



Solicitors
Disciplinary Tribunal

2012

CHAIRMAN'S REPORT

Solicitor members

Edward McEllin (Chairman)
Owen Binchy
Helena Bowe O'Brien
Mary Cantrell
Geraldine Clarke
Justin P Condon
Caroline Devlin

Fiona Duffy
Anthony H Ensor
Niall Farrell
Patricia Harney
Philip Joyce
Elizabeth Lacy
Michael Lanigan

Stephen Maher
Brian McMullin
Hugh O'Neill
Boyce Shubotham
Michael Tyrrell
Fiona Twomey

Lay members

Seamus Byrne
Colette Carter
Úna Claffey
Brenda Clifford
Dermot Eagney
Padraic Ingoldsby
Vera Kelly
Mary King
Joseph McPeake
Siobhan Toale

Tribunal registrar

Mary Lynch

Secretary to registrar

Ashling McGing

Administration assistant

Clare Ward

Administrator / receptionist

Nadia Farrell

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* and the *Solicitors (Amendment) Act 2008*, as cited in the *Civil Law (Miscellaneous Provisions) Act 2008* and the *Solicitors (Amendment) Act 2011*, as cited in the *Civil Law (Miscellaneous Provisions) Act 2011*. The tribunal is wholly independent of the Law Society of Ireland.

It is composed of 20 solicitor members and ten lay members, the latter being drawn from a wide variety of backgrounds and whose 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*, which came into operation on 1 March 2003. Under the *Solicitors Acts 1954-2011*, the tribunal's powers are mainly confined to receiving and hearing complaints of misconduct against members of the solicitors' profession.

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.

Introduction

This is my first report as chairman, and it describes the work of the tribunal during the calendar year 2012. I have been a member of the tribunal since 2005 and was appointed by the President of the High Court as chairman of the tribunal on the 1 December 2012, following the retirement of my predecessor, Mr Frank Daly. I would like to take this opportunity to thank Frank for his sterling service to the tribunal since his appointment in 2002.

I would also like to thank the other retired members for their enormous contribution and commitment to the tribunal over the past decade. They are Michael Carrigan, Niall Casey, Jeanne Cullen, Joseph Deane, Paula Duffy, Isobel Foley, Berchmans Gannon, Brian McMahon and Caroline O'Connor. The contribution of such long-standing and experienced members of the tribunal will certainly be missed. The President of the High Court also appointed ten new solicitor members, namely Owen Binchy, Helena Bowe O'Brien, Fiona Duffy, Niall Farrell, Philip Joyce, Elizabeth Lacy, Stephen Maher, Brian McMullin, Fiona Twomey and Michael Tyrrell, and I look forward to working with them.

The tribunal's principal role is to determine whether a respondent is guilty of misconduct as defined in the *Solicitors Acts 1954-2011*. In making such a determination, the tribunal has to find in the first instance that the facts relating to each allegation have been proven beyond all reasonable doubt and, secondly, based on the same high standard of proof, whether the facts so proven amount to misconduct. In the event the tribunal finds misconduct, it then has to assess and impose penalty.

Decisions of the tribunal are usually delivered on the day of the hearing, but it is possible in some cases that the tribunal will reserve its decision. However, there has been an increase in the length and complexity of cases, and there is no doubt that this has had, and will continue to have, an impact on the ability of the tribunal to ensure the timely conclusion of cases.

A number of applications were made to the tribunal to adjourn inquiries due to the respondent's ill health. In such circumstances, depending on the nature of the illness, the tribunal requires a full medical report to be furnished in advance of the hearing.

As can be seen from Chart 2 (page 5) there was a sharp increase in the volume of tribunal business during the year under review, when the tribunal received 187 new applications. This is the highest number ever received and represents an increase of approximately 32% on the number of applications received in 2011. This increase will, no doubt, have a major impact on the resources of the tribunal during the year ahead.



Divisions of the tribunal sat on 96 occasions throughout the year. The number of sittings of the tribunal during the year under review was down on the previous year. This was due, in the main, to the pending retirement of 50% of the solicitor members from the tribunal, who eventually retired on 29 November 2012. In addition, a number of hearings were adjourned on foot of applications to the tribunal.

Considerable additional time is also spent by tribunal members pre-reading large volumes of papers when preparing for inquiries. At times, members may also meet in private when preparing and finalising reasons for their decisions and reports, and this additional work is not reflected in Table 1, which shows the number of sittings of the tribunal since 2003.

The tribunal maintains a diary in respect of forthcoming inquiries on its website at www.solicitorsdisciplinarytribunal.ie.

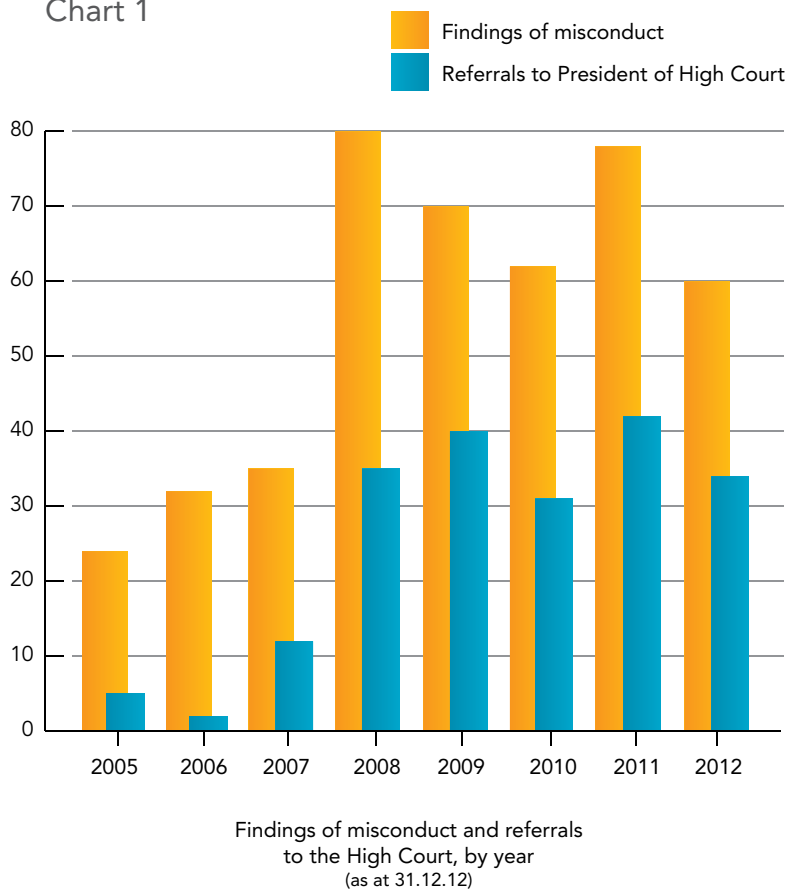
Table 1

Year	Number of sittings of tribunal
2012	96
2011	106
2010	92
2009	100
2008	110
2007	84
2006	59
2005	55
2004	57
2003	38

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

- Coordinating, 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.

Chart 1



Applications

The role of the tribunal is largely confined to receiving applications for an inquiry to be held into the conduct of a solicitor(s) or trainee solicitor(s) on the ground of alleged misconduct and, where a *prima facie* case of misconduct for inquiry is found by a division of the tribunal, proceeding to hold an inquiry in respect of the complaints of alleged professional misconduct.

The majority of complaints that come before the tribunal are at the instance of the Law Society of Ireland, but it is open to members of the public to make a direct application to the tribunal, with or without any previous reference to the Law Society. The procedure is an adversarial one and, consequently, it is a matter for an applicant to prosecute

a case and for a respondent to respond. In this regard, the tribunal is aware that members of the public may find the process of making an application an onerous one, but assistance is available from the tribunal staff in relation to completing the forms grounding an application.

However, it should be said that making an application to the tribunal does not operate as a bar to any other legal proceedings between the applicant and the solicitor concerned. Further, negligence should never be confused with misconduct. If a client suffers as a result of a mistake made by his/her solicitor, that client may have common law action against the solicitor concerned for negligence.

Chart 2

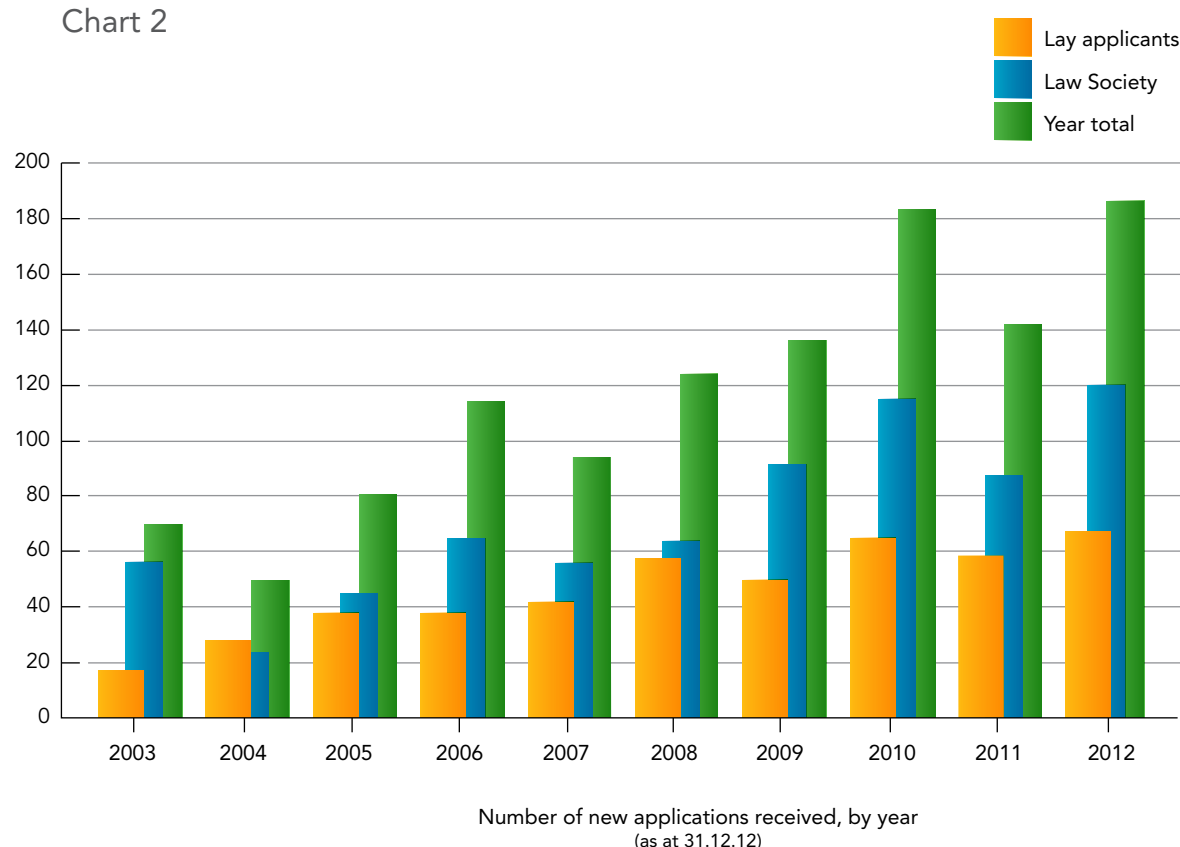
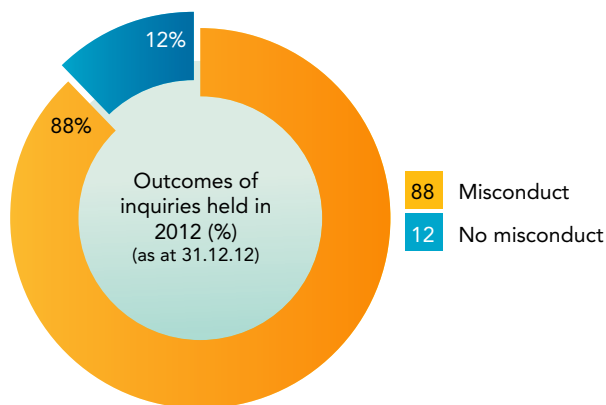


Chart 3



The procedures before the tribunal are formal in nature and, as the outcome of a hearing may affect the livelihood of a solicitor, the tribunal requires a high standard of proof.

Where a solicitor fails to appear or to be legally represented, this does not relieve the tribunal of its obligation to proceed to hold an inquiry and to proceed in the manner that it would should the solicitor be in attendance and fully represented.

The *Solicitors Acts* give the tribunal the power and duty to conduct fact-finding inquiries in relation to complaints against solicitors. Section 17 of the *Solicitors Act 1994* (as amended) and the *Solicitors Disciplinary Tribunal Rules 2003* set out the appropriate procedures to follow, which are similar but not strictly related to court procedures. The tribunal in all cases makes a tremendous effort to ensure that solicitors' constitutional rights to fair procedures and natural justice are honoured.

In the year under review, findings of misconduct were made in respect of 60 separate applications; however, as multiple applications were made to the tribunal in respect of some respondents, the actual number of individual respondents involved in such cases was 33, of which 20 individual respondents were referred to the President of the High Court.

Prima facie decisions:

The first function of the tribunal is to determine whether or not there is a *prima facie* case for the respondent 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 applicant has a right of appeal to the High Court.

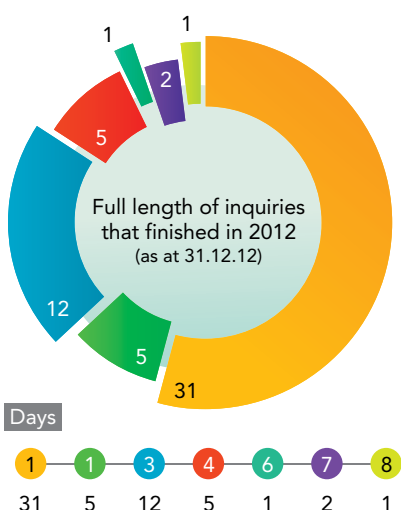
Sanctions

The tribunal may impose a range of sanctions in relation to its determinations, ranging from advising and admonishing, censuring, imposing a monetary penalty, suspension, and the ultimate sanction of striking the name of the respondent off the Roll of Solicitors.

In determining what penalty should be imposed upon a finding of misconduct, the tribunal, among other things, takes into account the action required to protect the public, the type of conduct, the severity of the conduct, aggravating circumstances, prior disciplinary history, and mitigating circumstances.

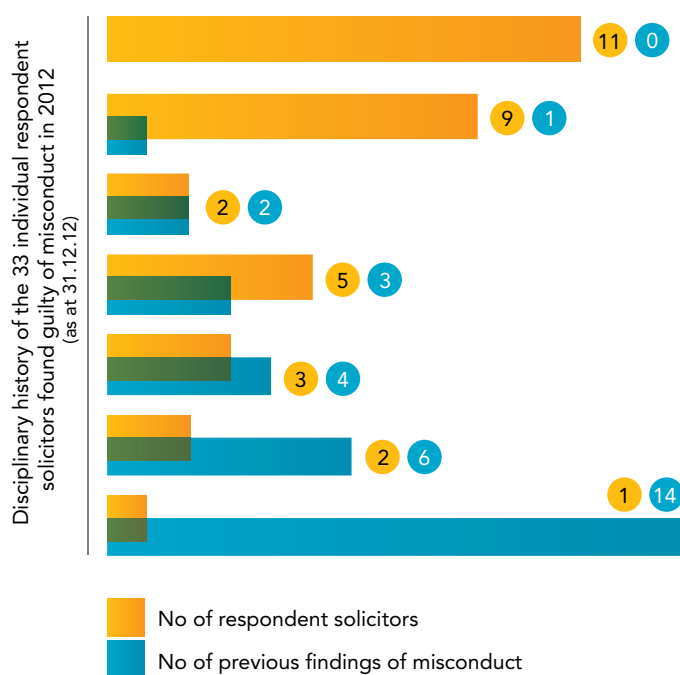
In one case, the tribunal ordered that the respondent pay a sum of €15,000 to the compensation fund, this being the maximum sum the tribunal may impose. The tribunal, however, having regard to the exceptional circumstances of the case, the representations made on behalf of the respondent (including a written undertaking signed by the

Chart 4



respondent and directed to the Law Society of Ireland that he would not practise as a solicitor at any time in the future) and the representations made on behalf of the applicant, decided to reduce the fine by the sum of €14,500 to the sum of €500.

Chart 5



Adjournments

In general, a party seeking an adjournment of an inquiry must make a formal application to that effect to any sitting division of the tribunal, with prior written notice to the other party. Good cause shall be shown to the tribunal for any such adjournment. Where an application by one party for an adjournment is made prior to or on the date fixed for the inquiry, and where the other party is not present or represented at the application, the consent of the other party to the making of the adjournment application must previously have been sought by the applying party before

that application will be considered by the tribunal. Only in the gravest circumstances will the foregoing procedure be departed from, and then only at the discretion of the tribunal.

Appeals

The procedure in respect of appeals to the High Court against decisions of the tribunal is set out in the *Rules of the Superior Courts (Solicitors Acts 1954 to 2002) 2004* (SI no 701 of 2004) and provides that an appeal shall be dealt with by way of notice of motion and grounding affidavit and that the papers in respect of an appeal shall be read by the President of the High Court or his nominee in chambers in the first instance, and then be listed for hearing in open court for the purposes of hearing submissions.

It has been held by the Supreme Court, in a judgment (record no 333/06) delivered in 2008, that "the correct interpretation of the *Solicitors Acts 1954-2002*, as amended, in the manner referred to above, is that the appeal from a decision of the Solicitors Disciplinary Tribunal, in this case from its decision dated 20 March 2006, is a hearing *de novo* in the High Court, in which the matter contended for by the appellant as constituting grounds for the holding of an inquiry into the respondent's alleged misconduct, and the respondent's reply, may be exposed again and argued afresh before the High Court which decides the appeal on the basis of the materials which were before the Disciplinary Tribunal, but having regard to the argument made before it, the High Court exercises an independent jurisdiction in the matter. It is for this reason that the respondent is the correct respondent and, equally, that the Solicitors Disciplinary Tribunal is a proper notice party to the proceedings, bound by any order which the High Court might make on the appeal. A different situation would, of course, arise if the appellant sought to challenge the Solicitors Disciplinary Tribunal in respect of matters dealt with, or failing to be dealt with in an appropriate case, such as would lend themselves to an application for judicial review."

The High Court made orders in respect of four appeals against decisions of the tribunal that there was no *prima facie* case of misconduct on the part of the respondent for inquiry. In all cases, the appeals were dismissed and the decisions of the tribunal affirmed.

In one such case, the President of the High Court, in affirming the decision of the tribunal, held "that this is not the appropriate forum to resolve this issue. The events described by the appellant and the respondent bear the characteristics of a dispute between them rather than actionable misconduct *per se* on the part of the respondent. Furthermore, the remedies available in this forum are not suitable to recompense the appellant for the loss allegedly incurred by him as a result of the respondent's alleged misconduct. The court notes the avenues explored by the appellant in seeking redress; however, the appellant will appreciate that it is not for this court to advise him on alternative legal options available to him."

In another case, the President of the High Court held that, having considered all of the papers in respect of this matter, he was satisfied that the issues raised by the investigating accountant were not of a serious nature and had been satisfactorily clarified by the respondent in his comprehensive replying affidavit and in his letter to the Law Society. He was also satisfied, from all of the exhibited correspondence reviewed, that there was, and is, no danger to the public posed by the respondent, that he operated within permissible margins in his dealings with clients' moneys, and was not conspiring in any untoward financial practice. He affirmed the decision of the tribunal.

In three cases, where the Law Society appealed against the sanctions imposed by the tribunal, the High Court allowed the appeals and made an order striking the name of the respondent off the Roll in all three matters.

There is also an appeal by the Law Society against the penalties imposed by the tribunal on one respondent, arising from nine separate findings of misconduct. In addition, it is appealing the penalty imposed on one respondent and a finding of no misconduct on two respondents arising out of the same case.

On consent, the President of the High Court struck out the motion of appeal by a respondent against the findings and recommendation of the tribunal.

A decision is awaited in respect of 16 appeals against determinations by the tribunal that there was no *prima facie* case for inquiry. There are also ten outstanding appeals by the Law Society of Ireland in relation to one respondent, where the tribunal found the respondent guilty of misconduct.

Four decisions in respect of appeals to the Supreme Court are also awaited.

Judicial review

One case was remitted to the tribunal to hear further submissions in relation to penalty only.

Observations on complaints before the Tribunal

Conveyancing

The tribunal held inquiries in 28 cases (in respect of 18 respondents) arising from their practice as conveyancers. Of these 28 cases, 61% related to the failure to comply with undertakings given to banks and other lending institutions. It is clear this type of complaint is distorting the number of complaints arising under this category.

Of the remaining 39%, the tribunal found the respective respondents guilty of misconduct in circumstances where there was a failure, among other things, to honour an undertaking to comply with a condition of a planning permission in a timely manner or at all; failed to register clients' title to property in a timely manner or at all; failed to stamp and register a deed of conveyance in a timely manner or at all; breached regulation 4(a) of the *Solicitors (Professional Practice Conduct and Discipline) Regulations 1997* (SI No 85 of 1997) in acting for both the vendor and purchaser in the sale and purchase for value of a newly constructed residential unit or a residential unit in the course of construction, where the vendor was the builder to the residential unit (or units) or was associated with the builder of a residential unit or units.

In this latter case, the tribunal recommended to the President of the High Court that the respondent be censured and restricted from practising in the area of property and conveyancing for such period as the court may provide.

In six cases, concerning a respondent whose name had previously been struck off the Roll of Solicitors, the tribunal again recommended in their reports to the President of the High Court that the name of the respondent be struck off

the Roll of Solicitors in each case. This arose in circumstances where, in two cases, he had failed to honour undertakings to banks and to reply to the Law Society's correspondence. However, in the other four cases, while the respondent was found not guilty of misconduct in regard to failing to honour his undertakings to banks, he was nevertheless found guilty of misconduct in failing to reply adequately or at all to letters from the Law Society. The President of the High Court made an order striking the name of the respondent off the Roll of Solicitors in one case. The orders in relation to the remaining five cases are awaited.

The tribunal had also to consider four cases against a respondent who had in effect closed his practice. The respondent, among other things, admitted that he had failed to register a client's title to property in a timely manner or at all, having purchased same in 2001, and failed to comply with an undertaking furnished to a bank in a timely manner or at all. He also admitted failing to reply to correspondence from the Law Society. The tribunal, in two of the cases, recommended to the President of the High Court that the respondent not be permitted to practise as a sole practitioner or in partnership without the leave of the Law Society of Ireland; that he be permitted only to practise as an assistant solicitor in the employment and

under the direct control of another solicitor of at least ten years' standing, to be approved in advance by the Law Society. He was censured and fined in respect of the other two applications, one of which related to a failure to file an accountant's report.

Where a respondent had admitted the allegations in correspondence, but did not appear at the inquiry, the tribunal found he had, among other things, failed to stamp and register a deed of conveyance in a timely manner or at all; prejudiced his clients by allowing interest and penalties to accrue in relation to the non-stamping of the deed; and misled his client and his new solicitor. The tribunal was of the opinion that the respondent was not a fit person to be a member of the solicitors' profession and recommended that his name be struck off the Roll of Solicitors. The respondent had appeared before the tribunal in 2011 in respect of two other applications and was also the subject of a High Court order.

The tribunal has been quite clear in its rulings that solicitors must honour their undertakings in a timely manner or face the inevitable consequences. Banks and lending institutions have placed their trust in the profession, and without this trust it would be impossible to operate efficiently. Undertakings are personal to the solicitor and bind him/her as a matter of professional conduct.

Solicitors Accounts Regulations

Of the 18 cases that arose under this heading, 33% approximately related to the failure of a respondent to furnish an accountant's report to the Law Society within six months of the practice year end, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI no 421 of 2001). In some cases, there was also the additional allegation that the respondent, through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance

with the *Solicitors Accounts Regulations* for the protection of clients and the public.

In those cases, the tribunal imposed penalties ranging from advising and admonishing to censuring the respondent; imposing fines ranging from €500 to €7,500; and recommending to the President of the High Court that the respondent be suspended from practice on such terms as the High Court thought fit.

The requirement to keep proper books of account and comply with the *Solicitors Accounts Regulations* is a fundamental requirement of any solicitor in practice. This is to ensure that the Law Society can ascertain, at any given time, what the true position is in regard to clients' funds and that there is no shortfall. Consequently, failing to have a full understanding of their obligations under the *Solicitors Accounts Regulations* and failing to maintain proper books of account may well be the rock upon which many a solicitor will perish.

In one case, involving 26 separate findings of misconduct, the tribunal found the respondent guilty of misconduct in that she had, among other things, caused or allowed a deficit to arise on her client account as a result of the drawing of fees through a dummy ledger card; caused or allowed fees to be improperly drawn from the client account by debiting fees to the client ledger accounts when there were no funds available in the client ledger accounts at the time; demonstrated a gross disregard for client funds; and failed to maintain proper books of account, in breach of regulation 12 of the 2001 regulations over a period of time, such that it was not possible to determine from her accounting records a true and accurate statement of client affairs. The tribunal was of the opinion that the respondent was not a fit person to be a member of the solicitors' profession and recommended in its report to the High Court that the name of the respondent should be struck off the Roll of Solicitors.

Another respondent was found guilty of misconduct in circumstances where he had, among other things, improperly retained substantial fees in the client account, in breach of regulation 5(2) and avoided tax thereon until the matter was rectified after the Law Society's investigation; transferred to the office account, in the case of a client, moneys received for Land Registry fees; improperly caused or allowed a sum to be misapplied from the client account for the benefit of a client when there was no money to his credit in the client account to cover the payment, in breach of regulation 7(1)(a); improperly caused or allowed a sum to be paid from the client account to a builder on foot of the respondent's personal liability to the builder in breach of regulation 7(2)(b). The tribunal was of the opinion that the respondent was not a fit person to be a member of the solicitors' profession and that his name be struck off the Roll of Solicitors. However, in recognition of his efforts to pay back the moneys to clear the deficit and to regulate his affairs, the tribunal did not make any recommendation in regard to imposing a monetary penalty.

Given the serious and grave nature of the complaints against a respondent in respect of two separate applications, which included serious breaches of the *Solicitors Accounts Regulations*, the Law Society submitted to the tribunal that the name of the respondent should be struck off the Roll of Solicitors. The tribunal, in view of the admissions made by the respondent, found that he had misappropriated substantial client moneys; breached regulation 12 of the *Solicitors Accounts Regulations* by failing at all times to maintain proper books of account that showed the true financial position in relation to his transactions with clients' moneys; failed to attend a meeting of the Regulation of Practice Committee, despite being required to do so; transferred stamp-duty funds to the office account from the client account, ostensibly as fees; and failed to stamp deeds on time, incurring substantial interest and penalties on late stamping of the deeds in question. The respondent did not oppose the submissions made in relation to penalty by the

Law Society, and consequently the tribunal concurred with the submissions that the respondent's name be struck off the Roll.

Civil proceedings

During the year under review, the tribunal had to deal with a number of cases where respondents had engaged in conduct that is totally incompatible with the qualities expected of a solicitor.

The tribunal, in a case involving a respondent who had six previous orders made against her by the tribunal, found the respondent guilty of misconduct in circumstances where she had failed to confirm in writing that she had reported the complainant's claim to her professional indemnity insurers. She also failed to respond in a timely manner or at all to the Law Society's correspondence. The tribunal, having taken into account the respondent's disciplinary history, was of the opinion that she was not a fit person to be a member of the solicitors' profession and recommended to the President of the High Court that the name of the respondent be struck off the Roll of Solicitors.

In another case, the tribunal censured a respondent and ordered him to pay a sum of €3,000 to the compensation fund and €3,000 as a contribution towards the whole of the costs of the applicant where he had, among other things, failed to act in the best interest of his client, allowed two motions to be issued in default of discovery being made at a time when the solicitor was in possession of the documents being sought in discovery, allowed the defence of the client to be struck out in default of compliance with an order for discovery, and allowed the plaintiff's claim to be brought on for hearing against the client without the defence being reinstated. Disciplinary proceedings were adjourned on consent in two cases, pending the outcome of related plenary proceedings that have been instituted by the respondent in the High Court. In one case, the proceedings are challenging the validity of the *Solicitors Advertising Regulations* and the

Solicitors Acts. In another matter, the respondent is seeking a declaration that an undertaking that was the subject matter of the complaint is null and void and of no legal effect.

In a case where plenary proceedings were instituted by the complainant against the developer, builder, architect and supervising engineer, all of whom were to give evidence on behalf of the respondent, their insurers would not allow them to give evidence to the tribunal. On the application of the respondent, the disciplinary proceedings were adjourned, pending the determination of the case.

Regulatory body

Solicitors are rightly expected by their professional body to adopt a high standard of conduct and behaviour in their professional life, thus underpinning the confidence the public has in the legal profession. A solicitor who is the subject of a complaint must comply with any reasonable request or direction imposed on him/her by the Law Society and take such steps as are reasonable to assist the Law Society in their investigations.

Unfortunately, this has not been the case in a number of complaints that came before the tribunal. I alluded to this earlier in my report, where the tribunal made a recommendation that the respondent's name be struck off the Roll in circumstances where there was a finding of no misconduct in relation to the substantive matter, but the failure to reply to the Law Society's correspondence warranted the ultimate sanction.

In another case, where the respondent's name had already been struck off the Roll of Solicitors, the tribunal found him guilty of misconduct in that he had attempted to mislead the Society by sending letters to the Society purporting to be from an assistant in the practice, when these letters emanated from the respondent himself; failed to respond to the Law Society's correspondence in a timely manner or at all; and failed to comply with the direction of the Complaints and Client Relations Committee that he make a contribution of €500 towards the costs of the Society in dealing with this matter. The tribunal, in its report to the President of the High Court, recommended again that his name be struck off the Roll of Solicitors.

Subject matter of complaints

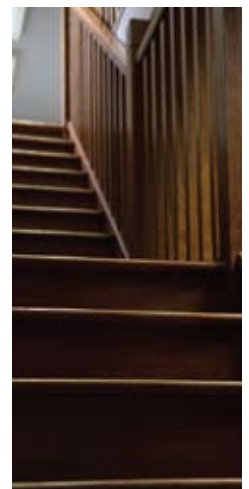
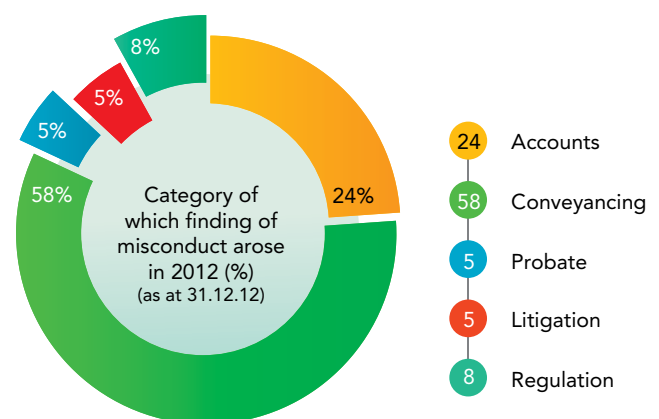
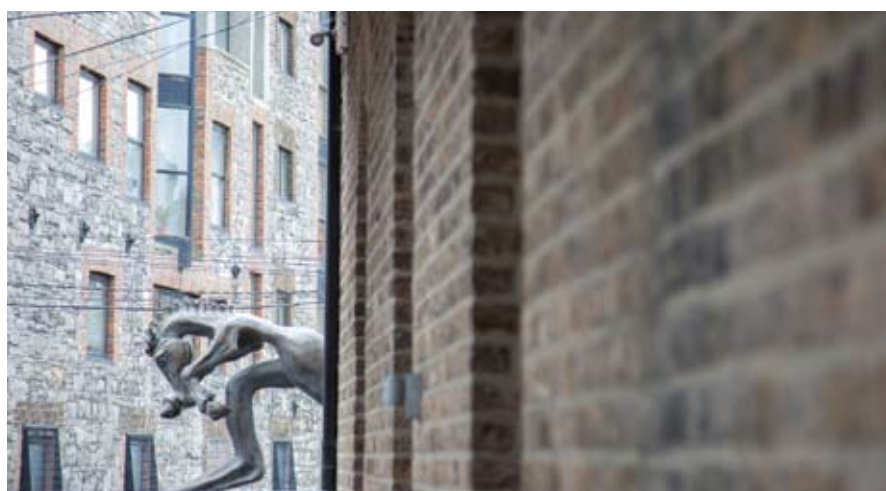


Chart 6 shows a detailed analysis of the subject matter of complaints, where the tribunal found that professional misconduct had taken place.

Chart 6



Some grounds on which professional misconduct was found



Administration of estates

- Delaying the distribution of the estate of the deceased until after the receipt of a letter of complaint, notwithstanding the deduction by the respondent of fees from the estate.
- Failing to issue a section 68 letter in relation to the administration of the estate, as admitted at a meeting of the Complaints and Client Relations Committee.

Civil claims

- Allowing two motions to be issued in default of discovery being made, at a time when the solicitor was in possession of the documents being sought in discovery.
- Allowing orders for discovery to be made and orders for costs to be obtained against the client.
- Allowing the defence of the client to be struck out in default of compliance with an order for discovery.
- Allowing a substantial number of orders and orders for costs to be obtained against the client as a result of the failures of the solicitor.
- Failing to bring an application to reinstate the defence of the client or failing to file an appeal against the striking out of the defence.

- Allowing the plaintiffs claim to be brought on for hearing against the client without the defence being reinstated.
- Allowing an order for costs to be made against the client when the Circuit Court judge allowed the case to be adjourned to allow an application to be made to reinstate the defence.
- Failing to advise the client of the orders having been made against him and the implications of same for the Circuit Court proceedings issued against him.
- Failing to confirm in writing that she had reported the complainant's client's claim to her professional indemnity insurers.
- Failing to act in the best interests of the client.
- Failing to use sufficient endeavours to secure the discharge of senior counsel's fees in a timely manner.

Conveyancing

- Failing to comply with an undertaking to the bank in failing to complete the legal formalities in relation to the purchase of the property concerned, so as to ensure that the bank obtained a good marketable title to the property, free from any encumbrance.
- Failing to comply with an undertaking, given in respect of clients over properties to a financial institution,

expeditiously or within a reasonable time or at all, whereby the respondent, among other things, undertook to stamp and register the documents of title to give the financial institution a first legal mortgage/charge over the properties and to forward documents of title and certificate of title to the financial institution duly registered.

- Failing to redeem the complainant's mortgage as instructed by the client.
- Failing to comply with an undertaking to furnish a receipt for the financial conditions of the planning permission and, if applicable, to discharge same from the proceeds of sale in a timely manner or at all.
- Misrepresenting to a lending institution in an undertaking given to that lending institution on his own behalf that he was a partner in the solicitors' practice.
- Failing to honour an undertaking to pay a mortgage company the net funds due to be paid to his clients by a county council under the terms of a compulsory purchase order.
- Stating in a letter to the Society and to the Complaints and Client Relations Committee that deeds of charges were lodged at the Land Registry for registration when this was not the case.
- Utilising the proceeds of a cheque received for, or on behalf of, a client for the benefit of a third party or parties, without the authority or the instructions of the client to do so.
- Breaching regulation 4(a) of the *Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997* (SI no 85 of 1997) in acting for both the vendor and purchaser in the sale and purchase for value of a newly constructed residential unit or a residential unit in course of construction, where the vendor was the builder to that residential unit (or units) or was associated with the builder of the residential unit (or units).
- Severely prejudicing clients by allowing interest and penalties to accrue in relation to the non-stamping of the deed.

Solicitors Accounts Regulations

- Causing or allowing a deficit to occur in respect of client funds of the practice.
- Causing or allowing clients' moneys to be improperly lodged to an account that was not designated as a client account, in breach of regulation 4, and instead causing or allowing the money to be held in a joint account bearing the respondent's name and that of a person who worked in her office.
- Causing or allowing fees to be improperly drawn from the client account to the client ledger accounts when there were no funds available in the client ledger accounts.
- Causing or allowing false or misleading documentation to be created and retained on the client file.
- Concealing the existence of a deficit by a practice of teeming and lading, whereby funds were moved from one client ledger to another, which had the effect of concealing the existence of the deficit.
- Misappropriating client funds received to pay stamp duty, Land Registry fees and outlay in respect of the purchase of a property.
- Making payments to clients at a time when there were no funds in the relevant client accounts and thereby creating a debit balance, which was rectified by transferring funds from the office account, in breach of the *Solicitors Accounts Regulations*.
- Breaching regulation 7 by withdrawing moneys from the client account that were not properly available to be so withdrawn in accordance with the provisions of that regulation.
- Failing to maintain and keep, in respect of transfers between clients' ledger accounts, such accounting records and other documents as would enable such transactions to be appropriately vouched, in breach of regulation 9(a).
- Breaching regulation 11 by failing to furnish bills of costs to clients prior to drawing fees.
- Failing to maintain proper books of account, in breach of regulation 12 of the 2001 regulations, over a continued

period of time, such that it was not possible to determine from the accounting records a true and accurate statement of client affairs.

- Improperly causing or allowing the Society's investigating accountant to be presented with, in or about, 23 section 68(1) letters that were created after notification of the investigation issued, but which were backdated, thereby giving the misleading appearance of compliance with section 68(1).
- Improperly causing or allowing funds to be drawn from the client ledger account in round sum amounts, without having issued bills of costs or interim bills of costs to the client, in breach of regulation 11.
- Improperly causing or allowing clients' money to be drawn from the client account to the office account, causing a debit balance on the client ledger account, in breach of regulation 7.
- Failing to ensure that there was furnished to the Society an accountant's report for the year ended 31 July 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI no 421 of 2001).
- Showing disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.
- Failing to respond adequately or at all to the Society's correspondence, necessitating an application by the Society to the High Court pursuant to section 10(A) of the *Solicitors (Amendment) Act 1994* (as amended by substitution).
- Failing to comply with an undertaking given to the Complaints and Client Relations Committee to lodge the application for first registration.
- Failing to provide regular updates regarding the progress of a registration to the Society, as directed by the Complaints and Client Relations Committee.
- Failing to respond adequately or at all to the Society's correspondence.
- Failing to respond to the Society's correspondence, resulting in the committee directing the Society to make an application to the High Court pursuant to section 10(A) of the *Solicitors (Amendment) Act 1994* (as amended by substitution).
- Failing to attend a meeting of the Complaints and Client Relations Committee, despite being required to do so.
- Misleading the Society by indicating that the registration was pending and a full update would be furnished to the bank within seven days, when this was not the case.
- Failing to attend or be represented at the meeting of the Complaints and Client Relations Committee, despite being required to so attend.
- Attempting to mislead the Society by sending letters to the Society purporting to be from an assistant in the practice, when these letters emanated from the solicitor himself.

Regulatory body – Law Society of Ireland

- Failing to comply with the direction of the Complaints and Client Relations Committee that he make a contribution of €3,000 towards the costs of the Society following his failure to answer the Society's correspondence in a timely manner and his failure to arrange for compliance with a notice pursuant to section 10 of the *Solicitors (Amendment) Act 1994*.

Other orders made by the tribunal

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

Publication of orders of the tribunal

Reports of the outcomes 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*.

Conclusion

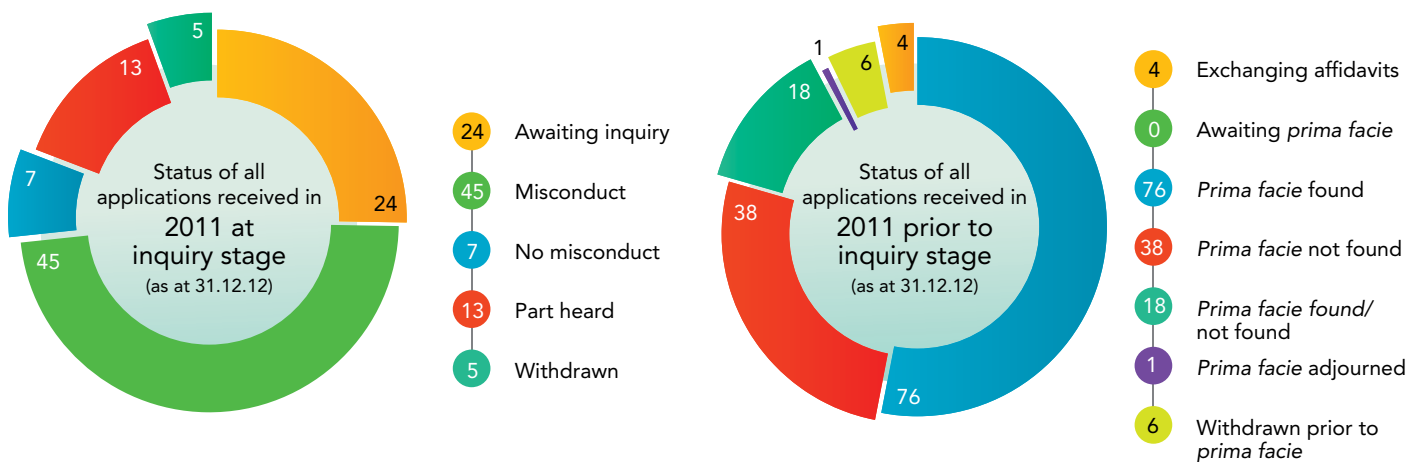
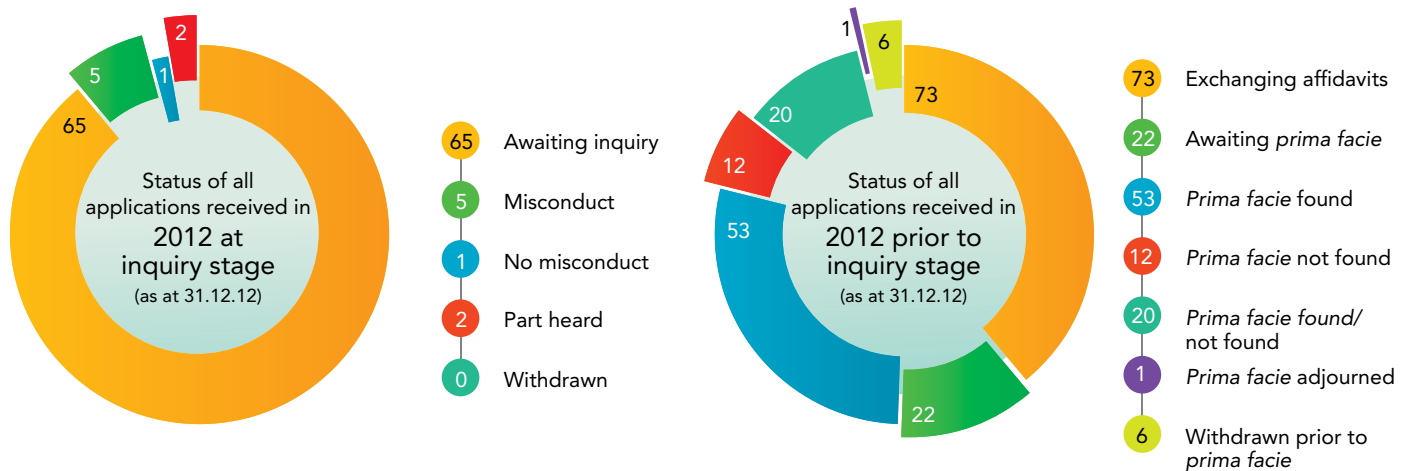
In these straitened times, it is a matter of personal responsibility for solicitors to ensure that they have the resources and that they are fit to cope with the pressures and responsibilities of their practices. It is essential that all solicitors who contemplate commencing practice on their own account have a working knowledge of the *Solicitors Accounts Regulations* and other office procedures to maintain an efficient practice.

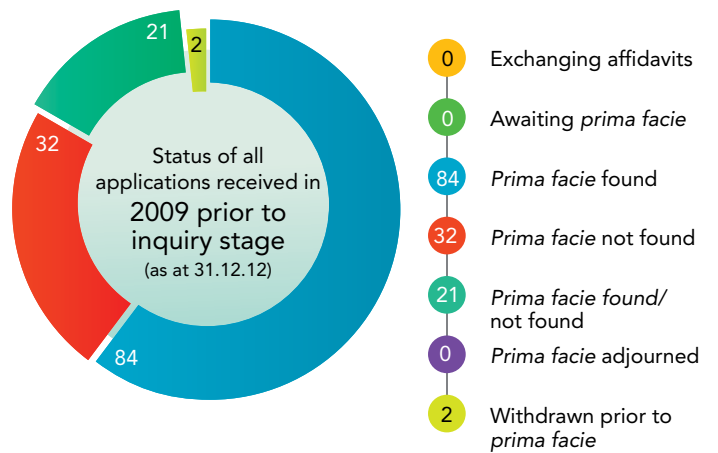
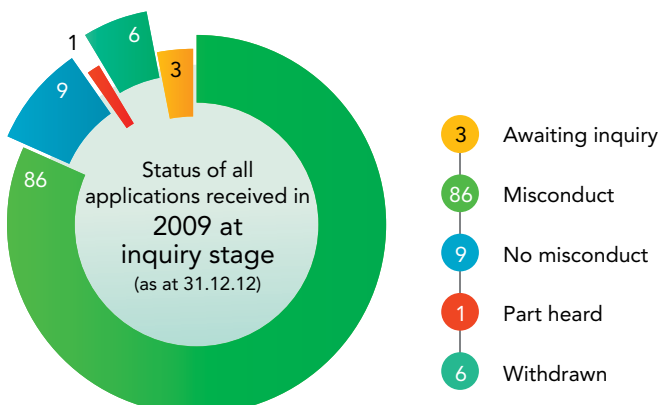
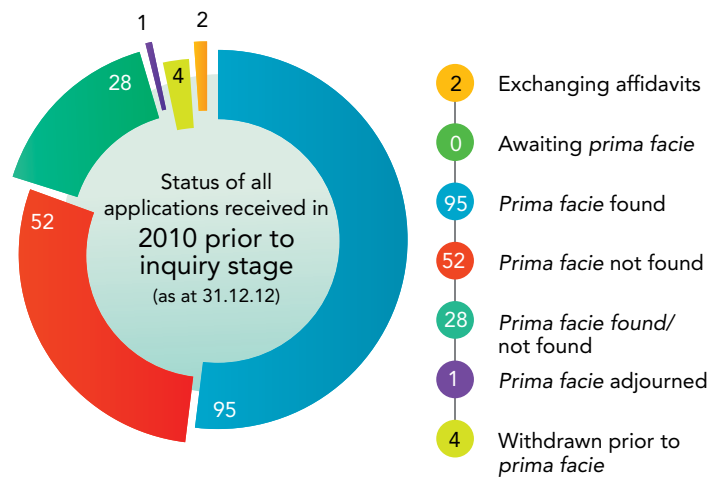
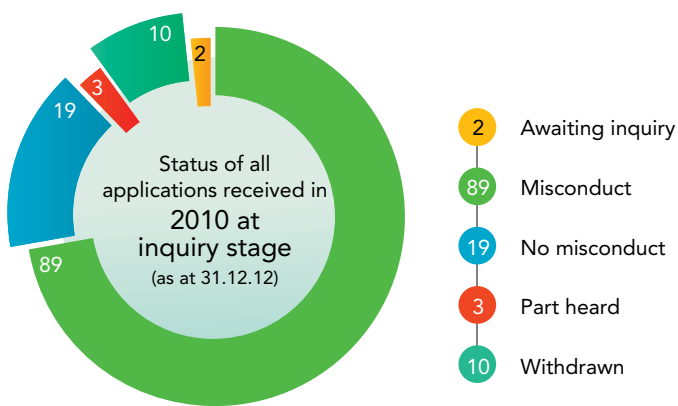
Solicitors also need to listen to their clients and understand their requirements, as clients who find themselves at the centre of a complaint can encounter severe emotional and financial turmoil.

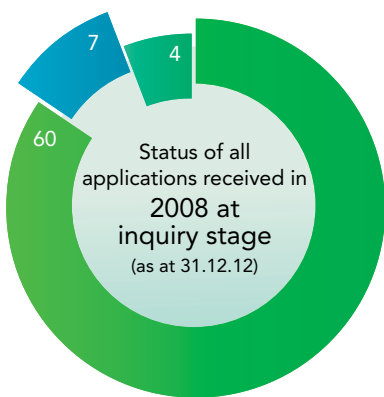
Finally, I would like to thank all members of the tribunal for the commitment and dedication to the work of the tribunal during the year.

Edward McEllin,
Chairman

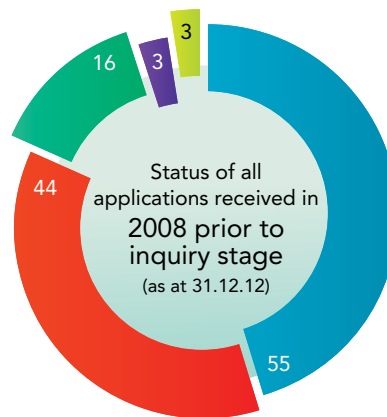
Appendix 1: Status of applications received, as at 31 December 2012



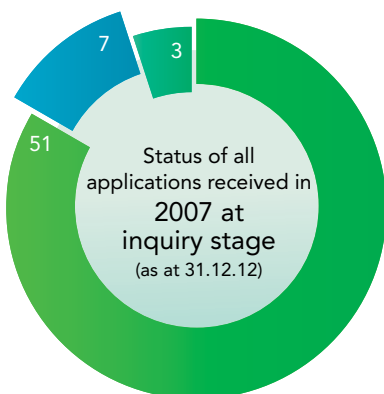




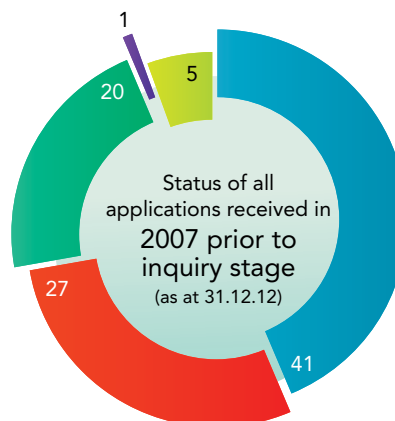
- 0 Awaiting inquiry
- 60 Misconduct
- 7 No misconduct
- 0 Part heard
- 4 Withdrawn



- 0 Exchanging affidavits
- 0 Awaiting prima facie
- 55 Prima facie found
- 44 Prima facie not found
- 16 Prima facie found/not found
- 3 Prima facie adjourned
- 3 Withdrawn prior to prima facie



- 0 Awaiting inquiry
- 51 Misconduct
- 7 No misconduct
- 0 Part heard
- 3 Withdrawn



- 0 Exchanging affidavits
- 0 Awaiting prima facie
- 41 Prima facie found
- 27 Prima facie not found
- 20 Prima facie found/not found
- 1 Prima facie adjourned
- 5 Withdrawn prior to prima facie

Appendix 2: Status of applications received, as at 31 December 2012

Analysis of applications and decisions

Solicitors Disciplinary Tribunal statistics, as at 31 December 2012

Status of applications	2012	2011	2010	2009	2008	2007
Law Society of Ireland:	120	87	117	92	65	53
Others:	67	56	65	47	56	41
Total received	187	143	182	139	121	94

Prior to *prima facie* consideration

Exchanging affidavits	73	4	2	0	0	0
Awaiting <i>prima facie</i> decision	22	0	0	0	0	1
<i>Prima facie</i> cases found	53	76	95	84	55	41
<i>Prima facie</i> cases rejected	12	38	52	32	44	27
<i>Prima facie</i> cases found/rejected	20	18	28	21	16	20
<i>Prima facie</i> decision adjourned	1	1	1	0	3	0
<i>Prima facie</i> application withdrawn	6	6	4	2	3	5

Inquiry stage

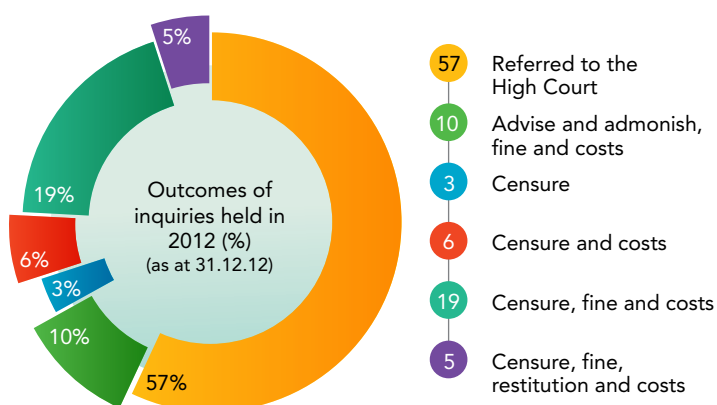
Cases scheduled for inquiry	65	24	2	3	0	0
Misconduct found	5	45	89	86	60	1
Misconduct not found	1	7	19	9	7	7
Part heard	2	13	3	1	0	0
Withdrawn	0	5	10	6	4	3

Prior to 2007, dealt with in 2012

Inquiry Stage	
Exchanging affidavits	0
Awaiting <i>prima facie</i> decision	0
<i>Prima facie</i> cases found	0
<i>Prima facie</i> cases rejected	0
<i>Prima facie</i> cases found/rejected	0
<i>Prima facie</i> decision adjourned	0
<i>Prima facie</i> application withdrawn	0
Cases scheduled for inquiry	0
Misconduct found	1
Misconduct not found	0
Part heard	0
Withdrawn	1

Appendix 3

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*



Appendix 4

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

Referrals by the tribunal to the High Court in respect of the applications set out in Appendix 3

Recommendations of the tribunal in 2012	Number of respondents	Number of applications
That the name of the respondent be struck off the Roll of Solicitors; that the respondent make restitution to the complainant as may be determined by the President of the High Court, and that payment of these moneys take priority over any cost and expenses to be paid in respect of the proceedings – costs	1	1
That the name of the respondent be struck off the Roll of Solicitors – costs	6	18
That the name of the respondent be struck off the Roll of Solicitors	2	2
That the respondent be suspended forthwith from practice, pending clarification by the Law Society of Ireland that it has received satisfactory closing accountant's report; censured, fined €7,500 and costs awarded	1	1
That the respondent be suspended from practice on such terms as the High Court thinks fit – costs	2	3
That the respondent be restricted from practising in the area of property and conveyancing for such period as the court may provide: censured – costs	1	1
The respondent be restricted from practising in the area of conveyancing for such a period as the court may provide; be censured; pay €500 to the compensation fund – costs	1	1
That the respondent should not be permitted to practise as a sole practitioner or in a partnership, that he be permitted only to practise as an assistant solicitor in the employment and 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	4	4

Recommendations of the tribunal in 2012 (continued)

	Number of respondents	Number of applications
In the event that the undertaking in question has not been complied with by the time this matter comes before the High Court, the tribunal recommends that:	1	1
<ul style="list-style-type: none"> (i) The respondent not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor, in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland, (ii) The respondent pay the whole of the costs of the applicant, to be taxed by a taxing master of the High Court in default of agreement 		
Alternatively:		
In the event that the undertaking in question has been complied with by the time this matter comes before the High Court, the tribunal recommends that the respondent:		
<ul style="list-style-type: none"> (i) Be censured, (ii) Pay a sum of €3,000 to the compensation fund, (iii) Pay the whole of the costs of the applicant, to be taxed by a taxing master of the High Court in default of agreement 		
That the respondent solicitor be censured; pay a sum of €25,000 to the compensation fund – costs	1	1

Appendix 5

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

Orders of the High Court made on foot of recommendations of the tribunal in 2012	Number of respondents	Number of applications
That the name of the respondent be struck off the Roll of Solicitors	1	1
That the name of the respondent shall be struck from the Roll of Solicitors – costs	9 *	18
That the respondent should be permitted to continue to practise as an assistant solicitor in the employment and 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	2 *	3
That the respondent be censured; that the respondent not be permitted to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland – costs	1	1

**Two orders made in relation to the one respondent*

Solicitors Disciplinary Tribunal
The Friary, Bow Street,
Smithfield, Dublin 7, Ireland

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