

Chairman's Report

Year ending 31 December 2005



Solicitors
Disciplinary Tribunal



Solicitors
Disciplinary Tribunal



Constitution and Powers of the Solicitors Disciplinary Tribunal

The Solicitors Disciplinary Tribunal is a statutory body, constituted under the *Solicitors (Amendment) Act 1960* as substituted by the *Solicitors (Amendment) Act 1994* and amended by the *Solicitors (Amendment) Act 2002*. The tribunal is wholly independent of the Law Society of Ireland.

It is composed of twenty solicitor members and ten lay members, the latter being drawn from a wide variety of backgrounds, and their remit is to represent the interests of the general public. All tribunal members are appointed by the President of the High Court – solicitor members from among practising solicitors of not less than ten years' standing and lay members who are not solicitors or barristers.

Procedures of the tribunal are also governed by the *Solicitors Disciplinary Tribunal Rules 2003*, (tribunal's rules) which came into operation from 1 March 2003.

Under the *Solicitors Acts 1954 to 2003*, the tribunal's powers are mainly confined to receiving and hearing complaints of professional misconduct against members of the solicitors' profession.

Applications to the tribunal are made by the Law Society of Ireland (Law Society) and, subject to a few instances under the *Solicitors Acts* where applications are limited to the Society, it is also open to members of the public to make a direct application to the tribunal without resorting to the Law Society.

Section 19 of the *Solicitors (Amendment) Act 2002* has extended the powers of the tribunal, giving it jurisdiction over trainee solicitors. In such cases, the Law Society may apply to the tribunal to hold an inquiry into alleged misconduct by trainee solicitors.

Solicitor Members

Francis D Daly (Chairman)
Ernest J Cantillon
Mary Cantrell
Michael Carrigan
Niall Casey
Helen Jeanne Cullen
Joseph Deane
Caroline Devlin
Paula Duffy
Anthony Ensor

Solicitor Members

Carol M Fawsitt
Isabel Foley
Berchmans Gannon
Maeve Hayes
Edward McEllin
Brian M McMahon
Caroline O'Connor
Michael V O'Mahony
Hugh O'Neill
Ian Scott

Lay Members

Colette Carter
Caroline Caslin
Ted Conlon
Padraig Ingoldsby
Paul Kingston
Sean McClafferty
Margaret O'Shea
Fergus O'Tuama
Kristin Quinn
Ken O'Neill

Tribunal Registrar:

Mary Lynch

Secretary to Registrar:

Monica Rickerby

Introduction

This is my second Chairman's Report, and it covers the period 1 January to 31 December 2005. It gives us the opportunity to reflect on the work of the tribunal for the year under view and to look at the trends and effectiveness of the tribunal in dealing with applications during what has turned out to be another very busy year.

In addition to my functions as a member of the tribunal, under the tribunal's rules I am responsible for

- Co-ordinating, in conjunction with the tribunal registrar, the administrative function of the tribunal,
- Liaising with the President of the High Court in relation to the efficient administration of the tribunal and
- Convening and presiding at general meetings of members of the tribunal held from time to time

It is the function of the tribunal to decide

- a) that the facts are proved and
- b) whether, on those facts, a respondent solicitor is guilty of professional misconduct.

Careful consideration is given to all applications, and the tribunal, as a matter of ordinary procedural fairness, strives to ensure that everyone is given a fair and public hearing within a reasonable time by an independent and impartial tribunal. A party to proceedings is given a reasonable opportunity of presenting his/her case, which will include the opportunity to call evidence, cross-examine witnesses and seek the disclosure of relevant documents.

Table 1

Year ending 31 December	No of sittings of Tribunal
2003	38
2004	57
2005	56

Table 1 shows the number of sittings of the tribunal

Applications

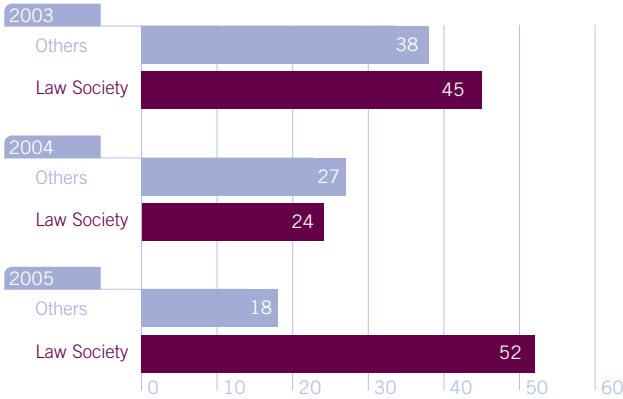
The number of new applications received by the tribunal for the year ending 31 December 2005 increased by 62% on the number of applications made in 2004.

Applications to the tribunal emanate from both the Law Society and members of the public (lay applicants).

As stated in my previous annual report, lay applicants are becoming more aware of the existence of the tribunal through various channels and, consequently, this awareness has resulted in an incremental increase in the number of direct applications from lay applicants for the past three years. During the year under review, 118 people applied for, and received, information on how to make a direct application to the tribunal.

Breakdown of the number of applications received by the tribunal during the past three years:

Chart 1



Applications to the tribunal must be made in the form specified by the tribunal's rules, supported by the facts of the case, and setting out the specific allegations of misconduct. The tribunal is conscious of the fact that a lay applicant making such an application may not be familiar with the disciplinary system. An information leaflet outlining the procedures is available on the tribunal's website and from our offices.

Further, the staff of the tribunal, insofar as they can, offer assistance to members of the public on how to complete the necessary forms. Nevertheless, complaints emanating from the public are, at times, difficult to decipher and, indeed, may not fall within the jurisdiction of the tribunal.

The trend towards longer and more complex cases continues. For example, an inquiry, in a case instigated by a lay applicant, that commenced in 2004, concluded in 2005 after the tribunal sat nine full days (three in 2004 and six in 2005). The tribunal found that there was no misconduct on the part of the respondent solicitor.

The first function of the tribunal is to determine whether or not there is a prima facie case of misconduct for the respondent solicitor to answer. For this purpose, the tribunal does not hold a formal hearing but considers each application, together with its supporting documentation. If satisfied that a prima facie case has been proved, an inquiry is held. Where the tribunal has found that a prima facie case has not been disclosed, an

Applications



applicant has a right of appeal to the High Court. During the year under review, seven such appeals by lay applicants were made to the President of the High Court, who has upheld six of the decisions of the tribunal. One case is awaiting determination.

Where the tribunal has found that there is a prima facie case for inquiry in respect of a direct application from a member of the public, a full day is generally set aside to hear such an application. The division of the tribunal hearing the case would be mindful of the fact that the lay applicant, for one reason or another, is appearing on his/her own behalf and does not have the benefit of legal advice or representation. To help alleviate this situation, a 'McKenzie Friend', who may assist the applicant but not take an active part in the proceedings, may accompany a lay applicant.

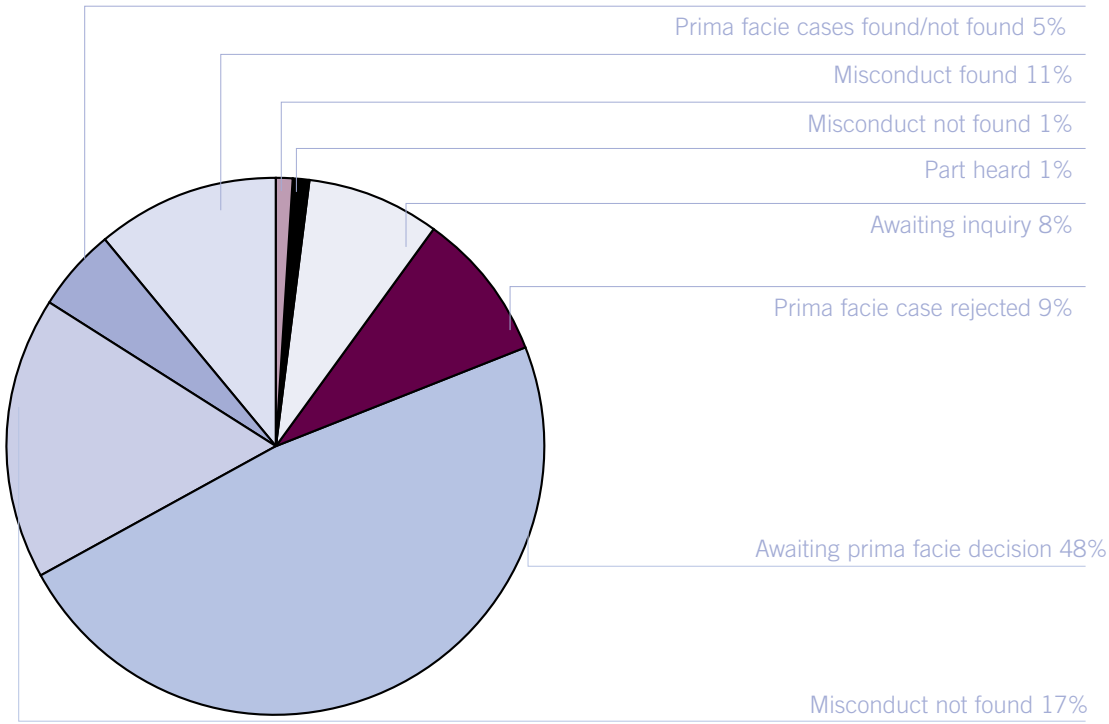
Also, in the case of a lay application, the tribunal may, under rule 49 of the tribunal's rules, request the Law Society to consider (at its option) either making a new application in relation to the respondent solicitor or undertaking on behalf of the original applicant the prosecution of the existing application.

Further, under rule 50 of the tribunal's rules, the Society may, at any stage in the processing of an application to the tribunal by a lay applicant, apply for leave either to make a new application in relation to the respondent solicitor, or to undertake the prosecution of the existing application.

Divisions of the tribunal continued to sit regularly throughout the past year and, as indicated in table 1 on page 2, sat on 56 occasions. In addition to sitting in respect of inquiries, the tribunal also sits and deals with matters of a preliminary nature, for example, applications for extensions of time to file replying affidavits, both from applicants and respondent solicitors. Further, under rule 8 of the tribunal's rules, a respondent solicitor may apply for leave to file a further affidavit in the interest of justice. Such an application will involve a division of the tribunal considering all the affidavits and accompanying documentation furnished to the tribunal by the parties, and hearing submissions from both sides. Consequently, the work of the tribunal should not be reviewed just in the context of statistical analysis, as it is constantly engaged in work, that is not reflected in statistics.

Observations on Complaints before the Tribunal

Chart 2



Of the 24 findings of misconduct by the tribunal, 11 related to the failure by respondent solicitors to file accountant's reports, within the permitted time, with the Law Society. The tribunal, after hearing submissions from the respondent solicitors in respect of mitigating factors and the submissions of the Law Society, imposed penalties ranging from fines of €250 to €2,500, to recommending to the President of the High Court that the respondent solicitor not be permitted to practise as a sole practitioner and should be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society. The tribunal is conscious of the responsibility of the Law

Society in ensuring that accountants' reports are filed in a timely and prompt manner and that an obligation rests with every member of the profession to see that that is achieved. It is time-consuming and, at times, difficult to comply with the regulations, but it is an obligation that is part and parcel of practising in the profession.

There is another type of complaint that concerns the tribunal, which is the failure of a solicitor to carry out the instructions of a client. In one particular case, the respondent solicitor was found guilty of misconduct in failing to register his clients as owners of their property, which was purchased in 1998, in a timely manner, or at all. He also failed to respond to his clients and explain

Observations on Complaints before the Tribunal

the situation. He further compounded the situation by, inter alia, failing to reply to the Law Society's correspondence, misleading the then Registrar's Committee (now the Complaints and Client Relations Committee) of the Law Society and failing to comply with an undertaking given to them. The tribunal also took into account the twelve findings of misconduct previously made by the tribunal against the respondent solicitor, when it recommended to the President of the High Court that the name of the respondent solicitor be struck off the Roll of Solicitors.

Solicitors must continue to be cognisant of the fact that clients have very high expectations of their solicitors and require a constant flow of information regarding the progress of their affairs. As a result of this expectation, lack of communication and delay by a solicitor in progressing a case are still major sources of complaint. It is recognised that some cases can, by their nature, take some considerable time to complete and that solicitors may encounter delays in the systems within which they operate. Notwithstanding this, the onus is on solicitors to keep clients informed about such delays and their reasons. Whether the delay is unavoidable or not, it is imperative to communicate and explain matters to a client. Communication is the key to avoiding complaints in regard to delay.

Solicitors were ordered to pay sums ranging from €250 to €5,000 to the compensation fund of the Law Society, and the total amount of such sums in 2005 amounted to €22,600.

Subject Matter of Complaints

Chart 3

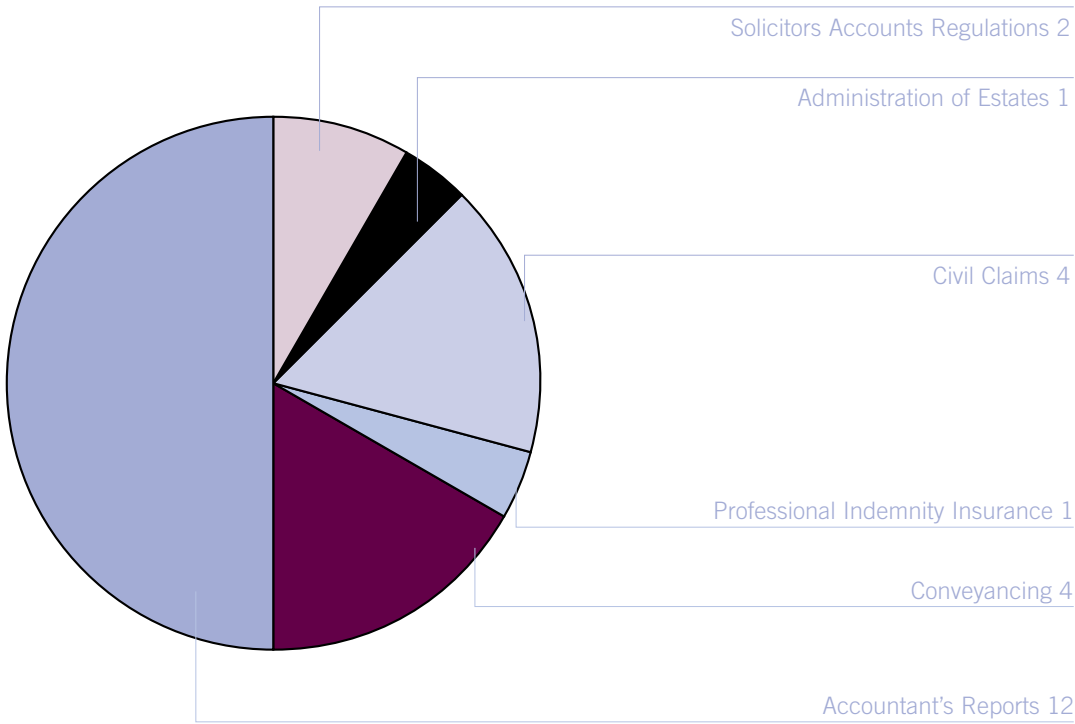


Chart 3 shows a detailed analysis of the subject matter of complaints where the tribunal found that professional misconduct had taken place:

Principal Grounds on which Professional Misconduct was found

Administration of estates:

- Failing to reply to executrix's correspondence.

Civil actions:

- Failing to provide details of the reasons for the non-progress of the applicant's personal injury case;
- Misleading clients by issuing to them a cash account indicating that actions had been settled for €6,000 each, when, in fact, the settlements were for €5,000 each;
- Misleading clients by advising that a settlement reached with a lending institution was €1,800 when, in fact, the settlement was €1,200;
- Failing to advise a complainant that a notice of appeal served on the complainant on behalf of a client had, in fact, not been filed and could not be filed;
- Delaying handing over an applicant's file to client's new solicitors.

Communication with clients/colleagues:

- Failing to respond to correspondence from clients and to explain a failure to register a property in a timely manner or at all.

Conveyancing:

- Failing to register clients as owners of their property which was purchased in 1998, in a timely manner or at all;
- Inferring in a letter to clients that their deed had been stamped, when this was not in fact the position;
- Incorrectly dating a deed to avoid the imposition of interest and penalties by the Revenue Commissioners;
- Failing to make full disclosure to former clients in relation to a failure to properly stamp and register a title deed;
- Setting off funds from an original purchase transaction and subsequent sale against the solicitor's own costs without issuing bills or accounting properly to the client for those funds;
- Failing to stamp and register the purchase document of clients in a timely fashion.

Professional indemnity insurance:

- Breaching the provisions of the Professional Indemnity Insurance Regulations and, in particular the provisions of SI 312 of 1995 as amended by SI No. 362 of 1999, having failed to renew run-off cover for the year 2005, in accordance with the requirements of those regulations.

Solicitors Accounts Regulations:

- Failing to file an accountants report with the Law Society in a timely manner, in breach of regulation 21(1) of the Solicitors' Accounts Regulations No. 2 of 1984 as amended by regulation 21(1) of the Solicitors Accounts Regulations 2001;
- Filing a seriously qualified accountant's report;
- Allowing the existence of a deficit of client funds;
- Failing to write up the client ledgers in breach of the Solicitors Accounts Regulations;
- Drawing amounts from the client account to the office account which were not debited to specific clients in the clients' ledger;
- Drawing two amounts on the client account, which were used to purchase two bank drafts, the proceeds of which were lodged to the solicitor's credit card account;
- Allowing debit balances on the client ledger account in the solicitor's own name;
- Abandoning a practice without making necessary arrangements for the protection of clients or the proper carrying on of the practice;
- Engaging in a practice of transferring fees in round sum amounts to the office account, resulting, in many cases, in over transfers to the office account, thereby causing debit balances in client ledger accounts in breach of regulation 7 of the Solicitors Accounts Regulations No 2 of 1984;

- Withdrawing six client account cheques, which were not allocated to any particular client, in breach of regulation 10 of the Solicitors Accounts Regulations No. 2 of 1984. Three of these cheques were made payable to the solicitor;
- Failing to keep proper books of account in breach of regulation 10(1)(a) of the Solicitors Accounts Regulations;
- Frustrating the investigating accountant's attempt to investigate a practice on a number of occasions.

Section 68:

- Failing to explain the costs situation to clients or to issue a section 68 letter in a timely manner or at all.

Undertakings:

- Failing to comply with an undertaking to hand over documentation on the closing of a sale and in particular, those items summarised in the letter sent by the complainants to the solicitor;
- Failing to comply with an undertaking given to a lending institution.

Principal Grounds on which Professional Misconduct was found

Regulatory body – Law Society of Ireland:

- Failing to reply to the Society's correspondence;
- Showing a disregard for statutory obligations and the Society's statutory obligation to monitor compliance with the Solicitors' Accounts Regulations for the protection of clients, the solicitors' profession and the public;
- Misleading the Registrar's Committee by telling them duty had been paid on a deed when this was not, in fact, the position;
- Failing to comply with an undertaking given to the Registrar's Committee to assist a client's new solicitor in rectifying this matter;
- Failing to comply with the direction made by the Registrar's Committee that a contribution of €500 be made towards a complainant's new solicitors' costs;
- Failing, without reasonable cause, to comply with a notice served on him pursuant to section 10 of the Solicitors (Amendment) Act 1994 within the time specified;
- Misleading the Society in a letter in which it was represented that a deed of conveyance had been "fully stamped" when it had not;
- Engaging in correspondence with the Society which was disingenuous and calculated to conceal default in relation to stamping and registration of a client's deed;
- Failing to attend at the Compensation Fund Committee and failing to give any reason for not attending.

Other Orders made by the Tribunal



Other Orders made by the Tribunal

The tribunal made three orders removing the names of solicitors, at their own request, from the Roll of Solicitors.

Publicity

Reports on the outcome of tribunal inquiries are published by the Law Society as provided for in section 23 (as amended by section 17 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1994. The tribunal welcomes the decision of the Law Society to publish the reports of the tribunal in their Gazette.



Conclusion

I would like to take this opportunity to acknowledge the professionalism and commitment of the members of the tribunal and to thank them for their hard work and effort.

The contribution of the lay members in particular to the work of the tribunal is considerable. They play a useful role in helping to assess the validity and worth of mitigating facts, that may be tendered to the tribunal. They also give an objective view in assessing the evidence given by both sides and whether a respondent solicitor is, beyond doubt, guilty of misconduct. They contribute many and long hours to the work of the tribunal, and their role helps to ensure confidence in the disciplinary system.

Finally, I want to pay tribute to the registrar of the tribunal, Mary Lynch, and the secretary to the registrar, Monica Rickerby, without whose never-ending attention and work the tribunal would grind to a halt. They have endless patience with applicants, solicitors in difficulty, the members of the tribunal and myself, for which we are all truly appreciative and grateful.

Francis D. Daly
Chairman

Appendix 1

Statistics for the year to 31 December 2005

Applications outstanding from previous years:	48	New applications year ending: 31 December 2005	83
Law Society	24	Law Society	45
Others	24	Others	38
Prima facie case rejected	11	Prima facie case rejected	10
Awaiting prima facie decision	1	Awaiting prima facie decision	50
Prima facie application withdrawn	-	Prima facie application withdrawn	-
Prima facie decision adjourned	5	Prima facie decision adjourned	-
Prima facie cases found	6	Prima facie cases found	18
Prima facie cases found/rejected	5	Prima facie cases found/rejected	5
Hearings		Hearings	
Misconduct found	13	Misconduct found	8
Misconduct not found	6 *	Misconduct not found	1
Misconduct found/rejected	2	Misconduct found/rejected	1
Part heard	8	Part heard	2
Struck out	-	Struck out	-
Withdrawn	1	Withdrawn	-
Dismissed	-	Dismissed	-
Awaiting inquiry	1	Awaiting inquiry	11

Of the nine cases appealed to the President of the High Court in 2004, where the tribunal had found that there was no *prima facie* case for inquiry, one decision was overturned in respect of one of the solicitors named in the application while, in another case, the president found there was a *prima facie* case for inquiry in relation to one specific allegation of misconduct.

**One finding of no misconduct overturned by the President of the High Court on appeal by the Law Society. Two appeals by lay applicants await to be determined by the High Court*

Appendix 2

Orders made by the tribunal pursuant to section 7(9) of the *Solicitors Amendment Act 1960*, as substituted by section 17 of the *Solicitors (Amendment) Act 1994*, and amended by section 9 of the *Solicitors (Amendment) Act 2002*

Orders of tribunal in respect of the applications set out in appendix 1	Number of orders
Censure, fine and costs	7
Censure and fine	1
Censure and costs	2
Censure	1
Admonish, advise, fine and costs	2
Admonish, fine and costs	3
Admonish, advise and costs/applicants' expenses	3

Appendix 3

Reports of the Solicitors Disciplinary Tribunal under section 7(3)(b)(ii) of the *Solicitors (Amendment) Act, 1960* (as amended)

Referrals by the tribunal to the President of the High Court in respect of the applications set out in appendix 1	5
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Recommendations of the tribunal

The respondent solicitor's practising certificate be suspended and that he pay the costs of the Law Society.	1
The name of the respondent solicitor be struck off the Roll of Solicitors and that he pay the costs of the Law Society.	1
The name of the respondent solicitor be struck off the Roll of Solicitors, or alternatively, the respondent solicitor not be permitted to practise as a sole practitioner, and should be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the appropriate committee of the Law Society, and that he pay the costs of the Law Society.	1
The respondent solicitor not be permitted to practise as a sole practitioner, and should be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least 10 years' standing, to be approved in advance by the appropriate committee of the Law Society and that he pay the costs of the Law Society.	1
The respondent solicitor not be permitted to practise as a sole practitioner or as a partner, and should be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least 10 years' standing, to be approved in advance by the appropriate committee of the Law Society and that he pay the costs of the Law Society	1

Appendix 4

Orders of the High Court made pursuant to section 8 of the *Solicitors (Amendment) Act 1960*
(as amended)

Struck off the Roll of Solicitors. Pay the complainants the costs of rectifying their title. Costs awarded.	1
The respondent solicitor may not be permitted to practise as a sole practitioner or as a partner in a solicitor's practice, but that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing to be approved in advance by the Law Society. Costs awarded.	1
The respondent solicitor be prohibited from practising as a sole practitioner and be permitted to practise only as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society. The respondent solicitor be prohibited from handling any clients' monies or trust monies whatsoever. The respondent solicitor pay a fine of €15,000 to the compensation fund. Costs awarded.	1*
Adjourned.	3

* This case was referred to the President of the High Court in 2004



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