

Chairman's Report

Year ending 31 December 2004



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.

The Tribunal is composed of 20 solicitor members and 10 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 10 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, which came into operation from the 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
Michael Carrigan
Niall Casey
Clare Connellan
Jean Cullen
Joseph Deane
Paula Duffy
Carol Fawsitt
Isabel Foley

Solicitor Members

Berchmans Gannon
Maeve Hayes
Michael Hogan
Donal Kelliher
Brian M. McMahon
Caroline O'Connor
Geraine O'Loughlin
Michael O'Mahony
Ian Scott
Thomas D. Shaw

Lay Members

Caroline Caslin
Mary Conlon
Ted Conlon
Padraig Ingoldsby
Paul Kingston
Sean McClafferty
Denis Murphy
Margaret O'Shea
Fergus O'Tuama
Kristin Quinn

Tribunal Registrar:
Secretary to Registrar:

Mary Lynch
Monica Rickerby

Introduction

This is my first Chairman's Report and it covers the period 1 January to the 31 December 2004.

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 has 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 to seek the disclosure of relevant documents.

Compared to the year 2001 when the Tribunal sat on 27 occasions, there has been over a 100% increase in the sittings of the Tribunal in 2004.

Year ending 31 December	No. of new applications	No of sitting days
2003	Law Society of Ireland	52
	Others	18
2004	Law Society of Ireland	24
	Others	27

A number of members, both solicitor and lay, will retire shortly from the Tribunal. All will have completed their five-year appointments, which are due to expire on the 21 May 2005. Indeed some members have given unswerving dedication to the Tribunal and its predecessor the Disciplinary Committee since 1987. I would like to take this opportunity to thank Thomas D. Shaw, my predecessor, for his untiring work as Chairman and handing over the Tribunal to me well organised, well managed and in a well structured fashion. I would like to thank the other retiring members for their enormous contribution and commitment to the Tribunal. They are

Solicitor Members

Clare Connellan
Michael Hogan
Donal Kelliher
Geraine O'Loughlin

Lay Members

Mary Conlon
Denis Murphy

Applications

The number of applications coming before the Tribunal for the year ending 31 December 2004 has decreased by approximately 27% on the number of applications received in 2003. While this is a welcome development it is attributable to the decrease in the number of applications emanating from the Law Society. Conversely there has been a 50% increase in the number of applications made direct to the Tribunal by members of the public. This increase may be due partly to a growing public awareness of the Tribunal as a result of the Law Society's practice of drawing the attention of complainants, who appear to be dissatisfied with the Society's investigation of their complaint, to the existence of the Tribunal. Further, members of the public are also availing of the Tribunal's website, which was launched during the period under review, to acquaint themselves with the Tribunal's procedures. As a result of this growing awareness of the Tribunal, details regarding the making of an application to the Tribunal have been forwarded to 98 members of the public in 2004.

Notwithstanding that there has been a decrease in the number of applications to the Tribunal, it has been necessary for the Tribunal, to sit regularly throughout the year. and as already indicated, there has been a record number of sittings. This rise in sittings is to a degree explained by the number of adjournments granted by the Tribunal who, in the best interest of complainants, have allowed extra time to allow

solicitors complete outstanding matters, which were the subject matter of complaint. However the Tribunal's patience is not inexhaustible and where necessary it has advised solicitors that unless the particular business is brought to a conclusion within a certain time frame, it would consider exercising its powers to refer the matter to the President of the High Court.

Of the 117 cases before the Tribunal in 2004 there were 42 (38%) findings of misconduct.



Analysis of Applications and Decisions

Applications outstanding from previous years	66	New Applications year ending 31 December 2004	51
Law Society	47	Law Society	24
Others	19	Others	27
Prima facie case rejected	09	Prima facie case rejected	09
Awaiting prima facie decision	--	Awaiting prima facie decision	23
Prima facie application withdrawn	01	Prima facie application withdrawn	--
Prima facie decision adjourned	05	Prima facie decision adjourned	--
Prima facie cases found	20	Prima facie cases found	20
Hearings		Hearings	
Misconduct found	34	Misconduct found	08
Misconduct not found	03	Misconduct not found	01
Part heard	08	Part heard	04
Struck out	03	Struck out	--
Withdrawn	01	Withdrawn	02
Dismissed	01	Dismissed	--
Awaiting inquiry	01	Awaiting inquiry	05

There were 9 decisions of the Tribunal appealed to the High Court and the Tribunal is awaiting the Orders of the High Court.

Orders made by the Tribunal pursuant to section 7 (9) of the Solicitors Amendment Act 1960 (as amended)

Orders of Tribunal in respect of the applications set out in the above table.	Number of orders
Censure fine, restitution and costs	03
Censure, advise, admonish, fine and costs	01
Censure fine and costs	20*
Admonish, fine and costs	04
Admonish and advise	02
Advise, fine and costs	05
Advise and costs	01
Referrals to the President of the High Court	07*

*One case related to two co-respondent solicitors and a separate order was made in respect of each solicitor

Reports of the Disciplinary Tribunal under Section 7 (3) (b) (ii) of the Solicitors (amendment) Act 1960 (as amended)

Recommendations of the Tribunal where its Reports were referred to the President of the High Court

The name of the respondent solicitor be struck off the Roll of Solicitors, pay a sum to the Compensation Fund and the costs of the Law Society .	2*
The name of the respondent solicitor be struck off the Roll of Solicitors, and pay the costs of the Law Society .	2
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 pay the costs of the Law Society	2
The respondent solicitor be censured, not be permitted to practise as a sole practitioner, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least 10 years to be approved in advance by the Law Society, pay a sum to the Compensation Fund, and pay the costs of the Law Society.	1

**These relate to the same solicitor*

Orders of the High Court made pursuant to Section 8 of the Solicitors (amendment) Act 1960 (as Amended)

Struck off the Roll of Solicitors	2
The respondent solicitor be restrained until further order from practising other than as an assistant solicitor in the employment of a solicitor of at least 10 years to be approved by the Law Society of Ireland and in the absence of such approval to be approved by the President of the High Court on notice to the Society. That for a period of five years at least from the date of the order the respondent solicitor be prohibited from giving any solicitor's undertaking on his own behalf or on behalf of any solicitor or firm by whom he might be from time to time employed	1
Costs awarded	1*
The respondent solicitor be restrained until further order from practising other than as an assistant solicitor in the employment of a solicitor of at least 10 years to be approve by the Law Society of Ireland and in the absence of such approval to be approved by the President of the High Court on notice to the Society.	1
Costs awarded	
Adjourned	1
Awaiting presentation to the High Court	1

**One order made in respect of two referrals to the High Court concerning the same solicitor*


Observations on complaints before the Tribunal

The gravity of matters considered by the Tribunal is demonstrated by the fact that the Tribunal recommended to the President of the High Court that the names of three solicitors be struck off the Roll of Solicitors, and further recommended in the case of three solicitors that their practising certificates be restricted.

In a particular case, the Tribunal was of the opinion that the solicitor was not a fit person to be a member of the solicitors profession by reason of his ongoing admitted failure to comply with an undertaking, his failure to respond to correspondence from the complainants and the Law Society, and his failure to attend meetings of the Registrar's Committee. The Tribunal, in its Report to the President of the High Court, recommended that the name of the solicitor be struck off the Roll of Solicitors. In making their recommendation, the Tribunal had regard to the numerous findings of misconduct previously made by them and not rescinded by the High Court. However subsequently when the matter came before the President of the High Court, it was ordered *inter alia* that the solicitor be restrained until further order from practising other than as an assistant solicitor in the employment of a solicitor of at least 10 years to be approved by the Law Society of Ireland and that for a period of five years at least that he be prohibited from giving any solicitor's undertaking on his own behalf or on behalf of any solicitor or firm by whom he might be from time to time employed. This case illustrates the seriousness of not complying with undertakings, and having a disciplinary history, which displays a lack of

awareness of a solicitor's duty to clients and to the Law Society. It is the view of the Tribunal that an undertaking should never be given unless the solicitor is sure that it can be complied with. Further, a letter from a regulatory body should have the effect of prompting a practitioner to give immediate attention to a matter which he/she may be overlooking or ignoring.

Many of the failures mentioned below arose as a result of the non-compliance of a number of solicitors with the Solicitors Accounts Regulations, which resulted in the names of two solicitors being struck off the Roll of Solicitors. The importance of maintaining proper books of account and filing Accountant's Report for the end of a solicitor's financial year cannot be overstated. If this is not done the consequences can be onerous for a solicitor, especially where the solicitor concerned is a sole practitioner. A solicitor who breached Regulation 21 (1) of the Solicitors Accounts Regulation No. 2 of 1984 in failing to deliver to the Society an accountant's report covering his financial year within six months, was by order of the Tribunal censured, directed to pay a sum of €15,000 to the Compensation Fund and to pay the costs of the Law Society. The Tribunal in deciding penalty took into account a previous Order of the Tribunal where it had found that the solicitor had breached precisely the same regulation. The reasons for the default were not acceptable to the Tribunal in that there appeared to be a persistent disregard by the solicitor of his obligations under the Regulations.



Delays and the failure to keep clients adequately informed of their business continue to be a frequent and well-justified cause of complaint. These failures are often compounded by the failure of a solicitor to reply to correspondence from the Law Society and/or to attend meetings of the Registrar's Committee when requested to do so. The attitude of the Tribunal to the failure to reply to the Law Society is exemplified in a case where it was found that the solicitor was not guilty of professional misconduct in respect of the substantive complaint, but was found guilty of misconduct in relation to the failure to reply to numerous letters from the Society and to comply with the notice served pursuant to section 10 of the Solicitors (Amendment) Act, 1994. The solicitor was censured and directed to pay a sum of €2,500 in respect of each finding of misconduct i.e €5,000 and to pay the costs of the Law Society.

Solicitors were ordered to pay sums ranging from €250 to €15,000 to the Compensation Fund of the Law Society and the total amount of such sums in 2004 amounted to €123,250.

As Chairman of the Tribunal I would like to take this opportunity to remind solicitors of their duty to reply promptly, fully and accurately to clients and to the Law Society in response to enquiries directed to them.

Subject matter of complaints

Conveyancing

Civil Actions

Administration of Estates

Solicitors Accounts Regulations

Principal grounds on which professional misconduct was found

Administration of Estates

- Failing to respond to correspondence from complainants in relation to the administration of an estate.

Civil Actions

- Failing to protect a client's interest in a timely manner or at all;
- Failing to take steps to process a client's claim in a timely manner or at all;
- Forging and uttering a document purporting to be an order of the District Court contrary to Sections 3 and 6 of the Forgery Act, 1913;
- Forging a partner's name on a cheque advanced to a client.

Communication with clients/colleagues

- Failing to communicate with a client in a timely manner or at all;
- Failing to reply correspondence from a former client's new solicitor;
- Failing to reply to telephone calls from a client enquiring about the situation.

Conveyancing

- Seriously prejudicing a client in failing to cooperate with the efforts of the client's new solicitor to register the former client's title to the property;

- Failing to register a client as owner of property and failing to disclose to the client the loss of title documents to a property;
- Failing to furnish documents including title documents referred to in a letter of authority to the solicitor from a former client;
- Involved in obtaining cash in twenty pound notes and was present when monies was paid under the counter as part of the purchase price of a property, thereby defrauding the Revenue;
- Making a false declaration of the total consideration in relation to a conveyancing transaction in a "particulars delivered" document required by the Revenue Commissioners for the purposes of ascertaining stamp duty liability thereby defrauding the Revenue of the correct amount of stamp duty payable;
- Prejudicing a client in exposing the client to considerable potential interest penalties arising out of the failure to stamp a purchase deed and the misrepresentations that it had been stamped;
- Failing to respond to complainants' enquiries as to the whereabouts of the purchase monies.

Practising Certificates

- Failing to apply for a practising certificate in a timely manner or at all;
- Practising as a solicitor without a practising certificate in breach of the provisions of the Solicitors Acts, 1954 to 2002.



Solicitors Accounts Regulations

- Allowing a deficit to arise when monies were drawn from a deposit received on behalf of a client in circumstances where the deposit should have been left intact pending execution of the contract;
- Misappropriating sums from the client account wrongfully debiting these withdrawals to another client ledger account and using the monies to pay outstanding taxes due to the Revenue Commissioners;
- Creating debit balances on the client account and in so doing utilising other client monies to pay penalties incurred for late payment of stamp duty;
- Transferring monies to an unrelated client ledger account;
- Permitting a cheque to be drawn on the client account which was debited to the client account ledger of another client which monies were used in the purchase of a business by the solicitor's son which caused a debit balance to arise;
- Failing to discharge a deficit by close of business notwithstanding the representation made to the Society to this effect in a letter to the Society;
- Falsely stating to the Compensation Fund Committee that monies had been introduced into the client account to clear a deficit when no such monies, or any monies had been paid into the client account;
- Falsifying the books of account to conceal misappropriation of client monies;
- Falsely representing to the practice's reporting accountant that a loan was lodged to the client account to clear a deficit identified by the reporting accountant ;
- Untruthfully advising the Society's accountant that a case had been settled and that the settlement cheque was awaited when the case had not in fact been settled;
- Holding client monies in bank accounts not designated as client accounts or trust accounts in breach of Regulations 3 and 11;
- Lodging sale proceeds being client monies to the office account in breach of Regulation 4. (1) and Regulation 6. (4) (a) of the Solicitors Accounts Regulations 2001;
- Breaching Regulation 5 (2) of the Solicitors Accounts Regulations, 2001 by holding moneys to which the solicitor was beneficially entitled in a client account for longer than three months;
- Creating a substantial deficit on a client account in the main by lodging client monies to the office account in breach of Regulation 7;
- Drawing fees without delivering a bill or other written intimation of costs in breach of Regulation 7 (iv);
- Allowing debit balances on the client ledger to occur on the client ledger account. in breach of Regulation 7 (1) and 7 (2) of the Solicitors Accounts Regulations 2001;

- Breaching Regulation 8 (1) of the Solicitors Accounts Regulations No. 2 of 1984 by failing to withdraw monies from the client account either by a cheque drawn on the client account in favour of him or by the transfer from the client account to an account in the name of the respondent solicitor not being a client account;
- Breaching Regulation 12 (1) and (2) (a) and (b) of the Solicitors Accounts Regulations, 2001 in failing to maintain proper books of account which showed the true financial position in relation to the respondent solicitor's transactions with clients' moneys and, in respect of each client, failing to distinguish separately between clients' moneys and other moneys transacted by him;
- Breaching Regulation 12 (4) (b) of the Solicitors Accounts Regulations, 2001 in that the records of transactions with clients' moneys were recorded in fictitious clients' ledgers;
- Failing to file an Accountant's Report with the Law Society within six months of the accounting date in breach of Regulation 21. (1) Solicitors Accounts Regulations No. 2 of 1984.

Section 68

- Failing to provide a client with particulars in writing of the actual charges, contrary to Section 68 (1) (a) Solicitors (Amendment) Act, 1994;
- Failing to provide a client with any information on the basis on which the charges would be made,

contrary to Section 68 (1) (c) Solicitors (Amendment) Act, 1994;

- Failing to inform the client in writing of the clients right to require a solicitor to submit a bill of costs to a taxing master of the High Court for taxation on a solicitor and own client basis, contrary to Section 68 (8) (b) (i) Solicitors (Amendment) Act, 1994;
- Breaching Section 68 (2) of the Solicitors (Amendment) Act, 1994 by charging a percentage fee to a client in relation to a case.

Undertakings

- Failing to comply with an undertaking to forward an original Deed of Assignment duly stamped and registered in a timely manner or at all;
- Failing to comply with an undertaking given to a complainant's solicitor in a timely manner and in particular the following matters:-
 - i) the furnishing of a certified copy of the head lease;
 - ii) the furnishing of a Landlord's consent to an assignment; and
 - iii) the furnishing of a deed of assignment duly signed and witnessed;
- Failing to comply with a letter of undertaking and in particular failing to furnish complainant solicitors with a memorial to enable them to register the deed of release the subject matter of the undertaking in the Registry of Deeds.



Regulatory Body - Law Society of Ireland

- Failing to respond to the Society's correspondence in a timely manner or at all;
- Failing to comply with directions of the Registrar's Committee;
- Failing to attend or to arrange representation at meetings of the Registrar's Committee for the purposes of investigating a complaint against a solicitor when requested to do so;
- Failing to comply with a notice pursuant to Section 10 of the Solicitors (Amendment) Act, 1994 requiring delivery to the Society of files and documents including ledger cards relating to a complaint ;
- Breaching an order of the President of the High Court for delivery of all the documents referred to in the Society's Section 10 Notice by failing to furnish to the Society a ledger card or cards relating to a file;
- Obstructing the Society in the investigation of a complaint;
- Showing a disregard for the Society in carrying out its statutory obligation to investigate complaints;
- Misleading the Registrar's Committee in a letter when it was represented that the solicitor had forwarded a client's title deeds to a building society when they had not.

Other orders made by the Tribunal

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

Publicity

Reports on the outcome of Solicitors Disciplinary 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

Solicitors' conduct should inspire confidence in the legal profession. However it is obvious from a perusal of the findings of the various divisions of the Tribunal that a small number of solicitors do not understand the importance of being honest and reliable in their dealings with their clients or the Law Society. Consequently they appear before the Tribunal and for some, whether they are represented or not, this is a very harrowing experience.

The Tribunal recognises that their work has quite a human aspect to it and that the experience may be an uncomfortable one for the solicitor concerned. Nevertheless the onus is on the Tribunal to ensure that the confidence of the public, clients and the solicitors' profession is maintained in the system by being unbiased, thorough and fair to all concerned.

Francis D. Daly
Chairman



Solicitors
Disciplinary Tribunal

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