

SOLICITORS
DISCIPLINARY
TRIBUNAL

2017

CHAIRMAN'S REPORT



Solicitors
Disciplinary Tribunal

Constitution and powers of the Solicitors Disciplinary Tribunal

The Solicitors Disciplinary Tribunal is a statutory body, constituted under the *Solicitors (Amendment) Act 1960*, as substituted by the *Solicitors (Amendment) Act 1994* and amended by the *Solicitors (Amendment) Act 2002* and the *Solicitors (Amendment) Act 2008*, as cited in the *Civil Law (Miscellaneous Provisions) Act 2008*, the *Solicitors (Amendment) Act 2011* and the *Civil Law (Miscellaneous Provisions) Act 2011*. Further, the *Legal Services Regulation Act 2015* provides that the *Solicitors Acts 1954 to 2011*, and part 13 of the said 2015 act, may be cited as the *Solicitors Acts 1954 to 2015*.

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, by the *Solicitors Disciplinary Tribunal Rules 2017*. Under the *Solicitors Acts 1954-2015*, the tribunal's powers are mainly confined to receiving and hearing complaints of misconduct against members

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

Members of the tribunal during 2017

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:

Sophie Goldsbury

Introduction

This annual report covers the work of the tribunal for the year up to 31 December 2017 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 1954-2015*. In making such a determination, the tribunal has to find, in the first instance, that the facts relating to each allegation have been proven beyond all reasonable doubt and, secondly, based on the same high standard of proof, whether the facts so proven amount to misconduct. In the event that the tribunal finds misconduct, it then has to assess and impose penalty or, alternatively, refer the matter to the High Court with a recommendation as to penalty.

Hearings of the tribunal vary in length – see Chart 2 (p6) – 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 2 (below). There has, approximately, been a 1% increase in the number of applications from the previous year. This slight increase is attributable to the number of applications received from the Law Society, which in total amounted to 56 cases compared with 41 last year. However, the trend in the number of applications being made to the tribunal continues to decline, and the number in the year under review would appear to be in line with those made prior to 2008.

The number of individual solicitors referred to the tribunal was 86, and this is in line with the 2016 figure. While there has been a slight increase in the number of applications in 2017, the overall decrease in the number of individual solicitors coming before the tribunal is to be welcomed.

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.

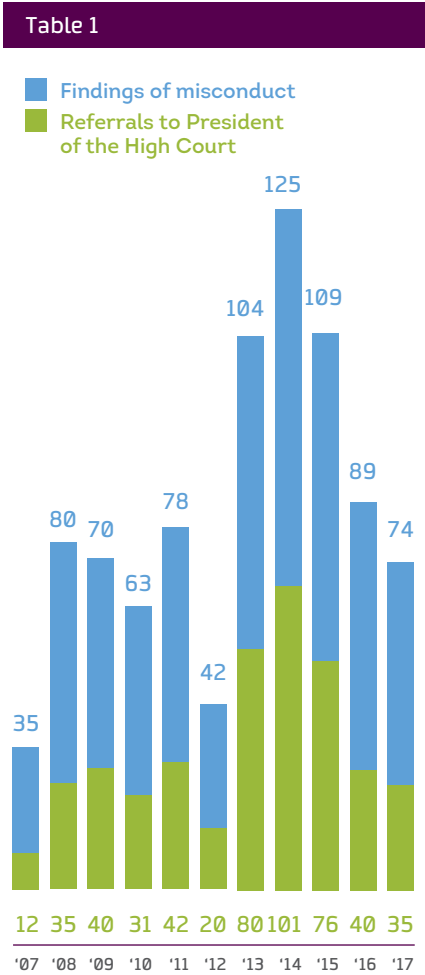


Table 2

Number of new applications received, by month (2017)

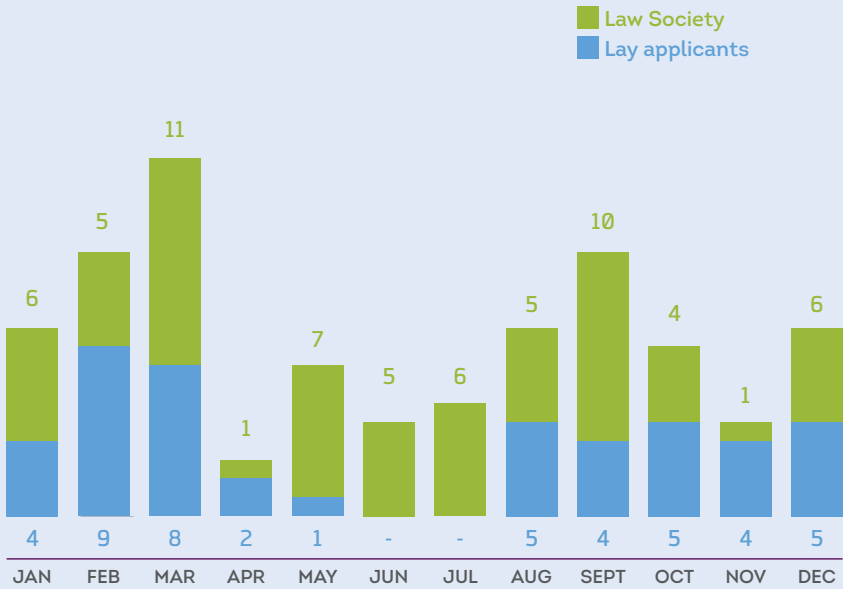
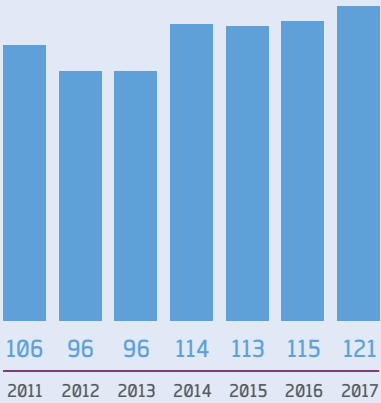


Table 3

Number of sittings of tribunal, by year



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.



Applications

The role of the tribunal is largely confined to receiving applications alleging misconduct in respect of solicitors or trainee solicitors. Where a *prima facie* case of misconduct for inquiry is found by a division of the tribunal, an inquiry will proceed in respect of the complaint(s) sent forward for hearing.

Complaints that come before the tribunal may be at the instance of the Law Society 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 reasonable doubt.

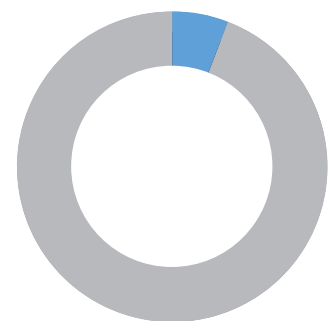
Where a solicitor fails to appear or is not legally represented, this does not relieve the tribunal of its obligation to hold an inquiry and to proceed in the manner that it would, should the solicitor have been in attendance and fully represented.

The *Solicitors Acts* give the tribunal the power and duty to conduct fact-finding inquiries in relation to complaints against solicitors. Section 17 of the *Solicitors Act 1994* (as amended) and the *Solicitors Disciplinary Tribunal Rules 2003* and the *Solicitors Disciplinary Tribunal Rules 2017* (the latter of which



Chart 1

Outcome of inquiries held in 2017



6%
No misconduct

94%
Misconduct

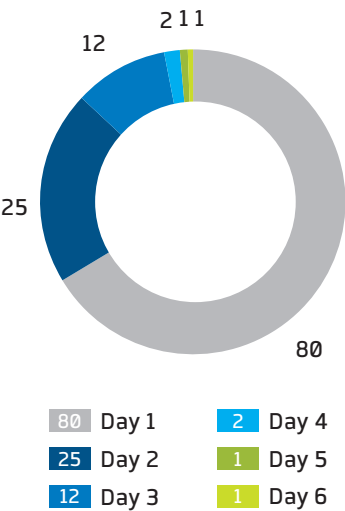
operates in respect of applications made on or after 1 January 2017) set out the appropriate procedures to follow, which are similar but not strictly related to court procedures. In all cases, the tribunal makes a tremendous effort to ensure that solicitors' constitutional rights to fair procedures and 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.

Chart 2

Full length of inquiries completed in 2017



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

If satisfied that a *prima facie* case has been proved, an inquiry is held. Where the tribunal has found that a *prima facie* case has not been

disclosed, an applicant has a right of appeal to the High Court. In this regard, it should be noted that, in an appeal to the Supreme Court in 2008, it was held that an appeal to the High Court from a decision of the tribunal is an appeal *de novo*, in which the parties are free to make all appropriate submissions for the purposes of persuading the High Court that a *prima facie* case of misconduct exists, and that the tribunal should be obliged to hold a full hearing. It was also held that the tribunal is a notice party only to the proceedings and is bound by any order that the High Court might make on the appeal.

Sanction

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

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 may 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 tribunal and High Court 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 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 ordered that the respondent be advised and admonished, pay a sum of €4,000 to the compensation fund and a contribution of €7,500 by way of costs to the Law Society.

In reaching its decision in regard to sanction, the tribunal explained that they had taken into consideration the following:

- The submissions made by both parties.
- The fact that the parties had appeared before the tribunal on six occasions. This, of itself, clearly involved an amount of preparation time on behalf of all parties. In the circumstances, this had to have a bearing on the level of costs, which the tribunal felt it was appropriate to order.
- The early admissions made by the respondent.
- That there had been no loss to the bank, which was the original complainant to the Law Society.
- The fact that the property was in the course of being sold and that the balance outstanding would be discharged from the proceeds of sale. The tribunal was conscious of its duty to protect the public interest.

- The personal circumstances of the respondent during much of the relevant period. This had assisted the tribunal in its understanding of some of the delays that had taken place, and was considered to be a relevant mitigating factor.
- The likelihood of imminent completion of the sale and registration of title was also a matter that the tribunal took into consideration.

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 instance, the President of the High Court, in relation to four appeals brought by an applicant/appellant, against the opinion of the tribunal that there was no *prima facie* case for inquiry, refused the appeals and affirmed the decision of the tribunal.

Decisions are awaited in respect of four other appeals to the High Court and the Court of Appeal.



Observations on complaints before the tribunal



The tribunal is concerned that the much repeated allegation of failing to comply with undertakings has again come before the tribunal during the year under review. The central importance of undertakings and their compliance has been emphasised both by this tribunal and the High Court.

Undertakings have, in the past, been described as the cornerstone and the currency of the profession. Consequently, their observance and adherence to them cannot be over stressed. Running in tandem with such failures is another constant allegation of failing to respond to correspondence, in the first instance, from the lending institution over a period of years, and subsequently failing to respond to the Law Society's correspondence. Solicitors should appreciate the importance of engaging with their regulatory body in order to resolve matters and to prevent an escalation of the situation. It is an opportunity to show their best efforts and *bona fides* in bringing matters to a speedy conclusion to the satisfaction of the complainant and the Law Society.

There is also the question of failing to comply with the directions of the Complaints and Client Relations Committee of the Law Society. Such failures only compound the situation and may, of themselves, be found to have brought the solicitors' profession into disrepute.

A respondent in respect of whom three separate complaints

were made, admitted the facts and accepted that his conduct amounted to misconduct where he had failed to comply with multiple undertakings, failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, failed to respond adequately or at all to some or all of the correspondence sent to him by the Law Society and failed to comply with the directions of the Complaints and Client Relations Committee in a timely manner or at all. In view of the admissions made by the respondent, the tribunal found him guilty of professional misconduct. In considering the issue of sanction, the tribunal was of the view that the respondent should not have allowed these matters to arise, and noted, in its findings, his misconduct in respect of his lack of communication and also his failure to comply with the directions of the Law Society at an early stage. However, significant credit had to be given to the respondent for his determined efforts to resolve matters, including securing compliance with a significant number of undertakings and the expenditure of personal funds in order to achieve this. The tribunal also noted the

submission made on behalf of the Law Society that the respondent did not have a previous disciplinary record. In respect of these cases, the respondent was advised and admonished, and directed to pay a cumulative sum to the compensation fund and costs.

In another case, the tribunal found the respondent guilty of misconduct in respect of his failure to comply with an undertaking expeditiously, within a reasonable time, or at all, given by him on behalf of his former clients, and his failure to reply adequately or at all to the complainant's correspondence. After considering the submissions made by both parties in regard to penalty and costs, the tribunal was of the view that, had the respondent given some care to the matter by responding to the bank, updating them at regular intervals, this matter would probably not have come before them. While compliance with the undertaking was outside of his control, keeping the bank informed was not. However, the tribunal noted the respondent had no disciplinary history and was unlikely to appear before it again. The tribunal censured the respondent and

directed him to pay a sum to the compensation fund and costs.

Practising solicitors receive, hold and control money belonging to clients. They have a duty to ensure that they keep proper books of account and that there are sufficient funds in the client account to cover the sum due to each client. As a consequence, the *Solicitors Accounts Regulations* were formulated to ensure solicitors keep clients' money separate from their own money and any other money passing through their accounts.

To ensure compliance with the *Solicitors Accounts Regulations*, the Law Society may appoint investigating accountants as the Society's 'authorised person' within the meaning of section 76(1) of the *Solicitors (Amendment) Act 1994*. This appointment authorises the investigating accountants to attend at the place of business of solicitors for the purpose of investigating whether there has been due compliance with the *Solicitors Regulations 2001 to 2006* and with the provisions of the *Solicitors Acts 1954 to 2015*, and to report thereon to the Law Society.

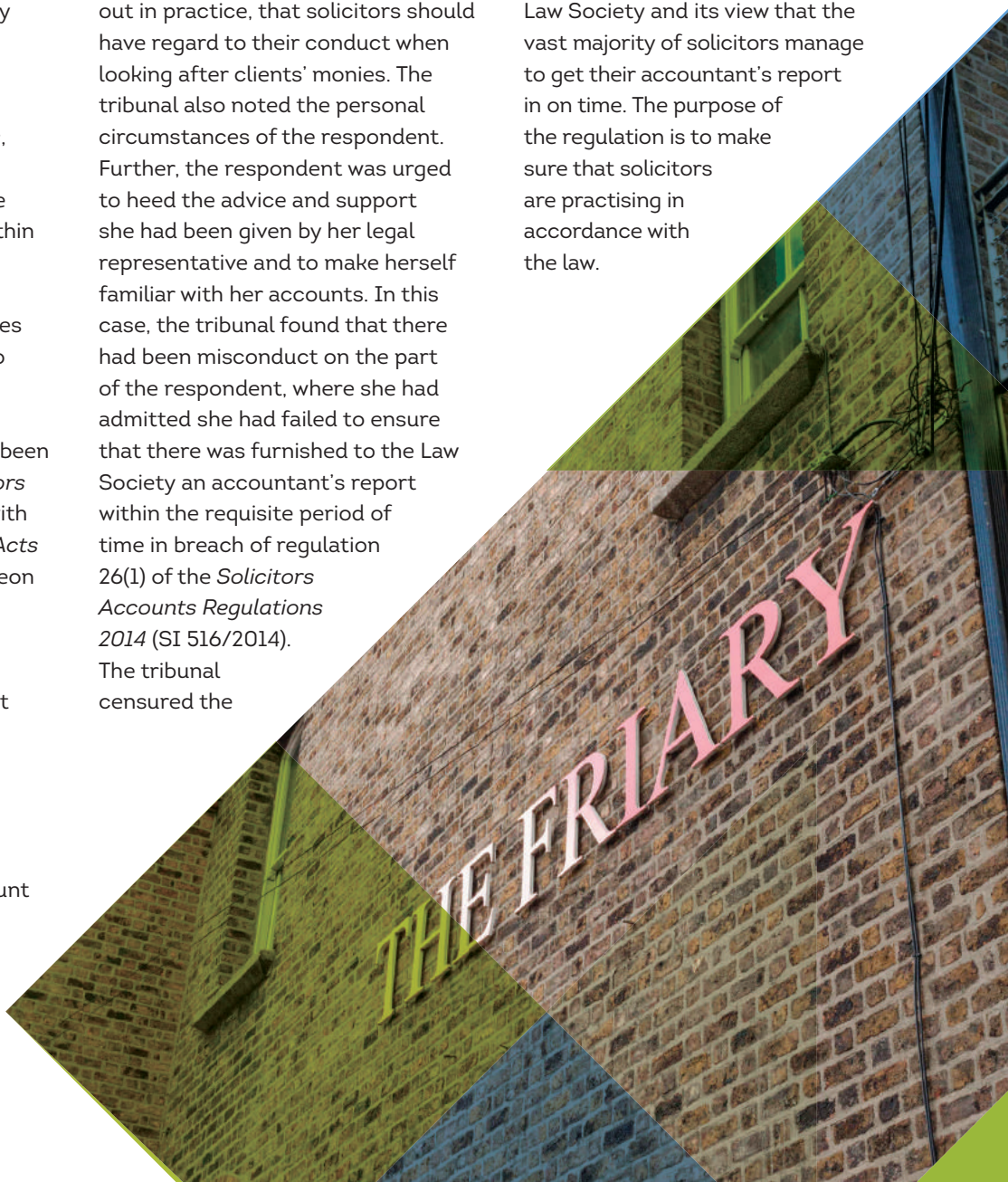
An inspection of the books of account, which include the client and office accounts and bank statements, may reveal certain shortcomings in accounting systems. For example, the investigating accountant may discover that the books of account

are not written up to date and that the books do not balance. In addition, legal fees may not be properly transferred from the client account to the office account. During the course of one such inspection, it was discovered that the respondent was using his client account as a personal account.

During the year under review, the tribunal explained to a respondent that it was important, when starting out in practice, that solicitors should have regard to their conduct when looking after clients' monies. The tribunal also noted the personal circumstances of the respondent. Further, the respondent was urged to heed the advice and support she had been given by her legal representative and to make herself familiar with her accounts. In this case, the tribunal found that there had been misconduct on the part of the respondent, where she had admitted she had failed to ensure that there was furnished to the Law Society an accountant's report within the requisite period of time in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516/2014). The tribunal censured the

respondent and ordered her to pay a sum to the compensation fund and the costs of the Law Society.

In another case, the tribunal, in addressing the Law Society and the respondent in regard to penalty and costs, noted the respondent's personal circumstances. By his own admission, the respondent's practice had not been doing well for quite some time. Nonetheless, the tribunal had to have regard to the Law Society and its view that the vast majority of solicitors manage to get their accountant's report in on time. The purpose of the regulation is to make sure that solicitors are practising in accordance with the law.



Further, while the respondent had been given every opportunity by the Law Society, at the Regulation of Practice Committee, to appear before it and explain his circumstances, he chose not to do so. Notwithstanding that there was no complaint before the tribunal in this respect, it must have regard to the opportunities the respondent had been given by the Law Society, and also by a previous division of the tribunal. In this case, the tribunal found the respondent guilty of misconduct in that he had failed to ensure that there was furnished to the Law Society an accountant's report in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014*. The tribunal, made an order censuring the respondent and directing him to pay a sum to the compensation fund and the Law Society's costs.

In a further case, the tribunal found the respondent had, among other things, caused or allowed a deficit to arise on the client account, caused or allowed debit balances to arise on the client account, and failed to keep proper books of account in breach of regulation 12(1) of the *Solicitors Accounts Regulations 2001*, to show the true position in relation to client liabilities. The tribunal noted and accepted the very strong level of cooperation by the respondent when the Law Society began to investigate his practice. The tribunal also noted that, at all times, the respondent had cooperated with the Law Society in respect of various orders made by the High Court. The tribunal further took into account that the

respondent had agreed with all of the evidence that had been offered on behalf of the Law Society, and that he had not queried, in any way, the facts or allegations made against him. He had, through his solicitor, agreed that the sanction of strike-off would be required. The tribunal, in its report to the High Court, was of the view that the respondent was not a fit person to be a member of the solicitors' profession and recommended that his name be struck off the Roll of Solicitors.

In a separate case, the respondent admitted misconduct where he had, among other things, deducted fees where he ought to have known that the client might not have properly authorised or agreed to the deductions, in circumstances where he had been advised that there was a concern that his client was suffering from dementia. He also admitted that he had deducted fees in advance of the extraction of the grant of probate, and further in the absence of sufficient funds available to the credit of the estate, thereby creating a debit balance in breach of regulation 7, and he admitted having deducted fees in a manner not compliant with the *Solicitors Accounts Regulations*. The tribunal censured the respondent and directed that a sum be paid to the compensation fund and costs. In assessing the penalty to be imposed, the tribunal took into account the admissions made by the respondent, the fact that a subsequent inspection of the respondent's practice showed that there were no outstanding issues

arising from a previous investigation, and that the respondent had no previous disciplinary history.

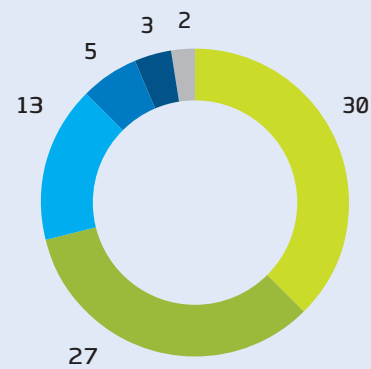
In another instance, the tribunal found a respondent guilty of misconduct where there was a failure to comply with section 68(1) of the *Solicitors (Amendment) Act 1994* in a number of files examined and set out in the Law Society's report, caused or allowed some costs received in two cases to be recorded as non-VATable outlay, and failed to record the receipt of solicitor/client costs in the books of account. In arriving at its decision in regard to penalty, the tribunal considered the submissions made, the actions taken by the respondent to deal with the matters in respect of which findings had been made, the good reputation of the respondent, his cooperation throughout the entire process, and that there had been no previous disciplinary findings. The tribunal in this case advised and admonished the respondent, and directed the respondent to pay the Law Society's costs.

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

Category in which a finding of misconduct arose in 2017



- 30 Solicitors Accounts Regulations
- 27 Conveyancing
- 13 Miscellaneous
- 5 Probate
- 3 Family law
- 2 Litigation

Some grounds on which professional misconduct was found

Civil claims

- Failing to comply with section 68(1) of the *Solicitors (Amendment) Act 1994*,
- Failing to provide a copy of the party and party bill of costs to a client in a personal injury case while charging a solicitor and client fee, contrary to section 68(6) of the *Solicitors (Amendment) Act 1994*.

Conveyancing

- Failing to comply with an undertaking given on behalf of clients to a lending institution in a timely manner or at all,
- Delaying without proper reason or cause in the conveyancing and purchase of a client's house,
- Misleading the complainant and the Law Society by informing them that the complainant's mortgage had been sent for registration in the Registry of Deeds,

Probate

- Failing to refund the total amount due to the estate in accordance with a decision of the taxing master,
- Deducting fees when the solicitor ought to have known that his client might not have properly authorised or agreed to the deductions, in circumstances where he had been continuing to seek detailed and complex instructions and authorities from the client, whom he ought to have known may have been suffering from dementia and unable to properly provide such instructions and authorities,
- Deducting fees in advance of the extraction of the grant of probate, and further in the absence of sufficient funds available to the

credit of the estate, thereby creating a debit balance, in breach of regulation 7,

- Delaying in making distributions to the beneficiaries and/or in finalising the administration of the estate, thereby depriving the beneficiaries for an unreasonable period of time of the proceeds of the estate,

Solicitors Accounts Regulations

- Causing or allowing a deficit in client funds to arise on the client account,
- Making unauthorised withdrawals from client account to a personal account, in breach of regulation 7(1),
- Deducting fees in a manner not compliant with the *Solicitors Accounts Regulations* 7(1)(a)(iii) and 11(3) and, in particular, without having, in advance of drawing fees: (i) furnished a bill of costs or interim bill of costs as required by regulation 11, and (ii) made it clear to the client that monies held would be applied against such fees, as detailed in the bill of costs/ interim bill of costs,
- Causing or allowing a client ledger debit balance to occur in respect of the client ledger account, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations 2001*,
- Causing or allowing personal and/or office expenditure to be discharged from the funds in the client account, which should have been transferred to the office account before being discharged, in breach of regulation 7(2)(b),
- Causing or allowing round sum transfers to be made from client ledger accounts to office ledger

accounts in the absence of a corresponding debit entry for professional fees and/or outlay and/or VAT, giving rise to credit balances on the office ledger accounts, in breach of regulation 10(4) and/or 10(5),

- Failing to keep proper books of account in breach of regulation 12 of the *Solicitors Accounts Regulations*, thereby making it difficult to ascertain the true position of client funds in the practice,
- Failing to maintain a non-controlled trust account in respect of a trust, thereby allowing trust monies to become intermingled with client account monies, in breach of regulation 19,
- Failing to ensure that paid cheques were being returned to the practice, in breach of regulation 20(1)(f),
- Causing or allowing costs received to be recorded as non-VATable outlay,
- Failing to record the receipt of solicitor/client costs in the books of account,
- Failing to use his best endeavours to ensure that a fee note due and owing to counsel in relation to a case in which he had briefed him was discharged,
- Making round sum transfers from the client account on a regular basis, purportedly as fees, but failing to post any fee notes,
- Failing to ensure that there was furnished to the Law Society an accountant's report, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014*,
- Through his conduct, showing disregard for

his statutory obligation to comply with the *Solicitors Accounts Regulations*, and showing disregard for the Law Society's statutory obligation to monitor compliance with the *Solicitors Accounts Regulations* for the protection of clients and the public,

- Tendering a series of cheques to the complainant, purportedly to effect a refund, but failing to ensure that there were sufficient funds in the client account to honour those cheques.

Professional indemnity insurance

- Practising as a solicitor in respect of matters without professional indemnity insurance, charging a fee for the services of a legal nature provided to the parties, contrary to section 57 of the *Solicitors Act 1954*, which prohibits the costs being recoverable where a solicitor acts while not qualified to practice.

Regulatory body

- Failing to reply adequately or at all or in a timely manner to the Law Society's correspondence,
- Failing to honour an agreement with the Law Society and the complainant to refund a specified sum to the complainant,
- Failing to comply with the directions of the Complaints and Client Relations Committee in a timely manner or at all,
- Failing to attend the Complaints and Client Relations Committee meeting as required.



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*. Details may be found on the Law Society's website at www.lawsociety.ie.

Conclusion

The tribunal has noted with grave concern the disregard shown to clients and banks in resolving matters, and to the Law Society in ignoring their correspondence and meetings. It has also noted in several cases that, had a solicitor given some care to the matter by responding to the bank and updating them at regular intervals, the complaint would probably not have come before the tribunal. The original complaint is often compounded by a solicitor's failure to correspond with a colleague, a bank or the Law Society, and to comply with the directions of the Complaints and Client Relations Committee of the Law Society. It is clear that such conduct may well bring the profession into disrepute and, consequently, in many cases, the tribunal has found that the failure to communicate with clients and the Law Society amounts to misconduct.

Another feature of the year under review is the failure to file an accountant's report with the Law Society within the time prescribed by the *Solicitors Acts*. Solicitors are obliged to comply with the *Solicitors Accounts Regulations* for the

protection of clients and the public. The solicitors' profession is one of few professions that have custody of clients' monies and must account at all stages to clients for those monies. Likewise, solicitors must account in their books of account in relation to costs. There are certain regulations that have to be complied with so that, at any given time, an independent verification by the solicitor's own reporting accountant or, indeed, by the Law Society's investigating accountant can verify that matters have been dealt with in a correct way. In general, the failure to comply with the *Solicitors Accounts Regulations* will lead to a finding of misconduct, being both a contravention of the *Solicitors Acts* and, ordinarily, conduct tending to bring the solicitors' profession into disrepute.

I wish to take this opportunity to pay tribute to the members of the tribunal for their hard work, cooperation and unstinting service to the tribunal throughout the year. The involvement of the lay members in particular is appreciated. They bring their experience from outside the solicitors' profession, and their contribution in this regard is very

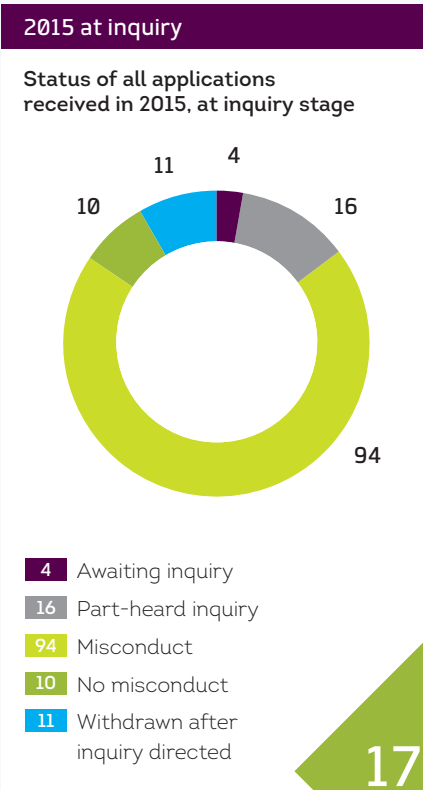
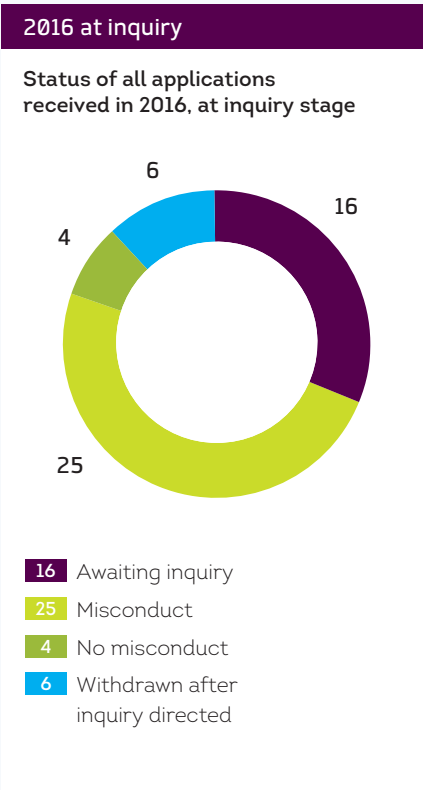
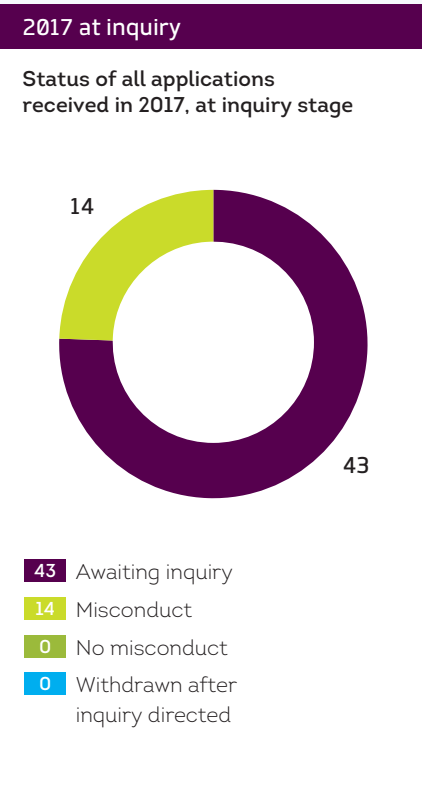
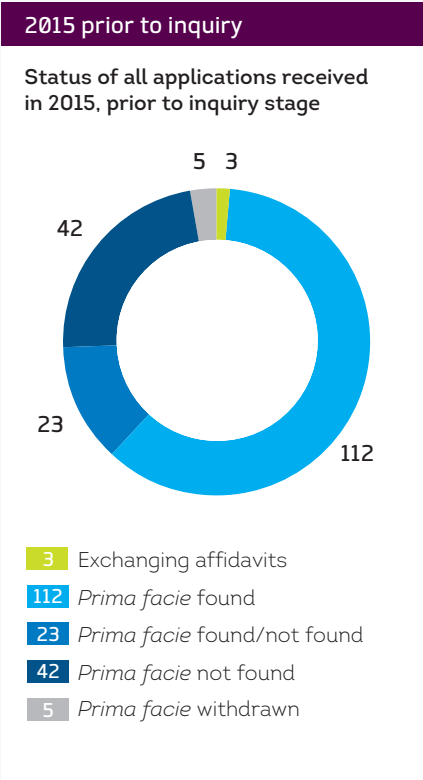
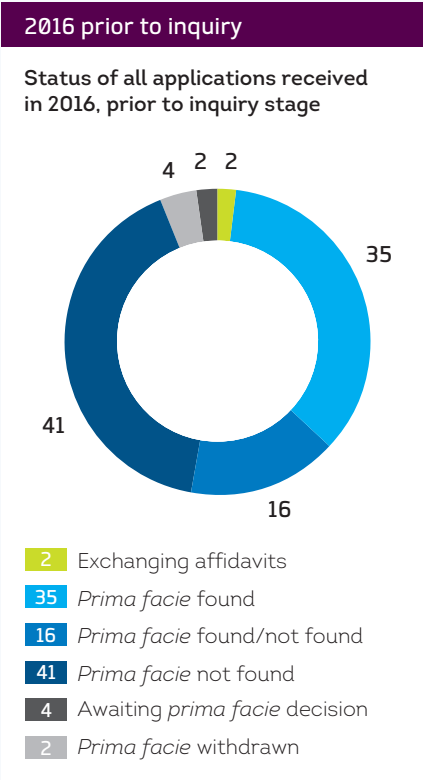
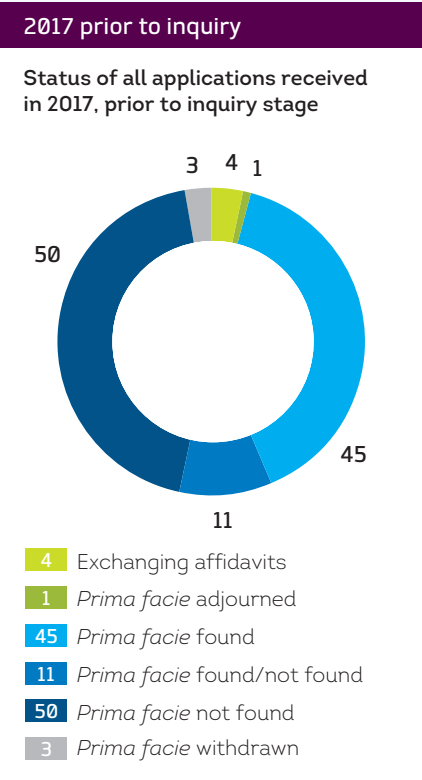
valuable. This year, four of the lay members, Seamus Byrne, Úna Claffey, Brenda Clifford and Mary King are retiring, having completed ten years' service to the tribunal. I would like to thank each and every one of them for their very diligent contribution to the solicitors' profession.

Finally, I would like to thank the staff of the tribunal for their very hard work in 2017. The work of the tribunal has to be carried out in a very painstaking way, with a great attention to detail, as matters of great importance to both applicants and respondents are involved. The staff of the tribunal work very hard to ensure this, and to treat both complainants and solicitors accused of misconduct with courtesy and impartiality. I would like, in particular, to mention the registrar, Mary Lynch, for her dedication and hard work in this regard. The support of the President of the High Court, Mr Justice Peter Kelly, for our work is also greatly appreciated.

Niall Farrell,
Chairman

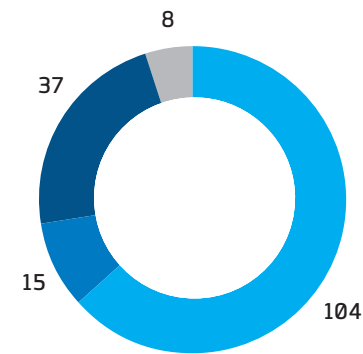
Appendix 1

Status of applications received, as at 31 December 2017



2014 prior to inquiry

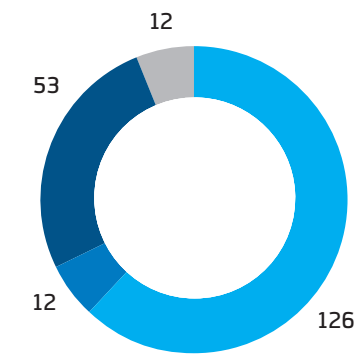
Status of all applications received in 2014, prior to inquiry stage



- 104 Prima facie found
- 15 Prima facie found/not found
- 37 Prima facie not found
- 8 Prima facie withdrawn

2013 prior to inquiry

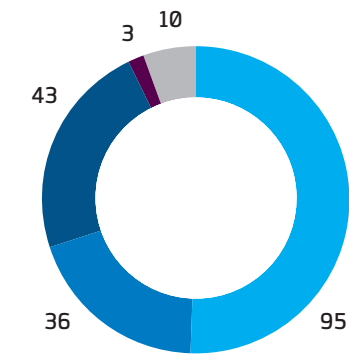
Status of all applications received in 2013, prior to inquiry stage



- 126 Prima facie found
- 12 Prima facie found/not found
- 53 Prima facie not found
- 12 Prima facie withdrawn

2012 prior to inquiry

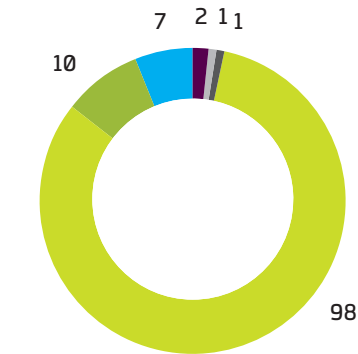
Status of all applications received in 2012, prior to inquiry stage



- 95 Prima facie found
- 36 Prima facie found/not found
- 43 Prima facie not found
- 3 Prima facie struck out
- 10 Prima facie withdrawn

2014 at inquiry

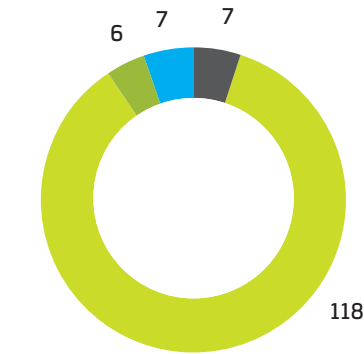
Status of all applications received in 2014, at inquiry stage



- 2 Awaiting inquiry
- 1 Part-heard inquiry
- 1 Inquiry adjourned
- 98 Misconduct
- 10 No misconduct
- 7 Withdrawn after inquiry directed

2013 at inquiry

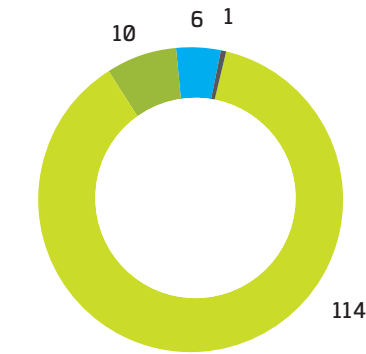
Status of all applications received in 2013, at inquiry stage



- 7 Inquiry adjourned
- 118 Misconduct
- 6 No misconduct
- 7 Withdrawn after inquiry directed
- 7 Withdrawn after inquiry directed

2012 at inquiry

Status of all applications received in 2012, at inquiry stage

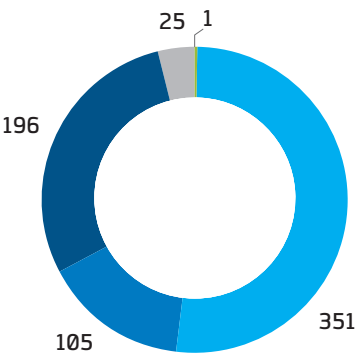


- 1 Inquiry adjourned
- 114 Misconduct
- 10 No misconduct
- 6 Withdrawn after inquiry directed
- 1 Inquiry adjourned



2007 to 2011 prior to inquiry

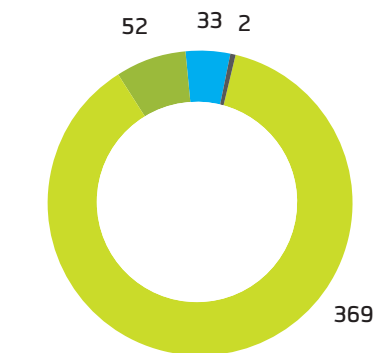
Status of all applications received from 2007 to 2011, prior to inquiry stage



- 1 Prima facie adjourned
- 351 Prima facie found
- 105 Prima facie found/not found
- 196 Prima facie not found
- 25 Prima facie withdrawn

2007 to 2011 at inquiry

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

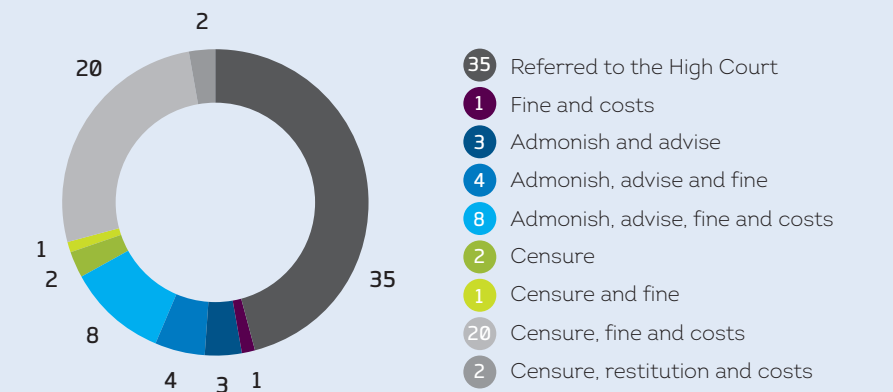
Analysis of applications and decisions

Analysis of Solicitors Disciplinary Tribunal statistics, as at 31 December 2017							
Status of applications	2017	2016	2015	2014	2013	2012	2007 to 2011
Law Society of Ireland	56	41	130	118	136	120	414
Others	58	59	55	46	67	67	264
Total received	114	100	185	164	203	187	678
Prior to <i>prima facie</i> consideration							
Exchanging affidavits	4	2	3	0	0	0	0
Awaiting <i>prima facie</i> decision	0	4	0	0	0	0	0
<i>Prima facie</i> cases found	45	35	112	104	126	95	351
<i>Prima facie</i> cases rejected	50	41	42	37	53	43	196
<i>Prima facie</i> cases found/rejected	11	16	23	15	12	36	105
<i>Prima facie</i> decision adjourned	1	0	0	0	0	0	0
Struck out before <i>prima facie</i>	0	0	0	0	0	3	0
Adjourned before <i>prima facie</i> decision	0	0	0	0	0	0	1
<i>Prima facie</i> application withdrawn	3	2	5	8	12	10	25
Total	114	100	185	164	203	187	678
Inquiry stage							
Cases scheduled for inquiry	43	16	4	2	0	0	2
Misconduct found	14	25	94	98	118	114	369
Misconduct not found	0	4	10	10	6	10	52
Part-heard	0	0	16	1	0	1	0
Inquiry adjourned	0	0	0	1	7	0	0
Withdrawn after <i>prima facie</i>	0	6	11	7	7	6	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*).

2017 orders and referrals



Appendix 4

Referrals of the tribunal to 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 2017	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.	3	6*
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.	3	5^
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.	3	16!
That the respondent be censured; that he should 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.	1	2
That the respondent should 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 of the Law Society; restitution and costs.	1	1
That the respondent should 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 and costs.	3	5+

* These include four applications in respect of the same respondent.

^ These include two applications each in respect of the two respondents.

! These include three applications in respect of one respondent, and 12 applications in respect of another.

+ These include three applications in respect of one respondent, and one application in respect of another, who has already been included in the above.

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).

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; costs.	2	2
That the name of the respondent be struck from the Roll of Solicitors.	1	1
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.	2	11*
The court, noted that the name of the respondent had been struck off the Roll of Solicitors, and the recommendation of the tribunal that the respondent was not a fit person to be a member of the solicitors' profession; costs.	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, and ancillary orders.	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; fine and costs.	1	1
Fine and costs.	1	1

* Ten of these cases relate to one respondent whose name has already been struck off the Roll, as referred to in the above table.

Solicitors Disciplinary Tribunal

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