

SOLICITORS DISCIPLINARY TRIBUNAL

Chairperson's Report 2019



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



It may be composed of up to 20 solicitor members and ten lay members, the latter 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.

The procedures of the tribunal are also governed by the *Solicitors Disciplinary Tribunal Rules 2003*, which came into operation on 1 March 2003 and, in respect of applications made from 1 January 2017, by the *Solicitors Disciplinary Tribunal Rules 2017*. Under the *Solicitors Acts 1954-2015*, 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* 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.

Members of the tribunal during 2019

Solicitor members

Niall Farrell, chairperson	Geraldine Kelly
Owen Binchy	Elizabeth Lacy
Helena Bowe O'Brien	Michael Lanigan
Geraldine Clarke	Justin McKenna
Justin Condon	Brian McMullin
Barbara Cotter	Stephen Maher
Helen Doyle	Joseph Mannix
Fiona Duffy	Boyce Shubotham
Patricia Harney	Fiona Twomey
Philip Joyce	Michael Tyrrell

Lay members

Dermot Eagney
Norah Gibbons
Vera Kelly
Joseph McPeake
Kevin Rafter
Siobhan Toale
Martin O'Halloran
Josephine Browne
Monica Mooney
Marion Coy

Tribunal registrar

Mary Lynch

Tribunal executive/ acting tribunal registrar

Kay Lynch

Tribunal executive

Ashling McGing

Administration assistant

Anthea Moore

Administration assistant

Nadia Farrell

Administrator/receptionist

Sophie Goldsbury
Sarah Banks
Patricia O'Shea

Introduction

This is my sixth report as chairperson, and it describes the work of the tribunal during the calendar year 2019. The report highlights some of the findings of the tribunal and sanctions imposed. It also provides information on statistics relating to the tribunal's work.

The tribunal's principal role is to determine whether a respondent is guilty of misconduct as defined in the *Solicitors Acts 1954-2015*. 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 that the tribunal finds misconduct, it then has to assess and impose penalty or, alternatively, refer the matter to the High Court with a recommendation as to penalty.

Hearings, when they involve complex, factual and legal issues, can take a number of days to complete. Consequently, hearings of the tribunal vary in length – see Chart 2 (page 7) – and more than one matter may be listed for hearing on a particular day in order to best utilise the time of the members and minimise costs. Decisions of the tribunal are usually delivered on the day of the hearing. However, it is possible that, in a number of cases, due to the complexity of the matters before them,

the tribunal will reserve its decision, and this has an impact on its ability to ensure the timely conclusion of cases.

Details of the workload of the tribunal during the year can be seen from Table 2 (page 4). There has been a further decrease, from 2018, in the number of applications received, both from the Law Society and from members of the public. The total number received was 72, compared with 108 in 2018. While 43 applications were received from members of the public during 2019, this is a decrease on the 57 complaints that were received in the previous year. Applications from the Law Society also continue to decrease, with 29 being made in 2019. This is in keeping with the trend from the past couple of years, and is expected to continue during the coming year. Only complaints submitted to the Law Society or the tribunal up to 4 October 2019 now come before the tribunal, and it will continue in existence until those cases have been disposed of. Complaints submitted after 4 October 2019 cannot be processed by the tribunal, and are being dealt with by Legal Services Regulatory Authority.

Further, the number of individual solicitors in respect of whom applications have been made declined to 76, which is a decrease of approximately 18% from the previous year. This decrease also indicates that there are fewer multiple applications being made to the tribunal. In view of all of the foregoing, it is anticipated that the tribunal will meet on fewer occasions during the coming years, as has happened in the year under review.

Considerable additional time is also spent by tribunal members 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 3 (page 4), which shows the number of sittings of the tribunal since 2011.

The tribunal maintains a diary in respect of forthcoming inquiries on its website at www.solicitorsdisciplinarytribunal.ie. However, preliminary/interlocutory applications are not included in the diary.

Table 1. Findings of misconduct and referrals to the High Court, by year

Number of applications received by year

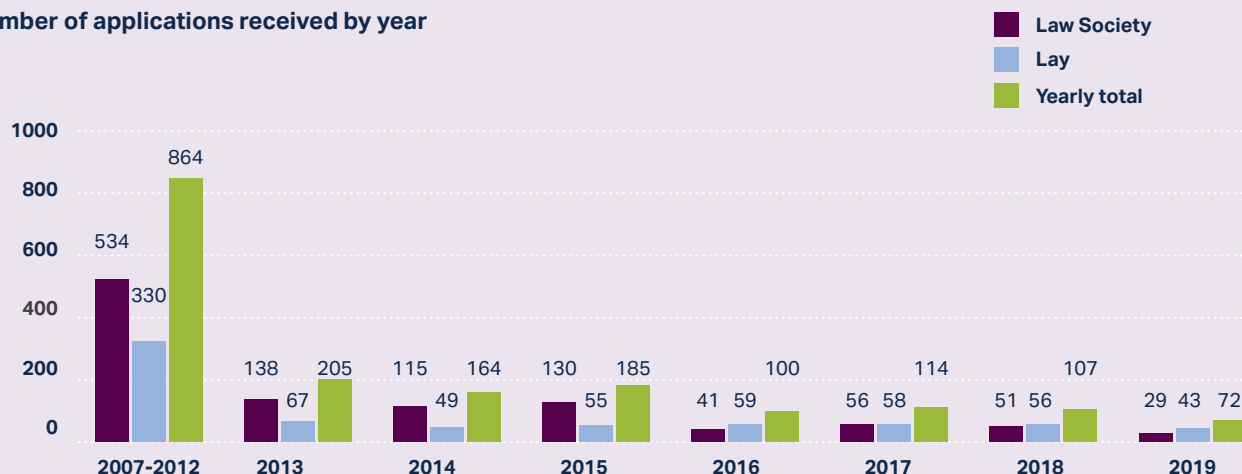
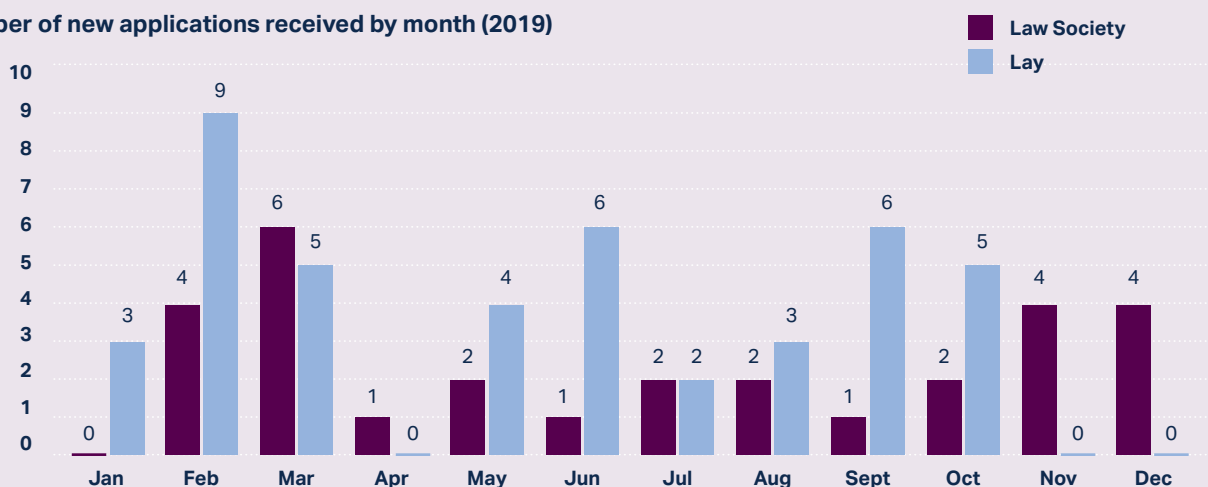
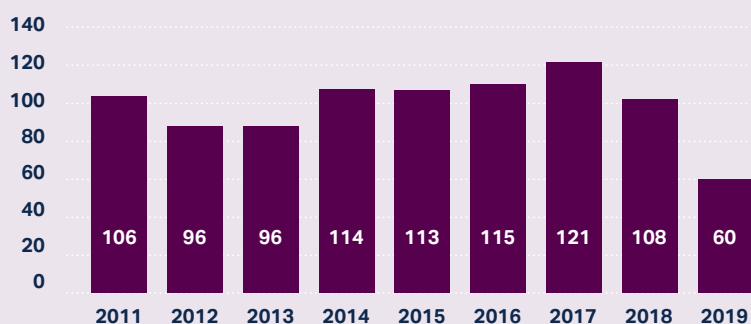


Table 2. Findings of misconduct and referrals to the High Court**Number of new applications received by month (2019)****Table 3. Number of sittings of tribunal, by year**

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.



Applications

The role of the tribunal is largely confined to receiving applications alleging misconduct in respect of solicitors or trainee solicitors. Where a *prima facie* case of misconduct for inquiry is found by a division of the tribunal, an inquiry will proceed in respect of the complaint(s) sent forward for hearing.

Complaints that come before the tribunal will have been received from the Law Society of Ireland or directly from members of the public.

Parties should be aware that they have the benefit of an adversarial procedure and, consequently, have the right to adduce and challenge evidence, and make submissions in mitigation or otherwise. The tribunal has an obligation to set out reasons for its decisions and this, on occasion, has resulted in lengthy written decisions being issued.

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 tribunal staff in relation to the processing of 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 the right to take an action in the courts against the solicitor concerned for negligence.

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, which is the criminal standard – that is, beyond all reasonable doubt.

Where a solicitor fails to appear or is not legally represented, this does not relieve the tribunal of its obligation to hold an inquiry and to proceed in the manner that it would, should the solicitor have been 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* and the *Solicitors Disciplinary Tribunal Rules 2017* (the latter of which operate in respect of applications made on or after 1 January 2017) set out the appropriate procedures to follow, which are similar but not identical to court procedures. In all cases, the tribunal makes a tremendous effort to ensure that solicitors' constitutional rights to fair procedures and natural justice are honoured.



Chart 1. Outcome of inquiries held in 2019 (%)

■ 79 (misconduct)
 ■ 21 (no misconduct)

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, in private. This is in accordance with rule 9 of the *Solicitors Disciplinary Tribunal Rules 2017*.

In general, it is at this stage of the process that the tribunal, for the first time, will read all of the documents furnished by the parties and consider each of the allegations of misconduct set out in an applicant's grounding affidavit. Members will assess each of the complaints by examining the evidence adduced, and the response, if any, of the respondent.

If satisfied that a *prima facie* case has been shown, 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. In this regard, it should be noted that, in an appeal to the Supreme Court in 2008, it was held that an appeal to the High Court from a decision of the tribunal is an appeal *de novo*, in which the parties are free to make all appropriate submissions for the purposes of persuading the High Court that a *prima facie* case of misconduct exists and that the tribunal should be obliged to hold a full hearing. It was also held that the tribunal is a notice party only to the proceedings and is bound by any order that the High Court might make on the appeal.

Sanctions

In determining what penalty should be imposed, the tribunal is conscious of its role to protect the public and to maintain public confidence in the profession by safeguarding the reputation of the profession. The tribunal, among other things, takes

into account the action required to protect the public and the type and severity of the misconduct, including any proven dishonesty, aggravating and mitigating circumstances, proportionality, and prior disciplinary history.

The tribunal may impose a range of sanctions in relation to its determinations, including advising and admonishing, censuring the solicitor, and/or imposing a monetary penalty. For more serious sanctions, such as that a solicitor should have restrictions placed on his/her practising certificate, be suspended from practice, or the ultimate sanction of having his/her name struck from the Roll of Solicitors, the tribunal makes a recommendation only to the President of the High Court. In such cases, it is a matter for the President of the High Court to decide what sanction is to be imposed.

In one particular case during the year under review, the tribunal, having considered the submissions made, censured the respondent, imposed a significant monetary penalty, and directed that he should pay a large contribution towards the costs of the Law Society. The allegations that were the subject matter of the inquiry related to the failure by the respondent to transmit documents of title and files to his clients, failure to comply with directions made by the Complaints and Client Relations Committee of the Law Society, failure to attend at a meeting of the committee, and failure to reply adequately or at all to the Society's correspondence.

In determining the penalty to impose, the tribunal took into consideration the admissions made by the respondent, the apology tendered by him, and the fact that, although belatedly, deeds had been furnished to the respondent's clients.

The tribunal also took account of the respondent's long blemish-free career and that he had no prior disciplinary history. In coming to its decision on sanction, the tribunal also recognised the extreme distress and difficulty caused to the respondent's clients by his failure, over a long period of time, to deal with their complaints. However, it was also acknowledged that this was not the norm for the respondent and had not happened before.

In another case, the tribunal looked at the appropriate penalty to impose where a respondent had failed to ensure that there was furnished to the Law Society an accountant's report, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014*. This is a report from the solicitor's accountant that certifies his compliance or otherwise with the *Solicitors Accounts Regulations*. It noted that, as of the date of the hearing, the report had still not been submitted.

The tribunal considered the submissions made as to the appropriate sanction, in which it made reference to the fact that there had been no engagement by the respondent with the Law Society. The tribunal noted that it was a serious matter when a solicitor did not file their accountant's report. Having regard to these factors, the tribunal recommended that the respondent be suspended from practising as a solicitor until such time as he was compliant with his obligations under the *Solicitors Accounts Regulations*.

Adjournments

The tribunal's policy in respect of applications to adjourn inquiries is furnished to each party to an inquiry.

In general, a party seeking an adjournment of an inquiry is required to make a formal application to that effect to a sitting division of the tribunal, with prior written notice to the other party. Such applications are expected to be made in a timely manner, as to do otherwise might result in unnecessary costs being incurred.

Good cause must be shown to the tribunal for any such adjournment. In this regard, the party seeking the adjournment must state in writing the full reasons why the adjournment is being sought and provide any documentary evidence in support of the application, such as medical reports, evidence of travel arrangements, or attempts to contact witnesses.

Where an application by one party for an adjournment is made on the date of the inquiry, and where the other party is not present or represented, the consent of the other party to the making of the application must previously have been sought before that application will be considered by the tribunal. Only in the gravest circumstances will this procedure be departed from, and then only at the discretion of the tribunal.

In considering an application for an adjournment, the tribunal, where appropriate, will also take into account the length of time the parties have been on notice of the intended inquiry, whether the application is being made in a timely manner, the fact that witnesses may be in attendance and have incurred expense in attending (including travelling from abroad), and whether it is in the public interest and/or the interests of justice to grant the adjournment.

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 1954-2002) 2004* (SI 701 of 2004).

It 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.

There were four appeals lodged in the High Court in the year under review. These appeals were in respect of decisions of the tribunal that there was no *prima facie* case of misconduct on the part of the respondent for inquiry. In two cases, the President of the High Court affirmed the decision of the tribunal. In the remaining two cases, the decision of the High Court is awaited.

The High Court also delivered a decision in respect of an appeal lodged in 2018. In this case, the court also affirmed the decision of the tribunal that there was no *prima facie* case for inquiry.

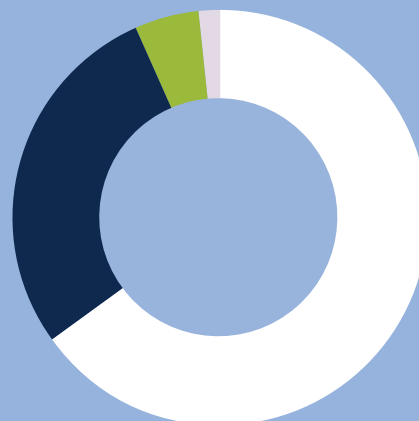
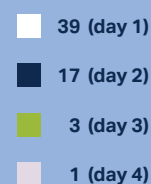


Chart 2. Full length of inquiries completed in 2019 (%)



Observations on complaints before the tribunal

Conveyancing

The importance of undertakings in conveyancing continues to be noted by the tribunal. Complaints regarding the alleged failure to comply with undertakings, given either to a financial institution or a colleague, continue to come before the tribunal. Failure to comply with undertakings has been found on many occasions by the tribunal to amount to misconduct.

In a case before the tribunal in the year under review, a respondent admitted misconduct in respect of two undertakings, both of which were more than ten years old. At the time the case came before the tribunal, the undertakings remained to be complied with. While the tribunal noted that the breach of the undertakings had arisen from an error on the part of the respondent – not dishonesty – the fact remained that the undertakings remained unfulfilled. The tribunal commented that undertakings are an essential component of the conveyancing system, and their breach must be dealt with seriously, however they arise.

However, having had regard to the fact that the respondent had done everything within his power to remedy the situation, the tribunal was of the view that a censure, together with a direction to pay the costs of the Law Society, was a sufficient sanction.

Solicitors Accounts Regulations

Some of the most serious matters that came before the tribunal concerned breaches of the *Solicitors Accounts Regulations*. In one case, in view of the admissions made, the tribunal

found the respondent was guilty of misconduct in that he had, among other things, caused a deficit in the client account; failed to maintain proper books of account, in breach of regulation 13(1) of the *Solicitors Accounts Regulations 2014*; failed to maintain books of account that showed the true position in relation to the respondent's dealings with client moneys, in breach of regulation 13(2) of the regulations; caused nine debit balances to arise on the client ledger accounts, contrary to 7(2)(a) of the regulations; and engaged in a practice of teeming and lading, thereby concealing the existence of a deficit in client funds.

After hearing submissions in regard to penalty, the tribunal recommended to the President of the High Court that the name of the respondent should be struck off the Roll of Solicitors. The tribunal was of the view that the respondent had been involved in serious breaches of the *Solicitors Accounts Regulations* over a sustained period. The tribunal was further of the view that, given the serious breaches of the regulations, there was no doubt that the respondent's conduct brought the solicitors' profession into disrepute.

In his favour, the tribunal noted that the respondent had made early admissions in respect of the allegation before them, that he had practised for a long period with no previous findings of misconduct, and that he had refunded the deficit on the client account. However, in view of the findings made, the tribunal felt it was clear that it had no option but to refer the matter to the President of the High Court with a recommendation that the respondent's

name be removed from the Roll of Solicitors.

In another matter, the tribunal found misconduct where a respondent had failed to ensure that there was furnished to the Law Society an accountant's report, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014*. When the matter came before the tribunal over 12 months after it was due, the accountant's report had still not been filed.

In considering what penalty was appropriate, the tribunal took into account the submissions made by the parties and noted that the respondent had been before the tribunal on two previous occasions in respect of similar allegations. While the respondent had made admissions, the tribunal was concerned to note that this was not the first time he had been before the tribunal for alleged breaches of the *Solicitors Accounts Regulations*. The tribunal also noted that the respondent had been given considerable time to file the report, but that it was still not available. The tribunal commented that it was vital, because of the respondent's dealings with members of the public, that the accounting regulations be complied with to the letter.

Having had regard to these factors and the submissions made by both of the parties, the tribunal recommended to the President of the High Court that the respondent be suspended from practice until such time as he was fully compliant with his obligations under the *Solicitors Accounts Regulations*, that he be censured, pay a sum to

the Compensation Fund, and pay a contribution towards the whole of the costs of the Law Society.

In a further matter, the tribunal made a finding of misconduct against a respondent in respect of three allegations. These were that the respondent had unlawfully and without authority retained client moneys in his client account that were due to be paid to a firm of solicitors; that he had failed to remit costs and outlays to a firm of solicitors, resulting in court proceedings being issued against that firm's client; and that he failed to provide an explanation as to why client moneys had been retained by him for a period in excess of four years and were not properly remitted to a firm of solicitors in discharge of their legal costs and outlays.

The tribunal noted that the circumstances of the case had led to considerable inconvenience and difficulty for the complainant, and that no proper explanation had been provided for what had occurred. It considered that the conduct of the respondent had continued for a very long period of time and did not accept his explanation that he had overlooked matters. For these reasons, it considered the matter to be acute, with serious ramifications for the complainant. However, the tribunal took account of the admissions made by the respondent and the significant attempts made by him to remedy matters.

Having regard to these attempts and having considered the submissions made by both parties, the tribunal made an order that the respondent be censured and that he pay a fine and pay the Law Society's costs.

No misconduct

In his unreported judgment, delivered on 23 April 2004, in the matter of *Patricia Boycott (Appellant) v Gerard O'Connor (Respondent)*, Finnegan P noted: "The integrity of a profession and its reputation with the public depend in large part on the maintenance and enforcement of high standards of professional conduct by the profession."

However, Finnegan P also went on to note: "It is not every falling-short of the requisite high standard of conduct that amounts to misconduct. Falling short of the requisite standard in the provision of legal services, by the provision of such services, negligently; inadequately, to an extent, less than negligence; or in a delayed manner, may amount to misconduct, but in general, to amount to misconduct a pattern of such neglect, inadequacy or delay is required.

"If the work of a solicitor falls below what he has undertaken to provide for his client, the client has a remedy under his contract. The client can withhold payment of fees claimed, in which case the solicitor may have to establish before a court that he has performed his contractual obligations to the required standard.

"If failure to provide the services amounts to negligence, the client has an additional remedy before the courts. The existence of such remedies is a factor which justifies, if justification be needed, the approach of what may be described as bad work, whether neglect, delay or otherwise, will not, necessarily, amount to misconduct."

As has been highlighted in previous reports, the tribunal considers failure to communicate with a client to be a potentially serious matter on the

part of a solicitor. *A Guide to Good Professional Conduct for Solicitors* (3rd edition) sets out that a solicitor should be "open, frank and honest" in all dealings with his/her client. In a case that came before the tribunal, it was alleged, among other matters, that the respondent had not informed the applicant in time about the status of her case and had not answered her questions about it. The tribunal found that the applicant and her witness had failed to substantiate each of the allegations of misconduct made by her. Furthermore, the tribunal found the evidence of the respondent and his witness to be compelling in making its decision. Accordingly, the tribunal made a finding of no misconduct in respect of each of the allegations before it.

In another case, the matter of delay in bringing a complaint was considered by the tribunal. The matters complained of by the applicant related to alleged misconduct that had occurred 15 years prior to the case coming for hearing before the tribunal. It was the opinion of the tribunal that the applicant had been in a position to make a complaint to the Law Society or the tribunal in 2010, when she had become aware of certain matters, and that she had the benefit of legal advice at that time. No complaint was made to the tribunal until 2018, by which time the respondent was long retired from practice. The tribunal noted that the law requires that a complaint, in any legal matter, be made as soon as reasonably possible to allow defendants to address the allegations and gather evidence when events are still relatively fresh in their mind and when evidence is to hand. The tribunal considered that, in view of all the circumstances outlined to it, the delay was inexcusable and that it would be unjust to allow the hearing to proceed. The tribunal made a finding of no misconduct in respect of the allegations before it.

Subject matter of complaints

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

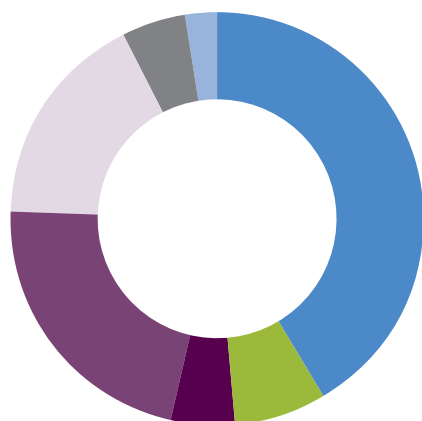


Chart 3. Category in which a finding of misconduct arose (2019)

2 (conveyancing)	2 (family law)
1 (probate)	9 (regulatory)
17 (<i>Solicitors Accounts Regulations</i>)	7 (miscellaneous)
3 (litigation)	

Some grounds on which professional misconduct was found

Solicitors Accounts Regulations

- Failing to ensure that there was furnished to the Law Society an accountant's report, in breach of regulation 26(1) of the *Solicitors Accounts Regulations* 2014 (SI 516 of 2014),
- Failing to ensure that there was furnished to the Law Society a closing accountant's report, as required by regulation 33(2) of the *Solicitors Accounts Regulations* 2014,
- Unlawfully and without authority retaining client moneys in his client account,
- Failing to remit costs and outlays arising out of litigation, resulting in Circuit Court proceedings being issued against the complainant's client,
- Failing to provide an explanation as to why client moneys had been retained for a period of in or around four years and not properly remitted in discharge of their legal costs and outlays,
- Causing or allowing a deficit in client funds to arise on the client account,
- Failing to maintain proper books of account that showed the true position in relation to clients' moneys, in breach of regulation 13(1) of the *Solicitors Accounts Regulations*,
- Failing to maintain books of account that showed the true position in relation to clients' moneys, in breach of regulation 13(2) of the *Solicitors Accounts Regulations*,
- Engaging in a practice of teeming and lading, thereby concealing the existence of a deficit in client funds,
- Causing debit balances to arise on the client ledger, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
- Taking client moneys to lodge moneys to a personal account, in breach of regulation 14 of the *Solicitors Accounts Regulations*,
- Taking moneys from a personal bank account in part discharge of two client mortgage accounts, having misapplied the funds originally received,
- Failing to maintain proper records by withdrawing funds from the client account to the office account without supporting documentation, contrary to regulation 7 of the *Solicitors Accounts Regulations*,
- Failing to maintain proper books of account and such relevant supporting documentation, contrary to regulation 13(1) of the *Solicitors Accounts Regulations*,
- Failing to comply with the direction of the Regulation of Practice Committee for inspection of the solicitor's practice by not responding to the Law Society to confirm agreement to inspection on two (previously) proposed dates,
- Failing to comply with the directions of the Regulation of Practice Committee, thus causing the Law Society to make an application to the High Court for an order pursuant to section 18 of the *Solicitors (Amendment) Act 2002*,
- Failing to comply with High Court orders.

Regulatory

- Failing to respond to correspondence from the Law Society,
- Failing to comply with the direction of the Complaints and Client Relations Committee, whereby the solicitor was directed to furnish within 14 days to the Law Society, in respect of each property belonging to his clients that were the subject of a mortgage, a full history of all legal transactions involving the property,
- Failing to comply with the direction of the Complaints and Client Relations Committee, whereby he was directed to furnish an update to the Law Society to address the direction made at a previous meeting,
- Failing to comply with an undertaking in a timely manner or at all,
- Failing to respond to the Law Society correspondence in a timely manner or at all,
- Failing to comply adequately or at all with an undertaking,
- Failing to comply expeditiously, within a reasonable time, or at all with an undertaking given to a financial institution,
- Failing to reply adequately or at all to his client's correspondence,
- Failing to reply adequately, or in a timely fashion, or at all to the Law Society correspondence in respect of a complaint concerning an undertaking,
- Failing to attend the meetings of the Complaints and Client Relations Committee, despite being required to do so,
- Failing to comply with the direction made by the Complaints and Client Relations Committee that the solicitor furnish to the Law Society a copy of a certificate of title and a copy of the architect's certificate.

Probate

- Failing to comply with a direction of the Complaints and Client Relations Committee to refund moneys to the estate of a deceased client,
- Failing to attend the Complaints and Client Relations Committee meeting that he was required to attend by High Court order,
- Failing to comply with section 68(1) of the *Solicitors (Amendment) Act 1994*,
- Issuing an excessive bill of costs,
- Causing the Compensation Fund of the Law Society to make a grant to a second complainant.

Family law

- Failing to comply with a direction made by the Complaints and Client Relations Committee that he provide a full written response to a complaint within seven days,
- Failing to comply with a direction made by the Complaints and Client Relations Committee that he pay outstanding costs to the Law Society and refund moneys to his former client within a 14-day period,
- Failing to comply with a direction made by the Complaints and Client Relations Committee that he provide a medical certificate explaining his non-attendance at the meetings,
- Failing to respond to the Law Society letters to him in a timely manner or at all.

Other orders made by the tribunal

The tribunal made seven 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

The first independent disciplinary committee charged with dealing with complaints against solicitors was set up under the *Solicitors (Amendment) Act 1960*. Prior to that, members of the disciplinary committee were formally appointed by the Law Society under the *Solicitors Act 1954*. From 1960, the Disciplinary Committee operated for a period in excess of 30 years until the Solicitors Disciplinary Tribunal came into force under the *Solicitors (Amendment) Act 1994* (as amended).

The 1960 act provided that the committee comprise solicitor members only, appointed by the then President of the High Court. Subsequently, when lay members were appointed in accordance with the 1994 act, both solicitor and lay members were also appointed by the president.

Over the last number of decades, the disciplinary tribunal and its predecessor have been well served by solicitor members who gave of their time to make a valuable contribution to the maintenance of standards in the profession. Their contribution in this regard cannot be overstated. Likewise, since 1994, the role of lay members in regulating the profession has been seen as a vital part of the work of the tribunal. Their role in maintaining the integrity of the disciplinary process has been recognised by their solicitor colleagues, the profession, and the public – and this continues to be so.

From 2008 onwards, following the unfortunate downturn in the economy, there was obvious cause for concern in regard to the giving of undertakings by solicitors due to the gross breaches

of trust in respect of undertakings given to lending institutions. As a result of such failures, solicitors found themselves in untenable situations, whereby they were forced to close their practices and face the ultimate consequence of having their names struck off the Roll of Solicitors. Thankfully, the number of such cases has been greatly reduced. In this regard, the tribunal has exhorted solicitors over the years to recognise that it is vitally important when a solicitor gives an undertaking that he or she complies with it. The old saying that ‘your word is your bond’ is recognised and enforced by the tribunal and, as has been said in the past, the tribunal regards such failures as serious.

Solicitors – and indeed complainants – may well find the experience of coming before the tribunal a daunting one. However, it is important to note that the solicitors in respect of whom misconduct is alleged represent a small percentage of the number of practising solicitors. In 2019, for example, 76 solicitors were the subject of new applications to the tribunal, out of a population of almost 12,000 practising solicitors.

Unfortunately, when practising, solicitors may encounter personal troubles such as marital breakdown, psychological or addiction problems, and these may have an adverse effect on the efficient running of a practice. Sadly, in the course of its work, the tribunal has encountered situations where solicitors, in such circumstances, may only seek help and guidance where they are forced to do so. Today, the tribunal is aware that solicitors may avail of the services of appropriately qualified people through facilities such as the [Wellbeing Hub](#) operated by the Law Society, [LegalMind](#) (an independent, confidential, low-cost, mental-health support for Law Society members and their dependants), and other similar services, such as [LawCare](#) (until 31 December 2020), and would urge solicitors to avail of these when encountering personal difficulties. It is not only in the interest of the solicitors concerned (and their families), but also in the interest of their clients, the public, and the solicitors’ profession.

It is also regrettable where the tribunal encounters situations where respondents, early in their careers,



do not appreciate or exercise the required level of responsibility, especially with regard to compliance with the *Solicitors Accounts Regulations*, which encompasses the safekeeping of clients' moneys entrusted to their care. The tribunal is of the view that the Law Society and its members should emphasise the weight of that responsibility, especially on young shoulders, where they decide to go into practice on their own account.

While this report relates to the work of the tribunal in 2019, I would like to pay tribute to Norah Gibbons, a lay member of the tribunal, who sadly passed away in April 2020. Norah was a very dedicated and conscientious member of the tribunal, who made a valuable contribution to its work and will be missed by all her colleagues. She was well known in public life, and the tribunal was privileged to have her as a member.

I would also like to thank a number of long-standing and experienced members, both solicitor and lay, who retired from the tribunal in 2019 and 2020. They are Geraldine Clarke, Justin Condon, Dermot Eagney, Patricia

Harney (who I congratulate on her appointment to the District Court bench), Vera Kelly, Michael Lanigan, Joseph McPeake, Boyce Shubotham and Siobhan Toale. The time and commitment given by them to the tribunal's work over the past decade is very much appreciated. A number of new lay members were appointed to the tribunal during 2019. They are Martin O'Halloran, Josephine Browne, Monica Mooney and Marion Coy. Their role as lay members will be important to the continued work of the tribunal.

I would also like to thank the immediate past-President of the High Court, Judge Peter Kelly, who retired in 2020. Judge Kelly was very supportive to me and the tribunal and its work, and I deeply appreciated this. He found time in his very busy schedule to attend general meetings of the tribunal and address the members, and validated their work and the attention they brought to it. His clarity of thought and insight when dealing with solicitors' disciplinary matters in his court provided very clear guidance to tribunal members in their work. His absence is

a great loss to the Irish legal system. However, I have no doubt that he will be active in retirement and continue to contribute in other ways.

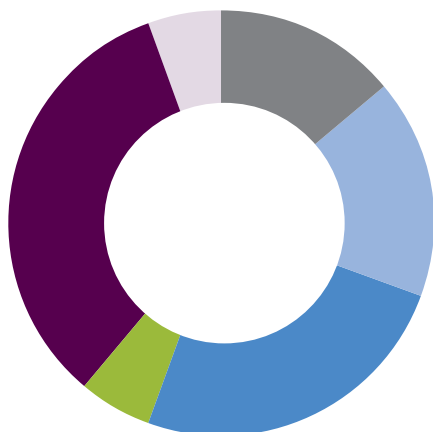
Finally, I would like to take this opportunity to thank the staff of the tribunal during this most difficult year and, in particular, tribunal registrar Mary Lynch, who retired during 2019. I mentioned Mary's retirement in last year's report and assure her that she is not forgotten.

Niall Farrell,
Chairperson

Appendix 1

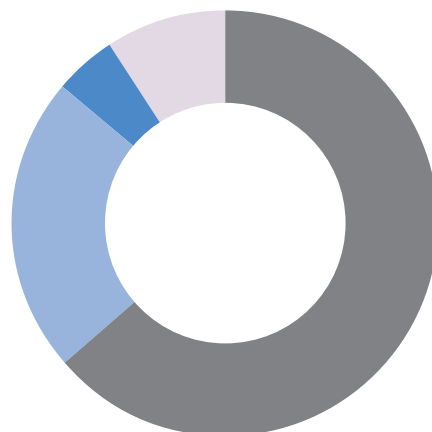
Status of applications received

2019 prior to inquiry stage



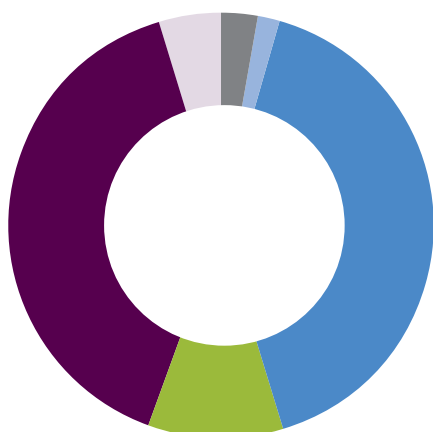
- 10 (exchanging affidavits)
- 12 (awaiting *prima facie*)
- 18 (*prima facie* found)
- 4 (*prima facie* found/not found)
- 24 (*prima facie* not found)
- 4 (*prima facie* withdrawn)

2019 at inquiry stage



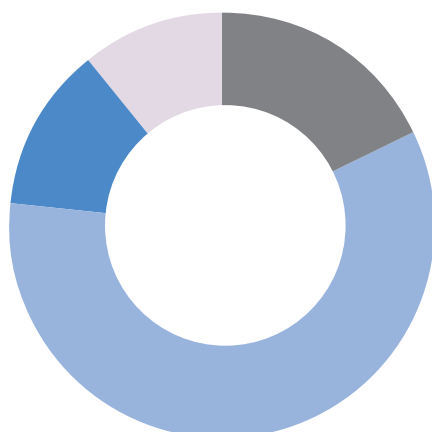
- 14 (awaiting inquiry)
- 5 (misconduct)
- 1 (no misconduct)
- 2 (withdrawn after *prima facie*)

2018 prior to inquiry stage



- 3 (exchanging affidavits)
- 2 (*prima facie* awaiting decision)
- 44 (*prima facie* found)
- 11 (*prima facie* found/not found)
- 43 (*prima facie* not found)
- 5 (*prima facie* withdrawn)

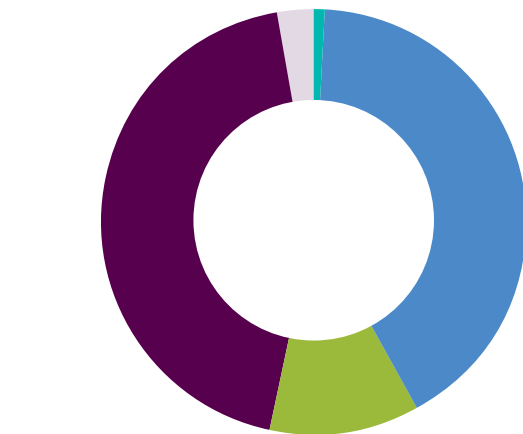
2018 at inquiry stage



- 10 (awaiting inquiry)
- 33 (misconduct)
- 7 (no misconduct)
- 5 (withdrawn after *prima facie*)

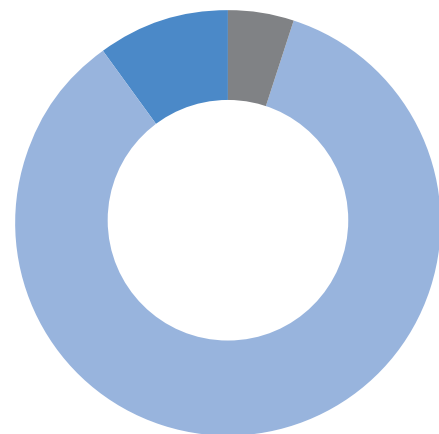
Status of applications received

2017 prior to inquiry stage



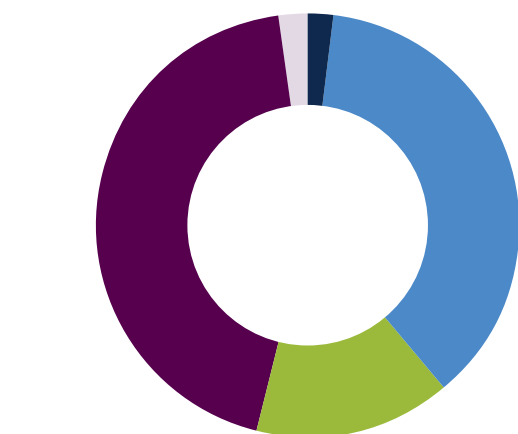
- 1 (struck out)
- 47 (*prima facie* found)
- 13 (*prima facie* found/not found)
- 50 (*prima facie* not found)
- 3 (*prima facie* withdrawn)

2017 at inquiry stage



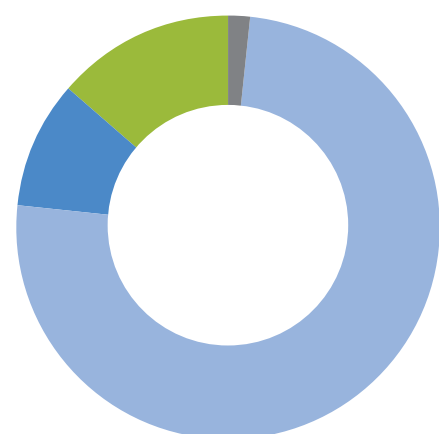
- 3 (awaiting inquiry)
- 51 (misconduct)
- 6 (no misconduct)

2016 prior to inquiry stage



- 2 (stay)
- 37 (*prima facie* found)
- 15 (*prima facie* found/not found)
- 44 (*prima facie* not found)
- 2 (*prima facie* withdrawn)

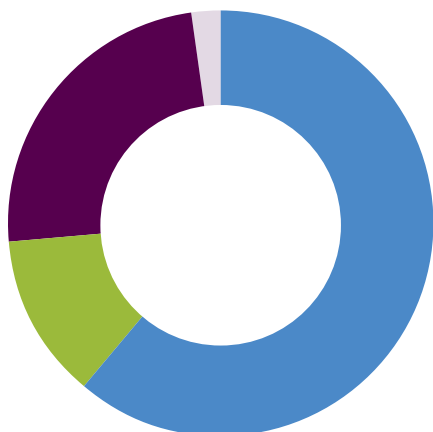
2016 at inquiry stage



- 1 (awaiting inquiry)
- 39 (misconduct)
- 5 (no misconduct)
- 7 (withdrawn after inquiry directed)

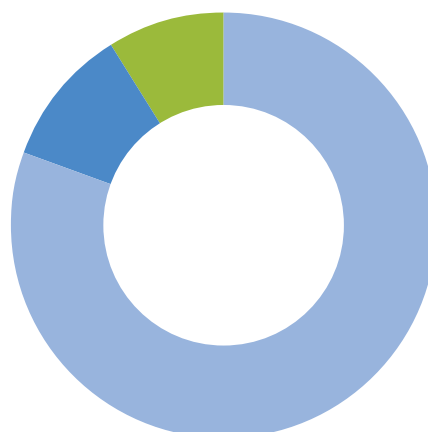
Status of applications received

2015 prior to inquiry stage



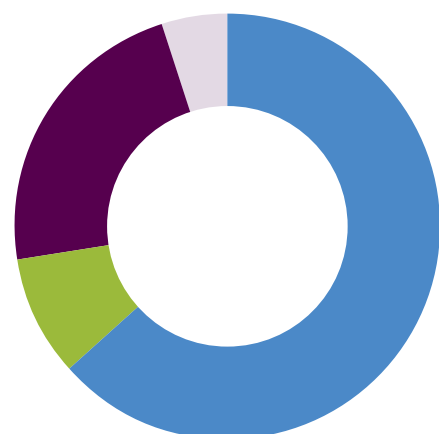
- 112 (*prima facie* found)
- 23 (*prima facie* found/not found)
- 44 (*prima facie* not found)
- 4 (*prima facie* withdrawn)

2015 at inquiry stage



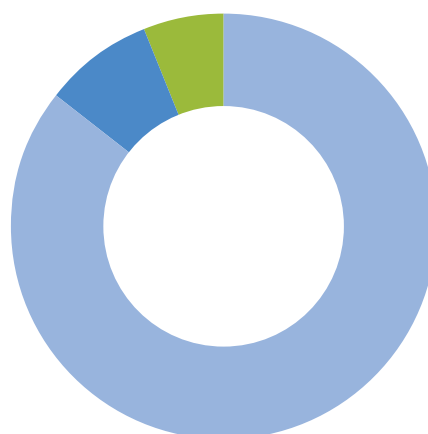
- 109 (misconduct)
- 14 (no misconduct)
- 12 (withdrawn after inquiry directed)

2014 prior to inquiry stage



- 104 (*prima facie* found)
- 15 (*prima facie* found/not found)
- 37 (*prima facie* not found)
- 8 (*prima facie* withdrawn)

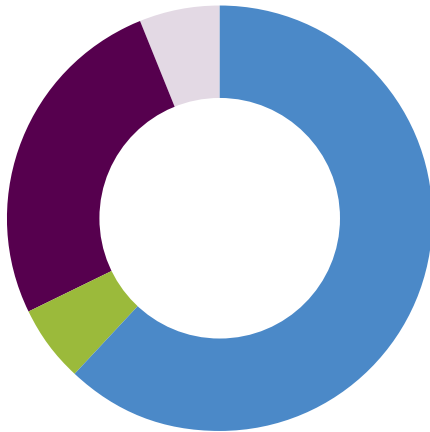
2014 at inquiry stage



- 101 (misconduct)
- 10 (no misconduct)
- 7 (withdrawn after inquiry directed)

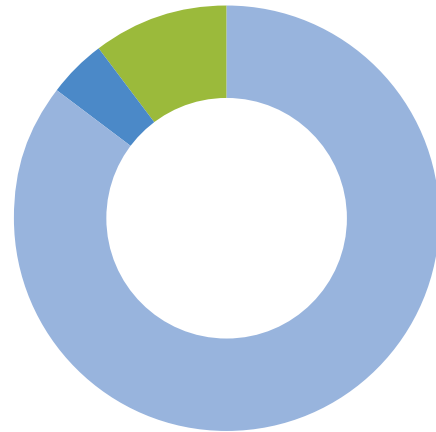
Status of applications received

2013 prior to inquiry stage



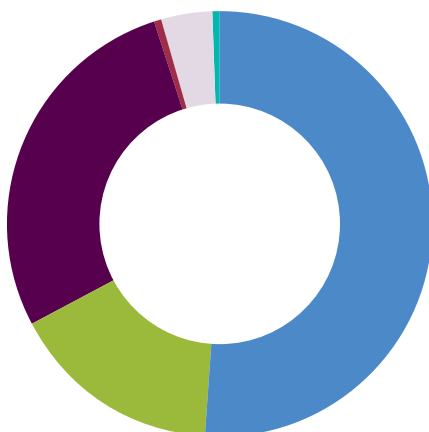
- 126 (*prima facie* found)
- 12 (*prima facie* found/not found)
- 53 (*prima facie* not found)
- 12 (*prima facie* withdrawn)

2013 at inquiry stage



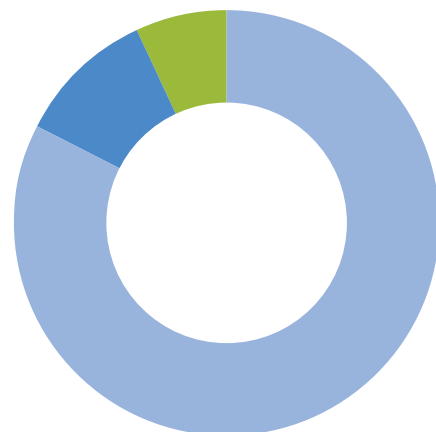
- 118 (misconduct)
- 6 (no misconduct)
- 14 (withdrawn after inquiry directed)

2007-2012 prior to inquiry stage



- 446 (*prima facie* found)
- 141 (*prima facie* found/not found)
- 240 (*prima facie* not found)
- 6 (inquiry generally adjourned)
- 34 (*prima facie* withdrawn)
- 3 (struck out)

2007-2012 at inquiry stage



- 484 (misconduct)
- 61 (no misconduct)
- 40 (withdrawn after inquiry directed)

Appendix 2

Analysis of applications and decisions

Solicitors Disciplinary Tribunal statistics, as at 31 December 2019								
Status of applications	2019	2018	2017	2016	2015	2014	2013	2007-2012
Law Society of Ireland:	29	51	56	41	130	118	136	532
Others:	43	57	58	59	55	46	69	332
Total received	72	108	114	100	183	164	203	864
Prior to <i>prima facie</i> consideration								
Exchanging affidavits	10	3	0	2	0	0	0	0
Awaiting <i>prima facie</i> decision	0	0	0	0	0	0	0	0
<i>Prima facie</i> cases found/yes	18	44	47	37	112	104	126	446
<i>Prima facie</i> cases rejected/no	24	43	50	44	44	37	53	240
<i>Prima facie</i> cases found/rejected	4	11	13	15	23	15	12	141
<i>Prima facie</i> decision adjourned	12	2	0	0	0	0	0	0
Struck out before <i>prima facie</i>	0	0	1	0	0	0	0	3
Adjourned before <i>prima facie</i>	0	0	0	0	0	0	0	0
<i>Prima facie</i> application withdrawn	4	5	3	2	4	8	12	34
Total	72	108	114	100	183	164	203	864
Inquiry stage								
Cases scheduled for inquiry	14	10	3	1	0	0	0	1
Misconduct found	5	30	51	39	109	101	118	484
Misconduct not found	1	7	6	5	14	11	6	61
Part heard	0	3	0	0	0	0	7	1
Withdrawn after <i>prima facie</i>	2	5	0	7	12	7	7	40

Appendix 3

Orders and referrals to the High Court made by the tribunal (pursuant to section 7 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

Referrals of the tribunal to the President of the High Court (pursuant to section 7(3)(b)(ii) of the *Solicitors (Amendment) Act 1960* as amended, in regard to penalty and costs (refer to Appendix 3 above).

Recommendations of the tribunal in 2019	Number of respondents	Number of applications
That the respondent is not a fit person to be a member of the solicitors' profession; that the name of the respondent be struck off the Roll of Solicitors; and pay costs	2	2
That the respondent be suspended from practice until such time as he is fully compliant with his obligations under the <i>Solicitors Accounts Regulations</i> ; that he pay a fine to the Compensation Fund; and pay costs	1	1
That the respondent be suspended from practice until such time as he is fully compliant with his obligations under the <i>Solicitors Accounts Regulations</i> ; and pay costs	2	2
That the respondent 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; and pay costs	1	2*

* These include two applications in respect of the same respondent

Appendix 5

Orders of the High Court made in respect of penalty imposed on respondents, pursuant to section 8 of the *Solicitors (Amendment) Act 1960* (as amended).

Orders of the High Court in 2019, following consideration of the recommendations made by the tribunal	Number of respondents	Number of applications
That the recommendation of the tribunal be set aside and, in lieu thereof, that the respondent be suspended from the Roll of Solicitors until the date stated in the order of the High Court; that, upon cessation of that suspension, the respondent may be issued with a practising certificate subject to conditions, to include that he not be permitted to practise as a sole practitioner or in partnership but only as an employed solicitor; that he be under the control and supervision of a solicitor who will be approved of in writing in advance by the Law Society; that he not be permitted to give undertakings of any sort save with the written consent obtained in advance from the supervising solicitor; that he not be permitted to have any drawing rights on the client or other accounts of the practice in which he may be employed; that the said conditions will apply to every practising certificate granted to the respondent for a period of seven years following his restoration to the Roll of Solicitors in 2020; that in the event of the respondent breaching any of those conditions, the proceedings may be re-entered, on notice to the respondent, with a view to the court making an immediate order striking the respondent off the Roll of Solicitors; and pay costs	1	1
That the name of the respondent be struck off the Roll of Solicitors, with a limited stay on the order; that the respondent be restrained between the date of the order and the expiry of the stay from taking on new clients and/or giving any undertakings and; pay costs	1	10
That the name of the respondent be struck off the Roll of Solicitors	1	6
That the respondent is not a fit person to be a member of the solicitors' profession, the respondent's name having already been struck off the Roll of Solicitors	1	1
That the name of the respondent be struck off the Roll of Solicitors; and pay costs	1	3
That the respondent not be permitted to practise as a sole practitioner or in partnership and 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; pay a fine to the Compensation Fund and costs	1	2

Solicitors Disciplinary Tribunal

The Friary, Bow Street,
Smithfield, Dublin 7, Ireland

Tel: (01) 869 0766

Fax: (01) 869 0767

Email: general@distrib.ie

www.solicitorsdisciplinarytribunal.ie