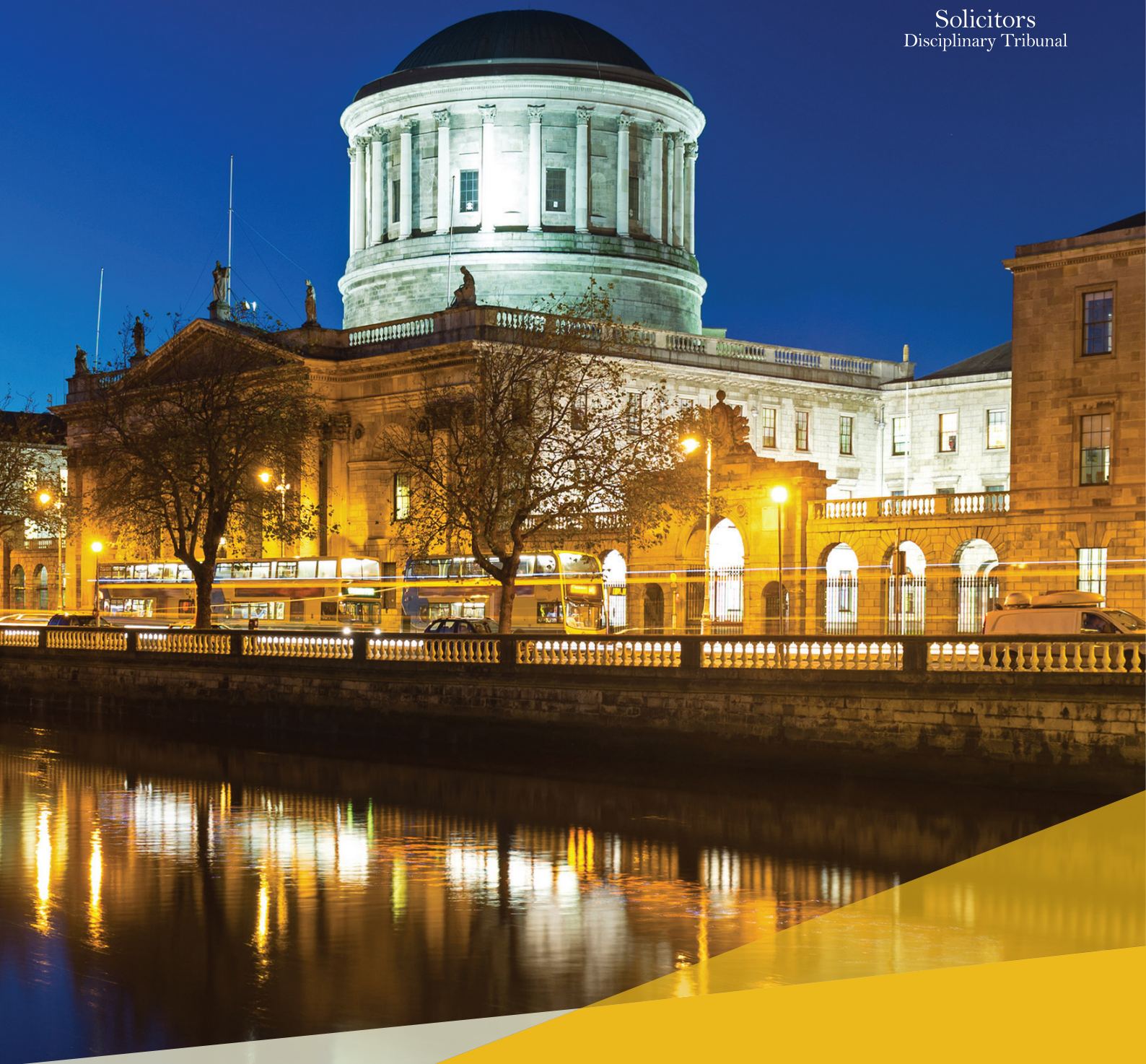




Solicitors
Disciplinary Tribunal

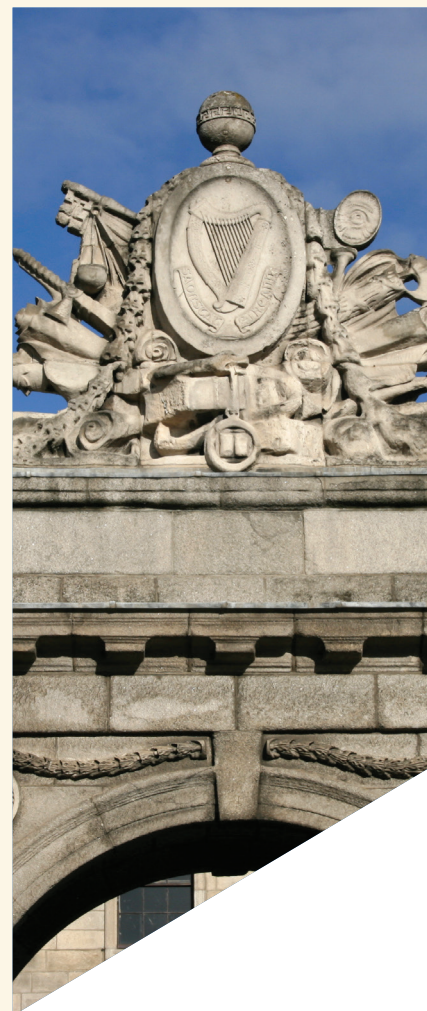


SOLICITORS DISCIPLINARY TRIBUNAL

Chairperson's Report 2020

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 2020

Solicitor members:

Niall Farrell, chairman
Owen Binchy
Helena Bowe O'Brien
Geraldine Clarke
Justin Condon
Barbara Cotter
Helen Doyle

Fiona Duffy
Philip Joyce
Geraldine Kelly
Elizabeth Lacy
Michael Lanigan
Justin McKenna
Brian McMullin

Stephen Maher
Joseph Mannix
Boyce Shubotham
Fiona Twomey
Michael Tyrrell

Lay members:

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

Acting tribunal registrar:

Kay Lynch

Administration assistant:

Nadia Farrell

Administrators/receptionists:

Patricia O'Shea
Gediminas Buika
Aoife Corrigan

Tribunal executive:

Ashling McGing

Administration assistant:

Anthea Moore

Introduction

This is my seventh report as chairperson, and it describes the work of the tribunal during the calendar year 2020. 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, 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 it, the tribunal will reserve its decision, and this has an impact on its ability to ensure the timely conclusion of cases.

Details of the number of applications received during the year can be seen from Table 1 (below). There has been a further substantial decrease, from 2019, in the number of applications received from the Law Society; none were received from members of the public. The total number received was 15, compared with 72 in 2019. While 43 applications were received from members of the public during 2019, none were received in 2020, as the tribunal could no longer accept complaints from members of the public after 4 October 2019. This followed the commencement of part 6 of the *Legal Services Regulation Act 2015*. Complaints submitted after 4 October 2019 are being dealt with by Legal Services Regulatory Authority.

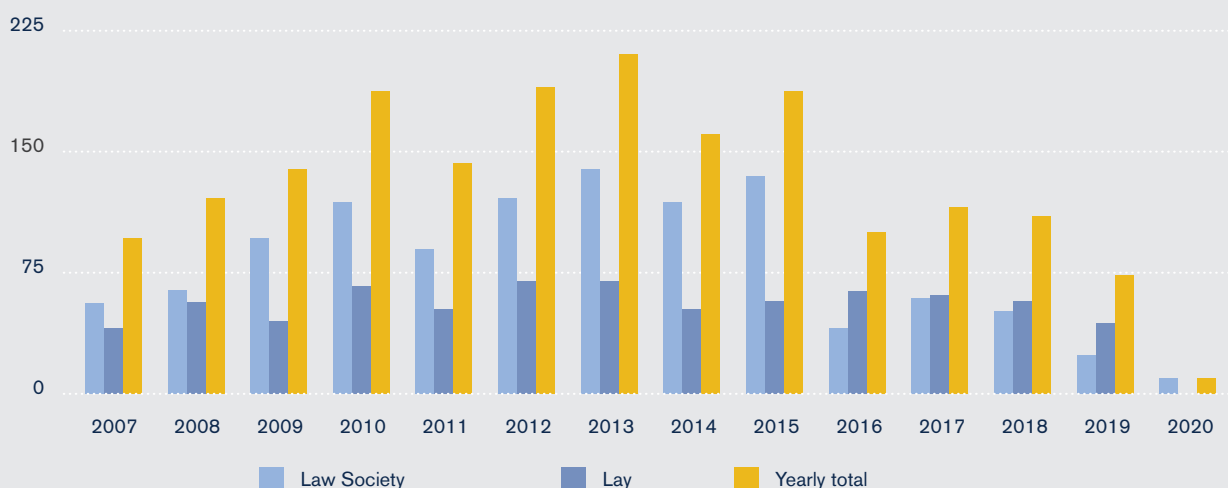
Further, the number of individual solicitors in respect of whom applications have been made declined to 14, which is a decrease of approximately 80% from

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 would have been anticipated that, during the coming year, the tribunal would meet on fewer occasions. However, the effects of restrictions arising from the COVID crisis meant that the work of the tribunal was significantly restricted during the year under review. This will mean an increased workload in terms of the schedule of inquiries to be held in 2021.

Tribunal members read and review a considerable volume of documentation when preparing for inquiries. As part of their work, members may also meet in private to consider whether or not there is a *prima facie* case for inquiry, or when preparing and finalising reasons for their decisions and reports.

The tribunal maintains a diary in respect of forthcoming inquiries on its website at www.solicitorsdisciplinarytribunal.ie. However, preliminary applications or matters listed for review are not included in the diary.

Table 1: Number of applications received by year



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 may be received from the Law Society of Ireland and, until 4 October 2019, directly from members of the public. Complaints from members of the public after that date have been made to the Legal Services Regulatory Authority. These changes follow from the commencement of part 6 of the *Legal Services Regulation Act 2015*.

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.

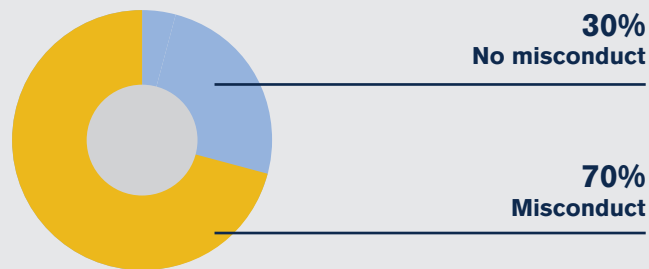
The tribunal is aware that members of the public may find it difficult to attend before the tribunal in respect of an inquiry, but assistance, where possible, is available from tribunal staff.

However, an applicant may still have recourse to other legal proceedings between him/her and the solicitor, apart from processing his/her application before the tribunal.

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. This is a separate cause of action to a complaint of misconduct.

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.

Chart 1: Outcome of inquiries held in 2020 (%)



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.

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 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. 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.

Sanction

At the conclusion of an inquiry, and where misconduct has been found, the tribunal will invite both parties to make submissions in relation to penalty and costs. Oral evidence may also be adduced in circumstances where a respondent wishes to call character witnesses.

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, and proportionality.

The tribunal will consider and give credit for admissions made by the respondent. The tribunal will also take note when a respondent has taken steps to resolve the matter at the source of a complaint.

However, when considering the issue of penalty, a respondent's disciplinary history will also be taken into account by the tribunal. It may also be advised whether or not the financial aspects of orders previously made remain outstanding.

Solicitors should also be conscious of the fact that the loss of trust by any member of the public in the solicitors' profession weighs heavily with the tribunal, which is concerned that the required standard of integrity, probity, and trustworthiness is upheld in the profession.

A range of sanctions is available to the tribunal in relation to its determinations, ranging from advising and admonishing, censuring, imposing a monetary penalty, or recommending to the President of the High Court that a solicitor should have

restrictions placed on his/her practising certificate, be suspended from practice, or face the ultimate sanction of having the name of the respondent struck off the Roll of Solicitors.

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 may 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 so 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*. 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 her nominee in chambers in the first instance, and then be listed for hearing in open court for the purposes of hearing submissions.

There were two appeals lodged in the High Court in the year under review 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 the one of the cases, the President of the High Court upheld elements of the appeal and referred the matter back to the tribunal for inquiry. In the second case, the High Court affirmed the decision of the tribunal that there was no *prima facie* case for inquiry.

There were four appeals in respect of the outcome of inquiry hearings. The High Court upheld the decision of the tribunal in respect of two matters and varied the decision of the tribunal for the remaining two matters.



OBSERVATIONS ON COMPLAINTS BEFORE THE TRIBUNAL

As the tribunal is no longer accepting applications arising from the ending of its work further to the *Legal Services Regulation Act 2015*, there was a much smaller number of cases heard. It is not possible in this year's report to usefully analyse the cases dealt with to show any relevant trends, because of the small numbers involved.

The cases which came before the tribunal in the year under review, and the findings made by it, are in line with previous reports of the tribunal.

PUBLICATION OF ORDERS

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 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.

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.

Unfortunately, when practising, solicitors may encounter personal troubles, such as marital, 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 Law Society Psychological Services. We 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 solicitors do not appreciate or exercise the required level of responsibility, especially with regard to compliance with the *Solicitors Accounts Regulations*, which encompass 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.

I would also like to thank a number of long-standing and experienced members, both solicitor and lay, who retired from the tribunal in 2020: Geraldine Clarke, Justin Condon, Michael Lanigan, Boyce Shubotham, Dermot Eagney, Vera Kelly, and Joseph McPeake. The time and commitment given by them to the tribunal's work over the past decade is very much appreciated.

The year 2020 was particularly difficult for everyone, arising from the COVID crisis. It

posed huge challenges in the legal world, and the tribunal was similarly affected. The tribunal has had to adapt to a primarily online model, with severe restrictions on the ability of our staff to carry out their work. The tribunal and its staff intend to adopt online hearings through the use of the familiar Zoom platform, but also by adopting a more specialised platform, Trial View. The tribunal has taken the view that, while the default method of hearing in many cases for the moment will be online, it appreciates that parties may require hearings in person, and either party may make an application to the tribunal in that regard.

The tribunal's premises have been adapted to limit the number of people in the hearing room by having a video-link to other rooms in the premises. It is undoubtedly the case that, as has happened in the courts, changes in legal practice using online technology will survive the pandemic and are to be welcomed. My view is that there are many hearings of a procedural nature where legal costs and travel time can be saved, without any impact on standards, by the use of online hearings.

I would like to express my appreciation for the willingness of our staff to adapt to the changing circumstances without any complaint and, in this regard, I am indebted to the acting registrar, Kay Lynch.

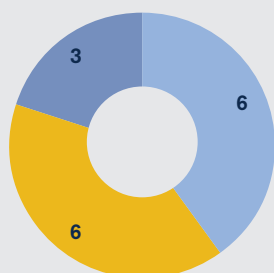
The only cases that are being referred to the tribunal are those where a complaint was made to the Law Society prior to 4 October 2019. The number of outstanding cases is falling and will continue to fall. Complaints since that time are referred to the Legal Services Regulatory Authority, which has its own tribunal. That tribunal expects to commence hearings in 2022. The tribunal and its staff will continue to ensure that, for the remaining life of the tribunal, it will deal with complaints made to it to the same standard as heretofore.

Niall Farrell
Chairperson

Appendix 1:

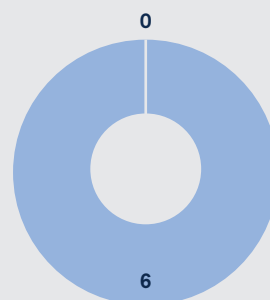
Status of applications received, as at 31 December 2020

Applications 2020, prior to inquiry stage



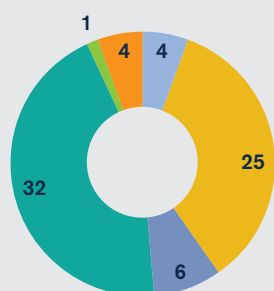
- Exchanging affidavits
- Prima facie* found
- Awaiting *prima facie* decision

Applications 2020, at inquiry stage



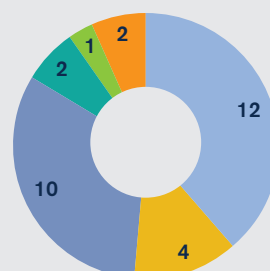
- Awaiting inquiry
- Misconduct found
- No misconduct found

Applications 2019, prior to inquiry stage



- Exchanging affidavits
- Prima facie* found
- Prima facie* found/not found
- Prima facie* not found
- Prima facie* awaiting decision
- Prima facie* withdrawn

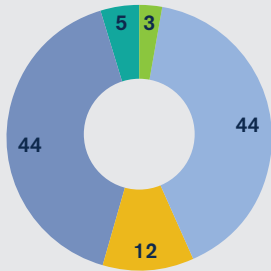
Applications 2019, at inquiry stage



- Awaiting inquiry
- Inquiry – part heard
- Misconduct found
- No misconduct found
- Stay on proceedings
- Withdrawn after *prima facie*
- Withdrawn after *prima facie*

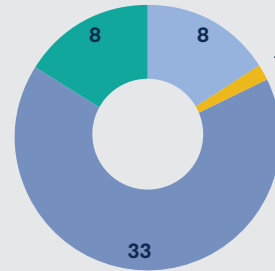
Status of applications received, as at 31 December 2020

Applications 2018, prior to inquiry stage



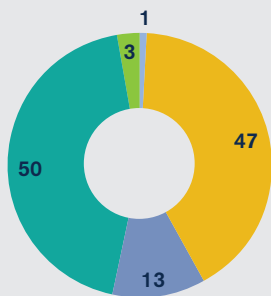
- Exchanging affidavits
- Prima facie* found
- Prima facie* found/not found
- Prima facie* not found
- Prima facie* withdrawn

Applications 2018, at inquiry stage



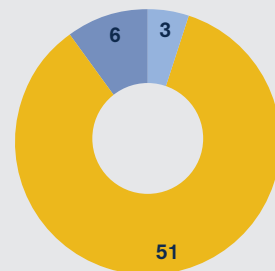
- Awaiting inquiry
- Inquiry – part heard
- Misconduct found
- No misconduct found

Applications 2017, prior to inquiry stage



- Struck out
- Prima facie* found
- Prima facie* found/not found
- Prima facie* not found
- Prima facie* withdrawn

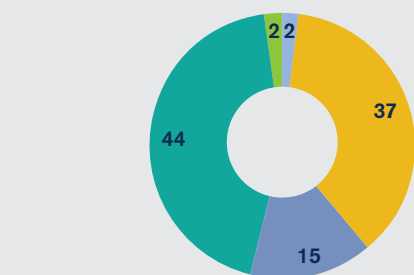
Applications 2017, at inquiry stage



- Awaiting inquiry
- Misconduct
- No misconduct

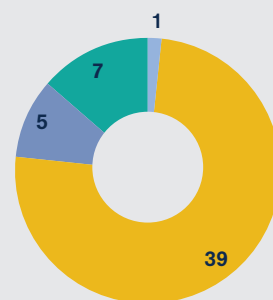
Status of applications received, as at 31 December 2020

Applications 2016, prior to inquiry stage



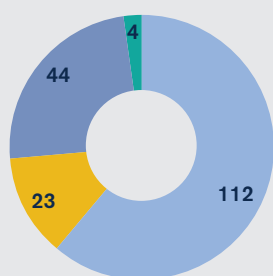
- Stay
- Prima facie* found
- Prima facie* found/not found
- Prima facie* not found
- Prima facie* withdrawn

Applications 2016, at inquiry stage



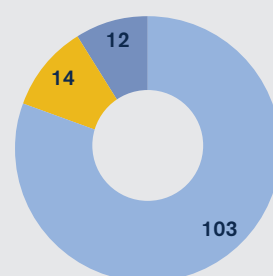
- Awaiting inquiry
- Misconduct
- No misconduct
- Withdrawn after inquiry directed

Applications 2015, prior to inquiry stage



- Prima facie* found
- Prima facie* found/not found
- Prima facie* not found
- Prima facie* withdrawn

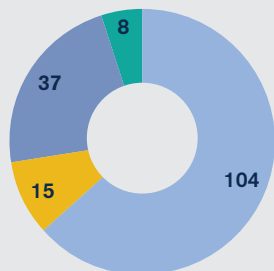
Applications 2015, at inquiry stage



- Misconduct
- No misconduct
- Withdrawn after inquiry directed

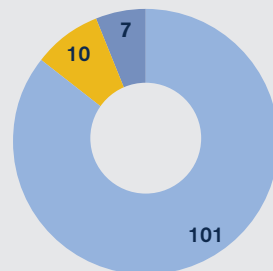
Status of applications received, as at 31 December 2020

Applications 2014, prior to inquiry stage



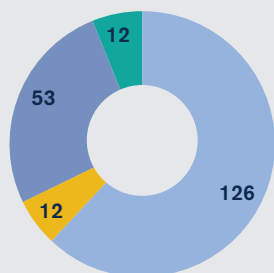
- *Prima facie* found
- *Prima facie* found/not found
- *Prima facie* not found
- *Prima facie* withdrawn

Applications 2014, at inquiry stage



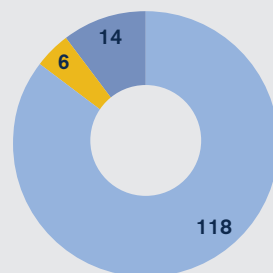
- Misconduct
- No misconduct
- Withdrawn after inquiry directed

Applications 2013, prior to inquiry stage



- *Prima facie* found
- *Prima facie* found/not found
- *Prima facie* not found
- *Prima facie* withdrawn

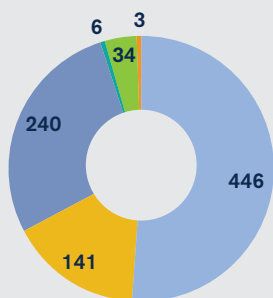
Applications 2013, at inquiry stage



- Misconduct
- No misconduct
- Withdrawn after inquiry directed

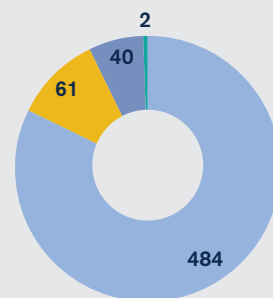
Status of applications received, as at 31 December 2020

Applications 2007-2012, prior to inquiry stage



- *Prima facie* found
- *Prima facie* found/not found
- *Prima facie* not found
- Inquiry generally adjourned
- *Prima facie* withdrawn
- Struck out

Applications 2007-2012, at inquiry stage



- Misconduct
- No misconduct
- Withdrawn after inquiry directed
- Awaiting inquiry



Appendix 2:

Analysis of applications and decisions

Solicitors Disciplinary Tribunal statistics, as at 31 December 2020									
Status of applications	2020	2019	2018	2017	2016	2015	2014	2013	2007 to 2012
Law Society of Ireland	15	31	51	56	41	130	118	136	532
Others	0	41	57	58	59	55	46	69	332
Total received	15	72	108	114	100	183	164	203	864
Prior to <i>prima facie</i> consideration									
Exchanging affidavits	6	4	3	0	2	0	0	0	0
Awaiting <i>prima facie</i> decision	3	0	0	0	0	0	0	0	0
<i>Prima facie</i> cases found/yes	6	25	44	47	37	112	104	126	446
<i>Prima facie</i> cases rejected/no	0	32	44	50	44	44	37	53	240
<i>Prima facie</i> cases found/rejected/yes/no	0	6	12	13	15	23	15	12	141
<i>Prima facie</i> decision adjourned	0	1	0	0	0	0	0	0	0
Struck out before <i>prima facie</i>	0	0	0	1	0	0	0	0	3
Adjourned before <i>prima facie</i>	0	0	0	0	0	0	0	0	0
<i>Prima facie</i> application withdrawn	0	4	5	3	2	4	8	12	34
Total	15	72	108	114	100	183	164	203	864
Inquiry stage									
Cases scheduled for inquiry	06	12	1	3	1	0	0	0	1
Misconduct found	0	10	33	51	39	109	101	118	484
Misconduct not found	0	2	8	6	5	14	11	6	61
Part heard	0	4	1	0	0	0	0	7	1
Withdrawn after <i>prima facie</i>	0	2	65	0	7	12	7	7	40

Solicitors Disciplinary Tribunal

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