

2021

SOLICITORS
DISCIPLINARY
TRIBUNAL



Chairperson's Report



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 2021

Solicitor members

Niall Farrell, chairman
Owen Binchy
Helen Bowe O'Brien
Barbara Cotter
Helen Doyle
Fiona Duffy
Philip Joyce
Geraldine Kelly
Elizabeth Lacy
Justin McKenna
Brian McMullin

Stephen Maher
Joseph Mannix
Fiona Twomey
Michael Tyrrell

Lay members

Kevin Rafter
Martin O'Halloran
Josephine Browne
Monica Mooney
Marion Coy

Acting tribunal registrar

Kay Lynch

Tribunal executive

Ashling McGing

Administration assistant

Nadia Farrell

Administration assistant

Anthea Moore

Administrators/ receptionists

Davina Monahan
Patricia O'Shea

Introduction

This is my eighth report as chairperson, and it covers the period 1 January to 31 December 2021. As I write this report, I am conscious that my term as chairperson of the Solicitors Disciplinary Tribunal, and that of nine of my solicitor colleagues, is drawing to its natural conclusion. By the end of November 2022, I will have completed ten years (two terms), initially as a member of the tribunal, and then as chairman.

During this time, I have witnessed the enormous commitment of both solicitor and lay members to the work of the tribunal. Many will have found that while it has been a very interesting experience, they will have had to deal with what, at times, have been difficult and challenging cases.

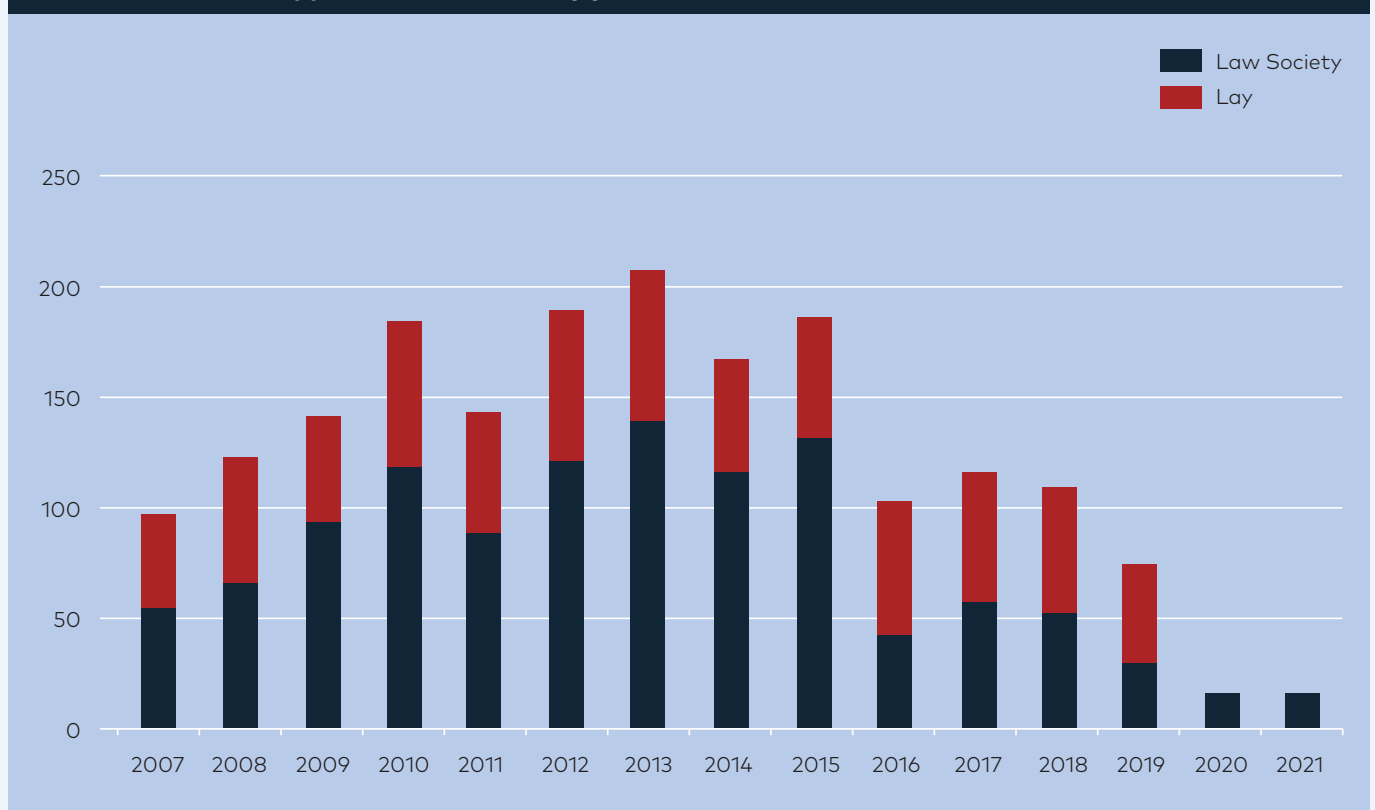
This report highlights some of the findings of the tribunal and sanctions imposed. It also provides information on statistics relating to the tribunal's work.

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.

Details of the number of applications received during the year can be seen from Table 1 (below). The tribunal received 14 applications from the Law Society, and this remained approximately the same as in 2020.

Table 1: Number of applications received by year – 2021



No complaints were received from members of the public during 2021, and this has been the case since 7 October 2019, following the commencement of part 6 of the *Legal Services Regulation Act 2015*. Since that date, members of the public may make a complaint about solicitors to the Legal Services Regulatory Authority. It is anticipated that the number of new applications that may be made to the tribunal by the Law Society in the next year will decrease significantly, as they will relate to matters that have been under review by the Law Society since before 7 October 2019.

Applications in respect of new matters will be made to the Legal Practitioners Disciplinary Tribunal by both the Law Society and the Legal Services Regulatory Authority. The Law Society will continue to deal with referrals relating to the alleged breach of the *Solicitors Accounts Regulations*, and the Legal Services Regulatory Authority will refer matters arising from complaints about solicitors or barristers on any other matter, such as excessive fees and the professional service provided.

Further, the number of individual solicitors in respect of whom applications have been made declined to 12, which is a decrease of approximately 15% from the previous year. This decrease also indicates that there are fewer multiple applications (concerning one solicitor) being made to the tribunal. While the number of cases before the tribunal is reducing, it continues to process its existing caseload. In this regard, as COVID restrictions have largely been lifted, it is anticipated that the tribunal will sit more frequently in 2022.

Tribunal members read and review a considerable volume of documentation when preparing for inquiries. As part of their work, members 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.distrib.ie. However, preliminary applications or matters listed for review are not included in the diary.



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.

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.

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 operates 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.

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*.

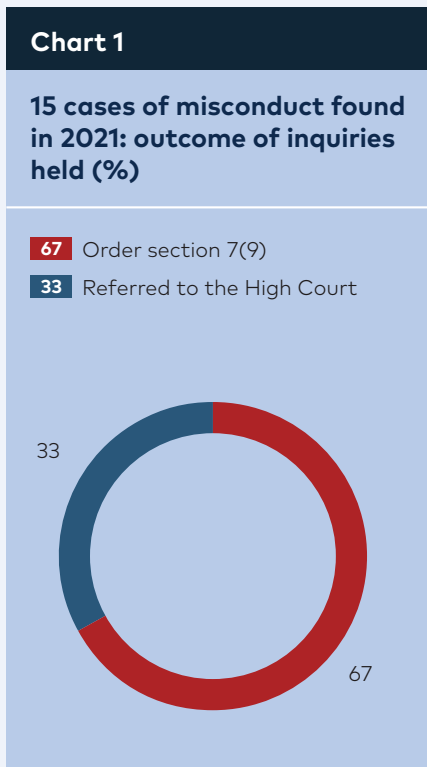
In general, it is at this stage of the process that the tribunal, for the first time, will read all of the documents furnished by the parties and consider each of the allegations of misconduct set out in an applicant's grounding affidavit. Members will assess each

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.

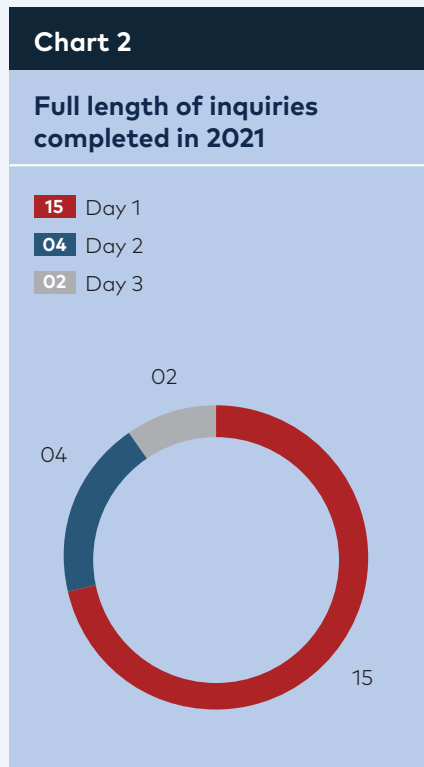
Inquiries

Where the tribunal finds that there is a *prima facie* case of misconduct, in accordance with case law and the *Solicitors Disciplinary Tribunal Rules 2017* (and, where applicable, the *Solicitors Disciplinary Tribunal Rules 2003*), the tribunal must proceed to hold an inquiry and determine whether or not the facts, as alleged by the applicant in respect of each of the allegations before the tribunal, are proved to the requisite standard. As detailed in Chart 1 (on page 6), the tribunal made a finding of misconduct in respect of 15 matters before it during 2021.



The tribunal may make its own order under subsection 9 of section 7 (as substituted by section 17 of the *Solicitors (Amendment) Act 1994* and as amended by section 9(d) of the *Solicitors (Amendment) Act 2002* of the *Solicitors (Amendment) Act 1960*. Orders that may be made by the tribunal include that the solicitor be advised and admonished or censured, that the solicitor be directed to pay a fine, and/or that the solicitor be directed to pay the costs of the applicant and any witnesses attending at the inquiry.

If the tribunal considers a more serious sanction to be appropriate (to include that a solicitor be supervised in practice, suspended from practice, or that his/her name be struck from the Roll of Solicitors) it may make a recommendation to the President of the High Court. In that situation, it is the President of the High Court who ultimately decides what sanction is to be imposed and makes the order.



As can be seen from Chart 2, of the inquiries completed by the tribunal during the year under review, approximately 70% were completed in one day. The tribunal is cognisant of the requirement to observe basic fairness of procedures and, consequently, to ensure that hearings are conducted in accordance with the rules of natural and constitutional justice. In this regard, where the allegations are being contested, evidence is given orally and tested by cross-examination.

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 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.

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 that is 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 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.

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.

The tribunal will be concerned about adjournments being made at the eleventh hour. In particular, it will be a matter of displeasure to the tribunal where all parties are assembled on the date scheduled for the inquiry hearing

to commence (including in some cases, witnesses), only to be met with an application for an adjournment on a basis that could have been made at an earlier date.

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 their nominee in chambers in the first instance, and then be listed for hearing in open court for the purposes of hearing submissions.

There was one appeal lodged in the Court of Appeal in the year under review, and a decision in respect of this matter is awaited. There were two determinations issued by the High Court in respect of judicial review proceedings: in one matter, the court remitted a case back to the tribunal to list the matter for

hearing again to determine a procedural application; in the second matter, the court ruled that the tribunal had afforded fair procedures to the appellant in respect of its ruling on certain procedural matters.





Observations on complaints before the tribunal

As the number of applications received by the tribunal is greatly reduced compared to years gone by, and having regard to the effects of the COVID pandemic, there was a much smaller number of cases heard. This was in line with the previous year of 2020. While it is therefore not possible in this year's report to usefully comment on the matters dealt with, it is the case that the majority of findings made by the tribunal related to breaches of the *Solicitors Accounts Regulations*.

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

Being a solicitor is a great privilege that can bring many benefits. In the recently published fourth edition of the *Solicitor's Guide to Professional Conduct*, former President of the High Court Ms Justice Mary Irvine noted that "solicitors are often engaged by members of the public at times when they may be anxious, confused, stressed and possibly even deeply vulnerable. Accordingly, it is vital that everything possible is done to protect and maintain public confidence in the reliability and honesty of the profession's members."

Solicitors are expected to adhere to these core values of the profession by behaving with integrity and trustworthiness. If they disregard the confidence and trust that the public places in them, solicitors will be held to account and will suffer the consequences of their actions.

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 very small percentage of the number of 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 2021), 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 solicitors do not appreciate or exercise the required level of responsibility, especially with regard to compliance with the *Solicitors Accounts Regulations*, which ensures 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.

During 2021, the tribunal continued to adapt to the change in work practices arising from the COVID crisis. Hearings were conducted both remotely (via Zoom and TrialView) and in person. As set out in my previous report, the tribunal's premises have been adapted to allow for the limitation on the number of people in the hearing room – when this is necessitated by restrictions – by having a video-link to other rooms in the premises. These measures continue to assist the work of the tribunal, and it is anticipated they will continue to remain in place in the long term.

In conclusion, I would like to express my appreciation to all the members of the tribunal for their huge contribution towards its important work over the past year and throughout my time as chairman. Each and every one of them took their work very seriously and deserve my thanks, and the thanks of the profession, for doing so. I can also say that I found each and every one of them to be people of the utmost integrity, and who were very pleasant work colleagues.

I would also like to thank the staff of the tribunal for their assistance to me and the other tribunal members during my time as chairman. They are very

competent and efficient, and were at all times a great help to me. I know also that they were very helpful to both applicants and solicitors, while at the same time being fair and impartial. In particular, I would like to thank the current acting registrar, Kay Lynch, who has been a great support to me, and was at all times a pleasure to deal with. I should also mention her retired predecessor, Mary Lynch, who was the registrar for many years.

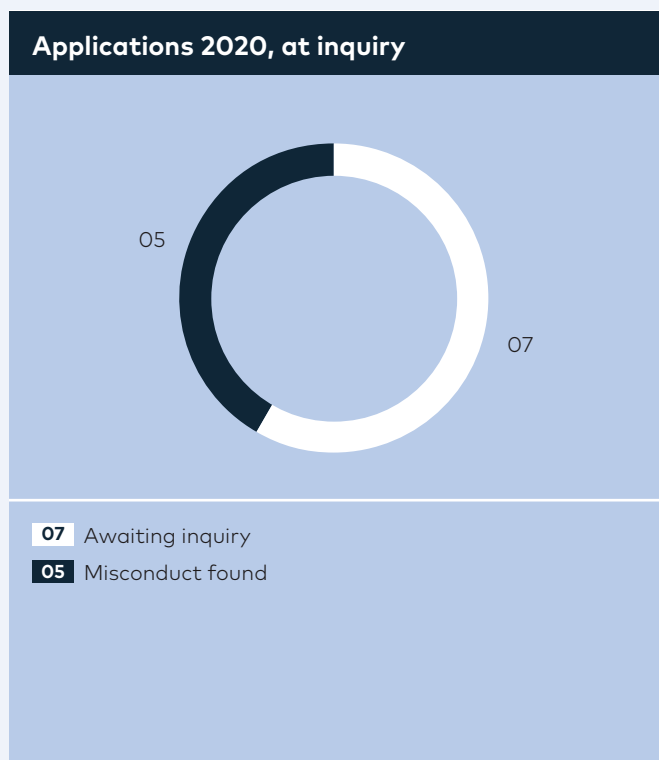
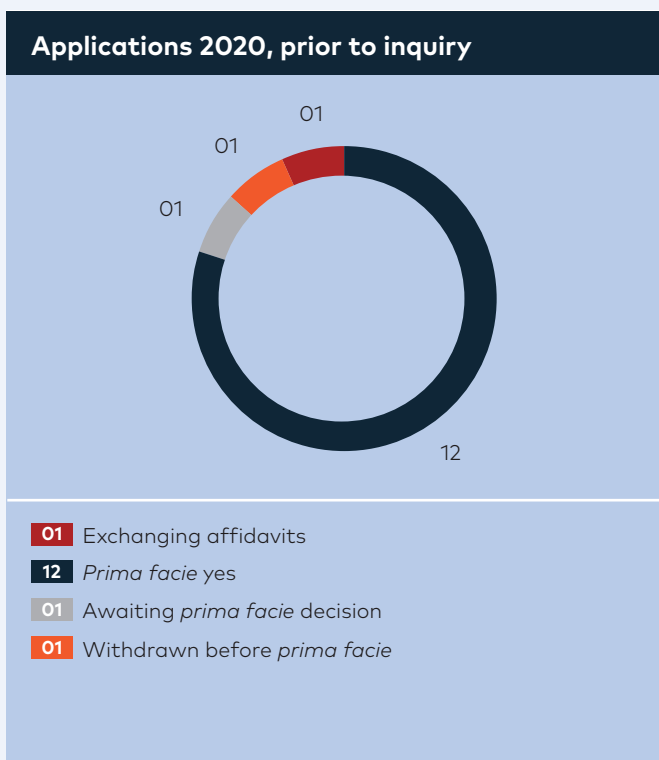
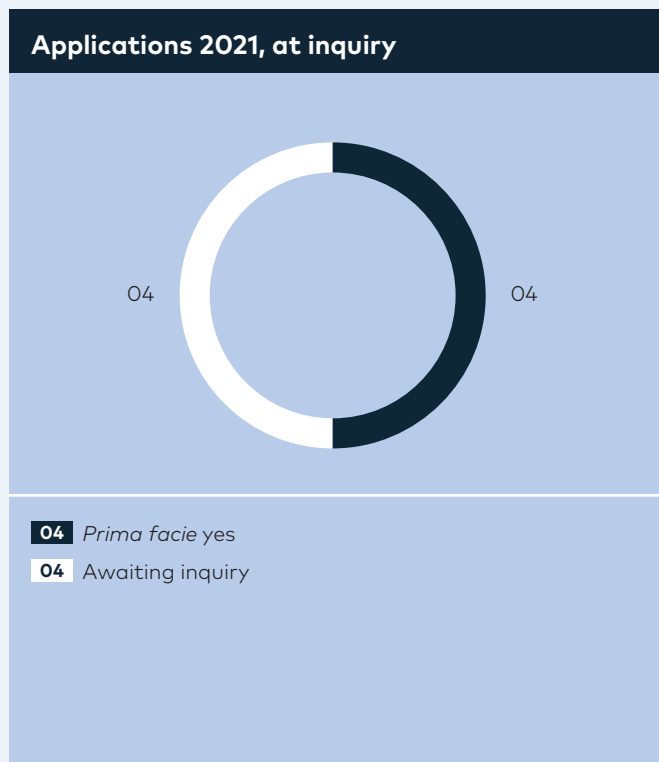
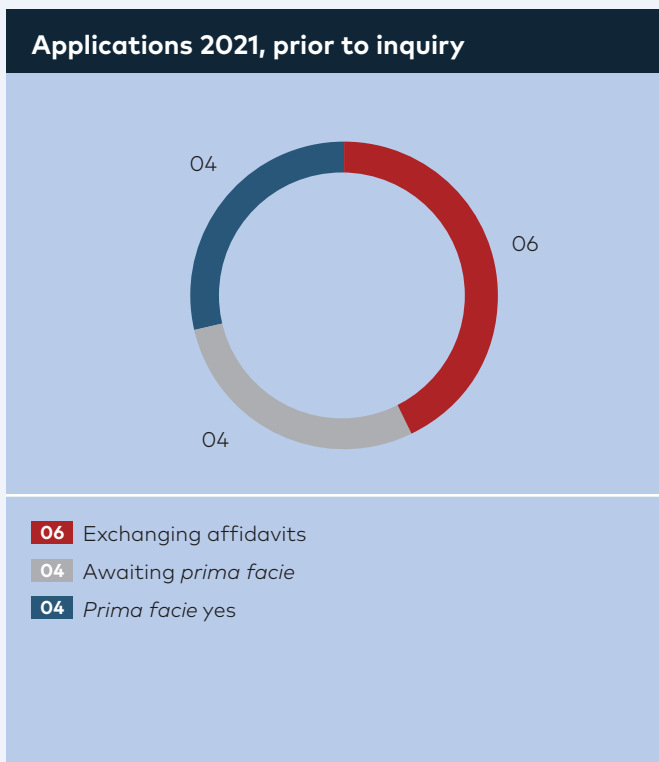
As my own term comes to a close, I can say with confidence that the Solicitors Disciplinary Tribunal has been a very fair, impartial, and independent tribunal in dealing with complaints against solicitors. It has been, in my experience, very conscious of the need to maintain the reputation of the solicitors' profession and has not shirked very tough decisions in doing so. At the same time, I am confident that solicitors who appeared before it will feel that they have been treated fairly and respectfully, and that the legal process before the tribunal was robust but fair.

As its functions come to an end and its role is taken over by the Legal Practitioners Disciplinary Tribunal, I can confidently say that it has served the public and the solicitors' profession very well.

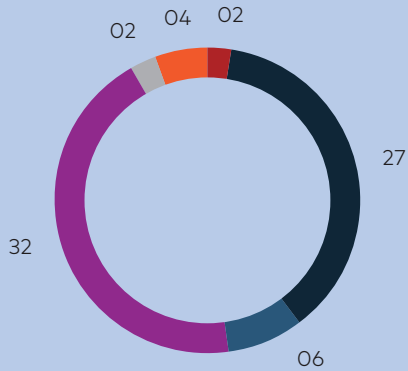
Niall Farrell,
Chairman

APPENDIX 1

Status of applications received, as at 31 December 2021

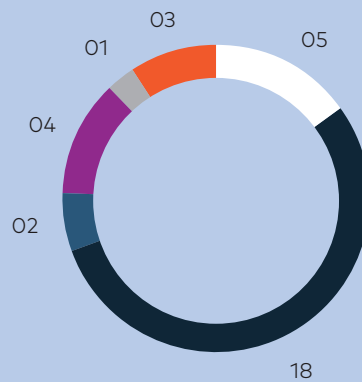


Applications 2019, prior to inquiry



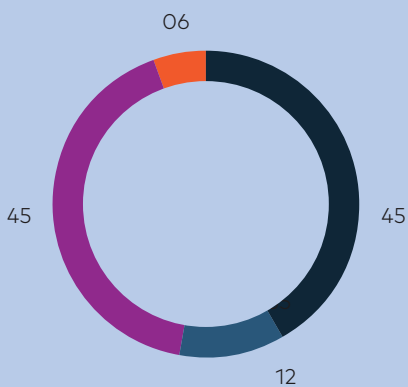
- 02** Exchanging affidavits
- 27** Prima facie yes
- 06** Prima facie yes/no
- 32** Prima facie/no
- 02** Awaiting prima facie decision
- 04** Withdrawn before prima facie

Applications 2019, at inquiry



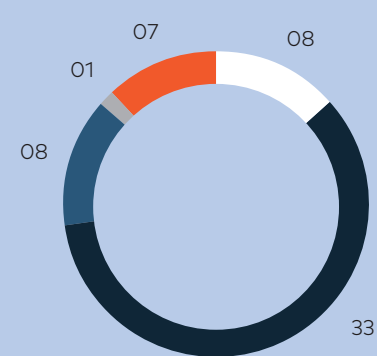
- 05** Awaiting inquiry
- 18** Misconduct found
- 02** No misconduct
- 04** Inquiry part heard
- 01** Stay on proceedings
- 03** Withdrawn after inquiry directed

Applications 2018, prior to inquiry



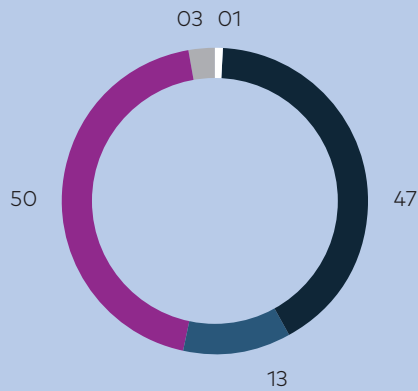
- 45** Prima facie yes
- 12** Prima facie yes/no
- 45** Prima facie/no
- 06** Withdrawn prior to prima facie

Applications 2018, at inquiry



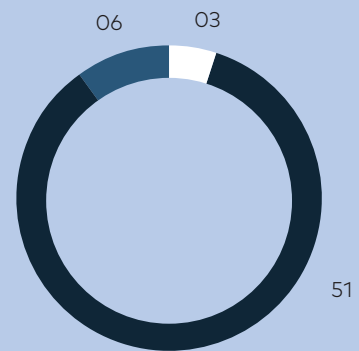
- 08** Awaiting inquiry
- 33** Misconduct found
- 08** No misconduct
- 01** Stay on proceedings
- 07** Withdrawn after inquiry directed

Applications 2017, prior to inquiry



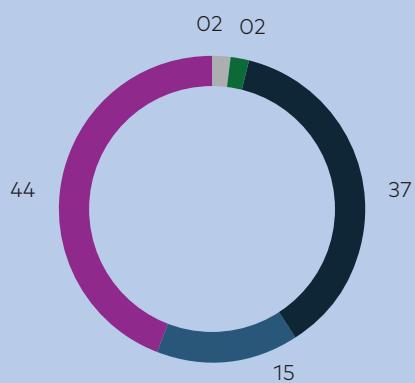
- 01** Struck out
- 47** Prima facie found
- 13** Prima facie found/not found
- 50** Prima facie not found
- 03** Prima facie withdrawn

Applications 2017, at inquiry



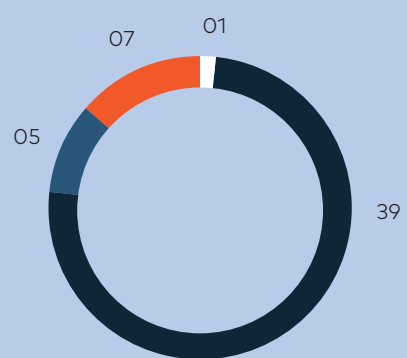
- 03** Awaiting inquiry
- 51** Misconduct found
- 06** No misconduct

Applications 2016, prior to inquiry



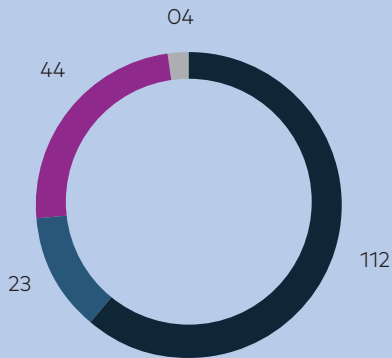
- 02** Stay on proceedings
- 37** Prima facie found
- 15** Prima facie found/not found
- 44** Prima facie not found
- 02** Prima facie withdrawn

Applications 2016, at inquiry



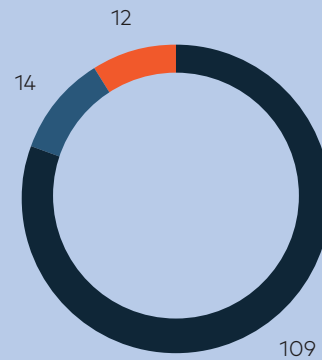
- 01** Awaiting inquiry
- 39** Misconduct found
- 05** No misconduct
- 07** Withdrawn after inquiry directed

Applications 2015, prior to inquiry



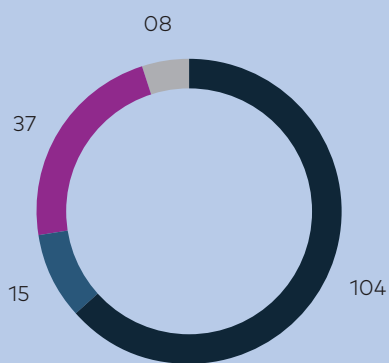
- 112** Prima facie found
- 23** Prima facie found/not found
- 44** Prima facie not found
- 04** Prima facie withdrawn

Applications 2015, at inquiry



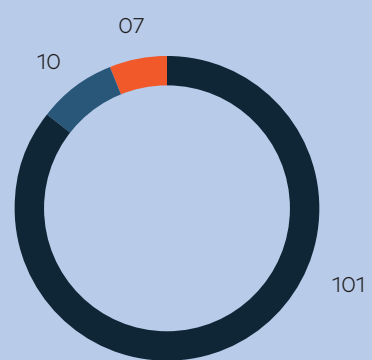
- 109** Misconduct found
- 14** No misconduct
- 12** Withdrawn after inquiry directed

Applications 2014, prior to inquiry



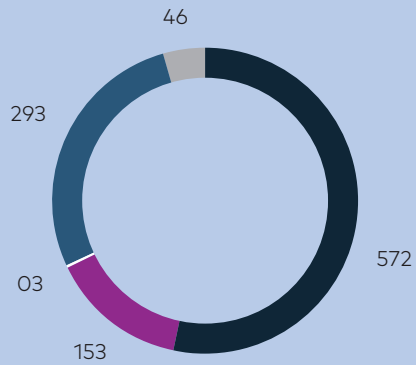
- 104** Prima facie found
- 15** Prima facie found/not found
- 37** Prima facie not found
- 08** Prima facie withdrawn

Applications 2014, at inquiry



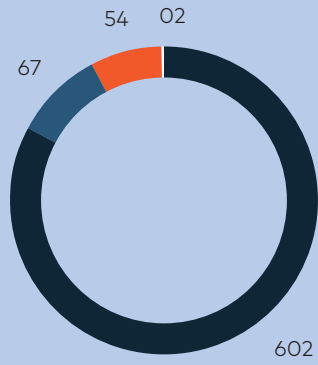
- 101** Misconduct found
- 10** No misconduct
- 07** Withdrawn after inquiry directed

Applications 2007-2013, prior to inquiry



- 572** *Prima facie* found
- 153** *Prima facie* not found
- 03** Struck out
- 293** *Prima facie* found/not found
- 46** *Prima facie* withdrawn

Applications 2007-2013, at inquiry



- 602** Misconduct found
- 67** No misconduct
- 54** Withdrawn after inquiry directed
- 02** Awaiting inquiry

APPENDIX 2

Analysis of applications and decisions

Solicitors Disciplinary Tribunal statistics, as at 31 December 2021

Status of applications	2021	2020	2019	2018	2017	2016	2015	2014	2007-2013
Law Society of Ireland	14	15	31	51	56	41	130	118	668
Others	0	0	41	57	58	59	55	46	401
Total received	14	15	72	108	114	100	183	164	1,069
Prior to <i>prima facie</i> consideration									
Exchanging affidavits	5	1	2	0	0	2	0	0	0
Awaiting <i>prima facie</i> decision	0	1	0	0	0	0	0	0	0
<i>Prima facie</i> cases found/yes	8	12	27	45	47	37	112	104	572
<i>Prima facie</i> cases rejected/no	0	0	31	45	50	44	44	37	293
<i>Prima facie</i> cases found/rejected/yes/no	0	0	6	12	13	15	23	15	153
<i>Prima facie</i> decision adjourned	0	0	2	0	0	0	0	0	0
Struck out before <i>prima facie</i> decision	0	0	0	0	1	0	0	0	3
<i>Prima facie</i> application withdrawn	1	1	4	6	3	2	4	8	46
Total	14	15	72	108	114	100	183	164	1,069
Inquiry stage									
Cases scheduled for inquiry	8	7	5	8	1	1	0	0	1
Misconduct found	0	5	18	33	51	39	109	101	572
Misconduct not found	0	0	2	8	6	5	14	11	67
Part-heard	0	0	4	1	0	0	0	0	1
Withdrawn after <i>prima facie</i> decision	0	0	3	7	2	7	12	0	54

