyancing/Real Property, Wills and Estates, Family Law and Criminal Law.

Area of Law



Source of Complaints

The complaints dealt with by the PSD come from a variety of sources. They comprise those made by members of the public and referred by the Legal Services Commissioner and those made by the Law Society. Clients or former clients of solicitors have historically accounted for the majority of complaints investigated by the Law Society. Complaints, however, can also be made by persons other than “a client” and are classified as third party or third party (other side) complainants. These can include barristers, experts, doctors or parties on the other side of a legal transaction or proceedings, and relate to such things as a lack of advice or communication, non-payment of fees or a conflict of interest. A number of complaints are also made by solicitors, again involving issues such as non-payment of fees, breaches of undertaking, liens or failing to respond to correspondence. Such complaints are often attempted to be resolved by encouraging some negotiation or mediation between the parties involved, thereby avoiding any need for a full investigation.

STATISTICS

- Clients or former clients of a solicitor comprise the largest group of complainant, accounting for 33% of total complaints opened in 2009/2010. This year there has been a noticeable shift in complaints coming from this source; last year they comprised 24% of total complaints.
- Third party and third party (other side) collectively account for 26% of the complaints investigated in 2009/2010. This has fallen slightly over the past year.
- Law Society complaints accounted for 16%, dropping from 21% last year.
- The number of solicitors complaining about other solicitors also fell slightly as a proportion of total complaints, from 15% to 13%.
- Complaints by solicitors complaining on behalf of a client comprised 4% of total complaints.

SOURCE OF COMPLAINTS

	2009	2010
Client	157	222
Law Society	134	110
Third Party (other side)	100	95
Solicitor	97	91
Third Party	86	82
Barrister	39	43
Solicitor for Client	22	27
Other	8	10

Solicitors the Subject of Complaint

The conventional profile of a solicitor the subject of complaint has changed little over the years. Typically they have been male sole practitioners who practise in the suburbs, range between the ages of 45 and 55 and have been practising for an average of 25 years.

Many less complaints are received about employees of larger law practices, government or corporate legal departments who are better equipped to deal with dissatisfied clients, often with their own internal complaint mechanisms, before a formal complaint is made. Smaller practices, however, are prone to various pressures specific to the small business; time and increasing financial burdens, a wider range of clientele, ever-increasing changes to technology, law and increasing regulatory obligations.

Over the years, the PSD has employed strategies to help such practitioners in need of assistance or guidance. This is offered by the ethics, costs and regulatory compliance solicitors of the Department.

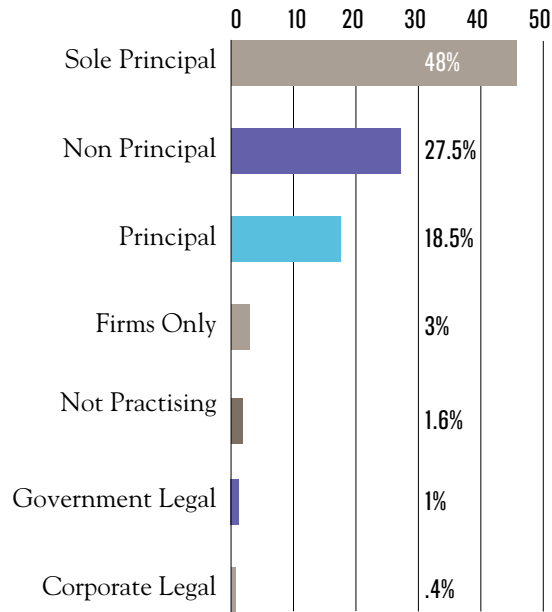
Percentages referred to are based on all complaints received and one solicitor may generate many complaints. As at 30 June 2010 there were 22,699 practising solicitors in New South Wales (up 2.6% over the year). A total of 466 individual solicitors were the subject of a complaint this year, representing one in every 49 solicitors or 2% of the practising population. This is an improvement on last year where one in every 45 solicitors had at least one complaint made against them.

STATISTICS

- 47.6% of complaints received in the period 2009/2010 were against sole principals, who constitute 17% of the practising profession, 18.5% of complaints were against principals of a firm, who make up 14% of the profession, and 27.5% of complaints were against non-principals, who account for 39.5% of the practising profession.
- 34.8% of complaints related to suburban practices, which account for 30.5% of the profession. Sydney CBD solicitors attracted 28% of the complaints yet they account for more than half of the practising profession (52%). Regional and rural solicitors make up 13% of the profession and generated 20% of the complaints this year (see Table 4 in the Appendix).
- 83% of complaints were made against male solicitors while female solicitors attracted 14% of the complaints. The profession's overall make-up is 55% male and 45% female.

- Complaints generally must be made against individuals rather than firms. In some cases, however, an individual solicitor cannot be identified and the complaint is opened against the firm. There were 21 such complaints (3%) opened against firms alone.

Complaints by Solicitor Type



COMPLAINT RESOLUTION AND INVESTIGATION

“The essential elements of an investigation are that it must be fair and open, impartial, expeditious and thorough”

Chapter 4 of the LPA defines the way complaints may be dealt with under the Act and the outcome of the complaints handled by the PSD depends on the nature of the complaint/dispute and the evidence available to support it.

Resolution

The attempted resolution of complaints can sometimes be considered as being the most appropriate option without the need for a lengthy and costly investigation. Often facilitating a meeting between the complainant and the solicitor or a simple phone call by the Manager of PSD to discuss resolution or facilitating negotiations between the complainant and the solicitor is sufficient to have the issue resolved to the satisfaction of both parties. Complaints made by third parties such as barristers, other solicitors or experts are often capable of such resolution and can include complaints such as the failure to pay third-party fees, delay in transactions or forms of non-communication. Complaints closed as “resolved” or “withdrawn” generally indicate that a satisfactory resolution of the complaint has occurred.

Consumer disputes are commonly referred for resolution as these do not as a rule involve more serious conduct issues, though if conduct issues are identified these will be investigated. While every effort is made to facilitate a resolution, the circumstances surrounding some consumer disputes will at times result in the Society being unable to assist with resolution.

Investigation and reporting to the Professional Conduct Committee

The Department’s solicitors investigate complaints and report the facts and evidence disclosed by the investigation to the Professional Conduct Committee (PCC) which has delegated powers from Council.

Chapter 4 (Complaints and Discipline) of the *Legal Profession Act 2004* provides a structure for dealing with the complaint investigation. The majority of matters that reach the PSD are likely to be those of a more serious or complex nature with most of these requiring investigation and report to the PCC.

The Professional Conduct Committee is one of the Society’s larger committees and plays an integral role in relation to the regulation and conduct responsibilities of the Law Society. Members of the Committee contribute many hours on a voluntary basis and are chosen to represent a broad range of legal expertise, while lay members bring to the Committee insights and experience from the public’s point of view. The Committee meets fortnightly to consider the reports relating to the complaints investigated by the PSD. This year there are 26 members of the Committee, comprising six Councillors of the Law Society, 10 solicitors and 10 lay members.

The PCC’s role is to form a view as to whether there is a “reasonable likelihood” that the practitioner will be found by the Administrative Decisions Tribunal to have engaged in unsatisfactory professional conduct or professional misconduct.

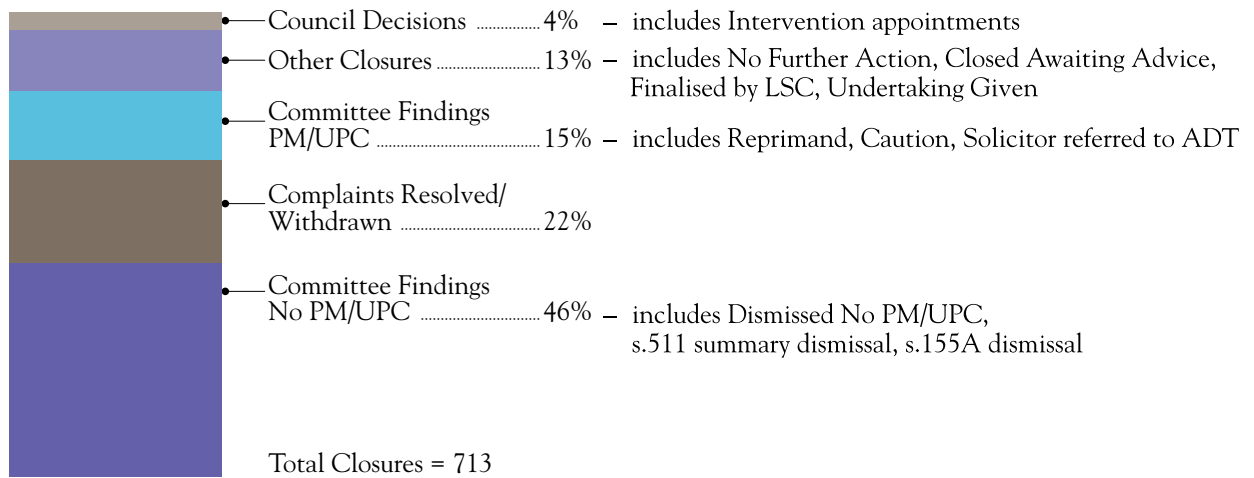
The Committee has the obligation to dismiss an allegation of professional misconduct if it is not so satisfied or it must refer the solicitor to the ADT if it is. Where the alleged conduct is considered to be unsatisfactory professional conduct, the PCC has the additional powers of dismissal, if it is in the public interest to do so, or can give a reprimand, a caution and/or order the payment of compensation.

Complaints that are deemed vexatious or frivolous, those that are considered not in the public interest to pursue (the solicitor may already have been struck off) or where further particulars of the complaint are not forthcoming can be dismissed summarily under Section 511 of the LPA 2004.

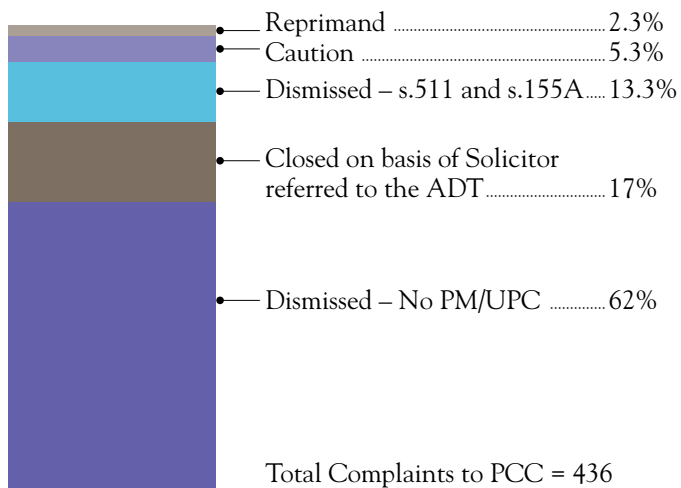
STATISTICS

- There was a significant increase in the number of complaint files finalised over the year, 20% more than last year totalling 713. As at the end of June 2010 there were 588 open complaint files (including 21 complaints that were reopened during the year).
- Of the 713 complaints closed, 436 (61%) had been referred to the Professional Conduct Committee (PCC) for determination. Of these, a total of 329 (75%) were dismissed, slightly less than last year when 78% were dismissed.
- The dismissals included 62% on the basis that there was no finding of professional misconduct or unsatisfactory professional conduct. The proportion of such dismissals fell from the 67% dismissed on this basis last year. There was a shift over the year to a greater number of complaints summarily dismissed under s.511 of the LPA. This year 57 complaints were determined by the PCC to be able to be dismissed this way, while last year only 36 such complaints were dealt with summarily and 29 the year before.
- While the proportion of dismissals fell, the number of matters reported upon to the PCC resulting in some finding of professional misconduct or unsatisfactory professional conduct increased over the year. 107 (25%) of the total matters before the PCC resulted in such a finding compared to 22% last year. Of these, 74 were finalised on the basis that the solicitor had been referred to the Tribunal (13 more than last year), 10 resulted in the issue of a reprimand (2 more than last year), and 23 cautions were recorded, a significant 12 more than last year.
- 22% of matters were dealt with by way of dispute resolution resulting in the complaint being resolved or withdrawn; last year 24.5% of complaints closed resulted in this outcome. A further 23 files were closed as “no further action” required. These are predominantly Law Society made complaints where it is deemed, after initial investigation, that further investigation is not warranted.
- There were 49 consumer disputes closed over the year, 27 were resolved, 20 were referred back to the OLSC as they remained unresolved and 2 were withdrawn.
- Three matters were closed on the basis that a Receiver was appointed to the law practice of a solicitor and in 24 matters an Investigator was appointed.

Major Closure Categories



Decisions of the Professional Conduct Committee



REVIEWS BY THE LEGAL SERVICES COMMISSIONER

“This year 98% of reviews conducted by the Legal Services Commissioner resulted in no change to the original decision of the PCC”

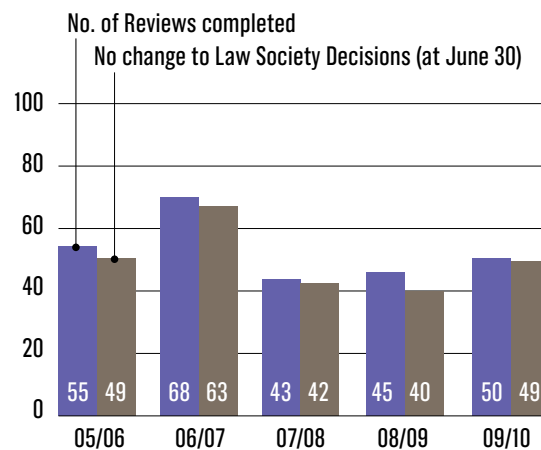
The independent review of the outcome of investigations undertaken by the Legal Services Commissioner is one of the criteria used by the Department to measure its key complaint-handling objectives. The number of reviews requested and the results of those reviews provide verification that the Department and the PCC are properly performing their statutory role and that the complainants are appropriately satisfied with the outcome of the investigations.

Complainants have the option to request the Commissioner to undertake an independent review of the PCC decision to dismiss a complaint, caution or reprimand a solicitor. The review process takes into account both the process of investigation and the final outcome. After a review the Commissioner can form the view that the decision of the PCC was correct; refer the matter for mediation; direct the Law Society to re-investigate the whole or one part of a complaint; re-investigate the complaint himself; caution or reprimand the solicitor; make an order for compensation or refer the complaint to the Tribunal for hearing.

STATISTICS

- This year 60 complaints were requested for review, 16 more than last year. This represents 16% of matters closed with a reviewable decision (i.e. matters finalised as dismissed as no PM/UPC, summary dismissals, cautions and reprimands). The number of requests for review has steadily increased over the past three years, from 31 in 2008, to 44 in 2009 and 60 this year.
- The LSC completed 50 reviews over the year. In 49 (98%) of these matters the original decision of the PCC was unchanged (including two after re-investigations). In one matter the Commissioner directed the Society to re-investigate one aspect of the complaint. This re-investigation remains open as at 30 June 2010.

Number of Reviews completed and decisions upheld 2006 – 2010



COMPLAINT MANAGEMENT AND PERFORMANCE INDICATORS

“One of the key objectives of the PSD is to conduct investigations in a timely manner”

Undertaking investigations in a timely manner is a key objective of the PSD and there has been continued effort to keep turnaround times to a minimum. To this end management regularly reviews staff practices and staff are encouraged to be actively involved in managing their file load.

Administrative processes support this file review system through the provision of monthly management reports and practice profile reports for each solicitor. The OLSC also monitors the investigations undertaken by the Society.

Though every effort is made to deal with files expeditiously, there are often factors outside the Department’s control that can delay completion of investigations, such as the parties to a complaint failing to respond to the Law Society, deferring the investigation of complaints where a solicitor has been referred to the Tribunal until a decision is brought down, awaiting a Bill of Costs being assessed by the Supreme Court or awaiting the results of court proceedings.

It is important that complainants are aware that it is inappropriate to use the complaint mechanisms of the Legal Profession Act as part of their litigation process. Often complaints are received during the course of litigation that would be more appropriately dealt with by a judicial determination.

Section 597 of the LPA 2004 requires that the Council and the Legal Services Commissioner jointly develop performance indicators and report upon them annually. The Professional Standards Department’s performance criteria for complaint handling is assessed as at May of each year and includes both the turnaround time for complaints and the decisions given after investigation (via the review system).

PERFORMANCE INDICATORS

AGED FILES

- Complaints completed between 1 July 2009 and 30 June 2010 took on average 9.8 months to close, up slightly from 9.5 months last year.
- At the end of June 2010, there were 588 complaint files open and under investigation within the Department. Of these, 138 (23%) were between one and two years old, 18 more than at the same time last year, and 46 (8%) were over two years old, 1 more than last year.

TURNAROUND TIME

Indicator: 30% of complaints closed within six months of opening

2010 assessment = 45% closed within six months

2009 assessment = 41% closed within six months

Indicator: 70% of complaints closed within 12 months of opening

2010 assessment = 70% closed within 12 months

2009 assessment = 67% closed within 12 months

Indicator: 95% of complaints closed within two years of opening

2010 assessment = 92% closed within two years

2009 assessment = 91% closed within two years

Indicator: 5% of complaints remain open that are greater than two years old

2010 assessment = 8% remain open

2009 assessment = 9% remain open

REVIEWS

Indicator: 90% of reviewed Law Society decisions upheld

2010 assessment = 98% of those completed were upheld

2009 assessment = 89% of those completed were upheld

DISCIPLINARY ACTION AND INTERVENTION

“The Tribunal’s function is both protective and consistently educative, publicly marking the seriousness of what the instant Solicitor has done”

Law Society of New South Wales -v- O'Donnell [2010] NSWADT 130

Litigation – Administrative Decisions Tribunal

A solicitor will be referred to the Administrative Decisions Tribunal (ADT) if the PCC is satisfied that there is a reasonable likelihood that the solicitor will be found guilty by the Tribunal of unsatisfactory professional conduct or professional misconduct. In the case of professional misconduct, the solicitor must be referred if the case is made out.

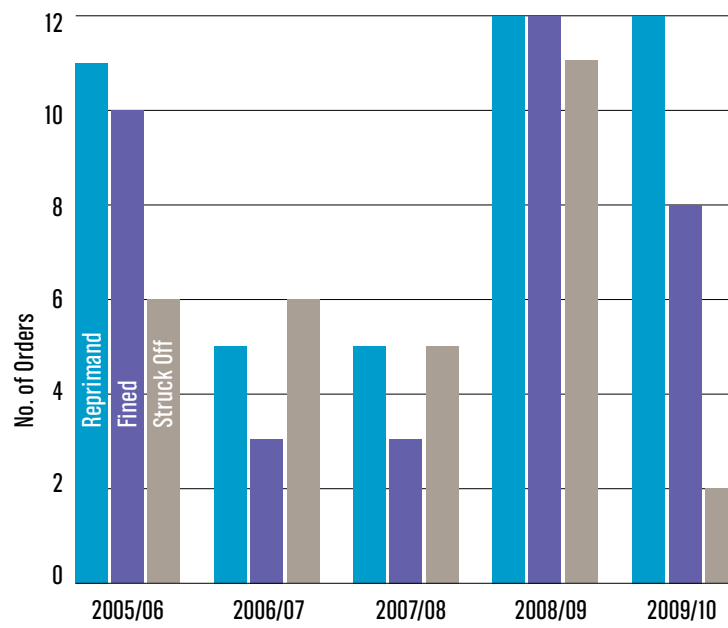
Many of the matters referred to the Tribunal can be quite complex and often involve multiple issues of conduct and even activities of a criminal nature. Typical allegations heard vary from matters of misappropriation and trust account breaches, misleading and gross delay through to forgery, fraud and false witnessing.

The Tribunal has a range of orders available to it should it find a solicitor guilty of unsatisfactory professional conduct or professional misconduct. Penalties range from the most severe: removal of the solicitor’s name from the Roll, down through a range of less severe outcomes including cancellation of the solicitor’s practising certificate, imposing a fine, publicly or privately reprimanding the solicitor, a requirement that the solicitor undertake further legal education or restricting the kind of work that the solicitor may perform. The Table on the following page sets out the decisions made over the 2009/2010 period and details both the type of conduct that was heard and the penalties handed down.

STATISTICS

- Over the 2009/2010 period, 27 solicitors were referred to the Administrative Decisions Tribunal by the Law Society Council. As at 30 June 2010, 15 of the disciplinary applications had been filed.
 - There were 25 separate proceedings instituted in the ADT (see Table 8 in the Appendix for details). As at 30 June 2010, 6 of these matters had been heard and decisions handed down.
 - In the period 1 July 2009 to 30 June 2010 the ADT handed down 19 determinations (9 less than last year) and made a total of 44 orders relating to matters referred by the Council. These are broken down as follows:
 - Reprimand.....12
 - Struck Off.....2
 - Fined (total amount \$30,500)8
 - Further Legal / Trust Account / Ethics Education.....9
 - Restricted Practising Certificate / PC Conditions.....5
 - Clerk not to be employed.....1
 - Practising Certificate Suspended.....2
 - Obtain assistance from the Senior Solicitors’ Programme3
 - Periodic Practice Inspection & Report to Law Society.....2
- A further 2 disciplinary applications were dismissed.
- At 30 June 2010, there are 23 matters current at the ADT, 7 of these are awaiting decision.

ADT orders for Reprimands, Fines or Strike-off 2006 - 2010



SUMMARY OF TRIBUNAL ORDERS 1 JULY 2009 – 30 JUNE 2010

Solicitor	Complaint	Order	Date of Orders
Bharati Jyoti	Breach of Section 254(1) LPA 2004 Breach of Section 262 of the LPA 2004 Misappropriation Breach of Section 264 of the LPA 2004	Public reprimand Conditions on practising certificate Costs	25 June 2010
Doherty Peter John <i>Solicitor appeal</i>	Breach of Section 255 LPA 2004 Misappropriation Knowingly misleading Unreasonable delay Failure to account Acted in conflict of interest Breach of Rule 12 Legal Profession Conduct & Practice Rules Breach of Section 67(2)(a) of the LPA 2004	Cancellation of practising certificate to 25/9/10 Conditions on practising certificate thereafter Completion of trust accounting and ethics courses Restricted to practise as employed solicitor for period of 6 years from 26/9/10 Costs	30 November 2009
Green Martin Geoffrey	Intending to participate and assist client in offering a bribe to a Police Officer with the intent that a charge be withdrawn	Conditions on practising certificate Costs	30 November 2009
Halligan Brenton Christopher	Wilful breaches of Section 61 of the LPA 1987 Undue reliance on honesty of employed bookkeeper Failure to maintain system for checking withdrawals from controlled money accounts Improper investment of client's funds	Conditions on practising certificate Public reprimand Demonstrated knowledge of current trust account regulation by passing an appropriate examination on this subject Costs	21 December 2009
Hancock John Leslie	Failure to communicate Failure to comply with a Section 660 Notice Delay in ensuring payment of stamp duty on purchase of property and thereby causing delay in registration of transfer	Fined \$12,000 Public reprimand Costs	19 October 2009
Hancock John Leslie	The solicitor had, without reasonable excuse, failed to comply with a Notice pursuant to Section 152 of the LPA 1987 The solicitor failed to assist the Law Society in the investigation of a complaint	Public reprimand Fined \$5000 Costs	24 May 2010
Marks Stephen John	Failure to comply with Section 660 Notice Failure to assist the Law Society No communication with solicitor for the other party Misappropriation	Fined \$1000 Public reprimand Costs	26 May 2010
Mavrakis George John	Breach of Section 254 of the LPA 2004 Breach of Rule 12 of the Revised Professional Conduct & Practice Rules 1995 by borrowing money from a client Misappropriation Breach of undertaking to the Society Failure to honour undertaking Misleading In relation to 2008 practising certificate renewal – the solicitor made a false declaration	Public reprimand Fined \$3000 Conditions on practising certificate Undertake course in Ethics, periodic trust account reporting, mentoring of solicitor by Senior Solicitor Costs	28 April 2010

Solicitor	Complaint	Order	Date of Orders
Mee Ling Paul Adrian	Failure to comply with an undertaking Failure to comply with requirements made by an Investigator in breach of Section 671 of the LPA 2004	Fined \$2500 Public reprimand Legal practitioner to undertake and complete a course of further legal education specified in the order Solicitor to undertake & successfully complete a course in Legal Ethics Participate in Senior Solicitors Program Periodical financial reporting to the Law Society Costs	16 February 2010
Nguyen Michelle My	Conflict of Interest Acting for opponent of client	Public reprimand Fined \$1000 Completion of Legal Ethics Course Costs	28 July 2009
Nguyen Michelle My	Making a false declaration in Application for Practising Certificate	Public reprimand Costs	19 May 2010
O'Donnell John Alexander	Wilful breach of Sections 255 and 264 of LPA 2004 Wilful breach of Section 264 of the LPA 2004 Misappropriation False witnessing of documentation False entries made to trust account records Breach of Section 262 of the LPA 2004 Misleading the Investigator Misleading the Law Society Acting without instructions The making of a false document Attempted to misappropriate funds Prepared a false tax invoice Breach of undertakings provided to the Office of the Legal Services Commissioner Breach of Section 660 of the LPA 2004 Holding out to the solicitor for an opposing party that he was his client's legal representative at a time when he had been suspended from practice Without reasonable excuse, failing to communicate with the Office of the Legal Services Commissioner with respect to two distinct complaints	Struck off Costs	31 May 2010
A Clerk	Clerk not fit and proper to be employed in a legal practice	Section 18(2) order – clerk not to be employed in a legal practice	7 December 2009
Sheehan Marshall	Failure to comply with Section 660 Notice	Recommend that the solicitor's Victorian Practising Certificate be suspended until solicitor complies with requirements of the Section 660 Notice Fined \$4000 Public reprimand Costs	4 June 2010

STATISTICS

- Over the past year a total of 10 solicitors were reprimanded by the PCC, one more than last year. Some examples of conduct for which the solicitors were reprimanded included practising outside the terms of the practising certificate and having no professional indemnity insurance in place; permitting a member of staff to practise without a practising certificate; trust account deficiencies and inconsistencies in trust account records; borrowing from a client in breach of Rule 12 of the Revised Professional Conduct & Practice Rules 1995 and misleading the Local Court.
- A total of 22 solicitors were cautioned by the PCC (one solicitor was cautioned twice). Examples of conduct for which the solicitors were cautioned this year include the alteration of a document, but without the intention of deceiving; a solicitor who was in breach of his duty to explain documentation (in breach of Rule 45.6 of the Revised Professional Conduct and Practice Rules, 1995); a failure to disclose costs and a solicitor unreasonably making statements to third parties which were against the interests of the complainant's organisation. In all these instances, the Committee found that the solicitor's conduct fell short of the standard expected of a reasonably competent solicitor but because they were found to be generally competent and diligent, resolved to issue a caution rather than reprimand or make any more serious finding.

Practising Certificates and Undertakings

The Council of the Law Society may refuse to issue, cancel, suspend or attach conditions to a practising certificate; or seek an undertaking, if there has been evidence of non-compliance. Non-compliance can take the form of various breaches of a provision of the LPA such as trust account breaches, failing to explain specified conduct which may indicate unfitness to practise, particularly with regard to show-cause events such as acts of bankruptcy, indictable offences or tax offences. It also covers such things as failing to comply with Professional Indemnity Insurance requirements, failing to lodge required annual external examiner's reports or failing to renew practising certificates.

Solicitors may provide an undertaking to the Law Society as a way of ensuring their future conduct is that which is required and expected of a solicitor. These undertakings can take the form of regular financial or medical reporting to the Society, completing further legal education or practising within certain restrictions, agreeing to meet ATO reporting and payment obligations and discharging all obligations in regards to bankruptcy. Most undertakings arise out of the notification and investigation of show-cause events. Undertakings are regarded as serious, as recognised under Section 608 of the LPA 2004, and failing to comply with its terms is capable of being unsatisfactory professional conduct or professional misconduct. The PSD has an effective monitoring process in place to ensure undertakings are met within required timeframes.

STATISTICS

- 5 solicitors had their practising certificates suspended by the Council of the Law Society. 2 arose out of disclosures of bankruptcy. These solicitors were not forthcoming with the required show-cause information within the statutory time limit of three months. In these circumstances the solicitors' practising certificates were automatically suspended and the matters transferred to the Legal Services Commissioner for final determination as to fitness to practise. At 30 June 2010 both solicitors remain suspended. A further 3 solicitors were suspended on the basis of trust account breaches and misappropriation. In these cases a Manager was appointed to two of the law practices while a Receiver was appointed to the other.
- 2 practising certificates were cancelled, both as a result of the solicitor not complying with the orders of the ADT.
- 2 solicitors had their practising certificate applications refused by the Council of the Law Society. In one instance the solicitor failed to obtain Professional Indemnity Insurance cover which prohibited him from practising until such time as the insurance is effected. The insurance was put in place within the week, at which time the solicitor's practising certificate was granted. In the other case the solicitor was deemed unfit to practise as a solicitor.
- A total of 12 undertakings were given over the year. 6 of the undertakings arose from bankruptcy notifications and 5 from tax offence notifications. In addition, one solicitor gave an undertaking never to apply for a practising certificate in any state or Territory after having been investigated for trust account breaches and misappropriation.

Interventions – Managers, Receivers, Supervisors and Investigators

There are many instances where the Council of the Law Society may have to resolve to intervene in a law practice if there is any uncertainty as to a solicitor's fitness to practise or any question arises as to protecting the public. Sometimes the intervention strategies available to the Society are used to intervene in situations where a solicitor, for whatever reason, is unable to continue running the practice effectively. Such pressures as ill health, money problems or family difficulties can severely undermine the smooth running of a practice. When this comes to the attention of the Society, there are measures that can be taken to assist the practitioner to alleviate some of these pressures. Often the Regulatory Compliance Support Unit within Professional Standards may be requested to make contact with the solicitor to discuss issues arising, on a confidential basis. However, if the solicitor's conduct or capacity to practise is impaired, intervention may occur by way of the appointment of a Supervisor, Manager or Receiver; or an external Investigator where further investigation is warranted.

Investigators are appointed to examine the affairs of a solicitor if there is a suspicion of improper conduct or irregularity in relation to a solicitor's conduct or general affairs. The Society retains a number of experienced Investigators and also calls upon the skills of the investigators within its Trust Account Department. The Attorney General, Council, OLSC and the solicitor are each furnished with a copy of the Investigator's report should there be an adverse finding. The PCC may, on the basis of the findings of the report, resolve to refer the solicitor to the ADT, if it is satisfied that there is a reasonable likelihood that the solicitor will be found by the ADT to be guilty of unsatisfactory professional conduct. In the case of

professional misconduct the solicitor must be referred if the PCC is so satisfied.

Supervisors are appointed to take control over the trust money as provided for in the LPA 2004. A Supervisor of the trust money of a law practice has the powers and duties to receive trust money into the practice, to open and close trust accounts and to make payments to those entitled.

Managers may be appointed by the Council under Part 5.4 of the LPA 2004 in identical situations to Receivers but as a matter of practice are usually appointed to ensure the orderly conduct of clients' and practice affairs. A Manager must hold an unrestricted practising certificate and will take over all of the duties and responsibilities of the solicitor's practice, including acting on behalf of existing and new clients (if they consent) and disposing of any practice property. Managers are more usually appointed upon the death or ill health of a sole practitioner or where a Receiver's powers of collecting or tracing trust property are not required. Managers must, in accordance with the Act, report to Council.

Receivers are appointed where there are grounds such as a failure to account, where a solicitor has ceased to hold a practising certificate, is mentally or physically infirm, has abandoned his or her practice, has died or when a client cannot obtain trust property. They are appointed by applying to the Supreme Court, by Summons. A Receiver's powers under Part 5.5 of the *Legal Profession Act 2004* are extensive and include taking possession of all trust property held by the solicitor in question.

STATISTICS

- 2 Investigators were appointed over the reporting period. The investigations are still current as at 30 June 2010.
- A Supervisor was appointed to 8 law practices. Such appointments are generally for 12 months only.
- 6 Managers were appointed to law practices over the reporting period. Following the death of three solicitors the Council appointed a Manager to each of their practices. One appointment was made as the result of the ill health of a solicitor, while two appointments arose out of the solicitors having had their practising certificates suspended. The number of Manager appointments fell quite significantly from 19 last year.
- Only one Receiver was appointed in the 2009/2010 year. There has been a general decline in the number of Receivers appointed in recent years with more Supervisors being appointed since this option was introduced with the LPA 2004.

Applications for Practice

Former solicitors who have been struck off the Roll and who seek to be readmitted have to apply to the NSW Legal Profession Admissions Board (LPAB). Such applications are then considered by the Law Society Council which provides its recommendations to the LPAB on the fitness of the applicant to be readmitted. Similarly, prospective students of law who have had a previous criminal conviction may also apply under s.26 of the LPA for early consideration as to their suitability for admission. These too are considered by the Law Society Council. A law practice wishing to engage an associate who is a disqualified person must first make an application to the Law Society for assessment before engaging that person. Lastly, where a legal practice wishes to employ as an associate a person who has been convicted of a criminal offence, the practitioner must obtain approval of the Administrative Decisions Tribunal before engaging that person. The Professional Standards Department represents the Council before the Tribunal.

STATISTICS

- Over the past year the PSD investigated 4 applications for readmission. Three of these were made by former Barristers who had been struck off the Roll. Of these, the Council recommended support for one application but opposed the other two. The fourth application was made by a former Solicitor who had been struck off in 2002; this too was opposed by Council.
- There were 3 applications for admission from persons who had been convicted of a serious offence; two of these were supported by Council and the third was opposed.
- There was 1 application made by a law practice to enable the employment of a person who had a previous criminal conviction for a serious offence. This application was approved.

UNQUALIFIED PRACTICE

“The Society remains vigilant in protecting both the public and the profession against those persons who do not have the right to practise as a solicitor”

Unqualified practitioners are persons who engage in legal practice, or hold out that they are entitled to do so, when they are not the holders of a current practising certificate or otherwise so entitled. Free from the restrictions of professional and ethical standards, unqualified persons can readily deceive unsuspecting members of the public, exposing their “clients” to great risks. Because unqualified persons are generally unaccountable for their actions, it may leave the unfortunate “client” with no recourse. Furthermore, not having the overhead costs to which legal practitioners are subject (professional indemnity insurance premiums, Fidelity Fund contributions, responding to complaints under Chapter 4 of the Act, meeting MCLE requirements, cost disclosure requirements, trust account requirements etc), unqualified persons can have a clear economic advantage over genuine legal practitioners, thereby creating unfair competition.

Generally breaches are brought to notice by practitioners who encounter unqualified persons acting for a party on the other side of a transaction or litigation or by the responsible PSD solicitor liaising with practitioners and police. Sometimes the unsuspecting client will contact the Law Society for advice only to be told that the person they thought was a “solicitor” was not. Experience has shown that offenders are often former solicitors whose names have been struck from the Roll and who continue to practise.

Sections 14 and 15 under Part 2.2 of the LPA 2004 specifically prohibit unqualified persons from engaging in legal practice or holding out that they are qualified to do so. However, though the Council of the Society has a statutory obligation to investigate and if necessary commence proceedings against unqualified practitioners, it has no particular investigative powers and can therefore be restricted in the course of action it can take. It is often difficult to obtain all the necessary evidence to prosecute as complainants, while providing the initial information, are sometimes reluctant to assist thereafter.

There are two remedies available for breaches of these provisions: summary proceedings before a magistrate which must be commenced within 12 months from the date of the alleged offence; or proceedings in the Supreme Court, seeking an injunction restraining a person from contravening Part 2.2.

The experience of the Law Society is that, most often, a warning is sufficient to deter the person from acting in breach of the Legal Profession Act in the future.

Unlike in previous years, the Law Society did not undertake any prosecutions this year. The recent decline in prosecutions for unqualified practice can be explained in part by the interpretation of Part 2.2 of the LPA 2004 which has recently evolved to give unqualified practitioners more opportunity to appear in specialist Tribunals and to do all legal work which precedes and follows such appearances: see [The Law Society of New South Wales v Stephen Gary Spring and Another \[2007\] NSWSC 1273](#) at [71] – [75]. In addition, the Society cannot legally require any documentation or information, from any person, in relation to the investigation of unqualified persons and unqualified persons have a complete right to silence, since Part 2.2 consists of offence provisions. Therefore, if witnesses do not want to get involved, there may be insufficient evidence to commence proceedings.

STATISTICS

- 13 files were opened in 2009/2010 dealing with unqualified practitioners. The number of such investigations has dropped over recent years. In 2009 the Department dealt with 30 enquiries, while three years ago 43 such enquiries were received.
- A total of 15 enquiries were finalised over the year. Three persons were put on notice while the remaining 12 enquiries resulted in no further action taking place, generally as a consequence of insufficient evidence being available to conduct a full and thorough investigation. Often no further particulars are provided once the initial enquiry is received so the Society is limited in its ability to investigate further.
- At 30 June 2010 there are 6 current investigations into unqualified practice.

DISCLOSURE AND SHOW-CAUSE EVENTS

“Solicitors are required not only to disclose, but also to provide the Council with a “show-cause statement” as to why they still consider themselves to be a fit and proper person to hold a practising certificate”

Division 7 Part 2.4 of the LPA 2004 requires solicitors to disclose to the Law Society what is defined as a “show-cause event”. Show-cause events include “bankruptcy”, serious offences (indictable offences) and all tax offences.

All solicitors are required to disclose convictions that would otherwise be required to be disclosed upon admission and must disclose upon being charged with a serious offence. Applicants for and holders of practising certificates must also disclose any show-cause event.

The Disclosure Committee of the Law Society of New South Wales has been delegated the responsibility of making determinations under Division 7 Part 2.4 on behalf of the Council. The Committee does not have the power to make a determination adversely affecting a solicitor’s right to practise. Any such determination is reserved for the Council.

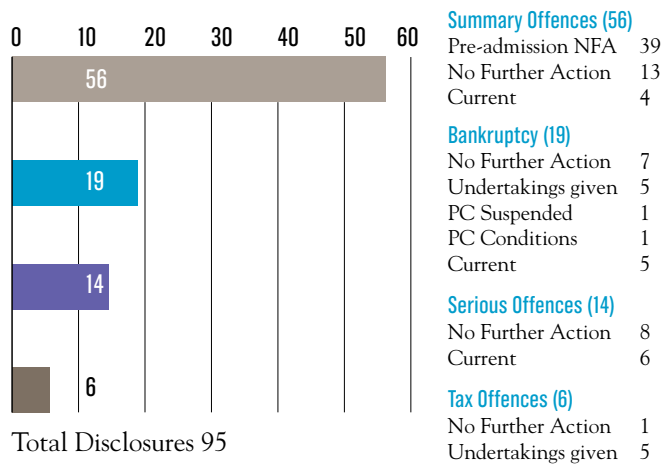
This year the Committee comprises three Councillors of the Law Society, two solicitor members and one lay member. Over the period 2009/2010 the Committee met seven times to make determinations on the reports before it.

STATISTICS

- Between 1 July 2009 and 30 June 2010 a total of 95 disclosures were made to the Law Society.
- Of the 95 disclosures received, 56 involved summary offences, predominantly driving offences such as drink-driving, negligent driving, driving whilst disqualified etc. 39 of these disclosures related to pre-admission offences, dealt with previously through the Legal Profession Admission Board and no further action was required.
- 6 were tax offence disclosures, double the number from last year.
- 19 were notifications of bankruptcy.
- 14 were notifications of a serious offence, down from 23 the previous year. These included such offences as negligent driving causing grievous bodily harm, perverting the course of justice, fraudulent representation and drug offences.
- The Disclosure Committee made determinations in 103 matters presented before it over the year. The majority of disclosures (47%) were dealt with by way of no further action being taken. These related, in the main, to summary offences where it was determined that the offence did not impact upon the solicitor’s fitness to practise; although they were warned of the need for future compliance with the law.
- 2 solicitors (both bankruptcies) had their practising certificates automatically suspended in accordance with the provisions of Section 70 of the LPA 2004. This is a statutory suspension after the expiration of the “required period” in which a determination has to be made by the Council. The investigation is then referred to the Legal Services Commissioner for final determination. At 30 June 2010, the two matters were still awaiting a determination by the Commissioner and the solicitors remain disqualified. Should they apply for a practising certificate in the future the facts surrounding their suspension will be considered by Council before granting a right to practise.

- 11 undertakings were given by solicitors. These arose out of 6 bankruptcy notifications and 5 tax offence notifications. These undertakings generally took the form of the solicitor agreeing to meet ATO reporting and payment obligations, practising only as an employee, having an accountant supervise financial affairs and discharging all obligations in regards to bankruptcy. Arising out of disclosure of a tax offence, one solicitor also undertook to undergo counselling and provide a medical report to the Law Society.
- Upon recommendation by the Disclosure Committee, Council determined in one case of bankruptcy that the solicitor should have conditions placed upon his practising certificate to ensure no principal's practising certificate be issued to him in the future unless he has first attended and satisfactorily completed a course relating to legal practice management and a three-part course conducted by LawCover on dealing with law practice risks.

Disclosures



LEGAL COSTS

“Providing advice, education and support in the ever-changing landscape of legal costs”

The Legal Costs Unit provides advice to the legal profession on professional costs relating to many aspects of legal service. The Costs Solicitor assists parties in a dispute (between a solicitor and a client or a solicitor and third party, e.g. medical practitioner or barrister) by facilitating discussion and mediation, hopefully negotiating a settlement that is satisfactory to both parties.

The Costs Solicitor carries out research into developments in the law, addresses policy issues associated with legal costs and is also a resource to the solicitors in the PSD in the investigation of complaints involving costs, the Ethics solicitors and the Regulatory Compliance solicitors when complex questions relating to legal costs arise. An important aspect of the work carried out by the Costs Solicitor is also assisting in the recovery of costs due to the Law Society pursuant to orders of the Court. The education focus of the Legal Costs Unit is directed at reducing the number of enquiries by individual practitioners. Once enquiries are identified as part of a trend, then attention is applied to that area. As well as presenting papers at seminars for Continuing Professional Development, the Legal Costs Unit publishes, on a regular basis, material in the *Law Society Journal*.

The Legal Costs Unit has had another demanding but successful year and was involved in a number of important projects, reviews of jurisdictional issues and educational initiatives. Some of the general work undertaken by the Costs Solicitor this year included settling costs agreements which contained special clauses not included in the Law Society precedent; providing assistance to principals of costs consulting firms; assisting the pro bono coordinator of the Bar Association; considering the question of whether a practitioner can accept payment of his or her bill when there is some suspicion that such payment could have been from proceeds of crime, and guiding a practitioner for many months through the assessment process which had previously become drawn out and acrimonious.

In addition, from 1 July 2009 to 30 June 2010 the Legal Costs Unit took 1091 calls for assistance from practising solicitors with questions relating to costs issues (up 2% from last year).

HIGHLIGHTS

Legal Profession National Reform Project

The Costs Solicitor's involvement with the Legal Profession National Reform Project included consideration of the submissions of the Large Law Firm Group Pty Limited; the National Legal Profession Reform Consultative Group Paper; The National Legal Profession Reform Project Consultation Draft; Chapter 8 of the Legal Profession National Rules Consultation Draft and the Solicitors' Rules 2010 under the Legal Profession National Law Consultation Draft. The Legal Costs Unit drafted detailed comments on the Legal Profession National Reform Project including a comparative table with the current State legislation.

Consequences of the *Boyce v McIntyre* decision

The Legal Costs Unit received numerous enquiries concerning the ability of costs assessors to make determinations on GST in both party/party costs and solicitor/client costs following the decision of *Boyce v McIntyre* [2009] NSWCA 185 handed down by the Court of Appeal on 20 July 2009. This decision put into question the ability of

costs assessors to determine the amount of GST payable and resulted in a number of costs assessors declining to allow GST in their determinations of fair and reasonable costs.

The amount of GST involved amounted to many millions of dollars. Practitioners wanted an interpretation of the GST issue in *Boyce v McIntyre*; advice on what submissions they could make to assessors on this issue; whether to hold off applying for assessment until a resolution was found; whether they could take separate recovery action for GST; whether GST could be included in the bill not as a separate item; whether they were obliged to concede to submissions for GST to be allowed; whether they should seek judicial clarification by placing an appropriate case before the court; whether any legislative amendments would be retrospective; whether they could make further representations to the Manager, Costs Assessment once the amendments were in place.

The Legal Costs Unit was asked to review draft contributions to the Law Society Journal seeking to clarify the position subsequent to *Boyce v McIntyre*. Seminars presented by the solicitor in the Legal Costs Unit aimed to explain the position since *Boyce v McIntyre* and what steps were taken to resolve the problem. This included the steps taken by the Law Society seeking amendments to the legislation. The amendment commenced on 28 June 2010 which finally resolved the difficulties.

Judicial interpretation and application of the legislation governing jurisdictional issues

The Legal Costs Unit considered the judgment of *Darkinjung Local Aboriginal Land Council v Darkinjung Pty Ltd & ors* [2010] NSWSC 132. This case gave a clear interpretation and application of the legislation governing jurisdictional issues. Based on the facts relating to each matter, the Court determined the legislation (old Act or new Act) and the jurisdiction (NSW or Victoria) which applied. The Court also considered, again based on the facts relating to each matter, whether there was an election by the client, displacing the jurisdiction, under s.304(2)(b) and s.305 of the *Legal Profession Act 2004 (NSW)* and s.3.4.4(1)(c) and (2)(b) of the *Legal Profession Act 2004 (Vic)*.

Mediations

The Legal Costs Unit conducted a number of difficult mediations.

- One was pursuant to an order of the District Court of New South Wales. The Court ordered that a party pay the reasonable costs incurred in complying with a Subpoena to Produce and in the absence of agreement between the parties the matter be referred to mediation with a mediator appointed by the Law Society. The amount involved was relatively small but the practitioners acting for their large corporate clients were unable to compromise their positions. Lengthy submissions and voluminous supporting documents were given and much time was expended by both parties before reaching a resolution.
- Another mediation involved both costs and ethical issues where a client specifically instructed his practitioner not to honour the practitioner's undertaking to protect the previous practitioner's costs. The matter remained unresolved for more than seven years. The Legal Costs Unit attempted to distill the issues involved and explain the ethical concerns to which the particular circumstances gave rise.
- A third involved a challenge by a practitioner to the effectiveness of the Tripartite Deed and the obligation under Rule 29 of the *Solicitors' Rules* to transfer a file where the Deed was not considered, by this practitioner, sufficient security for costs.

Liaising with large law firms

Meetings were conducted and seminar presentations were given, mainly with larger law firms and included videolinks with offices in other States and regional areas. These were provided, by the Legal Costs Unit solicitor, as part of Continuing Professional Development requirements.

Review of the Tripartite Deed

The Legal Costs Unit, together with the Ethics Committee, embarked on a comprehensive review of the Tripartite Deed. This document, on the Law Society website, is increasingly being relied upon by practitioners as the basis of security for their costs.

An impasse quite frequently occurs where the former practitioner claims a lien on the client's file and the present practitioner needs the file to continue proceedings. Rule 29 of the *Revised Professional Conduct and Practice Rules* provides for how, in the event of a termination of the retainer, a client's file is to be handed over to the present practitioner. Despite the Rule, problems continue to arise.

ETHICS

“The vast majority of solicitors are ethical in their practice and concerned to ensure that their actions are appropriate”

The work of the Ethics Unit is to support, educate and assist solicitors in understanding their ethical obligations and responsibilities. Emphasis is on the practical aspects of ethics to assist members of the legal profession in adopting desired ethical practices and avoid conduct that may be undesirable. This work is carried out on a daily basis, providing advice across a wide range of issues from questions of potential conflict of interest through to disclosure and confidentiality and issues surrounding the often unclear area of advertising. The Ethics Unit also provides a substantial educative role through the presentation of seminars and a research and review role in addressing policy and legal issues relating to solicitors in New South Wales.

A wide representative pool of members of the legal profession is used to select members for the Ethics Committee of the New South Wales Law Society. The Committee gives direction to the profession on general ethical issues and gives determinations on specific ethical dilemmas when raised by practitioners.

Membership of the Committee is comprised of solicitors from large, medium and small firms, government departments, and academics. In 2010 there are 19 members of the Ethics Committee, including 4 Councillors of the Law Society.

STATISTICS

- A total of 2685 Ethics enquiries were recorded for the period 1 July 2009 to 30 June 2010, an increase of 8% from last year. The vast majority of these enquiries are by telephone or email.
- The nature of enquiries displayed a similar trend to previous years, with practical aspects of conflicts of interest and how they may be resolved being the most frequent. These totalled 424 (15.7% of the total) for the year. The most common aspects of conflict of interest are where a solicitor acts against a former client or where a solicitor proposes to act or has acted for more than one client.
- Other frequent issues that were addressed included standards of communications between solicitors and between solicitors and third parties (14%) and confidentiality and privilege (13%). Questions relating to ownership and transfer of files between outgoing and incoming solicitors, undertakings by solicitors to the court and profession and aspects of conduct rules were also addressed.
- Advertising by solicitors has again featured prominently with issues of interpretation and compliance with the *Legal Profession Regulations* being raised by the profession.
- Civil litigation continues to be the area of law from which most advice is sought in relation to ethical dilemmas, although the proportion has fallen from 39.5% in the previous year to 35% this year. There has, however, been an increase in the number of enquiries arising out of commercial law issues. This year they represent 18% of ethics enquiries; last year they accounted for 13%. This mirrors the situation with the type of complaints received, with a greater proportion of them arising out of commercial matters in recent years.

HIGHLIGHTS

Proposed Legal Profession National Law Bill

The proposed Legal Profession National Law Bill has been the main consideration for the Ethics Committee during the latter half of the 2009/2010 year. The Ethics Committee has been active in reviewing the proposed changes to the regulatory framework to which solicitors may be exposed. In the first half of the year it was very much involved in considering the proposed National Conduct Rules.

Part of this work involved making recommendations upon the drafting of the proposed Australian Solicitors' Conduct Rules, a major project undertaken by the Ethics Committee. A special ethics sub-committee was formed to address the relevant issues in the proposed National Rules and recommendations were made on a wide spectrum of issues to be incorporated in the proposed rules.

Guidelines to assist the legal profession

The Ethics Committee was involved in reviewing and commenting on various guidelines on issues of professional ethics for the legal profession. These included a review of recent guidelines on ethics for Government Solicitors undertaken on behalf of the Government Solicitors Committee and a review and update of the tripartite agreement on costs for solicitors. In conjunction with the Costs Unit, the Ethics Committee has been updating the *Law Society Tripartite Deed* used by the profession when files are to be transferred from one solicitor to another and the issue of protection of costs needs to be addressed.

Advertising

There has been an increased use of various advertising media by solicitors in New South Wales. This highlights the need for law practices to be vigilant and aware of the Legal Profession Regulations and compliance with advertising guidelines. The Ethics Unit continues to liaise with the OLSC on issues relating to advertising and compliance. In keeping with the use of new technologies available to the legal profession, guidance has been provided to practitioners in their use of the internet and construction of websites for advertising legal services.

Client capacity issues

In recognition of an increasing need for guidance when dealing with client capacity issues and associated obligations under the Solicitors' Rules, guidelines for dealing with a client suffering from a lack of capacity were considered. This was done in conjunction with representatives of the New South Wales Legal Aid Commission. Further consultation with the legal profession on professional standards regarding client capacity issues for solicitors are being developed with the intention of assisting the legal profession with appropriate ethical principles relating to these issues. The Ethics Committee has been reviewing one of the conduct rules in relation to the issue of disclosure and client capacity and may recommend its amendment for the proposed National Conduct Rules.

Providing information and resources for ethics education to the profession

The Ethics Unit was involved in developing and providing programmes relevant to the profession pursuant to mandatory education requirements as well as publishing

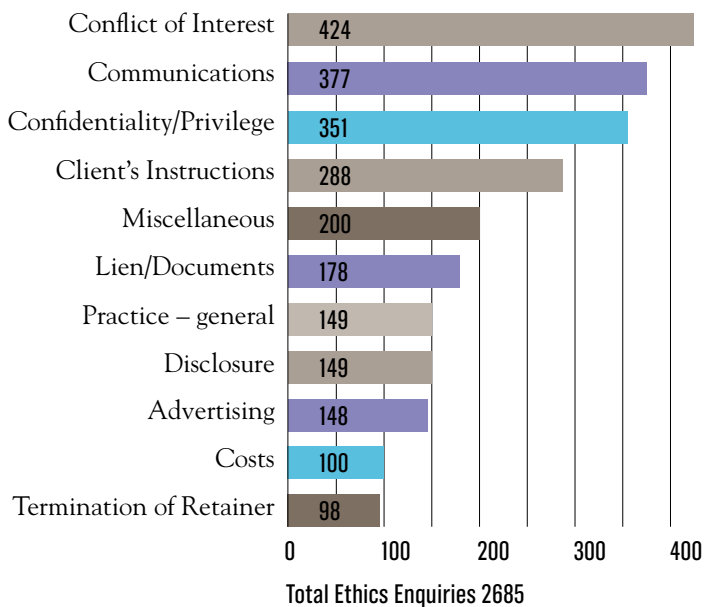
materials on ethics to assist the profession in maintaining professional standards. Through presentations and seminars, practitioners were encouraged to introduce ethics initiatives in legal practice. Recognising the need to assist solicitors in regional areas in practical aspects of ethics, the Ethics Unit extended their seminars and presentations to the regional law societies

There was also a series of presentations to the legal profession on special topics of ethics, such as reviewing ethical aspects of the proposed Legal Profession National Law Bill and in particular the Proposed Australian Solicitors' Rules.

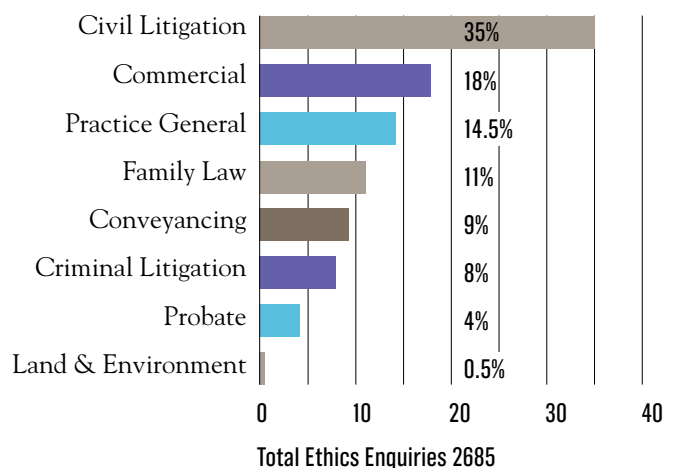
Lastly, the information available on the Law Society webpage for ethics was updated and expanded. This ongoing project will provide greater assistance to the legal profession with resources on ethics issues. It will include enhanced access to guidelines, documents and other materials and is available at:

<http://www.lawsociety.com.au/ForSolicitors/professionalstandards/index.htm>

Ethics Enquiries – most common issues



Ethics Enquiries – area of law



REGULATORY COMPLIANCE SUPPORT

CAR – *“The peer review of my processes helps confirm I am doing the right thing”*

The Regulatory Compliance Support Unit (RCSU) provides free assistance and guidance in relation to business structures for law practices, practice management, and other issues of a regulatory nature. It offers confidential compliance support and direction to legal practitioners and law practices.

The areas of assistance cover such issues as the establishment of law practices; decisions regarding law practice platforms; the management of law practices; business development; management of law practice trust accounts; interstate practice; the closure of practices; in-house legal practice, practising certificates and giving practitioners simple assurances as to their compliance with their regulatory obligations.

The Regulatory Compliance solicitors provide advice and practical assistance by a variety of means – responding to telephone and email enquiries, personally attending the solicitor’s practice, presentation of seminars to practitioners across the State, *Law Society Journal* articles, research and of course the successful Compliance Analysis Review (CAR) programme.

HIGHLIGHTS

- Enquiries to the RCSU (in the form of telephone and email requests) increased by 12% over the year to a total of 1403. The value to the profession of this area of support is reflected in the fact that calls for regulatory advice have gone up by over 50% over the five years that this unit has been operational. These enquiries predominantly came from legal practitioners but were also received from law practice accountants, office managers and staff.
- As has been the experience in previous years, the majority of the 1403 enquiries dealt with related wholly or in part to practising certificates (33.5%). As a proportion of total enquiries, questions relating to practising certificates increased from 27.5% last year. The nature of these questions ranged from practising entitlements interstate or overseas, conditions and restrictions on practising certificates, insolvent incorporated legal practices and how that affects practise, to disclosure of show-cause events and the effect of bankruptcy on a solicitor’s capacity to practise.
- This year the area of practice management represented the next highest area of concern for practitioners, representing 20% of enquiries and taking over from questions relating to incorporation of legal practices, most specifically the establishment of an incorporated legal practice (ILP) which as a proportion fell from 23.3% to 18.5%. At 30 June 2010, there were 1039 ILPs in New South Wales, 104 more than last year.
- Law practice demands was the fourth highest area of enquiry to the RCSU, accounting for 13% of the total. Issues such as financial stress, health or personal problems or family difficulties are often at the core of pressures faced by legal practitioners in the daily running of their law practice and this is reflected in the type of guidance being sought by solicitors. The RCSU solicitors were able to provide the necessary support and practical assistance either over the phone, by personally visiting the law practice or by referring practitioners to Law Society services such as the Lawyers Assistance Program and LawCare where appropriate.
- A total of 73 field visits to law practices were carried out enabling the RCSU solicitors to respond in a more personal, practice-specific and hands-on way.

- The RCSU solicitors also presented a total of 35 seminars across the State, many to regional solicitors who appreciate the personal assistance and practical guidance offered by the Unit.
- The RCSU acted upon law practice concerns identified by solicitors within PSD, the Law Society's Trust Accounts Department, the Office of the Legal Services Commissioner and LawCover.
- Over the past year, one of the more notable activities of the RCSU was to respond to the needs of local practitioners as the effects of the global financial crisis flowed through the New South Wales economy. The experience of some of the solicitors has been either a contraction of the work being undertaken, or in worst case scenarios, redundancy. The phenomenon has touched each end of the spectrum with both large and small firms feeling its effects, though sole principals accounted for the majority of calls to the RCSU.
- The solicitors of the RCSU were involved in examining important aspects of the National Legal Profession Reform Taskforce's draft Legal Profession National Law and Rules for the future regulation of the legal profession as presented to the Council of Australian Governments (COAG) on 19 April 2010. There was particular emphasis given to law practice business structures, definitions and any obvious flaws or deficiencies in the proposed legislation.
- A total of 26 Compliance Analysis Reviews were conducted over the 2009/2010 period on law practices across the State, with evaluations received suggesting that this initiative has been positively embraced by practitioners seeking a personalised, thorough and confidential review of their practice management systems.

Compliance Analysis Review Programme

The programme, developed to assist solicitors better manage their compliance obligations, entered its second successful year with 26 law practices taking advantage of the opportunity to have a voluntary, confidential and free service to review the management and compliance systems of their practice.

The review is conducted as a checklist analysis, based on recommended strategies for compliance with the regulatory and business obligations facing law practices in New South Wales today. It covers a broad range of issues relevant to running a practice, such as anti-money-laundering compliance, conflict of interest, confidentiality, communication, trust account management systems, strategies to avoid delay, staffing and life-work balance. Solicitors participating in the review receive a comprehensive report of the law practice's management systems and compliance strategies. Where necessary, the report provides detailed suggestions for improved management strategies and website links to resources that will assist a law practice better manage its compliance obligations.

The RCSU received the first evaluations from participating solicitors over this reporting year. The responses to the evaluations are encouraging evidence of the value of having such a service available to the profession. Responses overwhelmingly supported the programme with participants finding the process effective, the advice useful and clearly communicated, and the Regulatory Compliance Support Solicitors' understanding of the needs of their respective practices "excellent". On following up 6 months later, those who took part indicated that they had implemented many of the suggestions and overall found they had benefited from using this service. Some of the comments and feedback received further reinforced these views:

“My consultant was very deliberate in ensuring I understood the process and the questions”

“It allowed me to review my practice without feeling as though I was being judged on it”

“The peer review of my processes helps confirm I am doing the right thing”

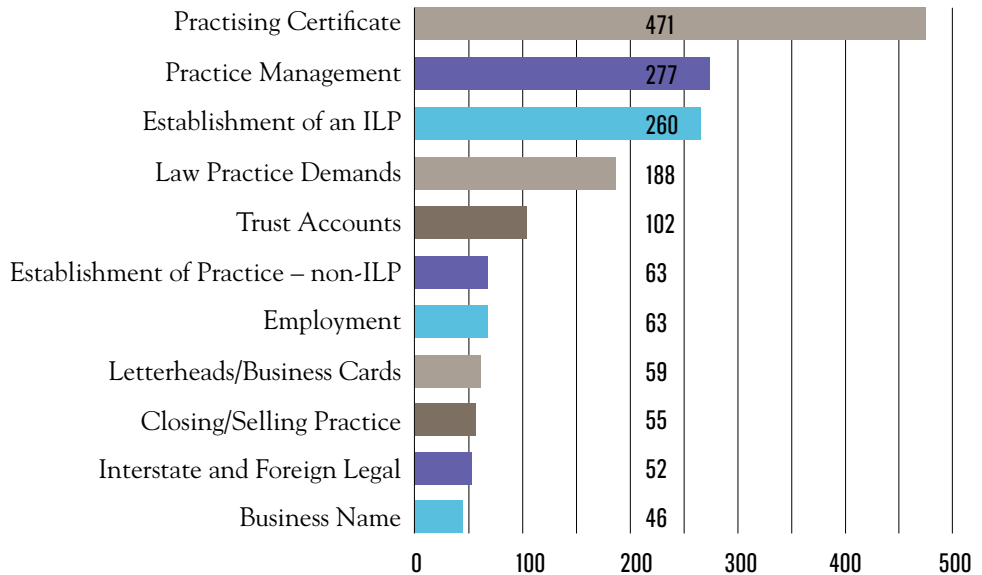
“It is useful to see what other firms do and your suggestions for us. It has practical application”

“Extremely helpful to focus on those areas requiring attention to ensure our systems are effective”

“Very informative report. The internet links are extremely helpful”

“It reminds our firm to regularly review policies and procedures to maintain high standards”

Regulatory Compliance Enquiries – Most Common Issues



2010 Appendix



**PROFESSIONAL
STANDARDS**
THE LAW SOCIETY
OF NEW SOUTH WALES

TABLE 1**Number of complaints opened, by type of complaint**

INVESTIGATIONS	06/07	07/08	08/09	09/10
Personal Conduct				
Unethical Conduct	126	125	166	165
Misleading	32	27	43	46
Negligence	36	34	38	40
Conflict of Interest	16	18	22	25
Breach Confidentiality	2	1	2	8
Failure to Transfer Documents	7	11	4	7
False Swearing of Documents	2	7	8	6
Communicating with a Client of Another Solicitor	6	7	10	5
Borrowing from Client	0	5	4	2
Undue Pressure	1	3	3	2
Threatening Behaviour	5	6	7	1
Failure to Assist Law Society	1	0	0	0
Cost / Payment Issues				
Failure to Pay Third Party	68	54	37	40
Overcharging	13	11	8	14
Failure to Provide a Detailed Account	2	3	4	12
No Costs Disclosure	7	7	8	10
Transfer Costs Without Authority	2	0	2	0
Communication / Service				
Failure to Carry Out Instructions	7	13	14	39
No Communication	12	15	16	16
Delay	7	9	9	11
Act Without/Contrary to Instructions	13	9	8	9
Lack of Supervision	7	3	11	8
No Client Advice	5	5	4	6
Discourtesy	4	7	5	4
No Advice on Progress	5	2	0	1
Non-compliance				
Not Complying with Undertaking	15	7	29	20
Not Complying with a s.660 Notice	10	12	11	16
Not Comply with Legal Profession Act/Regulations	3	14	8	15
Practising without a Practising Certificate	15	8	16	12
Not Complying with Fiscal Obligations ¹	0	0	0	6
Trust Account Matters				
Breach of Sections of Act / Regs relating to Trust Moneys	29	43	43	31
Misappropriation	9	15	9	17
Failure to Account	8	11	17	11
Other				
Review Re-Investigation	1	0	2	3
TOTAL NUMBER OF INVESTIGATIONS	476	492	568	608
CONSUMER DISPUTES	64	92	75	72
TOTAL NUMBER OF COMPLAINTS OPENED²	540	584	643	680

Notes: 1 New category of complaint introduced in 2010 2 Includes complaints made by the Law Society

TABLE 2**Number of complaints opened, by type of complainant**

COMPLAINANT TYPE	06/07	07/08	08/09	09/10
Client/Former Client	134	154	157	222
Law Society	93	98	134	110
Third Party (Other Side)	72	66	100	95
Solicitor	64	84	97	91
Third Party	90	87	86	82
Barrister	52	52	39	43
Solicitor for Client	25	32	22	27
Legal Services Commissioner	7	8	4	4
Other ¹	3	3	4	6
TOTAL NUMBER OF COMPLAINTS OPENED	540	584	643	680

Note: 1 Other includes Beneficiary, Government Department and Court Registrar

TABLE 3**Complaints opened, by solicitor type**

1 July 2009 – 30 June 2010

Solicitor Type	Number of complaints	Complaints as % of total active solicitors ^{1,2}	% of total complaints
Sole Principal	324	1.43%	47.6%
Non Principal	187	0.82%	27.5%
Principal	126	0.56%	18.5%
Firms Only	22	0.10%	3.2%
Government Legal	7	0.03%	1.0%
Corporate Legal & Non Legal Entity	3	0.01%	0.4%
Not Practising at Time of Complaint	11	0.05%	1.6%
TOTAL NUMBER OF COMPLAINTS OPENED	680		

Notes:

1 At June 2010 total active solicitors 22,699 (Source: Law Society of NSW, Policy & Research)

2 Includes multiple complaints against individual solicitors.

TABLE 4**Complaints opened, by practice region¹**

1 July 2009 - 30 June 2010

Sydney City	193	Active City Solicitors	11,906
Suburban	237	Active Suburban Solicitors	6,924
Outer West Metropolitan	97		
Southern Metropolitan	40		
Inner West Metropolitan	40		
Eastern Metropolitan	20		
Northern Metropolitan	40		
Regional	55	Active Regional / Rural Solicitors	2,938
Newcastle	17		
Hunter / Central Coast	12		
Wollongong	21		
Blue Mountains / Nepean	5		
Rural	79		
Interstate	9	Active Interstate Solicitors	94
Other²	107	Active Other Solicitors	837
TOTAL COMPLAINTS OPENED	680	TOTAL ACTIVE SOLICITORS	22,699

Notes:

¹ Refers to all complaints opened, not individual solicitors² Refers to Overseas or Unknown place of practice.

Solicitor statistics: Law Society of NSW, Policy & Research

TABLE 5**Number of complaints closed, by result**

RESULT TYPE	06/07	07/08	08/09	09/10
Professional Conduct Committee Decisions				
Dismissed – No PM/UPC	337	234	242	271
*Closed on basis of Sol. Referred to the ADT	45	56	61	74
s.511 Summary Dismissal	2	29	36	57
Caution	8	8	11	23
Reprimand	17	12	8	10
Dismissed 155A	0	3	3	1
Closed on basis of no further particulars	5	2	0	0
Council Decisions				
*Investigator Appointed ¹	21	7	3	24
*Receiver Appointed ¹	8	9	9	3
Solicitor Suspended/PC Refused	0	0	1	1
*Supervisor Appointed ¹	1	0	0	0
*Manager Appointed ¹	0	0	10	0
Department Closures				
Complaint Resolved	101	109	79	86
Complaint Withdrawn	75	58	67	72
No Further Action	10	8	11	23
*Closed Awaiting Advice	16	16	21	18
Undertaking Given	0	1	2	2
Other Closures				
Complaint Finalised by LSC	44	39	30	48
Supreme Court Proceedings Initiated	0	1	0	0
TOTAL NUMBER OF CLOSURES	690	592	594	713

* For the purpose of consistency with the Legal Services Commissioner's statistics, the items marked with an asterisk can be grouped as "suspended" file closures. These are grouped below.

RESULT TYPE	06/07	07/08	08/09	09/10
Closed on basis of Sol. Referred to the ADT	45	56	61	74
Investigator Appointed	21	7	3	24
Closed Awaiting Advice	16	16	21	18
Receiver Appointed	8	9	9	3
Supervisor Appointed	1	0	0	0
Manager Appointed	0	0	10	0
TOTAL SUSPENDED CLOSURES	91	88	104	119

Notes:

1. These figures refer to the number of complaint files closed on the basis that an external intervener was appointed to the practice of the solicitor the subject of the complaint.
 All sections (s.) are references to the Legal Profession Act
 PM = Professional Misconduct
 UPC = Unsatisfactory Professional Conduct
 PC = Practising Certificate

TABLE 6

Complaints opened and closed within the same period

1 July 2009 – 30 June 2010

COMPLAINT TYPE	NUMBER OPENED	NUMBER CLOSED	% OF OPENED
Unethical Conduct	165	57	35%
Consumer Dispute	72	49	68%
Misleading	46	25	54%
Negligence	40	12	30%
Failure to Pay Third Party	40	22	55%
Failure to Carry Out Instructions	39	20	51%
Breach of Sections of Act relating to Trust Moneys	31	11	35%
Conflict of Interest	25	8	32%
Not Complying with Undertaking	20	10	50%
Misappropriation	17	1	6%
No Communication	16	9	56%
Not Complying with a s.660 Notice	16	3	19%
Not Comply with Legal Profession Act/Regulations	15	9	60%
Overcharging	14	5	36%
Practising without a Practising Certificate	12	4	33%
Failure to Provide a Detailed Account	12	4	33%
Failure to Account	11	3	27%
Delay	11	3	27%
No Costs Disclosure	10	2	20%
Act Without/Contrary to Instructions	9	4	44%
Lack of Supervision	8	3	38%
Breach Confidentiality	8	4	50%
Failure to Transfer Documents	7	2	29%
False Swearing of Documents	6	2	33%
No Client Advice	6	0	0%
Not Complying with Fiscal Obligations	6	1	17%
Communicating with a Client of Another Solicitor	5	1	20%
Discourtesy	4	0	0%
Review Re-Investigation	3	2	67%
Borrowing from Client	2	0	0%
Undue Pressure	2	0	0%
Threatening Behaviour	1	1	100%
No Advice on Progress	1	0	0%
TOTAL	680	277	41%

TABLE 7**Detailed breakdown of closures for key complaint categories**

1 July 2009 – 30 June 2010

COMPLAINT TYPE	NUMBER OPENED	NUMBER CLOSED, BY RESULT	
Unethical Conduct	165	Dismissed – No PM/UPC	25
		s.511 Summary Dismissal	9
		Complaint Withdrawn	5
		Complaint Finalised by LSC	4
		Complaint Resolved	3
		Closed Awaiting Advice	3
		Investigator Appointed	3
		Solicitor referred to the Tribunal	3
		Caution	2
		TOTAL	57
Consumer Disputes	72	Complaint Resolved	27
		Complaint Finalised by LSC	20
		Complaint Withdrawn	2
		TOTAL	49
Misleading	46	Dismissed – No PM/UPC	9
		Investigator Appointed	6
		Complaint Finalised by LSC	4
		Complaint Withdrawn	3
		s.511 Summary Dismissal	2
		Complaint Resolved	1
		TOTAL	25
Negligence	40	Dismissed – No PM/UPC	8
		s.511 Summary Dismissal	3
		Complaint Withdrawn	1
		TOTAL	12
Failure to pay Third Party	40	Complaint Resolved	11
		Complaint Withdrawn	7
		s.511 Summary Dismissal	2
		Dismissed – No PM/UPC	1
		Complaint Finalised by LSC	1
		TOTAL	22
Failure to carry out instructions	39	Complaint Withdrawn	17
		Complaint Resolved	1
		Dismissed – No PM/UPC	1
		Complaint Finalised by LSC	1
		TOTAL	20
Breaches of Sections of Act relating to Trust Moneys	31	Dismissed – No PM/UPC	3
		s.511 Summary Dismissal	2
		Complaint Withdrawn	1
		Receiver Appointed	1
		Investigator Appointed	1
		Closed Awaiting Advice	1
		Solicitor referred to the Tribunal	1
		Caution	1
		TOTAL	11

TABLE 8

Number and type of proceedings instituted at the Administrative Decisions Tribunal

1 July 2009 – 30 June 2010

MATTER	DATE APPLICATION LODGED AT ADT		COMPLAINT JUDGMENT*
Law Society - v - A	28/1/10	Breach of s.264 LPA 2004	current
Law Society - v - C1	21/8/09	Failure to comply with a s.660 Notice	current
		Failure to assist Law Society	
		Causing a matter file to be destroyed	
		Failure to communicate	
		Failure to account	
Law Society - v - C2	11/12/09	Wilful breach of s.61 of the LPA 1987	current
		Failure to comply with Clause 77 of the Legal Profession Regulation 2002	
		Breach of s.255 of the LPA 2004	
		Failure to comply with Clause 82 of the Legal Profession Regulation 2005	
		Charging costs not permitted in a victim's compensation matter	
		Failure to disclose costs	
		Providing a false distribution statement	
		Overcharging	
		Misappropriation	
		Misleading	
		Delay	
		Failure to provide itemised accounts	
		Issuing false trust account statement	
		Failure to comply with Regulation 82 of the Legal Profession Regulation	
		Providing false information	
Law Society - v - E	29/1/10	Failure to comply with a s.660 Notice	current
		Failure to assist Law Society	
Law Society - v - F1	15/7/09	Misappropriation of trust moneys	current
		Failure to account	
		Breach of s.254, s.255 and s.257 LPA 2004	
		Breach of s.260 and s.264 LPA 2004	
		Wilful breach of s.60 and s.61 LPA 1987	
		Misleading Legal Services Commissioner	
		Breach of Court Orders	
		Breach of fiduciary duties	
		Borrowing from clients	
		Falsifying trust entries	
		Intermingling trust money	
		Failure to keep trust records	

TABLE 8 CONT.

MATTER	DATE APPLICATION LODGED AT ADT	COMPLAINT	JUDGMENT*
Law Society - v - F2	15/7/09	Misappropriation of trust moneys Misleading Law Society Falsifying Statutory Declaration Deficiency in trust account Breach of s.254 LPA 2004 Breach of s.260 LPA 2004 Breach of fiduciary duties Borrowing from clients	current
Law Society - v - F3	14/10/09	Producing false trust account records Breach of undertaking Misleading Failure to comply with a s.660 Notice Failure to transfer a client file Communicating with a client of another solicitor	current
Law Society - v - G	3/7/09	Failure to comply with employees tax and superannuation obligations	current
Law Society - v - H1	3/7/09	Failure to comply with employees tax and superannuation obligations	current
Law Society - v - H2	9/6/10	Breach of section 116 of the <i>Workplace Injury Management & Workers Compensation Act, 1998</i> Breach of s.61 of the LPA 1987 Practising without a practising certificate Failure to account	current
Law Society - v - K	14/10/09	Practising outside practising certificate conditions	current
Law Society - v - L	4/5/10	Breach of sections 255, 260, 262 and 264 of the LPA 2004 Misappropriation of trust moneys Breach of Rule 12 of the <i>Revised Professional Conduct & Practice Rules</i>	current
Law Society - v - M1	16/12/09	Failure to comply with s.660 Notice Failure to assist Law Society No communication with solicitor for the other party Misappropriation Breach of s.255 LPA 2004	26/5/10
Law Society - v - M2	20/7/09	Breach of s.254 of the LPA 2004 Breach of Rule 12 of the <i>Revised Professional Conduct & Practice Rules 1995</i> by borrowing money from a client Misappropriation Breach of undertaking to the Society Failure to honour undertaking Misleading	28/4/10
Law Society - v - M3	7/6/10	False witnessing of documents	current
Law Society - v - N1	16/12/09	Making a false declaration in Application for Practising Certificate	19/5/10
Law Society - v - N2	16/6/10	Not complying with ATO obligations Wilful breach of s.61 LPA 1987	current

TABLE 8 CONT.

MATTER	DATE APPLICATION LODGED AT ADT	COMPLAINT	JUDGMENT*
		Wilful breach of s.62 of the LPA 1987	
		Failure/Delay in payment of Counsel's fees	
		Failure to account for trust money	
Law Society - v - O	28/10/09	Wilful breach of s.255 and 264 of the LPA 2004	31/5/10
		Wilful breach of s.264 of the LPA 2004	
		Misappropriation	
		False witnessing of documentation	
		False entries made to trust account records	
		Breach of s.262 of the LPA 2004	
		Misleading the Investigator	
		Misleading the Law Society	
		Acting without instructions	
		The making of a false document	
		Attempted to misappropriate funds	
		Prepared a false tax invoice	
		Breach of undertakings provided to the Office of the Legal Services Commissioner	
		Breach of s.660 of the LPA 2004	
		Holding out to the solicitor for an opposing party that he was his client's legal representative at a time when he had been suspended from practice	
		Failing to communicate with the Office of the Legal Services Commissioner	
Law Society - v - P	16/12/09	Failure to respond to correspondence	current
		Failure to comply with undertaking to Law Society	
Law Society - v - R	28/8/09	Clerk not fit and proper to be employed in a legal practice	7/12/09
Law Society - v - T1	16/12/09	Making a false declaration in Application for Practising Certificate	19/5/10
Law Society - v - T2	11/12/09	Failure to assist Law Society	current
		Failure to comply with a s.660 Notice	
Law Society - v - W1	25/2/10	Failure to account	current
		Misappropriation	
		Breach of s.61 of the LPA 1987	
Law Society - v - W2	16/6/10	Misappropriation	current
		Failure to account	
		Wilful breach of s.61 of the LPA 1987	
		Wilful breach of s.62 of the LPA 1987	
		Borrowing from clients in breach of Rule 12 of the <i>Revised Professional Conduct and Practice Rules</i>	
		Causing deficiency in trust account	
Law Society - v - Y	14/5/10	Assisting in encumbering the title of property without there being any caveatable interest	current
		False statutory declaration	

* at 30 June 2010

TABLE 9

Tribunal orders given in disciplinary proceedings

	06/07	07/08	08/09	09/10
Reprimand	4	6	12	12
Fined ¹	3	3	12	8
Struck Off	6	5	11	2
Further Legal / Trust Account / Ethics Education	0	1	5	9
Restricted Practising Certificate / PC Conditions	1	1	5	5
Medical assessment & reporting to Law Society	0	0	3	0
Clerk not to be employed	0	1	2	1
Dismissed	1	2	1	2
Suspended	0	1	1	2
Order to comply with Law Society (s.660)	0	0	1	0
Undertaking Given	1	2	0	0
Caution	0	2	0	0
Periodic Practice Inspection & Report to Law Society	0	1	0	2
Compensation Ordered	0	1	0	0
Undertake Senior Solicitor's Programme	0	0	0	3
TOTAL NO. OF MATTERS HEARD	12	17	28	19

Notes:

One solicitor may have more than one order made against them.

1 Fines amounted to \$30,500

TABLE 10

Active solicitor statistics, 30 June 2010

	CITY	SUBURBAN	RURAL	INTERSTATE	OVERSEAS	TOTAL	MALE	FEMALE
Principal	2,052	532	549	1	14	3,148	2,494	654
Sole Principal	832	2,216	829	6	25	3,908	3,027	881
Non Principal	5,514	2,078	1,145	37	208	8,982	4,014	4,971
Government Legal Position	1,594	699	305	27	9	2,634	974	1,660
Corporate Legal Position	1,914	1,399	110	23	581	4,027	1,883	2,141
TOTAL	11,906	6,924	2,938	94	837	22,699	12,392	10,307

Source: Law Society of NSW, Policy & Research

TABLE 11**Total amounts expended by the Public Purpose Fund and Fidelity Fund on Regulation**

1 July 2009 - 30 June 2010

EXPENSE DESCRIPTION	RECOVERABLE FROM	
TOTAL		
Professional Standards / General Regulatory Expenses	Public Purpose Fund	4,353,047
External Interventions	Public Purpose Fund	158,718
Trust Account Inspections / Investigations	Public Purpose Fund	2,391,983
Fidelity Fund Administration	Fidelity Fund	478,359
TOTAL REGULATORY COSTS		7,382,106
TOTAL PAID FROM PUBLIC PURPOSE FUND		6,903,747
TOTAL PAID FROM FIDELITY FUND		478,359
TOTAL		7,382,106