



Solicitors
Disciplinary Tribunal

Solicitors Disciplinary Tribunal

Chairman's Report 2015

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

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

ten years' standing, and lay members who are not solicitors or barristers.

Procedures of the tribunal are also governed by the *Solicitors Disciplinary Tribunal Rules 2003*, which came into operation on 1 March 2003. Under the *Solicitors Acts 1954-2011*, the tribunal's powers are mainly confined to receiving and hearing

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

MEMBERS OF THE TRIBUNAL DURING 2015

Solicitor members

Niall Farrell, chairman
Owen Binchy
Helen Bowe O'Brien
Geraldine Clarke
Justin Condon
Barbara Cotter
Helen Doyle
Fiona Duffy
Patricia Harney
Philip Joyce

Geraldine Kelly
Elizabeth Lacy
Michael Lanigan
Justin McKenna
Brian McMullin
Stephen Maher
Joseph Mannix
Boyce Shubotham
Fiona Twomey
Michael Tyrrell

Lay members

Seamus Byrne
Una Claffey
Brenda Clifford
Dermot Eagney
Norah Gibbons
Vera Kelly
Mary King
Joseph McPeake
Kevin Rafter
Siobhan Toale

Tribunal registrar:

Mary Lynch

Tribunal executive:

Ashling McGing

Tribunal executive:

Kay Lynch

Administration assistant:

Nadia Farrell

Administration assistant:

Anthea Moore

Administrator/receptionist:

Aine Skelly

Introduction

This annual report covers the work of the tribunal for the year up to 31 December 2015 and 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 1954-2011*. 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 a penalty.

Hearings of the tribunal vary in length (see Chart 2, page 5), 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 an impact on the ability of the tribunal to ensure the timely conclusion of cases.

Details of the workload of the tribunal during the year can be seen

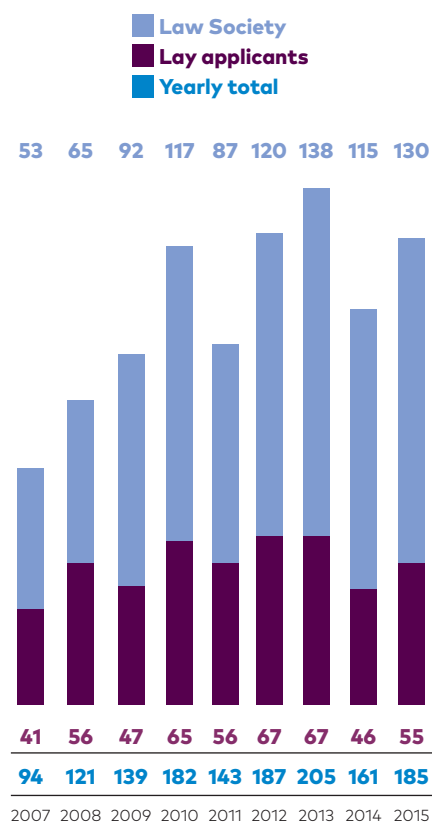
from Table 1 (right). There has been an increase of approximately 15% in the number of applications from the previous year.

In the main, the workload of the tribunal is directly attributable to the number of cases referred to the tribunal by the Law Society of Ireland. In the year under review, the tribunal received 130 cases from the Law Society and 55 cases from members of the public. However, Table 2 shows a decrease in the number of findings of misconduct and referrals to the High Court in 2015. As multiple applications were made in respect of some respondents, the actual number of solicitors involved was 50, of which 26 individual solicitors were referred to the President of the High Court, who can impose more severe sanctions. The decrease in the number of individual solicitors sent forward to the High Court is to be welcomed, as this is indicative of the fact that there are fewer serious matters coming before the tribunal.

Considerable additional time is also spent by tribunal members reading large volumes of papers when preparing for inquiries.

TABLE 1

Number of new applications received, by year



At times, members may also meet in private when preparing and finalising reasons for their decisions and reports, and this additional work is not reflected in Table 3, which shows the number of sittings of the tribunal since 2011.

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

However, preliminary/interlocutory applications are not included in the diary.

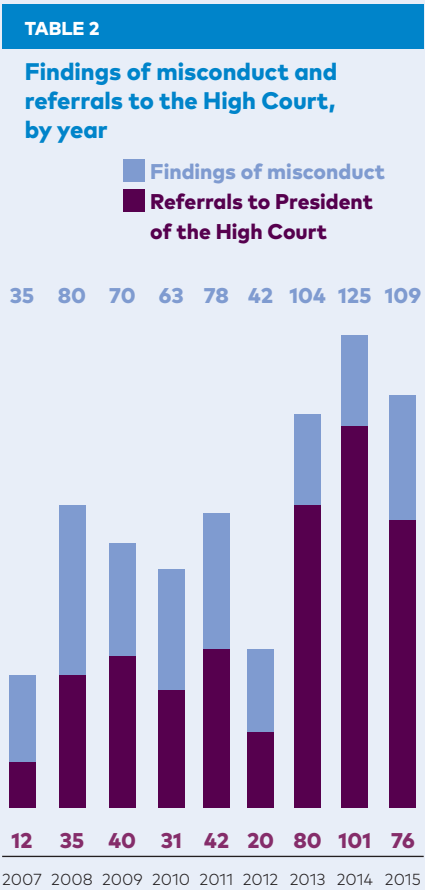


TABLE 3

Number of sittings of tribunal, by year

2011	106
2012	96
2013	96
2014	114
2015	113

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 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 a common law action for negligence against the solicitor concerned.

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.

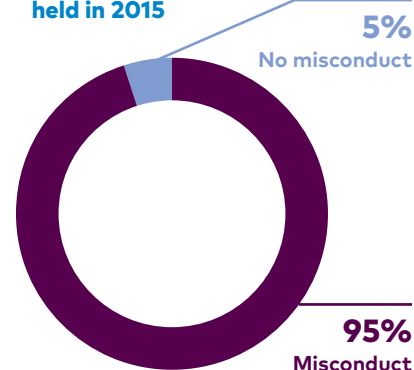
Where a solicitor fails to appear or to be legally represented, this does not relieve the tribunal of its obligation to proceed to hold an inquiry and to proceed in the manner that it would, should the solicitor have been in attendance and fully represented.

During the reporting year, the tribunal was very concerned by the lack of attention of some solicitors and commissioners for oaths in regard to the swearing of affidavits. It was noted that the jurats in affidavits were not completed in the proper manner and, consequently, had to be returned to the relevant party to be re-sworn. This, of course, causes unnecessary inconvenience and delay in processing applications.

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*

CHART 1

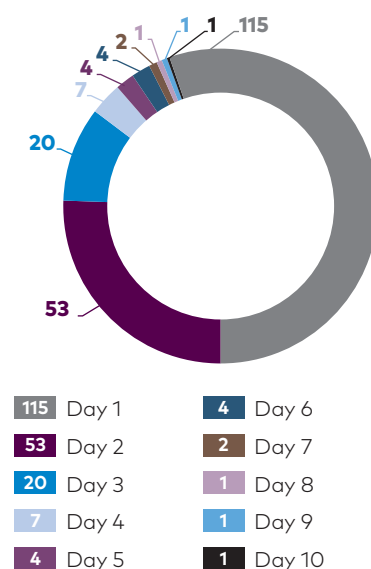
Outcome of inquiries held in 2015



(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, tries to ensure that solicitors' constitutional rights to fair procedures and natural justice are honoured.

CHART 2

Full length of inquiries that finished in 2015





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.

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 established, 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 a hearing *de novo*, at which both parties can make legal and other relevant submissions on all

matters, with a fresh determination of the issues and where a judgment is delivered on that appeal. It was also held that the tribunal is a proper notice party to the proceedings, bound by any order that the High Court might make on the appeal.

Sanctions

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.

It is at this time, when considering the issue of penalty, that a respondent's disciplinary history is opened to the tribunal. While a respondent should receive some credit for the admissions made, the tribunal cannot ignore the fact of previous findings of misconduct standing against the respondent. In addition, the tribunal may be advised that the financial aspects of those orders remain outstanding and this, of course, would be of grave concern.

A pattern of non-cooperation with the Law Society may also be evident

and, in the tribunal's view, this may be indicative that a respondent's conduct has fallen considerably short of the standards expected of a member of the profession.

The tribunal should not have to remind solicitors that it is in their best interests to actively engage and cooperate with the Law Society and to fully comply with the financial elements of orders of the tribunal.

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 its reputation. Consequently, the tribunal, among other things, takes into account the action required to protect the public, the type and severity of the misconduct, including any proven dishonesty, aggravating and mitigating circumstances, proportionality and prior disciplinary history.

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 suspension or the ultimate sanction of striking the name of the respondent off the Roll of Solicitors.

Adjournments

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.

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, for example, medical report, evidence of travel arrangements, or attempts to contact witnesses.

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, the consent of the other party to the making of the adjournment application must previously have been sought from the other party 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.

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 to 2002) 2004* (SI 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 purpose of hearing submissions.

During the course of the year, the High Court, in three cases, upheld the decision of the tribunal that there was no misconduct on the part of the respondents concerned.

In one case, the court was satisfied that the respondent had adequately rebutted the complaint that he failed to reply to certain emails and that he did, in fact, properly respond to all correspondence. Having examined the transcript of the tribunal hearing and the impugned decision, the court accepted that the tribunal had due regard to all of the evidence before it and arrived at a reasoned decision. No fresh evidence had been adduced by the appellant that would warrant a departure from this decision, and the court affirmed the decision that





the respondent was not guilty of misconduct.

In another appeal to the High Court, it was held, among other things, that the tribunal had given a detailed and reasoned decision, and the evidence as presented before it was available in the transcript of the hearing. Both parties were afforded the opportunity to provide lengthy submissions at the hearing in relation to each of the transactions in dispute. Nevertheless, both parties had filed lengthy affidavits in this appeal that were replete with innuendo, allegations, and counter-allegations, many of which were not ventilated before the tribunal. From a careful and exhaustive analysis of the documentation, the court was satisfied that the tribunal did not err in its decision and did not fail to consider any material evidence that

would have been determinative of any aspect of the appellant's complaint.

In respect of a further appeal, the High Court was satisfied the tribunal had given careful consideration to the appellant's complaint and had presented clear reasons for its decision. In relation to an allegation of false accounting, the court was also satisfied that the tribunal had due regard to the submissions and exhibits of both parties in arriving at its decision. No fresh evidence had been introduced by the appellant that suggested that the tribunal erred in some way, or which would warrant a departure from the finding of the tribunal that the respondent had adequately rebutted this aspect of the complaint.

The High Court affirmed the decision of the tribunal in one case

that there was no *prima facie* case of misconduct on the part of the respondent for inquiry and dismissed the appeal. However, the order of the High Court is now being appealed to the Court of Appeal.

The decision of the High Court in respect of four further appeals is awaited.

The Supreme Court, in respect of one appeal, struck out the appeal on consent. In the circumstances, the court placed a permanent stay on the disciplinary proceedings extant at that time, having noted the original applicant's assurances that he had no desire to pursue the underlying complaint any further.

Four decisions are still awaited in respect of appeals to the Supreme Court/Court of Appeal.

Observations on complaints before the tribunal

Civil proceedings

The tribunal found a respondent guilty of misconduct in respect of a complaint that he had failed to provide his clients with a satisfactory service in relation to civil proceedings issued by them. The proceedings were not issued until almost six years after the instructions to act were given. This delay was considered by the tribunal to be inexcusable, and it was noted that the delays were accepted by the respondent. The tribunal was of the view that, in such circumstances, the delay, combined with a failure to properly apprise the clients regarding the conduct of the proceedings, amounted to misconduct. The respondent was censured and directed to pay a sum of €5,000 to the compensation fund.

The tribunal made a finding of no misconduct on the part of a respondent, being satisfied on hearing the evidence given by and on behalf of the applicant and by the respondent that the alleged incident had not been proven beyond all reasonable doubt. Further, the tribunal noted that the complaint arose in 2004 and that the application in regard thereto

was made to the tribunal in March 2014. The respondent had raised the issue of the delay in making the application to the tribunal and, due to the lapse of approximately nine years, he had no recollection of the alleged incident. In the circumstances, the tribunal found it would be unsafe to make a finding of misconduct.

The tribunal found a respondent guilty of misconduct where he had admitted he had failed expeditiously, within a reasonable time, or at all to honour an agreement to pay 50% of the professional fees and counsel's outlay to a colleague arising out of the transfer of a file. To compound matters, the respondent also failed to respond to his colleague's and the Society's correspondence. He also failed to comply with directions of the Complaints and Client Relations Committee and to attend a meeting of that committee. The tribunal took into account the personal circumstances of the respondent, who was no longer in practice, and made an order censuring the respondent and directing him to pay a sum of €2,000 to the compensation fund and the applicant's costs.

Conveyancing

The allegation of failure to comply with undertakings given either to a colleague or a lending institution continues to be the most common complaint coming on for hearing before the tribunal. All solicitors recognise the fact that undertakings are essential to the conveyancing process and, as such, colleagues and/or lending institutions have to be able to rely on them. Consequently, a failure to comply with his/her undertaking may be regarded as a breach of a solicitor's obligation to protect his/her clients and uphold the reputation of the profession.

A respondent, in respect of whom five applications were made to the tribunal, was found to have shown a complete disregard for his obligations as a solicitor.

There was clear, uncontradicted evidence that the respondent had failed to comply with the directions of the Complaints and Client Relations Committee with regard to the furnishing of a file or copy file to the complainant, and refunding unused outlays and professional fees. In the circumstances, the tribunal found he was guilty of misconduct.

The same respondent was also found guilty of misconduct by failing to comply with numerous undertakings to banks, as a result of which both the banks and their clients had been left in a very difficult position. In failing to resolve matters, he showed an inability to ensure that he was in a position to comply with undertakings before giving them. Furthermore, his failure to resolve matters showed an inability to carry out standard conveyancing work.

The tribunal concluded that the reputation of the profession is brought into disrepute by solicitors who let down their clients in the manner shown in these cases. In their reports to the President of the High Court, the tribunal recommended that the name of the respondent be struck off the Roll of Solicitors and that he pay a cumulative sum of €10,000 to the compensation fund. Further, in one of the cases, that he make restitution to his client as directed by the Law Society.

Following a hearing in respect of four separate applications against another respondent, the tribunal found, in two of the cases, that she had, among other things, failed to comply with an

undertaking furnished to a lending institution in respect of her client in a timely manner or at all. Further, that she failed to respond to the Law Society's correspondence in a timely manner or at all (in one case) and failed to comply with the direction made by the Complaints and Client Relations Committee.

In the other two cases, she had also failed to ensure that there was furnished to the Law Society her accountant's report, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* and failed to furnish to the Law Society a closing accountant's report as required by regulation 26(2) of the regulations in a timely manner or at all. The tribunal, on hearing the submissions in relation to penalty and taking into account the respondent's previous disciplinary history, directed that a report be sent to the President of the High Court recommending that her name be struck off the Roll of Solicitors. The president concurred with the tribunal's recommendation and made an order striking the name of the respondent off the Roll.

During the year under review, eight cases were listed for hearing in

respect of a respondent. Following admissions made by the respondent, the tribunal found she had, in seven of the cases, failed to comply with undertakings furnished to lending institutions in a timely manner or at all. In six of the seven cases, she had failed to respond to the Law Society's correspondence in a timely manner or at all, and to comply with the direction of the Complaints and Client Relations Committee. In the eighth case, she admitted she had failed to ensure that there was furnished to the Law Society a closing accountant's report as required by regulation 26(2) of the *Solicitors Accounts Regulations*. The tribunal, having considered the submissions made on behalf of the applicant, and the respondent failing to be in attendance to make submissions on penalty, recommended that her name be struck off the Roll of Solicitors.

The tribunal, having found misconduct in a number of cases against a respondent in respect of his failure to comply with his undertakings to a bank in a timely manner or at all, noted, with some disappointment, that it was some considerable time before the bank sought to rely on their undertakings.





The tribunal also noted that had these matters been caught at an earlier stage, it was possible that the respondent might have been able to deal with them.

In making its recommendation to the President of the High Court that the name of the respondent should be struck off the Roll of Solicitors, the tribunal took the following into account:

- The number of undertakings outstanding,
- The lack of cooperation from the respondent in relation to complying with the undertakings,
- The evidence in the grounding affidavit that the respondent misled people, and
- The inordinate amount of time that the undertakings were outstanding.

The tribunal also found the respondent had failed to reply to correspondence from the Law Society, failed to comply with a direction of the Complaints and Client Relations Committee, and failed to attend meetings of that committee.

In relation to eight further cases against a respondent, whose name

was already struck off the Roll of Solicitors, the tribunal found he had, among other things, failed to apply the stamp-duty fee provided to him by the complainant for the purchase of the complainant's property, with the result that the relevant transfer deed was not properly stamped and registered in the complainant's name; failed to register the complainant's title to the property in a timely manner or at all; failed to release to the complainant some or all of the forfeited deposit moneys relating to the sale of the property held by him for the complainant in a timely manner or at all; and failed to respond to correspondence from the complainant and the Law Society.

The tribunal, having heard evidence of the loss, distress and anxiety caused to the complainants by the respondent's behaviour and his disregard for his regulatory body, recommended to the President of the High Court that his name be struck off the Roll of Solicitors.

Regarding the same respondent, another division of the tribunal also recommended, in a further four cases, that his name be struck off the Roll of Solicitors, having found

him guilty of misconduct where he had failed to honour undertakings that he had given. In respect of these four latter cases, the president also made an order striking the name of the respondent off the Roll of Solicitors.

In the case of another respondent, the tribunal took into account the admissions made and recommended to the President of the High Court that the name of the respondent should be struck off the Roll of Solicitors and that the respondent should pay a sum of €7,500 to the compensation fund. It also took into account the submissions made by the Law Society in relation to the importance of undertakings, as the operation of a solicitor's undertaking goes to the core of the profession. In this case, the respondent was found guilty of misconduct in respect of his failure to comply with 24 undertakings.

A further respondent was censured and directed to pay a sum of €2,000 to the compensation fund and to pay the Law Society's costs in circumstances where he had been found guilty of misconduct, in that he had failed to comply with two undertakings given



to a bank and to comply with the directions of the Law Society.

The tribunal was cognisant of the fact that the respondent and his solicitor had made every effort to resolve the matter and had succeeded in doing so, and that this was to his credit. It was the case, however, that there was considerable delay, and he had failed to comply fully with the direction of the Law Society. The tribunal noted the respondent had ceased practice and had no disciplinary record. In the circumstances, it was decided that it was unnecessary to attach restrictions in the event that he reapplies for a practising certificate.

In another case, the tribunal decided that it was not appropriate for it to make an order in relation to sanction, by reason of the fact that there had been no progress made in complying with the outstanding undertakings, despite the fact that the tribunal had adjourned the inquiry for a period of four months to facilitate the respondent in that regard. The tribunal instead directed the Law Society to bring its report in respect of this matter to the High Court, with the recommendation

that the respondent be suspended from practice pending compliance with the undertakings in question and that the respondent pay the Law Society's costs.

Before considering the issue of penalty, the tribunal, in view of the admissions made, had found the respondent guilty of misconduct, in that he had failed to comply in a timely manner or at all with one or more of the undertakings, failed to comply with a direction of the Complaints and Client Relations Committee to provide a progress report to the Law Society, and failed to respond adequately or at all to correspondence from the bank and the Law Society.

Solicitors Accounts Regulations

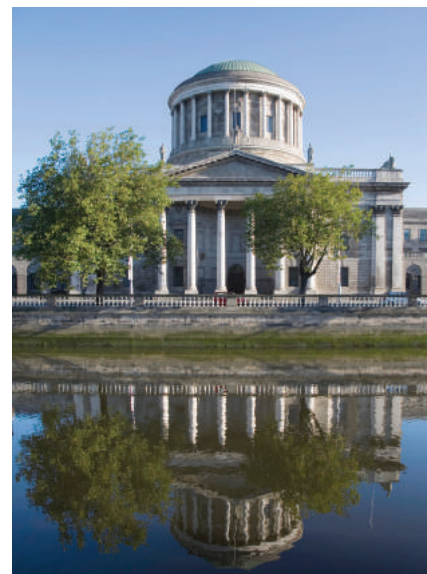
In a case where the respondent had admitted serious allegations of misconduct, and where the respondent had failed to reassure the tribunal that all accounting matters had been rectified, the tribunal was of the opinion that the respondent was not a fit person to be a member of the solicitors' profession and recommended that her name be struck off the Roll of Solicitors.

The tribunal had found the respondent guilty of misconduct in that she had, among other things, allowed debit balances to occur on nine client ledger accounts and allowed a deficit on the client account, in breach of the *Solicitors Accounts Regulations*. She had also permitted unauthorised transfers between unrelated accounts to temporarily clear debit balances, and took costs from deposits received in a number of conveyancing transactions. Further, she had failed to pay stamp duty that had been discharged and paid by the client and, instead, used it to pay costs. When the matter duly came before the High Court, the president made an order striking the name of the respondent off the Roll of Solicitors.

In another case, the tribunal was satisfied the respondent's delay of over one year in filing his accountant's report showed a disregard for his statutory obligation and the Law Society's obligation to monitor compliance with the *Solicitors Accounts Regulations* and, consequently, found him guilty of misconduct. He was also found to have failed to ensure that there was furnished to

the Law Society an accountant's report within six months of the appropriate date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001*. In its report to the High Court, the tribunal expressed its opinion that the respondent should be suspended from practice until such time as he filed his outstanding accountant's report. However, in the event that the respondent filed his accountant's report prior to the hearing of the matter in the High Court, the tribunal recommended that he pay a sum of €1,000 to the compensation fund and the costs of the Law Society.

On the basis of a respondent's undertaking never to practise again as a solicitor – which he would give to the High Court – in its report to the President of the High Court, the tribunal recommended that the respondent be permanently suspended. In this case, on hearing the admissions made by the respondent, the tribunal found him guilty of misconduct in that he had, among other things, caused or allowed a deficit on a client account and had breached a number of the *Solicitors Accounts Regulations*, including regulation 7(1), by withdrawing moneys on account of fees without the consent of the client.

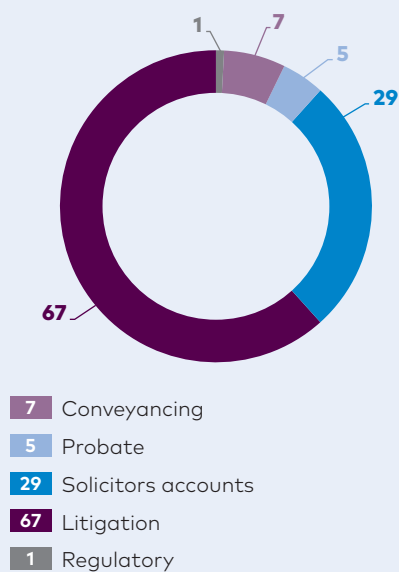


Subject matter of complaints

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

CHART 3

Categories in which a finding of misconduct arose in 2015



Some grounds on which professional misconduct was found

Civil claims

- Failing expeditiously, within a reasonable time, or at all, to honour an agreement to pay 50% of the professional fees and counsel's outlay to the complainant arising out of the transfer of a file,
- Settling proceedings without the authority of the clients,
- Failing to honour an undertaking given to a complainant to discharge his fees from the proceeds of costs to be received in a case expeditiously, within a reasonable time, or at all.

Conveyancing

- Failing to comply with an undertaking furnished to a lending institution in respect of a client and their customer in a timely manner or at all,
- Causing or allowing a representation to be made to a bank that there was an unconditional third-party contract in respect of a property,
- Failing to pay the total net sale proceeds to a bank in accordance with an undertaking to the bank,
- Failing to furnish the complainants in a timely manner with a VAT receipt and/or invoice in respect

- of paid fees, despite requests for him to account for these moneys,
- Failing to comply in a timely manner with the complainants' requests for a statement of account in respect of a purchase of a site,
- Breaching section 68(1) of the *Solicitors (Amendment) Act 1994* by failing to furnish the complainants, on the taking of instructions or as soon as practicable thereafter, with particulars in writing of the actual charges, or an estimate of the charges, or the basis on which the charges would be made for the provision of legal services in respect of a development,
- Updating a deed and then presenting the updated deed to the Revenue for stamping.

Solicitors Accounts Regulations

- Allowing debit balances to occur on client ledger accounts at the accounting date,
- Allowing a deficit on the client account, in breach of the *Solicitors Accounts Regulations*,
- Permitting unauthorised transfers between unrelated accounts to temporarily clear debit balances,
- Taking costs from deposits received in a number of

- conveyancing transactions,
- Failing to pay stamp duty that had been discharged and paid by the client and instead using same to pay costs,
- Failing to ensure that a client bank account was correctly designated,
- Failing to ensure that adequate narrative was written on cheques paid to banks or financial institutions,
- Receiving party-and-party costs in a personal injuries action, but failing to pay third-party outlays until after the Law Society's investigation,
- Improperly transferring fees and outlays received from third-party solicitors from a client account, properly due to the complainant, to the office account,
- Breaching regulation 7(1) of the *Solicitors Accounts Regulations*, as amended, by withdrawing moneys on account of fees without the consent of the client,
- Breaching regulation 7(1)(a) of the *Solicitors Accounts Regulations*, as amended, by creating debit balances,
- Permitting client ledger debit balances to arise on the client account, resulting in a deficit in breach of regulation 7(2),



- Breaching regulation 10(5) of the *Solicitors Accounts Regulations* by the creation of credit balances on the office account,
- Breaching regulation 11 of the *Solicitors Accounts Regulations* by failing to furnish bills of costs to clients and by the withdrawal of moneys not due to the respondent,
- Breaching regulation 12 of the *Solicitors Accounts Regulations* by the failure to maintain such relevant supporting documents that could vouch moneys taken as solicitor/client fees,
- Breaching regulation 12 of the *Solicitors Accounts Regulations*, as amended, in that the client ledger listing did not properly detail the full liabilities to clients because of the entries made for fee notes that had not been delivered to the client or agreed with them,
- Substantial non-compliance with section 68 of the *Solicitors (Amendment) Act 1994*, in that clients were not informed of the party-and-party costs recovered, nor were they given full account details of all moneys spent on their behalf,
- Failing to ensure that there was

furnished to the Law Society an accountant's report for the year ended 31 August 2012 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations*,

- Failing to ensure that there was furnished to the Law Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations* in a timely manner or at all, having ceased practice,
- Through their conduct, showed disregard for their statutory obligations to comply with the *Solicitors Accounts Regulations* and showed disregard for the Law Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

Regulatory body

- Failing to reply adequately or at all to the Law Society's correspondence,
- Failing to attend meetings of the Complaints and Client Relations Committee and did not arrange for legal representation in their absence,
- Failing to comply with directions of the Complaints and Client

Relations Committee,

- Refusing to attend a meeting of the Complaints and Client Relations Committee or to arrange representation,
- Failing to comply with a direction of the Complaints and Client Relations Committee, whereby the solicitor was directed to pay a contribution of €500 towards the costs of the Law Society's investigation,
- Failing to comply with a direction of the Complaints and Client Relations Committee, whereby the solicitor was directed to discharge 50% of the professional fee paid to the complainant within 21 days, together with documents to vouch the level of costs recovered.

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 of orders of the tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society, as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*.

Conclusion

In a judgment earlier this year, the President of the High Court stated that the most fundamental role of any sanction imposed on a solicitor is to maintain the reputation of the solicitors' profession and to sustain public confidence in the integrity of that profession. He stated that the sole purpose of the striking-off of the solicitor in that case was to maintain the reputation of the solicitors' profession "as one in which every member, of whatever standing, may be trusted to the ends of the earth".

Solicitors are not merely businessmen. They are professionals in whom the law places great trust because they handle clients' money and are privy to their most private affairs. The consequence is that if that trust is breached by any solicitor, the whole profession suffers and therefore misconduct will be harshly dealt with.

Any conduct that seriously and adversely affects the good reputation of the solicitors' profession comes within the remit of the tribunal. Practitioners should be conscious of the fact that, when clients seek legal services, there may be a lot at stake for them, both emotionally and financially. Consequently, the focus of the tribunal each year is to protect the interests of the public and to enhance public trust in the profession by maintaining proper professional standards.

Parts of the *Legal Services Regulation Act 2015* are due to be commenced later this year. The act provides for the replacement of the current disciplinary tribunal. Any complaint submitted to the current tribunal will be dealt with by it, and therefore the work of the current tribunal is expected to continue for some time.

It is important to note that the current tribunal is appointed by the High Court to deal with serious breaches of discipline referred to it. It is completely independent of the Law Society. The new disciplinary tribunal will be equally independent, and the primary differences will be that divisions of that tribunal will sit with a lay majority and a lay chair, and that cases may only be referred to it by the Complaints Committee of the Legal Services Regulatory Authority and the Law Society.

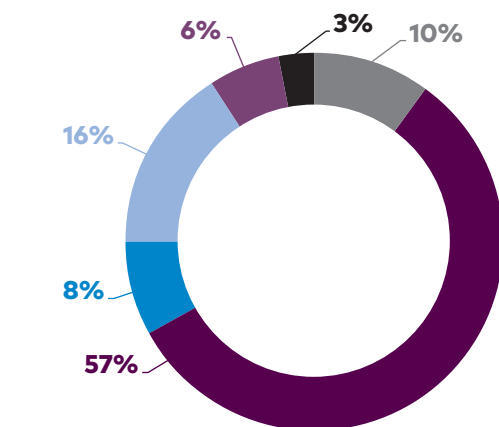
The current tribunal operates in a very formal environment, which by necessity involves a great amount of administrative work and coordination. The staff of the tribunal make a very big effort to ensure that both complainants and solicitors are treated fairly and with courtesy, and I would like to express my thanks to the registrar, Mary Lynch, and her very dedicated and competent staff for all their work in 2015.

Niall Farrell,
Chairman

Appendix 1

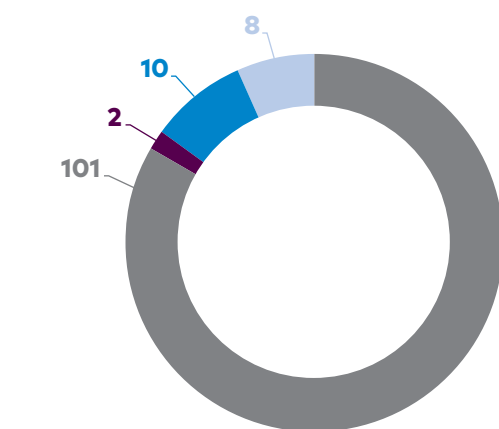
I Status of applications received, as at 31 December 2015

Status of all applications received in 2015 prior to inquiry stage



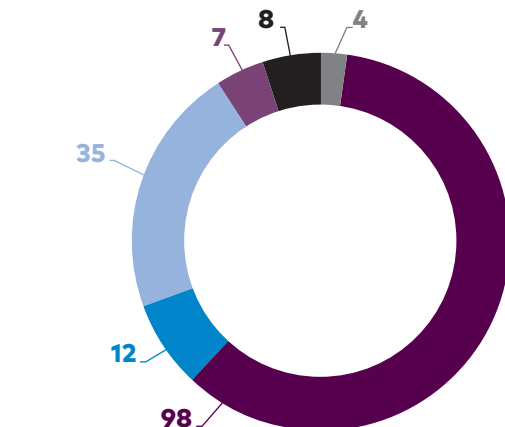
- 10% Exchanging affidavits
- 57% Prima facie found
- 8% Prima facie found/not found
- 16% Prima facie not found
- 6% Prima facie adjourned
- 3% Prima facie withdrawn

Status of all applications received in 2015 at inquiry stage



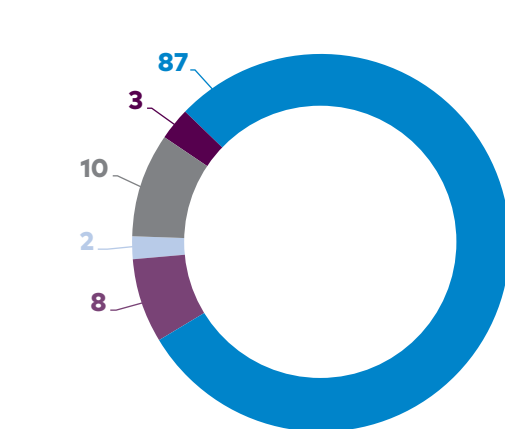
- 101 Awaiting inquiry
- 2 Inquiry adjourned
- 10 Misconduct
- 8 Withdrawn after inquiry directed

Status of all applications received in 2014 prior to inquiry stage



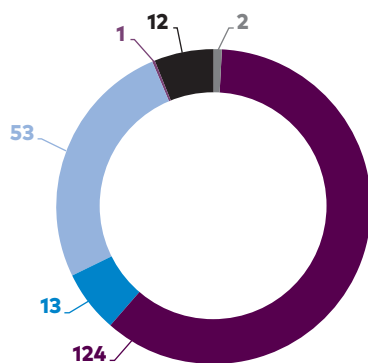
- 4% Exchanging affidavits
- 98% Prima facie found
- 12% Prima facie found/not found
- 35% Prima facie not found
- 7% Prima facie adjourned
- 8% Prima facie withdrawn

Status of all applications received in 2014 at inquiry stage



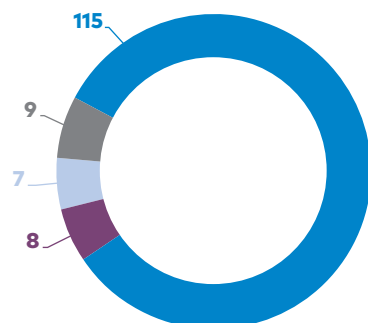
- 10 Awaiting inquiry
- 3 Inquiry adjourned
- 87 Misconduct
- 8 No misconduct
- 2 Withdrawn after inquiry directed

Status of all applications received in 2013 prior to inquiry stage



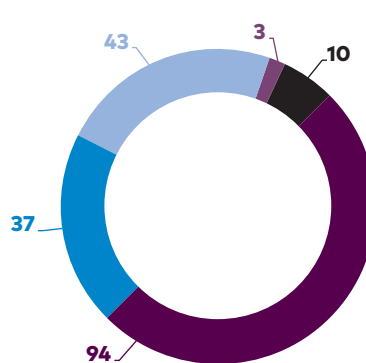
- 2 Exchanging affidavits
- 124 Prima facie found
- 13 Prima facie found/not found
- 53 Prima facie not found
- 1 Prima facie adjourned
- 12 Prima facie withdrawn

Status of all applications received in 2013 at inquiry stage



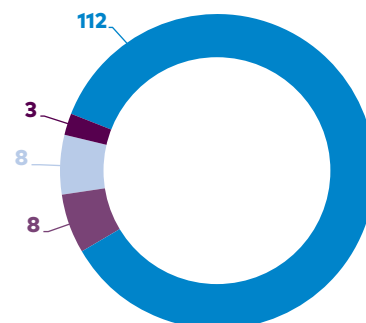
- 9 Awaiting inquiry
- 115 Misconduct
- 8 No misconduct
- 7 Withdrawn after inquiry directed

Status of all applications received in 2012 prior to inquiry stage



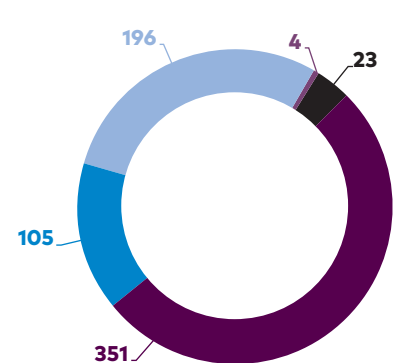
- 94 Prima facie found
- 37 Prima facie found/not found
- 43 Prima facie not found
- 3 Prima facie adjourned
- 10 Prima facie withdrawn

Status of all applications received in 2012 at inquiry stage



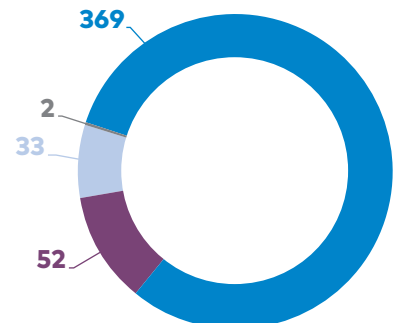
- 3 Inquiry adjourned
- 112 Misconduct
- 8 No misconduct
- 8 Withdrawn after inquiry directed

Status of all applications received from 2007 to 2011 prior to inquiry stage



- 351 Prima facie found
- 105 Prima facie found/not found
- 196 Prima facie not found
- 4 Prima facie adjourned
- 23 Prima facie withdrawn

Status of all applications received from 2007 to 2011 at inquiry stage



- 2 Awaiting inquiry
- 369 Misconduct
- 52 No misconduct
- 33 Withdrawn after inquiry directed

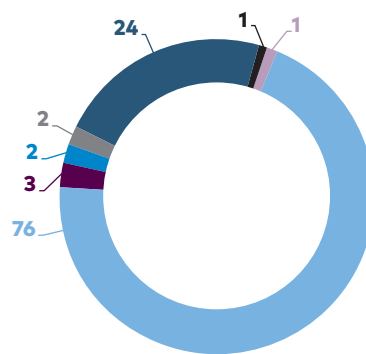
Appendix 2

I Analysis of applications and decisions

Solicitors Disciplinary Tribunal statistics, as at 31 December 2015					
Status of applications	2015	2014	2013	2012	2007 to 2011
Law Society of Ireland	130	118	136	120	414
Others	55	46	69	67	265
Total received	185	164	205	187	679
Prior to <i>prima facie</i> consideration					
Exchanging affidavits	18	0	2	0	0
Awaiting <i>prima facie</i> decision	0	0	0	0	0
<i>Prima facie</i> cases found	105	98	124	94	351
<i>Prima facie</i> cases rejected	30	35	53	43	196
<i>Prima facie</i> cases found/rejected	16	12	13	37	105
Struck out before <i>prima facie</i>	0	0	0	3	0
Adjourned before <i>prima facie</i>	11	7	1	0	4
<i>Prima facie</i> application withdrawn	5	8	12	10	23
Total	185	164	205	187	679
Inquiry stage					
Cases scheduled for inquiry	101	10	9	0	2
Misconduct found	10	87	115	112	369
Misconduct not found	0	8	6	8	52
Part heard	2	3	0	3	0
Withdrawn after <i>prima facie</i>	8	2	7	8	33

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*



- 76** Referred to the High Court
- 3** Admonish, advise and costs
- 2** Admonish, advise, fine and costs
- 2** Censure and costs
- 24** Censure, fine and costs
- 1** Censure, fine, restitution and costs
- 1** Censure, restitution and costs

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 2015	Number of respondents	Number of applications
That the name of the respondent be struck off the Roll of Solicitors: fine and costs	2	6
That the name of the respondent be struck off the Roll of Solicitors and costs	6	34
That the name of the respondent be struck off the Roll of Solicitors	5	16
That the respondent be suspended from practice until such time as he files his accountant's report and costs	2	2
That the respondent be suspended from practice pending compliance with the undertakings in question and costs	1	1
That the respondent be permanently suspended from practice and pay restitution	1*	1
That the respondent be permanently suspended from practice	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; fine, restitution 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; fine and costs	3	6
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; restitution 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.	3	7

*These referrals were made in respect of the one respondent.

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 in 2015, on foot of recommendations of the tribunal		
Orders of the High Court made in 2015	Number of respondents	Number of applications
That the name of the respondent be struck from the Roll of Solicitors: costs	19	47
That the respondent not be permitted to practise as a sole practitioner; that he be permitted to practise only 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; that the respondent must never have signing rights either solely or jointly over any client account; that the respondent pay a sum of €15,000 to the Compensation Fund of the Law Society; that certain third parties provide a bond of €100,000 to the High Court by way of a personal guarantee as to the respondent's future conduct, as appended to the order; pay the costs in respect of the disciplinary and High Court proceedings	1	1
That the respondent not be entitled to practise as a sole practitioner; that he be permitted to practise only as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society, and pay €15,000 to the compensation fund: costs	1	1
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: costs	3	8
That the respondent not be permitted to practise in the area of probate for a period of seven years; that he pay restitution of €15,000 to the applicant without prejudice to her legal rights and that he pay the sum of €3,000 in respect of the costs of the applicant in respect of the disciplinary proceedings	1	1
That the respondent be suspended from practice until such time as he furnishes the Law Society with his closing accountant's report, as required by regulation 26 (2) of the <i>Solicitors Accounts Regulations</i> , and forwards information to the Law Society in respect of clients' closing balances.	1	1

Orders of the High Court made in 2015, on foot of recommendations of the tribunal

Orders of the High Court made in 2015	Number of respondents	Number of applications
<p>That the respondent be prohibited from practising as a solicitor, or from holding himself out as a solicitor entitled to practise, for a period of ten years from the date of the making of the order; that the respondent, at the expiration of the ten years' prohibition period, apply to the court should he wish to resume practice as a solicitor;</p> <p>In the event of the respondent applying to the court to resume practice as a solicitor, that he 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; that the respondent never be given cheque-signing rights over any client account; that the respondent, when seeking employment as a solicitor, must furnish any prospective solicitor employer with a copy of the findings; that the respondent pay a sum of €5,000 to the compensation fund; that the respondent pay the costs of the disciplinary and High Court proceedings</p>	1	1
<p>That the respondent remain suspended from practice until such time as he secures a solicitor who will employ him and who is approved by the Law Society; thereafter, 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; that he be prohibited from signing any cheques or authorising any bank payment, either solely or jointly over any client account, that a copy of the Solicitors Disciplinary Tribunal report be furnished to any prospective legal practitioner wishing to employ the respondent; that he pay a sum of €5,000 as a contribution towards the whole of the costs of the Law Society, to be paid from any surplus that should arise after all clients' moneys have been returned</p>	1	1
<p>It was ordered that the disciplinary proceedings be adjourned generally with liberty to re-enter on the respondent's undertaking not to practise again as a solicitor or to seek a practising certificate.</p>	1	14

Solicitors Disciplinary Tribunal

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