



Solicitors  
Disciplinary Tribunal

**2013**

Solicitors Disciplinary Tribunal

# Chairman's Report





# Constitution and powers of the Solicitors Disciplinary Tribunal

The Solicitors Disciplinary Tribunal is a statutory body, constituted under the *Solicitors (Amendment) Act 1960*, as substituted by the *Solicitors (Amendment) Act 1994* and amended by the *Solicitors (Amendment) Act 2002* and the *Solicitors (Amendment) Act 2008*, as cited in the *Civil Law (Miscellaneous Provisions) Act 2008* and the *Solicitors (Amendment) Act 2011*, as cited in the *Civil Law (Miscellaneous Provisions) Act 2011*. The tribunal is wholly independent of the Law Society of Ireland.

It is composed of 20 solicitor members and nine lay members, the latter being drawn from a wide variety of backgrounds and whose remit is to represent the interests of the general public. All tribunal members are appointed by the President of the High Court – solicitor members from among practising solicitors of not less than ten years' standing, and lay members who are not solicitors or barristers.

Procedures of the tribunal are also governed by the *Solicitors Disciplinary Tribunal Rules 2003*,

which came into operation on 1 March 2003. Under the *Solicitors Acts 1954-2011*, the tribunal's powers are mainly confined to receiving and hearing complaints of misconduct against members of the solicitors' profession.

Section 19 of the *Solicitors (Amendment) Act 2002* has extended the powers of the tribunal, giving it jurisdiction over trainee solicitors. In such cases, the Law Society may apply to the tribunal to hold an inquiry into alleged misconduct by trainee solicitors.

## **Solicitor members**

Edward McEllin (*Chairman*)  
Owen Binchy  
Helena Bowe O'Brien  
Mary Cantrell  
Geraldine Clarke  
Justin P Condon  
Caroline Devlin  
Fiona Duffy  
Anthony H Ensor  
Niall Farrell  
Patricia Harney  
Philip Joyce  
Elizabeth Lacy  
Michael Lanigan  
Stephen Maher  
Brian McMullin  
Hugh O'Neill  
Boyce Shubotham  
Michael Tyrrell  
Fiona Twomey

## **Lay members**

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

## **Tribunal registrar:**

Mary Lynch

## **Secretary to registrar:**

Ashling McGing

## **Administration assistant:**

Nadia Farrell/Anthea Moore

## **Administrator/receptionist:**

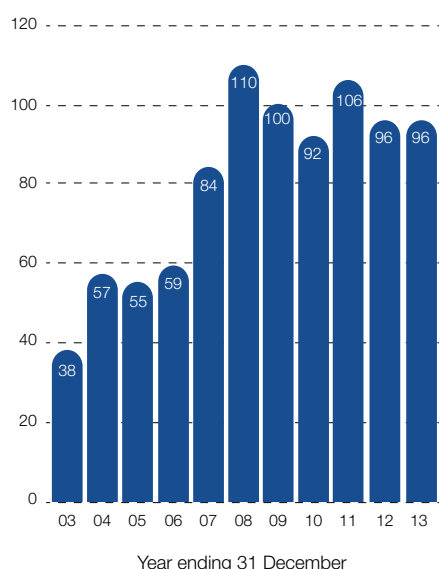
Aine Skelly

# Introduction

This is my second report as chairman, and it describes the work of the tribunal during the calendar year 2013.

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

**Table 1:**  
Number of sittings of tribunal since 2003



Hearings of the tribunal vary in length from a half day to five days, 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, but it is possible in some cases that the tribunal will reserve its decision.

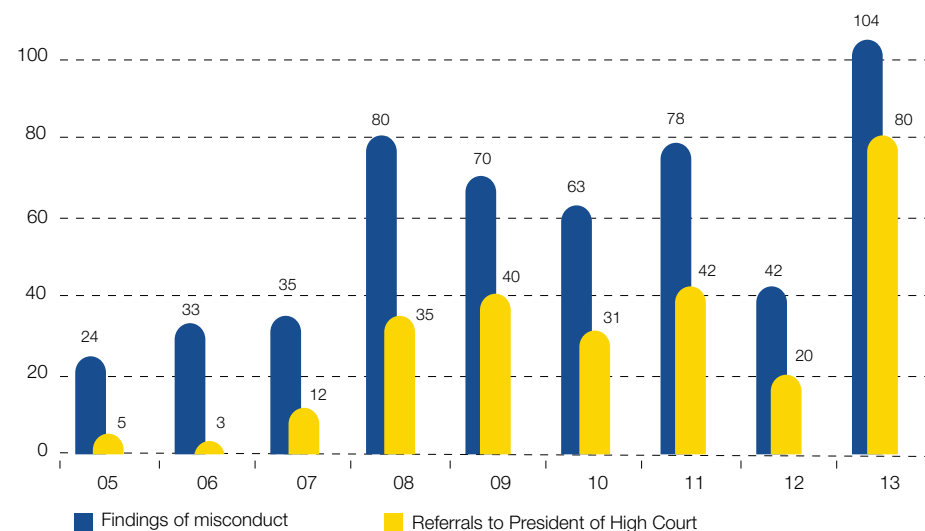
However, there continues to be an increase in the length and complexity of cases, and this has had, and will continue to have, an impact on the ability of the tribunal to ensure the timely conclusion of cases.

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

As can be seen from Chart 2, there has been a further increase in the number of applications to the tribunal during the year under review, when the tribunal received 205 new applications. This represents an increase of approximately 18% on the number of applications received in 2012.

In addition, Chart 1 shows a striking increase in the number of findings of misconduct by the tribunal – from 62 in 2012 to 104 in 2013. However, as multiple applications were made in respect of some respondents, the actual number of respondents involved in such cases was 41, of which 21 individual respondents were referred to the President of the High Court.

**Chart 1:**  
Findings of misconduct and referrals to the High Court by year



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

The tribunal maintains a diary in respect of forthcoming inquiries on its website at [www.solicitorsdisciplinarytribunal.ie](http://www.solicitorsdisciplinarytribunal.ie).

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

The majority of complaints that come before the tribunal are at the instance of the Law Society of Ireland, but it is open to members of the public to make a direct application to the tribunal, with or without any previous reference to the Law Society. The procedure is an adversarial one and, consequently, it is a matter for an applicant to prosecute a case and for a respondent to respond. In this regard, the tribunal is aware that members of the public may find the process of making an application an onerous one, but assistance is available from the tribunal staff in relation to completing the forms grounding an application.

However, it should be said that making an application to the tribunal does not operate as a bar to any other legal proceedings between the applicant and the solicitor concerned.

Further, negligence should never be confused with misconduct. If a client suffers as a result of a mistake made by his/her solicitor, that client may have common law action against the solicitor concerned for negligence.

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

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

should the solicitor be in attendance and fully represented.

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

## Prima facie decisions

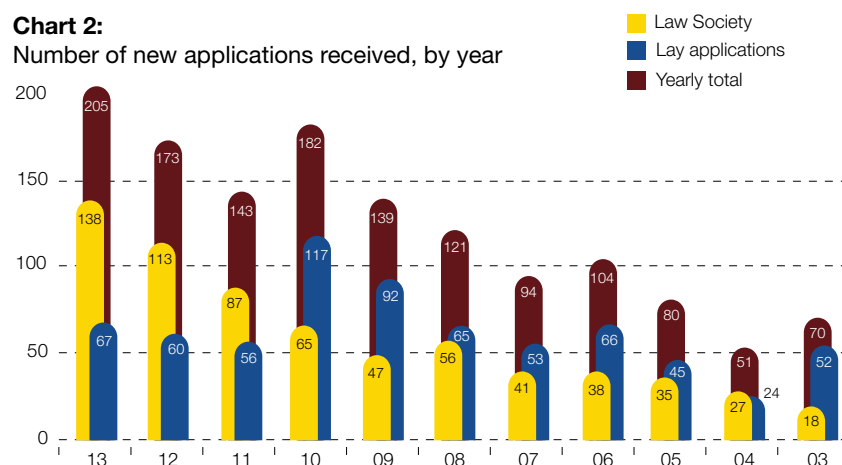
The first function of the tribunal is to determine whether or not there is a *prima facie* case for the respondent

to answer. For this purpose, the tribunal does not hold a formal hearing, but considers each application together with its supporting documentation. If satisfied that a *prima facie* case has been proved, an inquiry is held. Where the tribunal has found that a *prima facie* case has not been disclosed, an applicant has a right of appeal to the High Court.

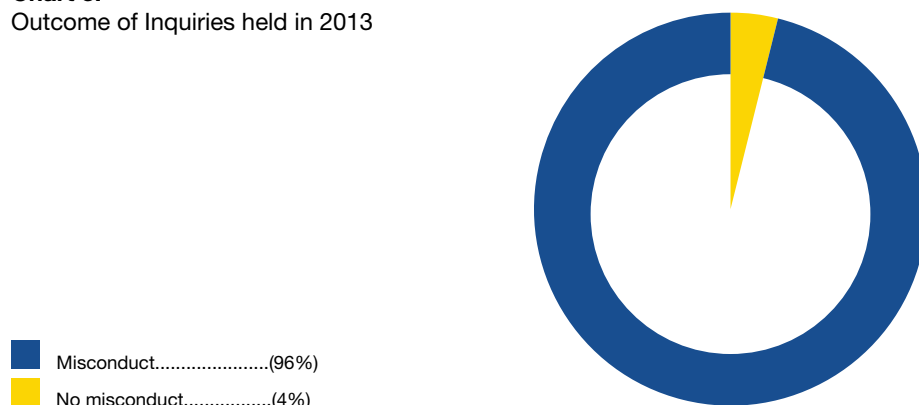
## Sanctions

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

**Chart 2:**  
Number of new applications received, by year

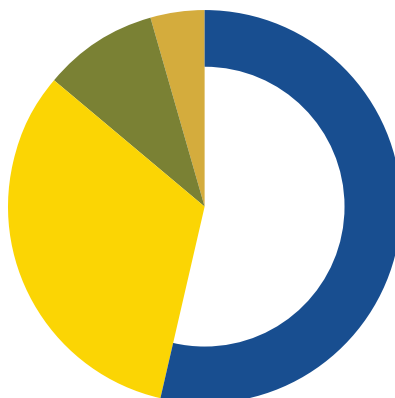


**Chart 3:**  
Outcome of Inquiries held in 2013



**Chart 4:**  
Full length of enquiries  
that finished in 2013

1 day.....	(102)
2 days.....	(62)
3 days.....	(18)
4 days.....	(8)



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.

### Adjournments

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

### Appeals

The procedure in respect of appeals to the High Court against decisions of the tribunal is set out in the *Rules*

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

The Law Society withdrew their appeal to the High Court in respect of a finding of no misconduct made in relation to two respondents arising from the same case. The tribunal's recommendation, arising from the same proceedings, that a third respondent be censured and pay a sum of €12,000 to the Compensation Fund and costs was not considered by the President of the High Court to be an appropriate penalty. In the circumstances, he ordered that the name of the respondent be struck off the Roll of Solicitors and that he pay a sum of €12,000 to the Compensation Fund and costs to the applicant.

The President of the High Court, having carefully reviewed all of the papers before him, was of the opinion that the appellant had not made out a sufficient preliminary case as to why the court should reverse the findings of the tribunal

that there was no *prima facie* case for inquiry and that the appellant had demonstrated no grounds whatsoever as to why it should consider the other complaints set out in his affidavit. Consequently, he was satisfied that the finding of the tribunal of no *prima facie* case of misconduct on the part of the respondent in relation to certain matters was entirely appropriate and that the appeal was without any merit.

In one case, the president – noting that the appellant did not intend to pursue his appeal – nevertheless made an order affirming the decision of the tribunal and dismissed the appeal. No order was made in respect of costs.

In another case, where the tribunal had found that there was no misconduct on the part of the respondent, the president was of the opinion that the appellant had not made out a sufficient case as to why the court should allow the appeal against the findings of no misconduct. The appellant had merely repeated his claims made in his earlier affidavits to the tribunal and had offered no explanation as to why the findings were incorrect. The respondent had addressed the allegations made against him in a coherent and satisfactory manner, while the appellant had failed to furnish any evidence before the court that would warrant allowing the appeal against the tribunal. The president was satisfied that there was no case of misconduct on the part of the respondent.

There is also an appeal by the Law Society against the penalties imposed by the tribunal on one respondent, arising from ten separate findings of misconduct.

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



# Observations on complaints before the Tribunal



## Conveyancing

Maintenance of high standards of conduct involves both the professional and personal spheres and is of critical importance for the solicitors' profession. This was the view of the tribunal in a case where the tribunal believed that the respondent had attempted to conceal his own dishonest dealings. While the precise nature of the relationship between the respondent and the applicant had not been established to the standard required by the tribunal, they were satisfied there was, at the very least, a business relationship between the parties. Further, there was no doubt that the respondent at the very least exploited his position as a solicitor to disguise many aspects of the transactions that were the subject matter of the complaint. The tribunal believed that the respondent set about a course of actions to conceal his own dishonest dealings and that his behaviour was disgraceful. It also found the respondent guilty of misconduct, in that he had failed to disclose to his client the true terms of a contract so as to conceal his own dishonest dealings. The tribunal recommended to the President of the High Court that the respondent's name be struck off the Roll of Solicitors.

In a further case, involving the same respondent but a separate applicant, and arising from the same set of circumstances, the tribunal also found the respondent guilty of professional misconduct, in that he had failed to disclose the true terms of the contract so as to conceal his own dishonest dealings. In this case, the tribunal was not satisfied that the applicant had established a client relationship, but was of the opinion that the weight of the evidence given in that complaint established that there was a course of dealings that would establish a business relationship between the parties.

In both cases, the tribunal noted that the respondent had failed to attend the inquiry, notwithstanding that he was aware of the date of the hearing. In the circumstances, it appeared to the tribunal that he had made a decision to absent himself on the day of the inquiry. Further, it was the tribunal's view that a solicitor who fails to attend a disciplinary hearing does so at his/her own peril by losing his/her ability to fully participate in the hearing and explain his/her actions.

The tribunal considered three separate cases against one respondent. There was no appearance by or on behalf of the respondent. While the tribunal noted that the evidence given on behalf of the Law Society included mitigating factors in respect of the respondent, the tribunal viewed her misconduct in respect of her failure to honour undertakings to lending institutions, to attend Law Society meetings, to attend to correspondence, to attend to the reasonable queries from the financial institutions involved and to, in fact, attend the tribunal, to be on the very serious scale of misconduct. Accordingly, the tribunal directed that its report be sent to the President of the High Court with a recommendation that the respondent was not a fit person to be a member of the solicitors' profession and that her name be struck off the Roll of Solicitors.

The tribunal found that there had been misconduct on the part of a respondent in that he failed to honour two undertakings given to the complainant on behalf of his clients, in respect of a loan advanced to his clients whereby he undertook to register a mortgage over a property and to furnish title documents and mortgage deed to the complainant, and he released the balance sale proceeds to his clients in circumstances where he had failed to put in place the complainant's

security over that property in accordance with his undertakings and in circumstances where loans the subject of those undertakings remained outstanding.

Having carefully considered the submissions made by counsel on behalf of the applicant and the previous disciplinary history of the respondent, the tribunal was of the view that, in deciding penalty, it may take into account such mitigating factors as the evidence and documentation may disclose. In this case, it appeared to the tribunal that a considerable amount of confusion had arisen and that the respondent's behaviour would give rise to concern. In this case, it was evident that both the original loan offer and the subsequent redemption figures furnished by the building society could have caused confusion. The respondent had averred to the fact that he was not approached by the building society until three years after the sale had closed. Further, while there was culpability on the part of the respondent, that culpability was compounded by the action of the building society.

The tribunal also noted that the respondent obtained no personal benefit from his action, that this was the first complaint of this type against him, and that he had ceased practice. In the circumstances of this case, the tribunal was of the view that the penalty sought by the applicant was excessive. In the circumstances, the tribunal made an order censuring the respondent and directing him to pay a sum of €2,000 to the Compensation Fund and a contribution towards the costs of the applicant.

In a further case, the respondent admitted that she failed to comply expeditiously, within a reasonable time or at all, with eight undertakings given on behalf of clients to the complainants and failed to

reply adequately or at all to the complainants' correspondence in relation to her clients and to the Law Society's correspondence. Further, in failing to reply to the Society's correspondence, caused the Society to have to apply to the High Court for an order to compel the respondent to respond to the Society's correspondence and to attend a meeting of the committee. The respondent also failed to comply with an order made by the President of the High Court when she failed to attend the committee meeting.

The tribunal, having found the respondent guilty of misconduct, made an order censuring the respondent and directing her to pay the sum of €5,000 to the Compensation Fund and a contribution towards the costs of the applicant. In deciding to make an order rather than refer the matter to the High Court, the tribunal took into account the fact that the respondent had now complied with the undertakings in question, had fully admitted and recognised her guilt and faced up to it, and there were no previous disciplinary issues before the tribunal. Further, it considered that the imposition of the sanction sought by the applicant would have the likely effect of putting the respondent out of business and, in that respect, the tribunal was of the view that that sanction was too extreme.

In another case, the tribunal was of the view that it was most unfortunate that the respondent allowed his practice to fall into disarray and that he used the client account to pay for personal family debts.

The tribunal believed, however, that credit must be given for the manner in which the respondent had dealt with his affairs since these events came to light. The tribunal did not believe that a strike-off was appropriate in view of the

respondent's immediate admissions to the Law Society, his continuing cooperation with the Law Society and his colleagues, the fact that no money was ultimately lost to any person, the stamp duty was paid, and the clients and the banks had been satisfied. In circumstances where there had been what might be called a 'remedying of the situation', the tribunal believed that a strike-off was too draconian.

This determination was made in respect of ten cases involving the same respondent, where the tribunal had found him guilty of misconduct in that he had failed to comply with undertakings furnished to complainants in respect of his clients and borrowers in a timely manner or at all, failed to reply to the Society's correspondence in a timely manner or at all, failed to comply with the directions of the Complaints and Client Relations Committee, and failed to attend a meeting of the Complaints and Client Relations Committee, despite being required to attend.

The tribunal, in its report to the President of the High Court, recommended that the respondent not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland.

In respect of another seven cases involving the same respondent, a separate division of the tribunal also made the same recommendation to the President of the High Court. The majority of the findings of misconduct by the tribunal related to the respondent's failure to comply with undertakings furnished to complainants in respect of his clients and borrowers in a timely manner or



at all, failure to reply to the Society's correspondence in a timely manner or at all, failure to comply with the directions of the Complaints and Client Relations Committee, and failure to attend a meeting of the Complaints and Client Relations Committee, despite being required to attend.

### **Solicitors Accounts Regulations**

The burden of proof was considered in proceedings brought against two respondents in relation to alleged breaches of these regulations. In their written decision, the tribunal stated that, as enunciated by Keane J in *O'Laoire v the Medical Council*, the burden of proof of the matters alleged is beyond reasonable doubt, and hence the onus lies on the applicant to prove beyond reasonable doubt every relevant averment of fact that was not admitted, and to establish beyond reasonable doubt that such facts, as so proved or admitted, constituted misconduct.

The tribunal, cognisant of this legal principle, gave careful consideration to the evidence adduced, the submissions made by counsel, and the case law cited in support of the parties' respective submissions. The tribunal found the second-named respondent guilty of professional misconduct in that she had, among other things, caused a deficit to arise on the client account of a client, which was due or partly due to the withdrawal of moneys from her client account, in breach of the *Solicitors Accounts Regulations*.

She also caused a deficit to arise on the client account, due or partly due to the withdrawal of moneys from her client account, in breach of one or more of the *Solicitors Accounts Regulations*. The facts in relation to this allegation were admitted, but the second-named respondent did not admit that they constituted

misconduct. In the opinion of the tribunal, the withdrawal of moneys from the client account of a deceased person prior to a grant of probate being issued is a very serious matter. Solicitors should be familiar with the restraints on them when dealing with the estate of a deceased person in the absence of a grant of probate, and the second-named respondent should have been aware of the position. The tribunal was satisfied that she had materially breached the regulations as alleged, which constituted misconduct.

The tribunal also found that the second-named respondent was guilty of misconduct in that she caused a deficit to arise on the client account, which arose due to the withdrawal of client moneys from one or more client accounts and, in so doing, acted in breach of the *Solicitors Accounts Regulations*.

In the course of her evidence, she attributed the withdrawals to inadequacies in the firm's bookkeeping systems and particularly the 'tick' system that she set up. She also accepted that she was aware of certain issues in the practice, but thought that they were being monitored by the reporting accountants to the firm. In considering this allegation, the tribunal had particular regard to the case of *In Re a Solicitor* and the dictum of Lord Denning to the effect that "it is most important that every solicitor should keep the account rules and cannot escape responsibility by handing over the books to a bookkeeper or accountant – he must answer for those whom he employs".

In respect of this allegation, it was submitted on behalf of the first-named respondent that, although he was the senior/managing partner of the firm, he had delegated responsibility for matters relating to the firm's accounts to the second-

named respondent and to the firm's then reporting accountants.

However, he accepted in his evidence that he was aware of the shortcomings in the practice and that the second-named respondent had had difficulties with the inadequacies in the accounts. The tribunal found that the first-named respondent was guilty of a breach of the regulations and that the breach was material and constituted misconduct.

The first-named respondent was also found guilty of misconduct in that he had transferred moneys from the client account prior to the issue of the grant of probate, in breach of regulation 8(4) of the *Solicitors Accounts Regulations 2001-2006* (SI 421/2001 as amended).

The tribunal made an order censuring both respondents and directed that each respondent would pay the sum of €1,000 and €4,000 respectively to the Compensation Fund and that both respondents would be jointly and severally liable to pay the whole of the costs of the Society. In making such an order, the tribunal took into consideration the absence of any previous disciplinary history and the steps taken to remedy the deficiencies in the practice with a view to ensuring that there was no recurrence of the issues that gave rise to this inquiry and in respect of which the tribunal had made findings of misconduct.

In relation to the issue of costs, while it was submitted that the facts that gave rise to the findings of misconduct were admitted, it was not admitted that those facts constituted misconduct. Consequently, the applicant had to prove the misconduct beyond reasonable doubt. In the circumstances, the tribunal was of the view that it was appropriate to award the applicant its costs.

In another case, where the facts averred to in the applicant's affidavit (which had been accepted by the respondent) and the evidence of the investigating accountant (which was not rebutted), the tribunal found the respondent guilty of misconduct in that he had, among other things, allowed a deficit in client moneys; misappropriated moneys, being the balance of a deposit in a conveyancing transaction; altered a photocopy of a bank draft in the conveyancing transaction; misappropriated funds received in respect of the purchase proceeds of a holiday home for a client; misappropriated client funds in a probate matter; altered a photocopy of a bank draft by changing it in order to conceal misappropriation of clients funds; and engaged in a practice of teeming and lading to hide the misappropriated client moneys.

The tribunal was of the opinion that the respondent was not a fit person to be a member of the solicitors' profession, that his name be struck off the Roll of Solicitors, and that he make such restitution to the Law Society's Compensation Fund as the court thinks fit.

In regard to the recommendation that he make a contribution towards the applicant's costs, the tribunal took into account the cooperation that was extended by the respondent in relation to the investigation and also noted that the contents of investigating accountant's report had not been challenged.

By reason of the submissions made on behalf of the applicant and the respondent – which included the submission that there was no claim on the Compensation Fund arising from the misconduct of the respondent; that the respondent had cooperated fully with the investigation by the applicant; confirmation by the applicant that

the respondent, on reinspection of his practice, was found to be fully compliant with the *Solicitors Accounts Regulations* – the tribunal made an order censuring the respondent and directing him to pay a sum of €3,000 to the Compensation Fund.

In this case, the tribunal found that the respondent had, among other things, created a deficit of in or around €108,000 to arise on the client account, which was due to partly due to the withdrawal of client moneys from one or more client accounts without authority and not for the benefit of clients, in contravention of regulation 7(1) of the *Solicitors Accounts Regulations*; created debit balances on client ledger accounts, in contravention of regulation 7(2)(a) of the *Solicitors Accounts Regulations*; withdrew moneys from client accounts other than as permitted, in contravention of regulation 8(4) of the *Solicitors Accounts Regulations*; failed to account for interest to clients on moneys held, in contravention of regulation 7(4) of the *Solicitors Accounts Regulations*.

### **Civil proceedings**

On another occasion, the tribunal found, among other things, that there was a clear request from a client to a solicitor for a bill of costs and that such a request, in the view of the tribunal, could not be ignored. The tribunal made an order censuring the respondent, directing him to make restitution of €7,500 to the applicant and to pay a contribution towards the applicant's expenses.

In that case, the tribunal found that there had been misconduct on the part of the respondent in circumstances where it found there was a failure to supply the applicant with an estimate of his costs and, despite repeated requests, the respondent failed without reason

or excuse to provide his client, the applicant, with written details of the actual charges. Such conduct fell short of the requisite standard in the profession and amounted to professional misconduct.

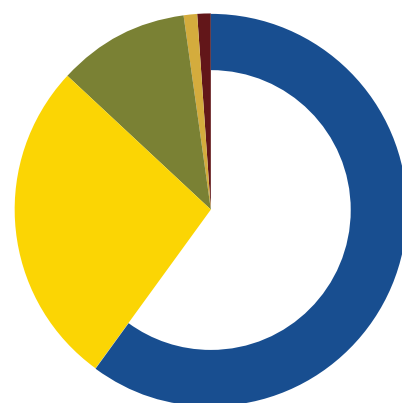
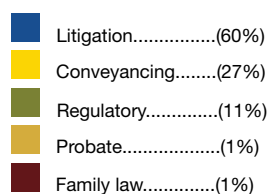
The applicant also established to the tribunal that there was repeated failure to respond to correspondence, including correspondence that was crucial and significant to the applicant, and the respondent had failed to give the tribunal any or any adequate explanation for this.

Further, the tribunal found that the respondent misled the Law Society that he had sent a section 68 letter, when it was now accepted by him that he had not and, in so doing, caused the Law Society to dismiss the complaint of the applicant.

# Subject matter of complaints

Chart 5 shows a detailed analysis of the subject matter of complaints, where the tribunal found that professional misconduct had taken place.

**Chart 5:**  
Categories in which a finding of  
misconduct aroes in 2013



# Some grounds on which professional misconduct was found

## Civil claims

- Failing expeditiously, within a reasonable time or at all, to pay over the balance of settlement compensation to the complainant, despite having been paid by the defendant's insurance company,
- Failing to carry out the client's instructions to prosecute his case,
- Causing delay to such an extent that his case was dismissed,
- Exposing his client to an award of costs by his inordinate delay,
- Failing to act in the best interests of his client,
- Failing to discharge expeditiously, within a reasonable time or at all, the complainant's fees given on behalf of the respondent's client in a personal injuries/loss of earnings claims, despite having been paid the costs by the defendant's insurance company, and
- By omission, misrepresenting or allowing to be misrepresented the position in relation to the recovery of costs for the clients from the defendant's insurers.
- Failing to honour an undertaking given to the bank on behalf of his clients in respect of a loan advanced to his clients, whereby he undertook to register a mortgage over property and to furnish title documents and mortgage deed to the bank,
- Releasing the balance sale proceeds of the property to his clients in circumstances where he had failed to put in place the bank's security over that property in accordance with his undertakings and in circumstances where loans the subject of those undertakings remained outstanding,
- Misrepresenting to a bank the position regarding the registration of its security,
- Misleading a bank by stating in a signed undertaking that he was a partner when this was not the case, and he was prohibited from practising as a partner,
- Causing or allowing an undertaking to be given to a bank to lodge the title documents of a property on completion of registration when he did not have the written authority of the owner of the property to give the undertaking and/or he failed to comply with the undertaking in a timely manner or at all,
- Failing to lodge for registration a bank mortgage on a property at any time since giving an undertaking to the bank, despite having informed the bank that he would "now do so",
- Incorrectly causing or allowing the Revenue stamps branch to be informed that a purchaser was a first-time buyer, when there was documentary evidence on the client's file that this was untrue,
- Failing to pay stamp duty either at all or in a timely manner to enable the firm to comply with their undertaking to the bank,
- Permitting and/or had knowledge of the fact that two undertakings came into being in respect of the same property at the same time without taking any or any sufficient steps to alert the solicitors and/or financial institutions involved of the situation, and
- Having mislaid the title deeds, failing to take the necessary steps to rectify the matter.

## Conveyancing

- Failing expeditiously or within a reasonable time to comply with an undertaking to furnish a deed of partial discharge in respect of a mortgage in favour of the bank appearing on the parent folio on behalf of his clients to the complainant,
- Causing or allowing a deficit to arise in respect of client funds of the practice,
- Causing or allowing debit balances to arise on clients' ledger accounts,
- Improperly causing or allowing clients' money, which had been received to pay outlay, to be drawn from the clients' ledger account,
- Creating a deficit to arise on the client account, which was due or partly due to the withdrawal of client moneys from one or more client accounts without authority and not for the benefit of clients, in contravention of

## Solicitors Accounts Regulations

regulation 7(1) of the *Solicitors Accounts Regulations*,

- Transferring moneys to and from client ledger accounts to hide debit balances and clear overdrawn fees, in contravention of regulation 9 of the *Solicitors Accounts Regulations*,
  - Failing to maintain, as part of his accounting records, proper books of account that showed the true financial position in relation to the respondent's transactions with clients' moneys and/or with money transactions by the respondent through the client account, in breach of regulation 12 of the *Solicitors Accounts Regulations*,
  - Misappropriating trust moneys from the client account,
  - Misappropriating moneys received in respect of the purchase proceeds of a holiday home for a client,
  - Engaging in a practice of teeming and lading to hide the misappropriated client funds,
  - Failing to account for interest owing to an untraced beneficiary of an estate, in contravention of regulation 7b(4) of the *Solicitors Accounts Regulations*,
  - Transferring one round sum amount to the office account in respect of costs and disbursed the VAT element of some costs from the client account,
  - Wrongfully misappropriating funds from clients and diverting them for his own use,
  - Retaining fees in the client account for periods well in excess of three months, in breach of regulation 5(2),
  - Failing to maintain separate ledger accounts for each client matter, in breach of regulation 12(c),
  - Failing to ensure that there was furnished to the Society a final reporting accountant's report in respect of the accounting period on the date the solicitor ceased to hold, control or pay clients moneys, in breach of regulation 26(2),
  - Breaching the provisions of section 68(6) of the *Solicitors (Amendment) Act 1994* by failing to provide clients with a bill of costs that showed the amount in respect of fees, outlays, disbursements and expenses incurring or arising in connection with the provision of such legal services, and
  - Withdrawing funds for fees from the client accounts other than as authorised by the regulations, and in particular regulation 7(1)(a)(iii).
- Regulatory body – Law Society of Ireland**
- Failing to comply with the direction of the Complaints and Client Relations Committee to provide an update within one month to the Society,
  - Failing without reasonable excuse to attend a meeting of the Complaints and Client Relations Committee as required by letter from the Society,
  - Failing without reasonable excuse to attend a meeting of the Complaints and Client Relations Committee as required by order of the High Court,
  - Failing to comply with the direction of the Complaints and Client Relations Committee that the respondent solicitor pay a sum of €300 to the Society for its costs incurred because of the respondent solicitor's failure to respond to the Society in a timely manner or at all,
  - Failing to comply with the direction of the Complaints and Client Relations Committee to refund fees to his former client within 28 days from the date of that direction,
  - Failing to comply within a reasonable time or at all, with direction of the Complaints and Client Relations Committee whereby he was to furnish an apology to the complainant, waive any entitlement to fees, and pay compensation of €3,000 to the complainant,
  - Failing to reply to the Society's correspondence, causing the Society to have to apply to the High Court for orders pursuant to section 10(A)(1)(a) and section 10(A)(1)(b) of the *Solicitors (Amendment) Act 1994*, as amended by section 13 of the *Solicitors (Amendment) Act 2002*, to compel the respondent solicitor to respond to the Society's correspondence concerning the complainant's complaints and to attend a meeting of the committee,
  - Failing to respond to the Society's correspondence in connection with the complaint in a timely manner or at all,
  - Misleading the Society by letter and at a meeting of the Complaints and Client Relations Committee when he indicated that he was dealing with the file and subsequently informed the Society by letter that he could not locate the file in question, and
  - Failing to attend the meeting of the Complaints and Client Relations Committee, despite being required to do so by letter.

## Other orders made by the Tribunal

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

## Publication orders made by 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 most common complaints that come before the tribunal relate to the failure on the part of solicitors to keep their clients fully informed of developments in respect of their cases. This, in turn, may lead a client to believe that there is procrastination on the part of the solicitor. Further, this perceived delay may undermine the solicitor/client relationship. In previous reports, the tribunal has alerted solicitors to the risks in regard to the failure to respond to clients and indeed to the Law Society of Ireland. Clients should be assured that their cases are being attended to, and this may well be achieved by ensuring that their concerns are recognised and acted upon.

Special thanks are extended to all members of the tribunal, who continue to give their time and expertise to the tribunal, and to the hard-working staff.

**Edward McEllin,  
Chairman**

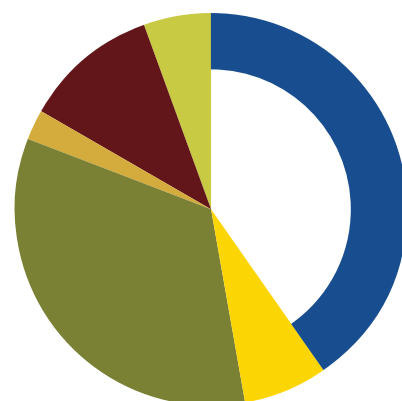


# Appendix 1

## Status of applications received at at 31 December 2013

Status of all applications received  
in 2013 prior to inquiry stage

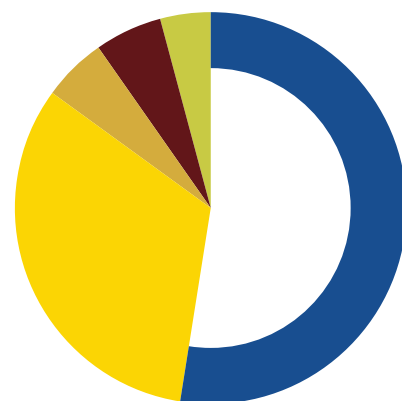
Exchange affidavits.....	(83)
Awaiting <i>prima facie</i> .....	(14)
<i>Prima facie</i> found.....	(69)
<i>Prima facie</i> yes/no.....	(5)
<i>Prima facie</i> not found.....	(23)
<i>Prima facie</i> withdrawn.....	(11)
<i>Prima facie</i> adjourned.....	(0)



2013

Status of all applications received  
in 2013 at inquiry stage

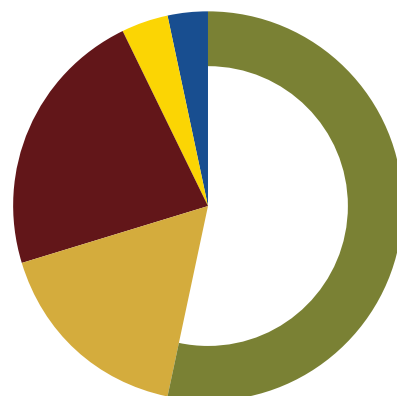
Awaiting inquiry.....	(39)
Inquiry ongoing.....	(24)
Inquiry adjourned.....	(4)
Miscounduct.....	(4)
No micdonduct.....	(0)
Withdrawn after inquiry directed.....	(3)



2012

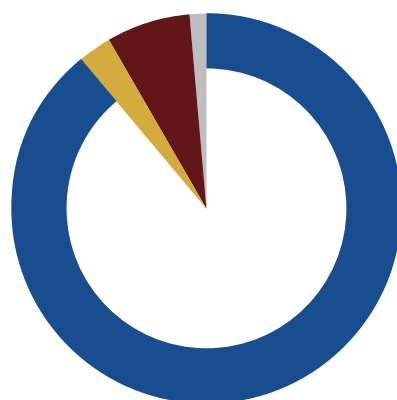
Status of all applications received in 2012 prior to inquiry stage

Exchange affidavits.....	(6)
Awaiting <i>prima facie</i> .....	(7)
<i>Prima facie</i> found.....	(98)
<i>Prima facie</i> yes/no.....	(31)
<i>Prima facie</i> not found.....	(41)
<i>Prima facie</i> withdrawn.....	(0)
<i>Prima facie</i> adjourned.....	(0)



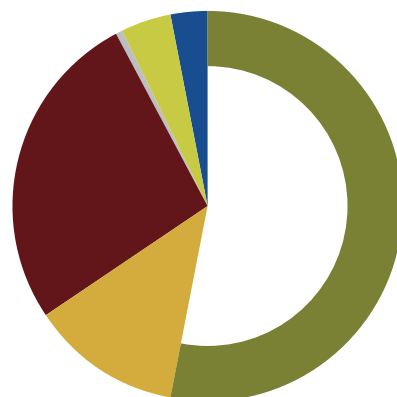
Status of all applications received in 2012 at inquiry stage

Awaiting inquiry.....	(65)
Inquiry ongoing.....	(0)
Inquiry adjourned.....	(2)
Miscounduct.....	(5)
No micdonduct.....	(1)
Withdrawn after inquiry directed.....	(0)



Status of all applications received in 2011 prior to inquiry stage

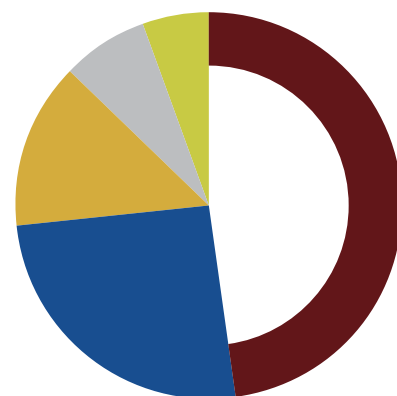
Exchange affidavits.....	(4)
Awaiting <i>prima facie</i> .....	(0)
<i>Prima facie</i> found.....	(76)
<i>Prima facie</i> yes/no.....	(18)
<i>Prima facie</i> not found.....	(38)
<i>Prima facie</i> withdrawn.....	(6)
<i>Prima facie</i> adjourned.....	(1)



2011

Status of all applications received in 2011 at inquiry stage

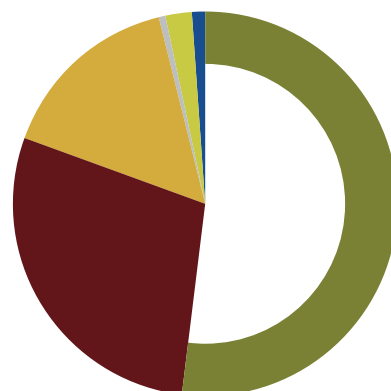
Awaiting inquiry.....	(24)
Inquiry ongoing.....	(0)
Inquiry adjourned.....	(13)
Miscounduct.....	(45)
No micdonduct.....	(7)
Withdrawn after inquiry directed.....	(5)



2010

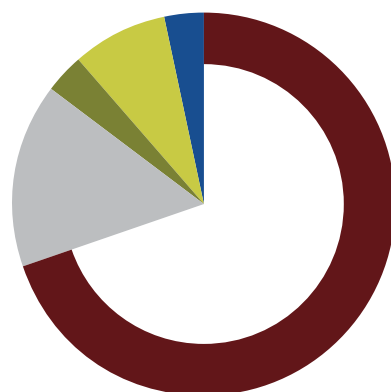
Status of all applications received  
in 2010 prior to inquiry stage

Exchange affidavits.....	(2)
Awaiting <i>prima facie</i> .....	(0)
<i>Prima facie</i> found.....	(95)
<i>Prima facie</i> yes/no.....	(28)
<i>Prima facie</i> not found.....	(52)
<i>Prima facie</i> withdrawn.....	(4)
<i>Prima facie</i> adjourned.....	(1)



Status of all applications received  
in 2010 at inquiry stage

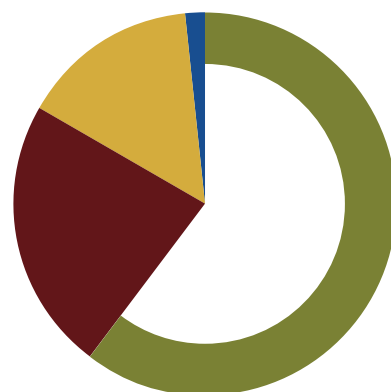
Misconduct.....	(86)
No misconduct.....	(19)
Part heard.....	(4)
Withdrawn.....	(10)
Awaiting inquiry.....	(4)



2009

Status of all applications received  
in 2009 prior to inquiry stage

Exchange affidavits.....	(2)
Awaiting <i>prima facie</i> .....	(0)
<i>Prima facie</i> found.....	(84)
<i>Prima facie</i> yes/no.....	(21)
<i>Prima facie</i> not found.....	(32)
<i>Prima facie</i> withdrawn.....	(0)
<i>Prima facie</i> adjourned.....	(0)



Status of all applications received  
in 2009 at inquiry stage

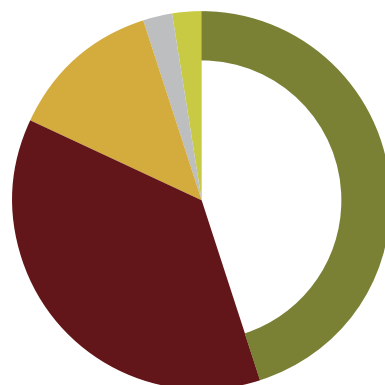
Misconduct.....	(86)
No misconduct.....	(9)
Part heard.....	(1)
Withdrawn.....	(6)
Awaiting inquiry.....	(3)



2008

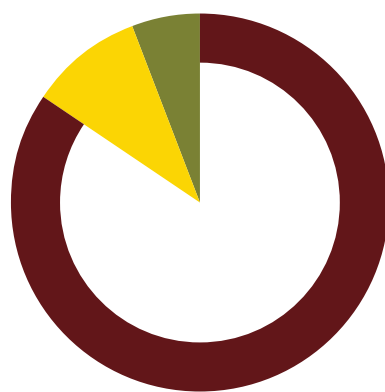
Status of all applications received in 2008 prior to inquiry stage

Exchange affidavits.....	(0)
Awaiting <i>prima facie</i> .....	(0)
<i>Prima facie</i> found.....	(55)
<i>Prima facie</i> .....	(16)
<i>Prima facie</i> not found.....	(44)
<i>Prima facie</i> withdrawn.....	(3)
<i>Prima facie</i> adjourned.....	(3)



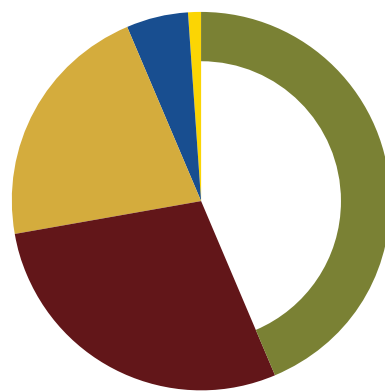
Status of all applications received in 2008 at inquiry stage

Misconduct.....	(60)
2008.....	(7)
Withdrawn.....	(4)
No misconduct.....	(0)
Awaiting inquiry.....	(0)
Part heard.....	(0)



Status of all applications received in 2007 prior to inquiry stage

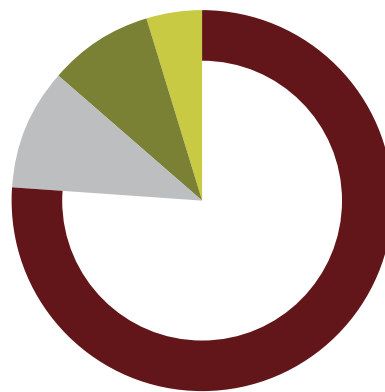
Exchange affidavits.....	(5)
Awaiting <i>prima facie</i> .....	(1)
<i>Prima facie</i> found.....	(41)
<i>Prima facie</i> yes/no.....	(20)
<i>Prima facie</i> not found.....	(27)
<i>Prima facie</i> withdrawn.....	(0)
<i>Prima facie</i> adjourned.....	(0)



2007

Status of all applications received in 2007 at inquiry stage

Awaiting inquiry.....	(0)
Inquiry ongoing.....	(0)
Part heard.....	(6)
Misconduct.....	(51)
No misconduct.....	(7)
Withdrawn.....	(3)



# Appendix 2

## Analysis of applications and decisions

Solicitors Disciplinary Tribunal statistics as at 31 December 2013

STATUS OF APPLICATIONS	2013	2012	2011	2010	2009	2008	2007
Law Society of Ireland	136	120	87	117	92	65	53
Others	<u>69</u>	<u>67</u>	<u>56</u>	<u>65</u>	<u>47</u>	<u>56</u>	<u>41</u>
<b>Total received</b>	<b>205</b>	<b>187</b>	<b>143</b>	<b>182</b>	<b>139</b>	<b>121</b>	<b>94</b>
<b>Prior to <i>prima facie</i> consideration</b>							
Exchanging affidavits	83	4	4	2	0	0	0
Awaiting <i>prima facie</i> decisions	14	0	0	0	0	0	0
<i>Prima facie</i> cases found	69	98	76	95	84	55	42
<i>Prima facie</i> cases rejected	23	41	38	52	32	44	27
<i>Prima facie</i> cases found/rejected	5	31	18	28	21	16	20
Struck out	0	3	0	0	0	0	0
<i>Prima facie</i> decision adjourned	0	1	1	1	0	6	0
<i>Prima facie</i> application withdrawn	11	9	6	4	1	3	5
<b>Inquiry Stage</b>							
Cases scheduled for enquiry	39	45	24	1	3	0	1
Inquiry adjourned	0	0	0	1	0	0	0
Misconduct found	4	71	45	92	86	60	51
Misconduct not found	0	3	7	19	9	7	7
Part heard	28	9	13	0	1	0	0
Withdrawn	3	2	5	10	6	4	3

### Prior to 2007, dealt with in 2013

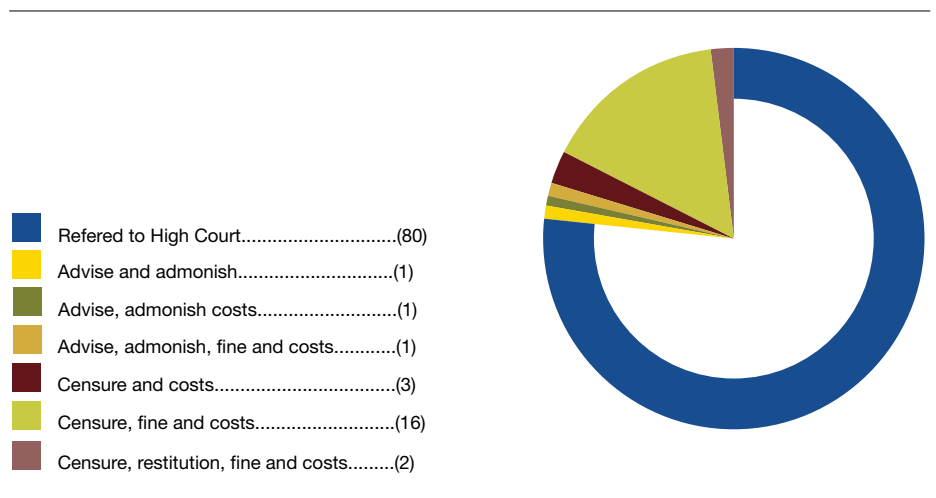
Exchanging affidavits	0
Awaiting <i>prima facie</i> decision	0
<i>Prima facie</i> cases found	0
<i>Prima facie</i> rejected	0
<i>Prima facie</i> cases found/rejected	0
<i>Prima facie</i> decision adjourned	0
<i>Prima facie</i> application withdrawn	0

### Inquiry stage

Cases scheduled for inquiry	0
Misconduct found	1
Misconduct not found	0
Part heard	0
Withdrawn	0

# Appendix 3

Orders made by the tribunal pursuant to section 7(9) of the *Solicitors (Amendment) Act 1960* as substituted by section 17 of the *Solicitors (Amendment) Act 1994* and amended by section 9 of the *Solicitors (Amendment) Act 2002*





## Appendix 4

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

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

Recommendations of the tribunal in 2013	Number of respondents	Number of applications
That the name of the respondent be struck off the Roll of Solicitors	4 * #	7
That the name of the respondent be struck off the Roll of Solicitors – fined and costs	6 ~	9
That the name of the respondent be struck off the Roll of Solicitors, that the respondent make restitution to the complainant as may be determined by the President of the High Court, and that payment of these moneys take priority over any cost and expenses to be paid in respect of the proceedings – costs	3	4
That the name of the respondent be struck off the Roll of Solicitors – costs	7* ~	22
That the respondent should not be permitted to practise as a sole practitioner or in a partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance of the Law Society – fine and costs	1# ^	1
That the respondent should not be permitted to practise as a sole practitioner or in a partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance of the Law Society – costs, fine and costs	7 ^	33

\* # ~ ^ These cases refer to the same respondent(s)

## Appendix 4 - contd.

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

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

Recommendations of the tribunal in 2013	Number of respondents	Number of applications
First-named respondent solicitor: misconduct found; that the first-named respondent solicitor is not a fit person to be a member of the solicitors' profession; that the name of the first-named respondent solicitor be struck off the Roll of Solicitors; that the second-named respondent solicitor be admonished, fined and costs	1	1
That the respondent be suspended from practice on such terms as the High Court thinks fit – costs	3	3

\* # ~ ^ These cases refer to the same respondent(s)

## Appendix 5

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

Orders of the High Court made on foot of recommendations of the tribunal in 2012	Number of respondents	Number of applications
That the name of the respondent shall be struck from the Roll of Solicitors, censured and fined €12,000 – costs	1	1
That the name of the respondent be struck off the Roll of Solicitors; that he make restitution to the Compensation Fund and costs	1	1
That the name of the respondent shall be struck from the Roll of Solicitors – costs	7	17
That the name of the respondent be struck off the Roll of Solicitors	1	3
That the respondent be suspended and costs	1	1
That the respondent not be permitted to continue to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society – costs.	3	4
That the respondent be restricted until further order of the court from practising in the area of conveyancing, that he be censured, pay a sum of €500 to the Compensation Fund and costs	1	1

The High Court also made an order pursuant to section 10(2) of the *Solicitors (Amendment) Act 1994* directing the Registrar of Solicitors to restore the name of the applicant to the Roll of Solicitors subject to a limited practising certificate on condition filed with the court.

**Solicitors Disciplinary Tribunal**

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

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Fax: (01) 869 0767  
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