



Solicitors Disciplinary Tribunal

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SOLICITORS DISCIPLINARY TRIBUNAL

Chairman's Report 2016

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

The procedures of the tribunal are also governed by the *Solicitors Disciplinary Tribunal Rules 2003*, which came into operation on 1 March 2003 and, in respect of applications made from 1 January 2017, the *Solicitors Disciplinary Tribunal Rules 2017*. 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 of Ireland 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 Helena 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 Úna 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 2016 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 that the tribunal finds misconduct, it then has to assess and impose penalty.

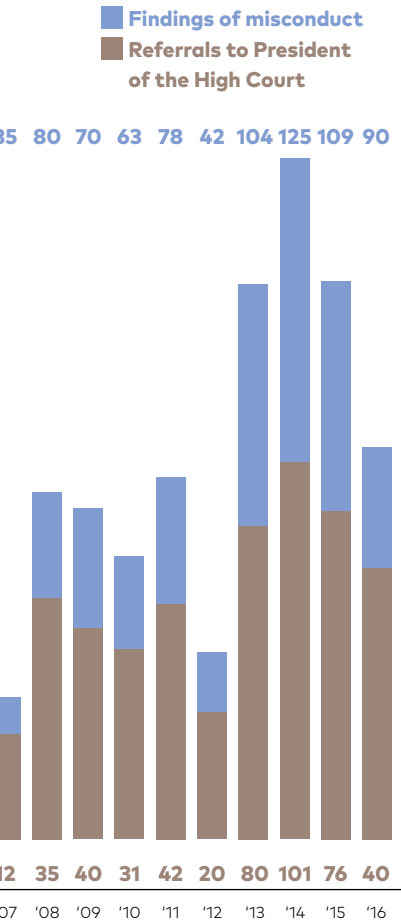
Hearings of the tribunal vary in length – see Chart 2 (page 6) – and more than one matter may be listed for hearing on a particular day in order to best utilise the time of the members and minimise costs. Decisions of the tribunal are usually delivered on the day of the hearing, but it is possible in 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. There has been an approximately 54% decrease in the number of applications from the previous year. This is due to the fact that the tribunal received 41 cases from the Law Society, compared with the 130 applications received in 2015. The decline in the Law Society's number may be attributable to the fact that there were fewer multiple applications arising from their failure to comply with undertakings to lending institutions. In contrast, the number of applications received from members of the public increased from the previous year to 59.

In the year under review, the number of individual solicitors referred to the tribunal was 86, which – notwithstanding that there was an overall decrease in the number of applications – is an increase in the number of individual solicitors appearing before the tribunal.

TABLE 1

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



Considerable additional time is also spent by tribunal members reading large volumes of papers when preparing for inquiries. At times, members may also meet in private when preparing and finalising reasons for their decisions and reports, and this additional work is not reflected in Table 3, 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.distrib.ie. However, preliminary/interlocutory applications are not included in the diary.

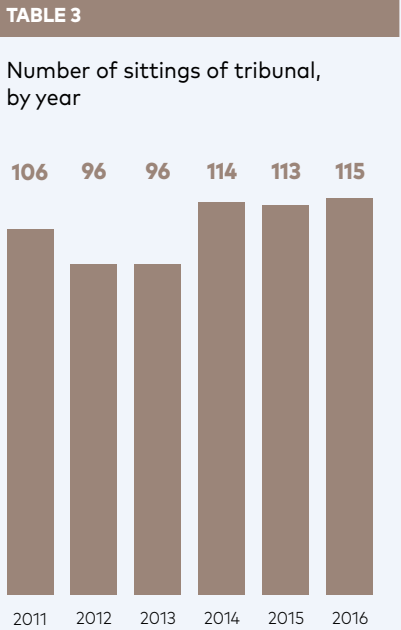
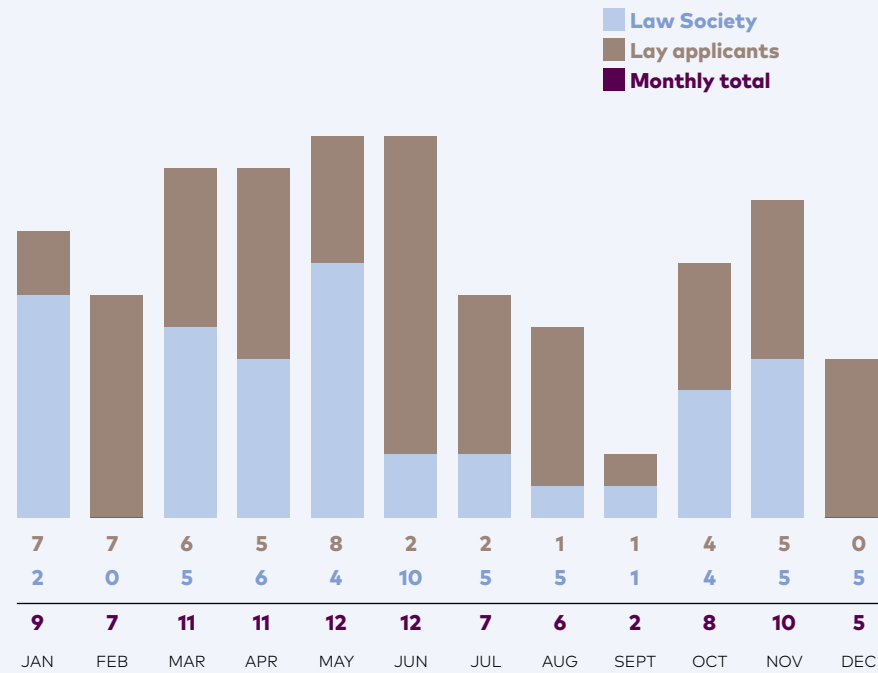


TABLE 2

Number of new applications received, by month (2016)



APPLICATIONS



The role of the tribunal is largely confined to receiving applications for an inquiry to be held into the conduct of a solicitor or trainee solicitor 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.

Complaints that come before the tribunal may be at the instance of the Law Society of Ireland or members of the public, who can make a direct application to the tribunal, with or without any previous reference to the Law Society.

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

The tribunal is aware that members of the public may find the process of making an application an onerous one, but assistance is available from tribunal staff in relation to 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.

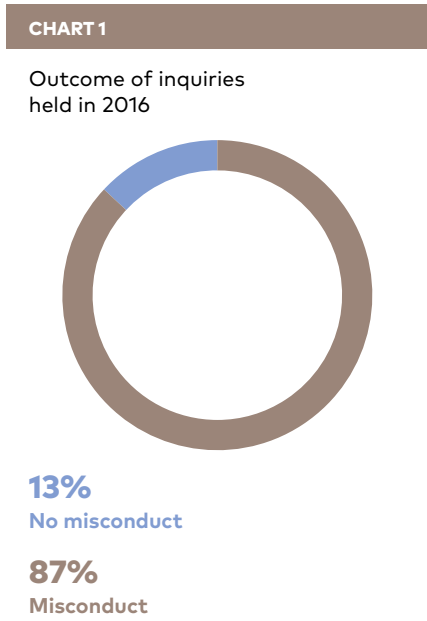
Further, negligence should never be confused with misconduct. If a client suffers as a result of a mistake made by his/her solicitor, that client may have the right to take an action in the courts against the solicitor concerned for negligence.

The procedures before the tribunal are formal in nature and, as the outcome of a hearing may affect the livelihood of a solicitor, the tribunal requires a high standard of proof, which is the criminal standard – that is, beyond all reasonable doubt.

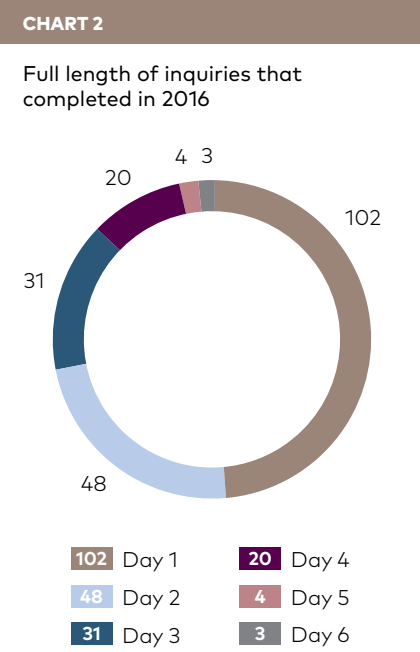
Where a solicitor fails to appear or is not legally represented, this does not relieve the tribunal of its obligation to hold an inquiry and to proceed in the manner that it would, should the solicitor have been in attendance and fully represented.

The tribunal continues to be concerned by the lack of attention of some solicitors and commissioners for oaths with regard to the swearing of affidavits. It was noted that the jurat in affidavits are not being completed

in the proper manner and, consequently, affidavits have had to be returned to the relevant party to be re-sworn. This, of course, causes unnecessary inconvenience and delays 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* (as amended) and the *Solicitors Disciplinary Tribunal Rules 2003* and the *Solicitors Disciplinary Tribunal Rules 2017* (the latter of which operate in respect of applications made on or after 1 January 2017) set out the appropriate procedures to follow, which are similar but not strictly related to court procedures. In all cases, the tribunal makes a tremendous effort to ensure that solicitors' constitutional rights to fair procedures and natural justice are honoured.



Prima facie decisions

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

purpose, the tribunal does not hold a formal hearing, but considers each application, together with its supporting documentation, in private.

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 an appeal *de novo*, in which the parties are free to make all appropriate submissions for the purposes of persuading the High Court as to whether a *prima facie* case of misconduct exists, and that the tribunal should be obliged to hold a full hearing. It was also held that the tribunal is a proper notice party to the proceedings, bound by any order that the High Court might make on the appeal.

Sanction

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

circumstances where a respondent wishes to call character witnesses. It is at this time, when considering the issue of penalty, that a respondent's disciplinary history is opened to the tribunal. On occasion, while a respondent should receive some credit for the admissions made, the tribunal cannot ignore previous findings of misconduct against a respondent. The tribunal may also 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 maintain public confidence in the profession by safeguarding the reputation of the profession. The tribunal, among other things, takes into account the action required to protect the public, and the type and severity of the misconduct, including any proven dishonesty, aggravating and mitigating circumstances, proportionality, and prior disciplinary history.



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 with ensuring that the required standards of integrity, probity and trustworthiness are upheld in the profession. The President of the High Court, in a recent case, quoted with approval an English judgment that stated that the purpose of disciplinary action against solicitors is "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".

A number of sanctions are 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.

In one case, the tribunal, having listened carefully to the submissions made by the parties in relation to the question of penalty, indicated there were three factors weighing heavily on them. First, the tribunal was of the view that the misconduct in this matter was serious and, in particular, was concerned at the length of time that was involved in relation to the failure to comply with two undertakings. Second, the tribunal noted that the respondent had 62 previous and similar findings of misconduct – a factor that they could not ignore; and, third, some of the evidence given by the respondent was not credible. The tribunal had been urged to take into account mitigating factors, including the respondent's age, ill-health, and impecuniosity. However,

in all of the circumstances, the tribunal did not think that these factors outweighed the three serious concerns they had in respect of this matter. The tribunal recommended the ultimate sanction of striking the name of the respondent off the Roll of Solicitors.

Adjournments

The tribunal has reviewed its policy in respect of applications to adjourn inquiries, and a copy of this policy is now furnished to each party to an inquiry.

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

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

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

In considering an application for an adjournment, the tribunal, where appropriate, will also take into account the length of time the parties have been on notice of the intended inquiry, whether the application is being made in a timely manner, the fact that

witnesses may be in attendance and have incurred expense in so attending (including travelling from abroad), and whether it is in the public interest and/or the interests of justice to grant the adjournment.

Appeals

The procedure in respect of appeals to the High Court against decisions of the tribunal is set out in the *Rules of the Superior Courts (Solicitors Acts 1954 to 2002) 2004* (SI 701 of 2004). It provides that an appeal shall be dealt with by way of notice of motion and grounding affidavit, and that the papers in respect of an appeal shall be read by the President of the High Court or his nominee in chambers in the first instance, and then be listed for hearing in open court for the purposes of hearing submissions.

In one case, the President of the High Court, in respect of an appeal that there was no *prima facie* case for inquiry, noted that the appeal proceedings could be disposed of on the basis of an apology proffered through counsel on behalf of the respondent and accepted by the appellant, to be confirmed by way of a letter of apology. The High

Court made an order dismissing the appeal motion, with the appellant's outlay as measured by the court to be paid by the respondent.

In another case, the High Court dismissed the appellant's appeal and ordered him to pay the respondent's costs, to include all/any reserved and discovery costs, to be taxed in default of agreement.

The High Court also struck out an appeal motion where no papers had been lodged for pre-reading.

The Supreme Court dismissed an appeal and upheld the High Court order affirming the decision of the tribunal that there was no *prima facie* case for inquiry.

In another case, the Supreme Court dismissed the appeal and affirmed the order of the High Court. It also affirmed the order of the High Court in respect of costs and further ordered that the appellant pay the costs of the Supreme Court appeal when taxed and ascertained, such costs not to include any reserved costs.

Four decisions are still awaited in respect of appeals to the High Court.

OBSERVATIONS ON COMPLAINTS BEFORE THE TRIBUNAL



Civil proceedings

In a case where the respondent was found guilty of misconduct, the tribunal, in considering the issue of penalty, noted the admissions made to the matters before it. It also took into account the aggravating factors. In this regard, the tribunal believed the respondent had misled his client in a cavalier fashion and noted his intransigence in regard to his client and the Law Society. He had also failed to recognise, at key points, the authority and the good direction he was getting from his regulatory authority.

The tribunal was of the view that to ignore a section 10 notice was simply unacceptable, but it believed the respondent now understood the position.

In relation to the mitigating factors, the tribunal had regard to the plea of guilty, albeit not at the earliest stage, which avoided what would have been a very lengthy hearing. It also gave considerable weight to the unreserved apology the respondent made to his client, and to a voluntary undertaking in relation to a payment to his client.

The tribunal also took into account the personal circumstances of the respondent as a mitigating factor, and noted that it would appear that he understood the error of his ways and would not repeat this behaviour in the future. It was for these reasons that, while the tribunal believed that his conduct was cavalier but not dishonest, it had decided to censure the respondent and direct him to pay a sum of €10,000 to the compensation fund.

In this case, the tribunal had found the respondent guilty of misconduct in that he, among other things, had misleadingly and/or incorrectly informed his client that he could not deal with his personal injury application, nor engage any other firm of solicitors in the matter until the respondent's fee note was discharged. Further, he had misleadingly and/or incorrectly informed him that it was open to the respondent to seek an injunction preventing another forum from dealing with him and, in so doing, engaged in conduct bringing and/or tending to bring the profession into disrepute.

Conveyancing

The most valuable asset of the solicitors' profession is its collective reputation and the confidence that inspires. In this regard, the tribunal is conscious of its role in maintaining and supporting the reputation of the solicitors' profession. Clients put their trust in their solicitors and in the integrity of the profession. They employ solicitors to carry out their instructions, and trust that they will do what they have been contracted to do. Solicitors who do not complete their conveyances in a timely manner or at all, who fail to stamp relevant documents in a timely manner or at all, or who use money that was paid for stamp duty for other purposes are engaging in conduct that falls well below the standard expected of a solicitor and, consequently, bring the profession into disrepute.

In one case, the tribunal, when deciding the issue of penalty, recognised that the respondent was faced with a very difficult case, in which mapping issues had caused significant problems. Nevertheless, it was the tribunal's view that the respondent had an obligation at the

time of giving the undertaking to ensure that he had the appropriate map and architect's declaration to allow him to give the undertaking.

However, the tribunal's concern in respect of this matter was the respondent's failure to respond to the correspondence from the Law Society and the bank's solicitors. As is often the case, it may be that the respondent had made no progress with the case and had nothing to report. However, this is no excuse for ignoring correspondence from the Law Society. Furthermore, he had wasted the time of the Complaints and Client Relations Committee and Law Society staff. While the matter was a difficult one, the appropriate action was to give it continuous attention and to keep the Law Society informed. The tribunal was of the view that, had he done so, there would have been no need for an inquiry.

In circumstances where the undertaking had been complied with, the tribunal censured the respondent and directed him to pay a sum of €4,000 to the compensation fund.

Frequently, matters come before the tribunal that would not have done so if the solicitors concerned had kept clients, financial institutions and the Law Society informed. In other instances, the tribunal considered that solicitors would have been well served by passing a difficult file to a colleague.

A respondent, in respect of whom three applications were made to the tribunal, was found to have

shown a complete disregard for his obligations as a solicitor.

In one case, the tribunal observed that the respondent had accepted that he was at fault and had, at a late stage, dealt with the matter and completed the outstanding undertaking. However, 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 the respondent was guilty of misconduct.

The same respondent was also found guilty of misconduct in another case 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 had shown 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 was 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 also 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, she had 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, among other things, also failed to ensure that there was furnished to the Law Society an 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 *Solicitors Accounts Regulations 2001* in a timely manner or at all. On hearing the submissions in relation to penalty, and taking into account the respondent's previous disciplinary history, the tribunal directed that a report be sent to the President of the High Court recommending that the respondent's 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 of Solicitors.

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 that she had, in each of seven



cases, failed to comply with an undertaking furnished to a lending institution in a timely manner or at all. In six of seven cases, she had failed to respond to the Law Society's correspondence in a timely manner or at all, or to comply with the direction of the Complaints and Client Relations Committee within the time specified or at all. 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 2001*, in a timely manner or at all. 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.

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, the tribunal 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 early, 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 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 along the way, and the inordinate amount of time that the undertakings were

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

In relation to eight further cases against a respondent, whose name was already struck off the Roll of Solicitors, the tribunal found that he had, among other things, failed to apply the stamp duty provided to him by the complainant to the purchase of the complainant's property in a timely manner, with the result that the relevant transfer deed was not properly stamped; 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, adequately or at all, to correspondence from the complainant and the Law Society in respect of the above.

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 given by him. 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 in a timely manner or at all with 24 undertakings.

A further respondent was censured and directed to pay €2,000 to the compensation fund and the Law Society's costs, in circumstances where he had been found guilty of misconduct where 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, had succeeded in doing so, and that this was to his credit. However, there was considerable delay, and he had failed to comply fully with the directions of the Law Society. The tribunal noted that 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 to deal with the matter itself 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.

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 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 in respect of one or more of the undertakings.

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 the money 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 that 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*. In its report to the High Court, the tribunal expressed its opinion that the respondent 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

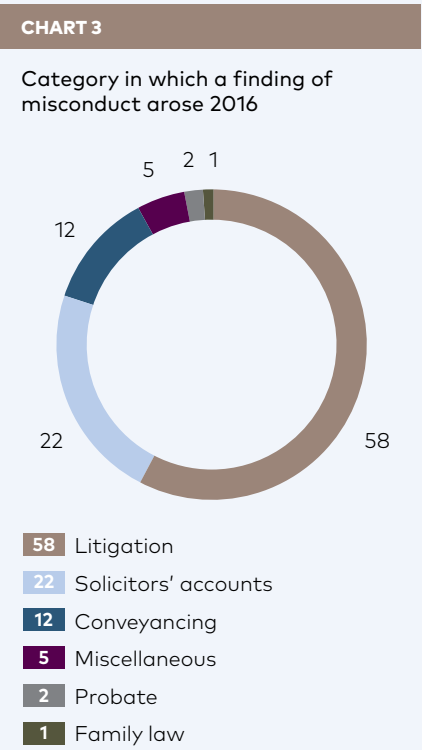
that he pay a sum of €1,000 to the compensation fund and the costs of the Law Society.

On the basis of a respondent's undertaking never to practise again as a solicitor – which he would give to the High Court – the tribunal, in its report to the President of the High Court, recommended that the respondent be permanently suspended. In this case, the tribunal, on hearing the admissions made by the respondent, found him guilty of misconduct, in that he had, among other things, caused or allowed a deficit on the 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.



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.

Regulatory body

- Failing to reply adequately or at all to Law Society's correspondence,
- Failing to attend meetings of the Complaints and Client Relations Committee and not arranging 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.

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, properly due to the complainant, from the client account 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 2001*,
- 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.

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

As has already been alluded to, there has been a reduction in the number of applications received from the Law Society and, in particular, the number of cases arising from a failure to comply with undertakings given by solicitors to lending institutions. Many of these cases arose from the heavy volume of conveyancing before the recession, and the number of cases coming before the tribunal has reduced significantly. The tribunal is satisfied that solicitors are now far more careful regarding the giving of undertakings. The involvement of bank panel solicitors in commercial lending will also help prevent this type of case coming before the tribunal in the future.

The tribunal cannot stress enough the responsibility on solicitors to ensure that they are in a position to comply with their undertakings. Undertakings are the currency of the profession, and solicitors should not give undertakings in respect of matters that are beyond their control. A failure to comply with an undertaking is often compounded by a failure to communicate with the financial institution and/or the Law Society. Solicitors are reminded that it is in their interest to comply with directions given by the Complaints and Client Relations Committee, as such directions may often assist the solicitor, and cooperation with them may well be a mitigating factor.

One of the other consequences of the recession has been the much more difficult business environment in which solicitors have had to operate, particularly in smaller firms. It is incumbent on practitioners to ensure that they

have sufficient financial resources to practise, that fees are notified in advance to clients, charged only when appropriate, and taken from client funds only when agreed by the client.

It was expected that those parts of the *Legal Services Regulation Act 2015* relevant to the work of the tribunal would be commenced this year, but this has not yet happened. Until it does, the tribunal will go about its work. Any complaint submitted to the current tribunal will be dealt with by it, and the work of the current tribunal is expected to continue for some time.

Members of the tribunal, both solicitors and lay members, spend a substantial amount of time considering the large volumes of material put before them. There is a great burden on lay members, who may not be as familiar with the legal documentation involved. I would like to express my appreciation to all members of the tribunal for all of their work and the very careful attention they give to their task.

What is equally as important is that complainants and solicitors appearing before the tribunal are treated courteously during what is, generally, a very stressful time for them. I know that all of the tribunal members bear this in mind, explain matters to unrepresented complainants, and treat all parties very fairly.

The current tribunal operates in a very formal environment that, by necessity, involves a great amount of administrative work and coordination. I would like to express

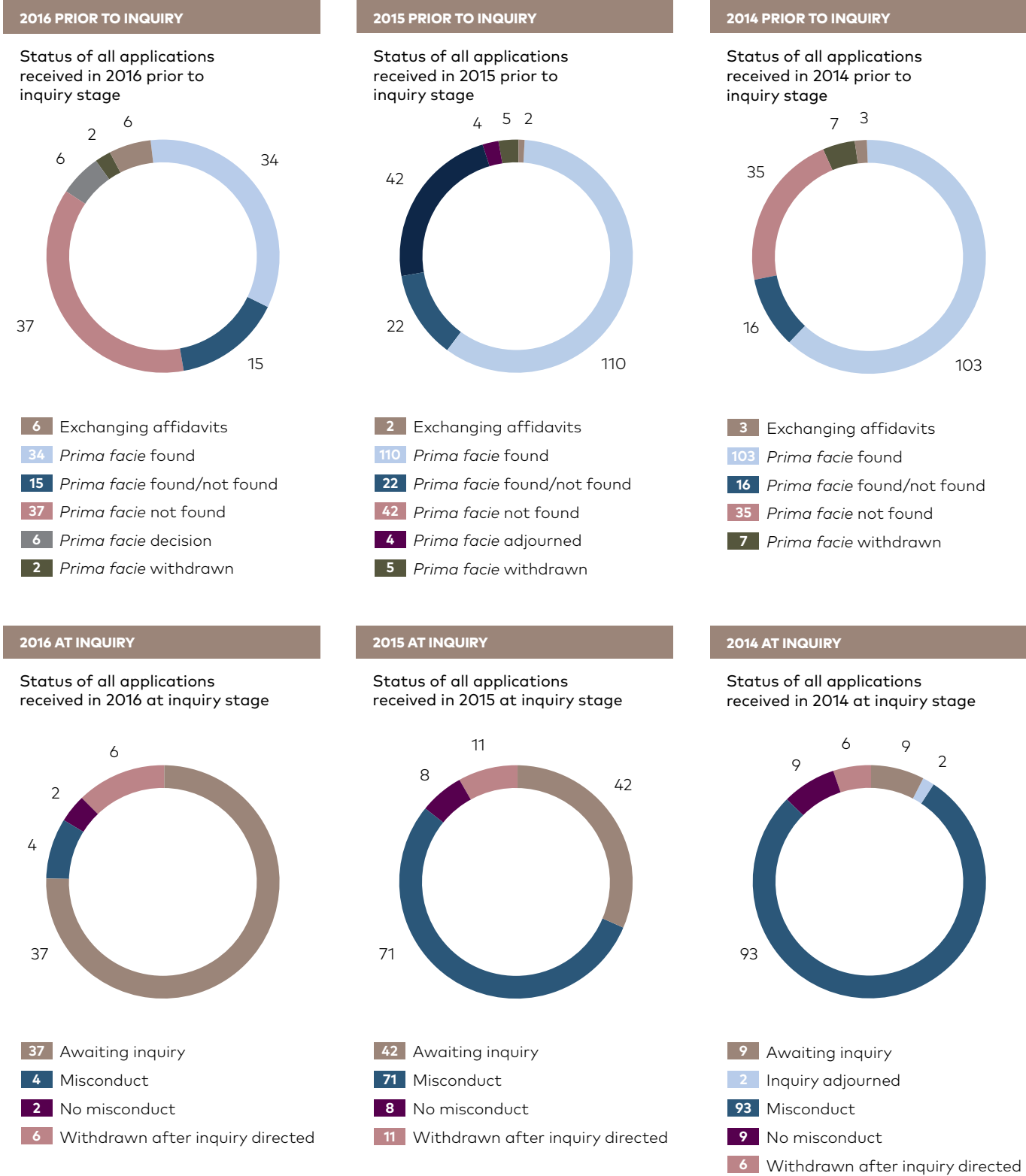
my thanks to the registrar, Mary Lynch, and her very dedicated and competent staff for all their work in 2016. They treat both complainants and respondents with patience and courtesy.

Finally, I would like to thank the President of the High Court, Mr Justice Peter Kelly, for his support and guidance to the tribunal in 2016.

Niall Farrell,
Chairman

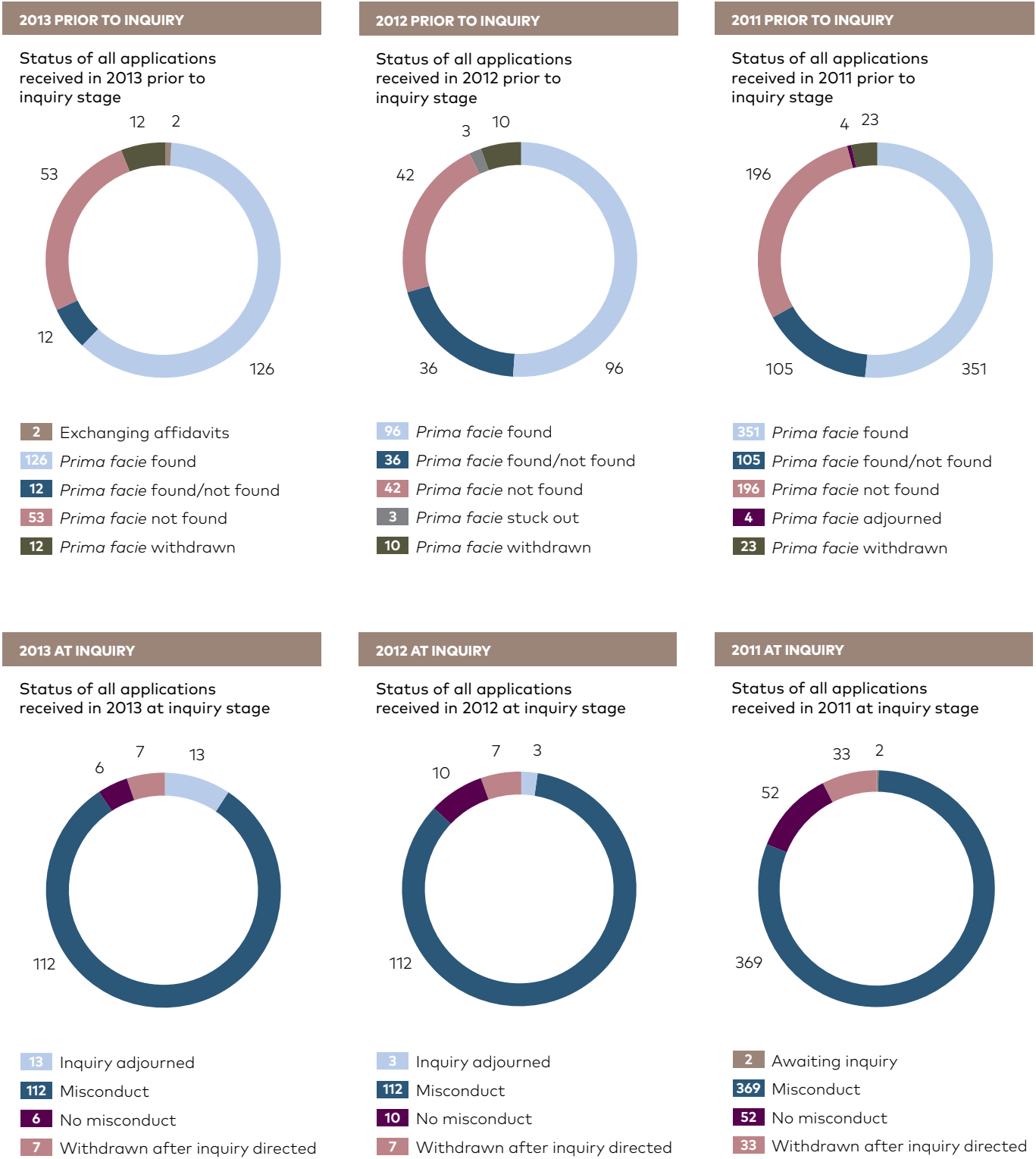
APPENDIX 1

Status of applications received, as at 31 December 2016



APPENDIX 2

Analysis of applications and decisions

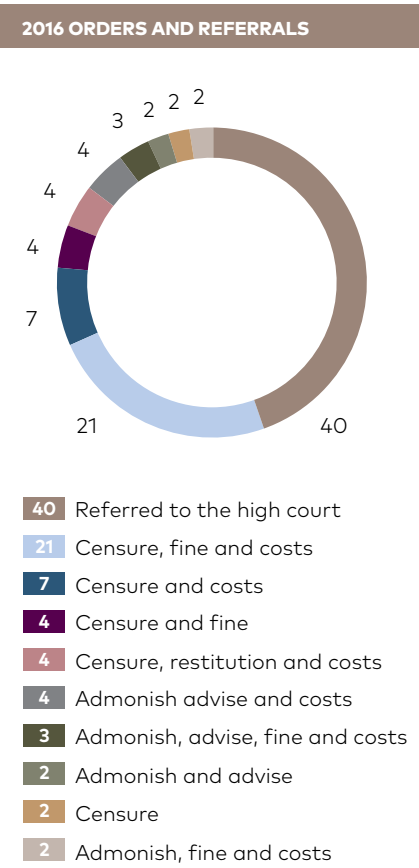


Analysis of Solicitors Disciplinary Tribunal statistics, as at 31 December 2016						
Status of applications	2016	2015	2014	2013	2012	2007 to 2011
Law Society of Ireland	41	130	118	136	120	414
Others	59	55	46	69	67	265
Total received	100	185	164	205	187	679
Prior to prima facie consideration						
Exchanging affidavits	6	2	3	2	0	0
Awaiting prima facie decision	6	0	0	0	0	0
Prima facie cases found	34	110	103	126	96	351
Prima facie cases rejected	37	42	35	53	42	196
Prima facie cases found/rejected	15	22	16	12	36	105
Prima facie decision adjourned	0	4	0	0	0	0
Struck out before prima facie decision	0	0	0	0	3	0
Adjourned before prima facie decision	0	0	0	0	0	4
Prima facie application withdrawn	2	5	7	12	10	23
Total	100	185	164	205	187	679
Inquiry stage						
Cases scheduled for inquiry	37	42	9	0	0	2
* Misconduct found	4	71	93	112	112	369
* Misconduct not found	2	8	9	6	10	52
* Part-heard	0	0	2	13	3	0
* Withdrawn after prima facie decision	6	11	6	7	7	33

APPENDIX 3



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



APPENDIX 4

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

Recommendations of the tribunal in 2016	Number of respondents	Number of applications
That the respondent is not a fit person to be a member of the solicitors' profession. That the name of the respondent be struck off the Roll of Solicitors, and costs.	8*^	16
That the respondent is not a fit person to be a member of the solicitors' profession. That the name of the respondent be struck off the Roll of Solicitors.	2^	2
That the respondent is not a fit person to be a member of the solicitors' profession. The tribunal noted that the name of the respondent had already been struck off the Roll of Solicitors, and costs.	1	2
That the respondent is not a fit person to be a member of the solicitors' profession. The tribunal noted that the name of the respondent had already been struck off the Roll of Solicitors.	1	1
That the respondent be suspended from practice until such time as he becomes fully compliant with his obligations under the <i>Solicitors Accounts Regulations</i> , fine, and costs.	1	1
That the respondent be suspended from practice until such time as the Law Society is satisfied that he has become compliant with the <i>Solicitors Accounts Regulations</i> to an acceptable standard; 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 by 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 by the Law Society; and costs.	6	11

* These relate to seven applications in respect of the same respondent.
^ These relate to four applications in respect of the same respondent.

APPENDIX 5

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

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 by the Law Society.	2	2
In the event that the respondent applies for a practising certificate, should be allowed only to practise as a sole practitioner or in a partnership; that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society.	1*	3

* These relate to seven applications in respect of the same respondent.
^ These relate to four applications in respect of the same respondent.

Orders of the High Court in 2016, following consideration of the recommendations made by the tribunal	Number of respondents	Number of applications
That the name of the respondent be struck from the Roll of Solicitors, with ancillary orders.	2	5
That the name of the respondent be struck from the Roll of Solicitors and pay a cumulative sum of €10,000 to the compensation fund in respect of five cases; costs.	1	5
That the name of the respondent be struck from the Roll of Solicitors; costs.	3	3
Declaration by the court that a respondent whose name had been struck off the Roll of Solicitors was not a fit person to be a member of the solicitors' profession; costs.	1*	3
The court, noting that the name of the respondent had been struck off the Roll of Solicitors, ordered that the respondent was not a fit person to be a member of the solicitors' profession; costs.	1*	1
That any future practising certificate of the respondent limit him to practising 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.	1	5
That the respondent not be permitted to practise as a sole practitioner or in partnership; that he be permitted 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.	1	1
That the respondent not be permitted to practise as a sole practitioner or in partnership; that he be permitted 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; costs.	4	4
Declaration that, should the respondent decide to return to practice, that he only be allowed to practise as an assistant solicitor under the full-time supervision and employment of a solicitor of no less than ten years' standing, to be approved in advance by the Law Society.	1^	3
Suspended from practising as a solicitor until such time as the respondent files a closing accountant's report with the Law Society of Ireland.	1	1
Motion struck out and costs awarded.	1	1

* These relate to respondents whose names were struck off the Roll, as referred to in the above table.
^ This relates to a respondent whose name was subsequently struck off the Roll, as referred to in the above table.