



Solicitors  
Disciplinary Tribunal

SOLICITORS DISCIPLINARY TRIBUNAL

# Chairperson's Report 2018



# Constitution and powers of the Solicitors Disciplinary Tribunal



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

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

The procedures of the tribunal are also governed by the *Solicitors Disciplinary Tribunal Rules 2003*, which came into operation on 1 March 2003, and, in respect of

applications made from 1 January 2017, by the *Solicitors Disciplinary Tribunal Rules 2017*. Under the *Solicitors Acts 1954-2015*, the tribunal's powers are mainly confined to receiving and hearing complaints of misconduct against members of the solicitors' profession.

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

## Members of the tribunal during 2018

### 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  
Mary King  
Norah Gibbons  
Vera Kelly  
Joseph McPeake  
Kevin Rafter  
Siobhan Toale

### Tribunal registrar:

Mary Lynch

### Tribunal executive:

Kay Lynch

### Administration assistant:

Anthea Moore

### Tribunal executive:

Ashling McGing

### Administration assistant:

Nadia Farrell

### Administrator/receptionist:

Sophie Goldsbury

# Introduction

This annual report covers the work of the tribunal for the year up to 31 December 2018 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, when they involve complex, factual and legal issues, can take a number of days to complete. Consequently, 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. However, it is possible that, in a number of cases, due to the complexity of the matters before them, the tribunal will reserve its decision, and this has an impact on its ability to ensure the timely conclusion of cases.

Details of the workload of the tribunal during the year can be seen from Table 2 (page 4). There has been a decrease in the number of applications from the previous year. The total number received was 108 as compared with 121 in 2017. While applications from the public remain very much static, those from the Law Society largely

continue to fall. This is in keeping with the overall trend, and it is expected to continue during the coming year. Only complaints submitted to the Law Society or the tribunal up to 4 October 2019 will now come before the tribunal. Complaints submitted after that date will be dealt with by the Legal Services Regulatory Authority (LSRA). The tribunal will continue in existence until those cases have been disposed of. Further, the number of individual solicitors in respect of whom applications have been made rose to 92, which is an increase of approximately 7% from the previous year. However, this increase indicates that there are less multiple applications being made to the tribunal, which is a welcome development. In view of all of the foregoing, it is anticipated that, during the coming years, the tribunal, as has happened in the year under review, will meet on fewer occasions.

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 – this additional work is not reflected in Table 3 (page 4), which shows the number of sittings of the tribunal since 2011.

The tribunal maintains a diary in respect of forthcoming inquiries on its website at [www.solicitorsdisciplinarytribunal.ie](http://www.solicitorsdisciplinarytribunal.ie). However, preliminary/interlocutory applications are not included in the diary.

**Table 1. Findings of misconduct and referrals to the High Court, by year**

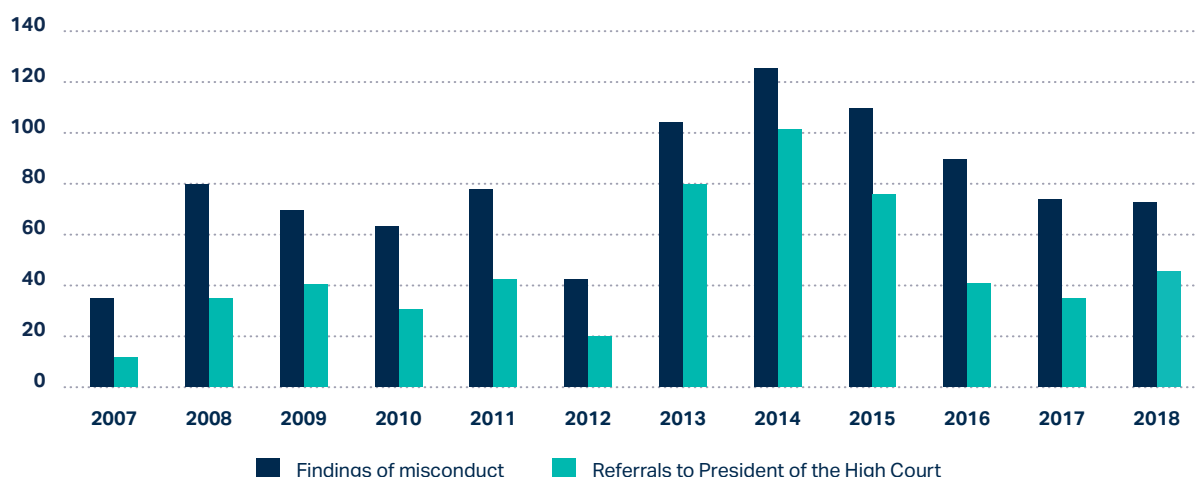


Table 2. Number of new applications received by month (2018)

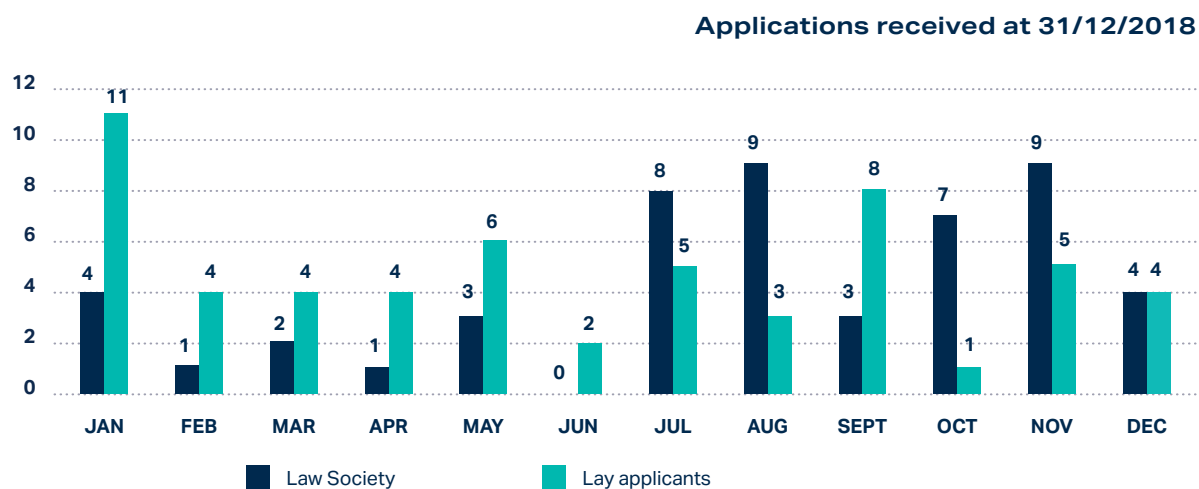
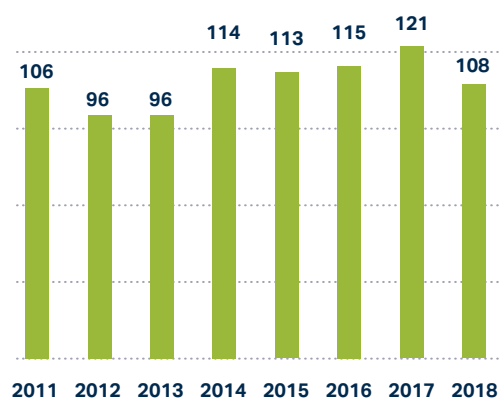


Table 3. Number of sittings of tribunal, by year



# 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 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, written decisions 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.

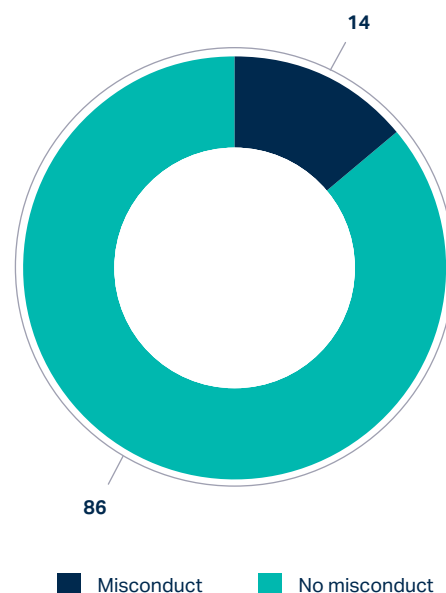
The procedures before the tribunal are formal in nature and, as the outcome of a hearing may affect the livelihood of a solicitor, the tribunal requires a high standard of proof, which is the criminal standard – that is, beyond all reasonable doubt.

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 *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), 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 identical

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.

**Chart 1. Outcome of inquiries held in 2018 (%)**



## *Prima facie* decisions

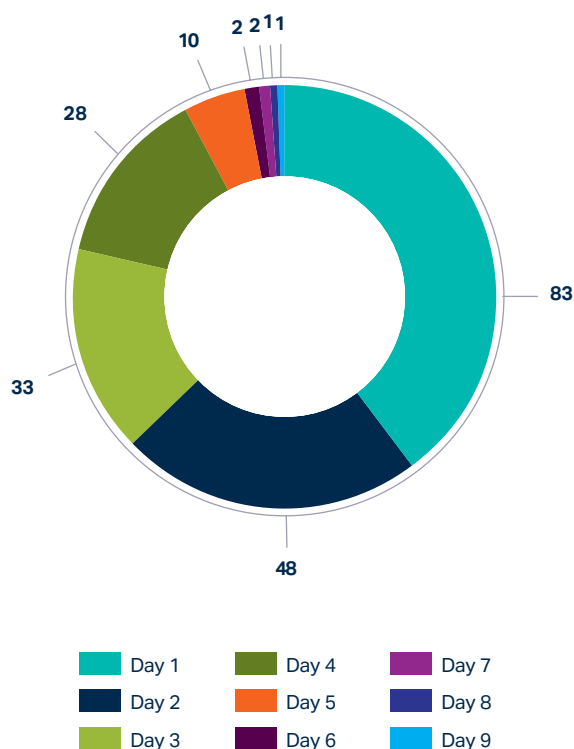
The first function of the tribunal is to determine whether or not there is a *prima facie* case for the respondent to answer. For this purpose, the tribunal does not hold a formal hearing, but considers each application, together with its supporting documentation, in private. In general, it is at this 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 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.

**Chart 2. Full length of inquiries completed in 2018**



## Sanction

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.

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.

During the year, the tribunal, in one particular case when dealing with the issue of penalty, considered the submissions made on behalf of the parties as to the appropriate sanction. They also took into consideration the relevant case law, whether the misconduct tended to bring the solicitors' profession into disrepute, and the seriousness of the pattern of inadequacy and delay displayed by the respondent. The tribunal was of the view that compliance with the *Solicitors Accounts Regulations* and the *Solicitors Acts* and the consequent requirement that an annual accountant's report must be filed, were fundamental regulatory requirements for members of the solicitors' profession. Further, the admitted misconduct was very serious in nature, and a clear pattern of misconduct was evident. It was the tribunal's view that such conduct undoubtedly brought the solicitors' profession into disrepute.

The tribunal, in deliberating on the question of penalty, noted the dictum of Sir Thomas Bingham MR in the English Court of Appeal decision in the case of *Bolton v Law Society* ([1994] 1WLR 512), where he stated: "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity, and trustworthiness must expect severe sanctions to be imposed on him." Bingham MR went on to state that the reputation of the solicitors' profession is "one in which every member of whatever standing may be trusted to the ends of the earth".

The tribunal also noted that this decision has been quoted with approval in several subsequent Irish cases, and was considered by the Supreme Court in the case of *Carroll v Law Society of Ireland* ([2016] IESC 49). That court, per McKechnie J, said of the decision: "The learned Master of the Rolls identified proven dishonesty, whether attended by a criminal conviction or not, as the most serious such conduct. Where established, no matter how strong the mitigation is, a strike-off will almost invariably follow."

In that case, the Law Society sought the sanction of a strike-off. It appeared to the tribunal that the reason for this was primarily to maintain the reputation of the solicitors' profession and to sustain public confidence in the integrity of the profession. Having considered the gravity of the respondent's actions and inaction, the tribunal did not believe that anything less than a strike-off would be a sufficient sanction.

## Adjournments

The tribunal's policy in respect of applications to adjourn inquiries is furnished to each party to an inquiry.

In general, a party seeking an adjournment of an inquiry is required to make a formal application to that effect to a sitting division of the tribunal, with prior written notice to the other party. Such applications are expected to be made in a timely manner, as to do otherwise might 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 1954-2002) 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.

The President of the High Court, on the application of one applicant, struck out the appeal and ordered the applicant to pay to the respondent the costs of the motion, to be taxed in default of agreement. In another two cases, the president affirmed the decisions of the tribunal that there was no *prima facie* case of misconduct on the part of the respondent for inquiry, and dismissed the appeals.

# Observations on complaints before the tribunal

## Conveyancing

During the year under review, the attention of the tribunal was drawn to the judgment of Mr Justice Peart in the Court of Appeal decision in *Law Society v John Tobin*, delivered on 21 July 2017 (record number 2015/143):

"It is a cardinal rule of the solicitors' profession that an undertaking must not be given where it is not already within the solicitor's control to fulfil. A solicitor may well consider, even with justification at the time he is giving the undertaking that, although one or two matters will have to be attended to by some other party, perhaps even the client, before the undertaking can be honoured and he can obtain a discharge, there will be no difficulty in doing so. That is not a proper basis for giving an undertaking. The solicitor must know that he is, at the time the undertaking is given, be in a position to honour it and is in complete control of it being honoured."

And:

"The solicitors' undertaking is part of the hard currency of the solicitors' profession. The trust and faith reposed in such undertakings are an indispensable part of the conduct of legal business and transactions, without which the profession and the public it serves would be the poorer. The undertaking is based upon the absolute honesty and integrity expected of a solicitor in dealing with his clients, other parties to a transaction, and the courts. A solicitor is an officer of the court. His/her word must be his/her bond. If a solicitor undertakes to do something, it must be done. If there is any tolerance allowed for slippage in the traditional approach to such undertakings and the respect to be accorded to them, the hard currency of the profession is irreparably damaged to the point where other solicitors will not – indeed, should not – accept an undertaking. It should not be thought that the serial failure to honour undertakings, such as occurred in this case, may not be considered to be at the same level of seriousness as misconduct that results in financial loss to clients or third parties. This is particularly so where, as yet, some of the undertakings are still outstanding, even though serious efforts have been made to rectify the problems involved."

In one case that came before the tribunal, it was submitted on behalf of a respondent that there had been no misconduct on the part of the respondent, as his failure to discharge his undertaking was due to the fact that the vendor's solicitors did not discharge their undertaking to the respondent – that is, an undertaking to discharge any reasonable Land Registry queries. In the circumstances, the respondent found himself in the impossible position of being unable to discharge his own undertaking. The tribunal, however, was of the view that matters were not entirely outside the respondent's control; for example, he could, and should have sought the Law Society's assistance in ensuring compliance with the undertaking he had been given by a colleague. While the respondent was not helped by some of his colleague's delays, nevertheless he allowed an inordinate and serious delay to occur before he finally complied with his undertaking.

Three cases concerning the same respondent also came on for hearing before the tribunal. In view of the admissions made by the respondent and by reason of the documents before the tribunal, the respondent was found guilty of misconduct, in that he had failed to comply with undertakings (seven in all) furnished to the complainants in respect of his clients, in a timely manner or at all. In considering the appropriate penalty to be imposed, the tribunal regarded the failure of the respondent as particularly serious because of the number of undertakings outstanding; the fact that the undertakings were, at the time of the hearing, still outstanding for a significant period; and, while it was noted that the respondent had given whatever assistance he could from abroad, the fact remained that he had left it to others to try and resolve outstanding problems. While the tribunal considered the personal circumstances of the respondent, it also had regard to the words of the former President of the High Court in the case of *Law Society v Lambert* ([2015] IEHC 453), which were quoted with approval by the Court of Appeal in the *Tobin* case:

"They [undertakings] are outward manifestations of its probity, honesty and reliability. They are the currency of the profession's integrity. For this reason, the court regards breaches of undertakings as being matters of the utmost gravity, as they put public trust in the solicitors' profession at serious risk."



The tribunal also noted the previous findings of misconduct against the respondent. Further, while the tribunal was aware that the matter of sanction in regard thereto was under appeal, it was nonetheless apparent that the previous findings of misconduct were based on admissions by the respondent to the tribunal. In the circumstances, the division of the tribunal hearing the matter was of the view that, although the matter was under appeal, it could take the admissions into account as a further factor in arriving at its decision as to sanction. That said, the tribunal wished to make it clear that, even if it were not entitled to take the admissions into account, it would not affect its decision as to sanction because it believed that there was already sufficiently serious misconduct to warrant its decision.

Consequently, the tribunal, in its report to the President of the High Court, recommended that the name of the respondent be struck off the Roll of Solicitors and that the respondent pay the Law Society its costs.

Two other cases in respect of a respondent also came before the tribunal, arising from 11 alleged breaches of undertakings given to three separate lending institutions. It was alleged that the respondent had failed to respond to repeated correspondence from the Law Society and the banks; that he had failed to comply with the directions of the Law Society; and that he failed to attend meetings of the Regulation of Practice Committee of the Law Society. The tribunal noted that all of these allegations were admitted by the respondent and, consequently, formal findings in this regard were made.

In the course of its submissions in these cases, the Law Society had referred the tribunal to the case of *Law Society of Ireland v Tobin* and, in particular to the remarks of Mr Justice Peart to the effect that any breach of a significant number of undertakings, regardless of whether there was any financial loss or dishonesty, falls within the very serious category of misconduct.

The tribunal was in no doubt that these cases fell within that category and, in the circumstances, having considered the submissions of both parties, was of the view that the matter should be referred to the President of the High Court. The tribunal was also of the view that the Law Society's submissions were appropriate and, in the circumstances, advised that it was recommending to the president that the respondent not be permitted to practise as a sole practitioner or in partnership, and 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 that he pay a sum to the Compensation Fund and the Law Society's costs.

In considering another two cases involving a respondent, the tribunal noted that there had been two previous findings of misconduct against the same respondent. In the first matter, the respondent was censured in relation to his failure to furnish reporting accountants' certificates. The second case related to a failure to comply with an undertaking, failing to respond to correspondence from the complaining bank and the Law Society, and failing to attend a meeting of the Complaints and Client Relations Committee. On that latter occasion, the tribunal recommended that the respondent not be permitted to practise in sole practice or in partnership and that he be restricted to practising under the supervision of another solicitor of at least ten years' standing. This last recommendation was accepted by the court, and an order was made in this regard.

In regard to the two current cases before the tribunal, in respect of which findings of misconduct had been made, the Law Society argued that, due to the respondent's repeated failure to respond to the complainants and the Law Society and his failure to engage in remedying his failure to comply with the outstanding undertakings, the respondent was not fit to be a member of the profession.

The tribunal also noted there was no appearance by or on behalf of the respondent.

The tribunal was told that the respondent had ceased practice some years ago and that, if he ever applied for a practising certificate, it would be subject to restrictions. Further, the chances of him re-entering practice were very small and there was little danger to the public. However, there was no suggestion that the respondent was dishonest in his dealings with his clients. Further, it was also apparent to the tribunal that the conveyancing difficulties that gave rise to the failure to comply with the undertakings would not seem to be of his making.

In arriving at its conclusion in relation to penalty, the tribunal noted that the allegations were, in substance, the same as those leading to the earlier finding of the court and that they arose from the same time period. In addition, there was no evidence of breaches of large numbers of undertakings. While an argument might well be made that the respondent was not fit to be a member of the solicitors' profession, the tribunal had come to the view that circumstances had not changed since the date of the previous order of the court made in respect of the respondent. Accordingly, the tribunal recommended that the court note the further findings of misconduct in respect of the respondent, but that it not impose any further sanction, and that the respondent pay the whole of the costs of the Law Society, to be taxed in default of agreement.

In another case, following upon admissions made by a respondent, the tribunal found that there had been misconduct on his part in respect of his failure to comply with an undertaking furnished to a lending institution, and his failure to respond to letters from the Law Society within the time provided, in a timely manner or at all.

The tribunal made an order censuring the respondent, directing him to pay a sum to the Compensation Fund, and to pay a contribution towards the whole costs of the Law Society.

In contemplating on the question of penalty, the tribunal noted that the respondent had paid the outstanding stamp duty out of his own personal funds. The tribunal also accepted that some of the delay (which was significant) in dealing with the matter was due to factors outside of the control of the respondent. The tribunal also took into account the fact that the respondent had been suspended from practice by order of the President of the High Court and that he was currently not practising. Further, that in the event that he applied for a practising certificate, this would be on the basis of the restrictions also imposed by the said order of the president.

### ***Solicitors Accounts Regulations***

Some of the most serious matters that came before the tribunal concerned breaches of the *Solicitors Accounts Regulations*. In one case, the tribunal, in view of the admissions made, found the respondents were guilty of misconduct in that they had, among other things, improperly and dishonestly caused or allowed a deficit on the client account; failed over an ongoing period of time to maintain proper books of account, in breach of regulation 13; improperly and dishonestly caused or allowed a transfer of clients' funds to the office account, in breach of regulation 7; and caused or allowed fees to be transferred to the office account, in breach of regulation 7(2)(a).

The tribunal, after hearing submissions in regard to penalty, was of the view that the names of the respondents should be struck off the Roll of Solicitors. In considering the issue of penalty, the tribunal based its decision primarily on Judge Peter Kelly's decision in the High Court in *Law Society v Herlihy* (2017 no 5 SA). The tribunal noted, in particular, that Judge Kelly, in his conclusion, had regard to the fact that where dishonesty is established on the part of a solicitor, sadly, that no matter how strong the mitigation is, a strike-off will almost invariably follow. The tribunal noted that, in that case, as in the case before the tribunal, there had been lapses of standards of integrity, probity and trustworthiness and that, over several files, there were multiple instances of such lapses.

In a further case, the tribunal found misconduct where a respondent 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 (SI 516 of 2014). The tribunal explained that the definition of misconduct in the *Solicitors Acts* includes a breach of the *Solicitors Accounts Regulations*, and it would only be in a very *de minimis* situation that the tribunal would find that a breach of those regulations did not amount to misconduct. In addition, the submission of accountants' reports was a very important part in the regulation of the accounts of solicitors and gave confirmation to the Law Society and to the public that the affairs of solicitors are being dealt with in an efficient and regulated manner.

In this case, there was a very significant delay of ten months in the submission of the accounts. While there may well have been explanations as to why it was very difficult to comply with the regulations, unfortunately it was incumbent upon every solicitor to ensure that there were backup measures in place to provide these accountants' reports on time.

In assessing penalty, the tribunal took into account the submissions made by the parties, and noted that the respondent had acknowledged that she was remiss in not submitting the accountant's report. However, it was worrisome that correspondence from the Law Society was not responded to, but no allegation had been made in that regard. However, in view of the evidence of the steps taken to regularise the position, and the recognition by the respondent that keeping books of account up-to-date on a live basis was absolutely crucial, the tribunal decided not to refer the matter to the High Court. Instead, it made an order advising and admonishing the respondent and directed that she pay a contribution towards the whole of the costs of the Law Society.

In another matter, the tribunal found the respondent was guilty of misconduct, in that she had failed to file an accountant's report in breach of the *Solicitors Accounts Regulations*. The tribunal recommended to the President of the High Court that the respondent be suspended from practice until such time as she was fully compliant with her obligations under the regulations; be censured; pay a sum to the Compensation Fund; and pay a contribution towards the whole of the costs of the Law Society.

The tribunal considered six separate cases relating to one respondent. Two separate divisions sat in regard thereto. These cases covered a number of areas of law and were quite diverse in the circumstances giving rise to the complaints. In one such case, the tribunal found the respondent guilty of misconduct, in that she, among other things, took funds from an estate in circumstances where she was not entitled to do so; took two payments, together with travel expenses, which payments were not recorded in the office ledger account for that client; failed to keep proper books of account and records to show

the amounts of settlement received and failed to provide evidence of same when requested; allowed a shortfall in relation to clients' funds due to third parties because of the transfer of excess amounts for costs; and failed to provide sufficient documentary evidence to ensure that clients were informed of the correct amount of their settlement.

In its report to the High Court, the tribunal included its recommendation that the respondent was not a fit person to be a member of the solicitors' profession and that the respondent's name be struck off the Roll of Solicitors. The High Court subsequently made an order in line with the recommendation of the tribunal. In regard to the remaining five cases, which were heard by a separate division, the tribunal made findings of misconduct in each case and, in view of the order of the High Court, recommended in its report that the respondent was not a fit person to be a member of the solicitors' profession. The High Court made a further order in respect of these findings and concurred with the recommendation of the tribunal.

## No misconduct

In assessing whether a respondent is guilty of misconduct, the tribunal is, at times, guided in its decision by the judgment of Finnegan P in *Patricia Boycott, Appellant v Gerard O'Connor, Respondent* in an unreported case in 2003, delivered on 23 April 2004, at p10, in which he said:

"It is not every falling-short of the requisite high standard of conduct that amounts to misconduct. Falling short of the requisite standard in the provision of legal services by the provision of such services negligently; inadequately, to an extent less than negligence; or in a delayed manner, may amount to misconduct but, in general, to amount to misconduct, a pattern of such neglect, inadequacy or delay is required.

"If the work of a solicitor falls below what he has undertaken to provide for his client, the client has a remedy under his contract. The client can withhold payment of fees claimed, in which case the solicitor may have to establish before a court that he has performed his contractual obligations to the required standard.

"If failure to provide the services amounts to negligence, the client has an additional remedy before the courts. The existence of such remedies is a factor which justifies, if justification be needed, the approach of what may be described as bad work, whether neglect, delay or otherwise, will not, necessarily, amount to misconduct."

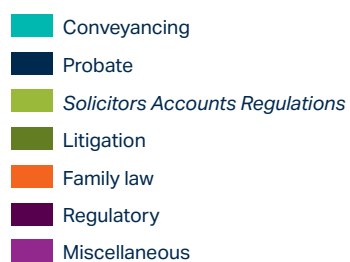
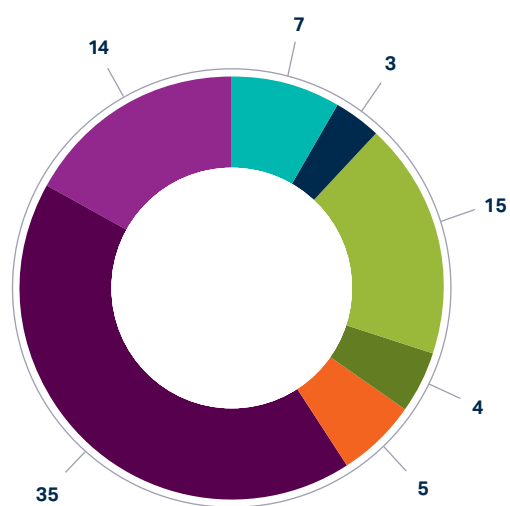
As has been reported in the past, the tribunal, in most instances, regards a failure to communicate with a client or a colleague in a most serious light. However, there are

circumstances where the tribunal may find that such a failure does not amount to misconduct. That was the finding of the tribunal where it was alleged that two co-respondents had failed to respond to correspondence in a timely manner, resulting in greatly increased costs and litigation. The tribunal regarded the failure of the first-named respondent to reply promptly to the letter issued by the applicant's solicitors as being unsatisfactory and fell short of the standards normally expected of a solicitor in responding to an enquiry from a colleague. It reiterated that a solicitor should always answer correspondence from another solicitor making enquiries on behalf of a client. However, the first-named respondent's conduct arose from a single event, and the tribunal was unconvinced, having considered all the evidence, that the first-named respondent's failure was not part of a pattern of neglect, delay or inadequacy, such as to justify a finding of misconduct. In arriving at this decision, the tribunal was satisfied that there had been material engagement by the first-named respondent prior to the date of the letter in question. The tribunal further noted that no follow-up letter issued to the first-named respondent for over four months, and the tribunal believed that this was inconsistent with the importance that the applicant attributed to it. The tribunal also found that the misconduct as alleged against the second-named respondent was not established by the applicant to the satisfaction of the tribunal.

# 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. Subject matter of complaints



# Some grounds on which professional misconduct was found

## Conveyancing

- Failing to comply with an undertaking furnished to the complainants in respect of his clients in a timely manner or at all,
- Failing to release the balance of funds due to the complainant in a timely manner,
- Failing to notify the complainant in a timely manner or at all of the significant increase in the level of fees,
- Failing to register the interests of his clients in relation to registration of their title to their home, having been instructed and paid to do so, in a timely manner or at all,
- Failing to respond satisfactorily to his client's enquiries in relation to their instructions to him in a timely manner or at all,
- Failing to register the interests of her former clients to the title of property when first instructed in the purchase of the said property in or around 2007, expeditiously, within a reasonable time, or at all.

## Practising certificate

- Practising as a solicitor/providing legal services while there was not a practising certificate in force for the practice year in respect of him, contrary to section 55 of the principal act and/or section 56(1) and/or (2) of the *Solicitors (Amendment) Act 1994*,
- Holding himself out as a person entitled to practise/ provide legal services during the practice year while there was not a practising certificate in respect of him in force,
- By his actions in practising and/or providing legal services and/or holding himself out as a person entitled to provide legal services while unqualified by reason of not holding a valid practising certificate, acted with reckless disregard for the interests of clients/prospective clients and/or for the administration of justice, thereby tending to bring the profession into disrepute.

## Probate

- Taking a sum from an estate in circumstances where she was not entitled to do so,
- Taking two payments, together with travel expenses, which payments were not recorded in the office ledger account for that client,
- Failing to issue a section 68(1) letter to the client or to the residuary legatees, setting out the fees payable or the basis to be used to calculate those fees.

## Regulatory

- Failing to comply with the direction of the Complaints and Clients Relations Committee to refund moneys to the complainant within seven days of the meeting, as specified by the committee or at all,
- Failing to respond adequately or at all to some or all of the correspondence sent to him by the Law Society,
- Failing to comply with a direction of the Complaints and Client Relations Committee to provide detailed information in relation to the file and to attend at the next committee meeting,
- Failing to discharge the sum of €300 as a contribution towards the Law Society's costs for failing to respond to the Law Society's correspondence, as levied by the Complaints and Client Relations Committee at its meeting,
- Failing to attend at a meeting of the Complaints and Client Relations Committee when required to do so.



### ***Solicitors Accounts Regulations***

- Failing to ensure that there was furnished to the Law Society an accountant's report for the year within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001),
- Failing to ensure there was furnished to the Law Society a closing accountant's report, in breach of regulation 26(2) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001), having ceased practice,
- Breaching regulation 7(1)(ii) by the creation of debit balances,
- Breaching regulation 7(1)(iii) by taking moneys across to the office account in respect of fees, when it had not been made known to such clients that moneys so held would be used in satisfaction of professional fees due to the solicitor,
- Breaching regulation 10(2) and 10(5) of the 2001 regulations and 11(2) and 11(5) of the 2014 regulations by failing to lodge all costs received to the client account, and reflect same properly in the client ledger account,
- Breaching regulation 11(3) of the 2001 regulations and regulation 12(3) of the 2014 regulations by taking moneys not properly payable to the solicitor at the time of taking,
- Breaching regulation 12(1) of the 2001 regulations and regulation 13(1) of the 2014 regulations by failing to keep proper books of account that showed the true financial affairs of the clients,
- Breaching regulation 11(1) of the 2001 regulations and regulation 12(1) of the 2014 regulations by failing to furnish clients' bills of costs dealing with professional fees and outlay,
- Breaching regulation 13 of the 2001 regulations and regulation 14 of the 2014 regulations in instances where the solicitor was the controlling trustee, and failed to lodge moneys received without delay to a controlled trust bank account,
- Failing to keep proper books of account and records to show the amounts of settlement received, and failed to provide evidence of same when requested,
- Allowing a shortfall in relation to clients' funds due to third parties because of the transfer of excess amounts for costs,
- Failing to provide sufficient documentary evidence to ensure that clients were informed of the correct amount of their settlement.

## Other orders made by the tribunal

The tribunal made six 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



The first independent disciplinary committee charged with dealing with complaints against solicitors was set up under the *Solicitors (Amendment) Act 1960*. Prior to that, members of the disciplinary committee were formally appointed by the Law Society under the *Solicitors Act 1954*. From 1960, the Disciplinary Committee operated for a period of over 30 years, until the Solicitors Disciplinary Tribunal came into force under the *Solicitors (Amendment) Act 1994* (as amended).

The 1960 act provided that the committee comprise of solicitor members only, and these were appointed by the then President of the High Court. Subsequently, when lay members were appointed in accordance with the 1994 act, both solicitor and lay members were also appointed by the president.

Over the last number of decades, the disciplinary tribunal and its predecessor have been well served by solicitor members who gave up much of their time to make a valuable contribution to the maintenance of standards in the profession. Their contribution in this regard cannot be overstated. Likewise, since 1994, the role of lay members in regulating the profession has been seen as a vital part of the work of the tribunal. Their role in maintaining the integrity of the disciplinary process has been recognised by their solicitor colleagues, the profession, and the public, and this continues to be so.

From 2008 onwards, following the unfortunate downturn in the economy, there was obvious cause for concern in regard to the giving of undertakings by solicitors, due to the gross breaches of trust in respect of undertakings given to lending institutions. As a result of such failures, solicitors found themselves in untenable situations, whereby they were forced to close their practices and face the ultimate consequence of having their names struck off the Roll of Solicitors. Thankfully, the number of such cases has been greatly reduced. In this regard, the tribunal has exhorted solicitors over the year to recognise that it is vitally important that, when a solicitor gives an undertaking, he or she complies with it. The old saying that 'your word is your bond' is recognised and enforced by the tribunal and, as has been said in the past, the tribunal regards such failures as serious.

Solicitors, and indeed complainants, may well find the experience of coming before the tribunal a daunting one. However, it is always reassuring to note that the solicitors in respect of whom misconduct is alleged represent a small percentage of the number of practising solicitors. For instance, in 2018, a total of 98 solicitors were the subject of new applications to the tribunal, out of a population of over 10,000 practising solicitors.

Unfortunately, when practising, solicitors may encounter personal troubles, such as marital breakdown, psychological or addiction problems, and these may have an adverse effect on the efficient running of a practice. Sadly, in the course of its work, the tribunal has encountered situations where solicitors, in such circumstances, may only seek help and guidance where they are forced to do so. Today, the tribunal is aware that solicitors may avail of the services of appropriately qualified people through such organisations as LawCare and other similar services, and would urge solicitors to avail of such services when encountering personal difficulties. It is not only in the interest of the solicitors concerned, but also in the interest of their clients, the public, and the solicitors' profession.

It is also regrettable where the tribunal encounters situations where respondents, so early in their careers, do not appreciate or exercise the required level of responsibility, especially with regard to compliance with the *Solicitors Accounts Regulations*, which encompasses the safekeeping of clients' moneys entrusted to their care. The tribunal is of the view that the Law Society and its members should emphasise the weight of that responsibility, especially on young shoulders, where they decide to go into practice on their own account.

A number of members stepped down during the year, having completed their ten-year spell as lay members of the tribunal. I would like to thank Seamus Byrne, Úna Claffey, Brenda Clifford and Mary King for their long service and valuable contribution to the work of the tribunal.

Mary Lynch, the registrar of the tribunal during all of its existence, retired in 2019, and I would like to thank her on behalf of the tribunal and indeed the entire profession. Her very competent and courteous dealings with both complainants and solicitors were much appreciated. I and the staff of the tribunal were very sad to lose her wisdom and good company, and I wish her all the best in her retirement.

I would also like to thank the President of the High Court, Judge Peter Kelly, for his continuing support of the tribunal and its work.

On 7 October of this year, the Minister for Justice commenced that part of the *Legal Services Regulation Act* relating to the processing of complaints made by members of the public to the Law Society or to the tribunal. From this date, complaints will be dealt with by the LSRA. The tribunal expects that it will take at least two years to deal with outstanding complaints, some of which may take some time to make their way from the Law Society to the tribunal. The work of the tribunal is, therefore, coming to an end.

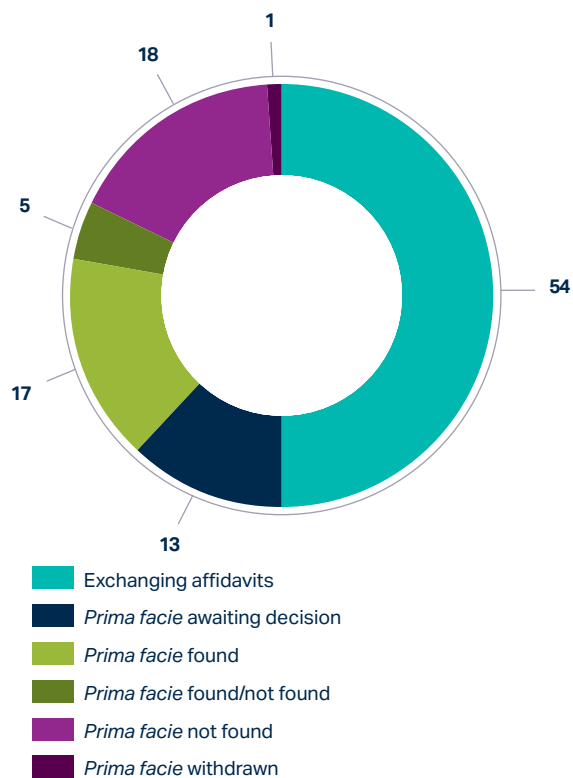
Since its establishment, the tribunal has served its statutory function competently and fairly, and I would like to take this opportunity to thank the tribunal members, both lay and solicitor, who have served on it over that time. The staff of the tribunal also deserves mention and, in particular, Mary Lynch, Kay Lynch, and Ashling McGing.

**Niall Farrell,**  
*Chairperson*

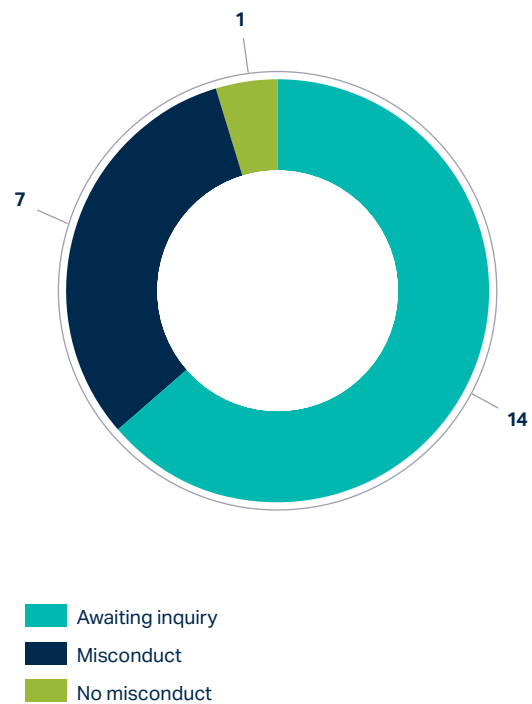
# Appendix 1

Status of applications received, as at 31 December

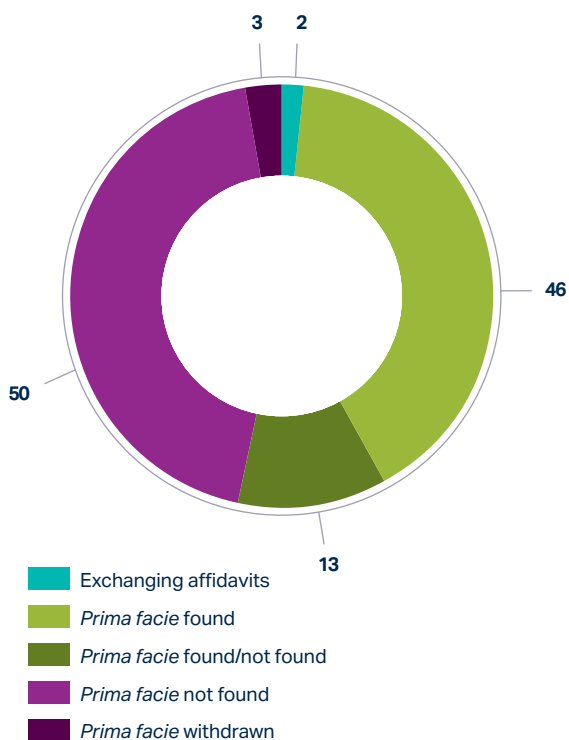
2018 prior to inquiry stage



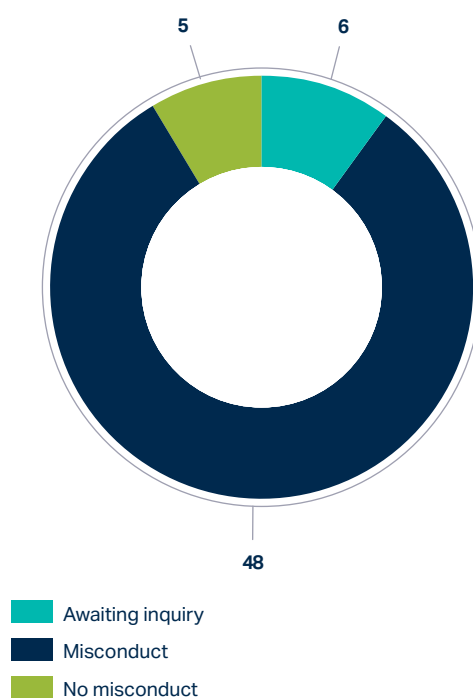
2018 at inquiry stage



2017 prior to inquiry stage



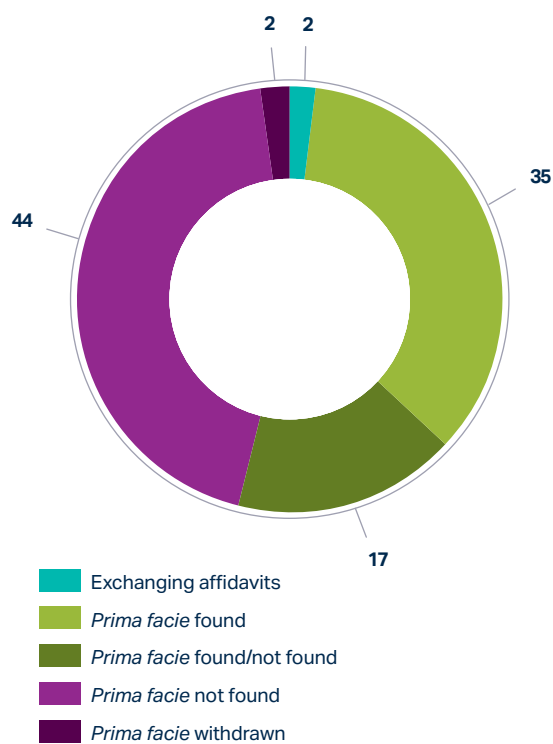
2017 at inquiry stage



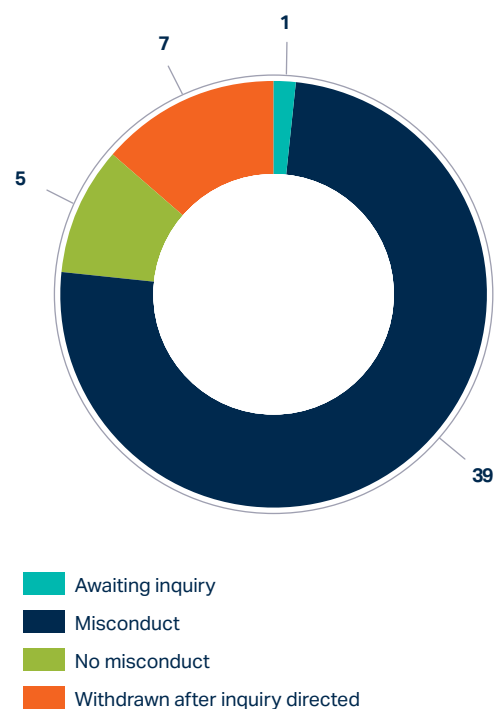


## Status of applications received, as at 31 December

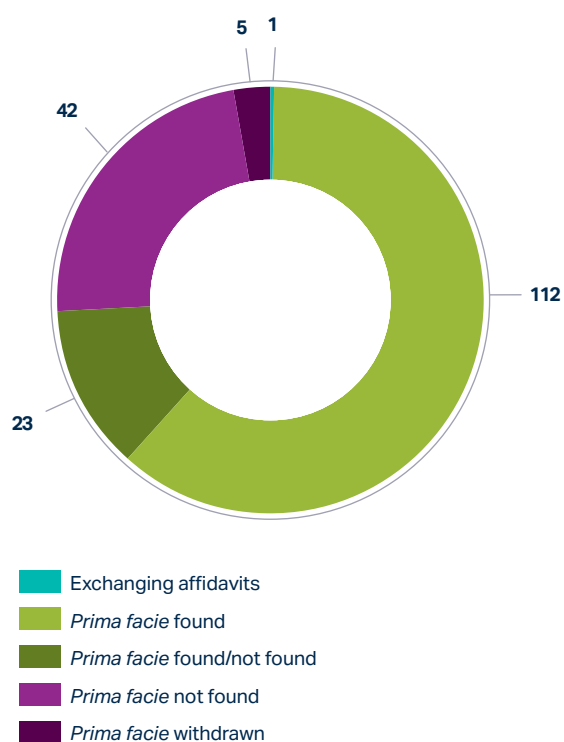
### 2016 prior to inquiry stage



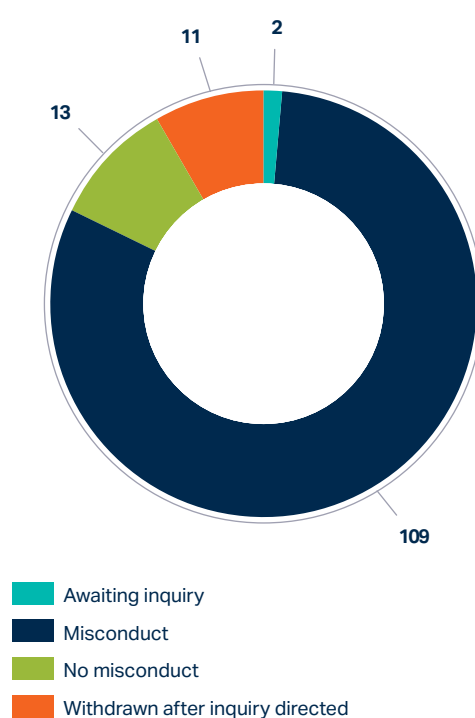
### 2016 at inquiry stage



### 2015 prior to inquiry stage

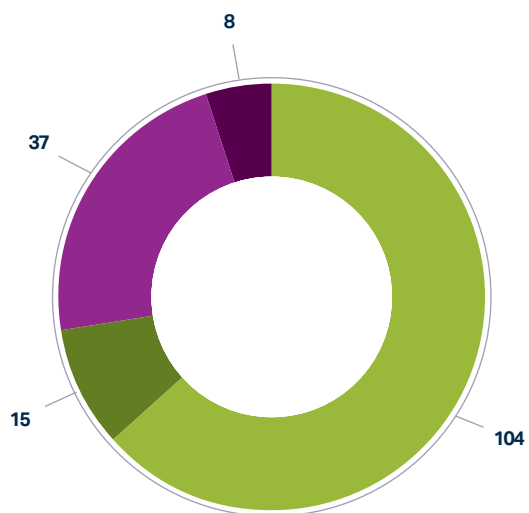


### 2015 at inquiry stage



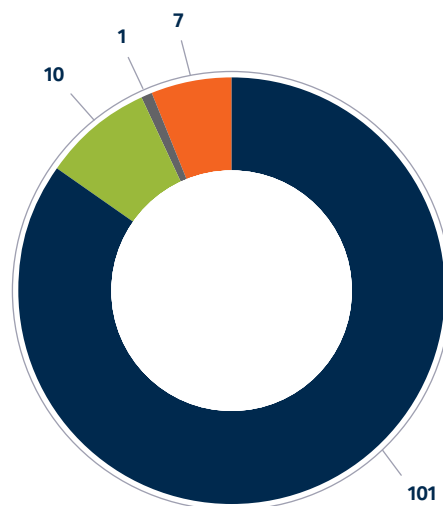
## Status of applications received, as at 31 December

2014 prior to inquiry stage



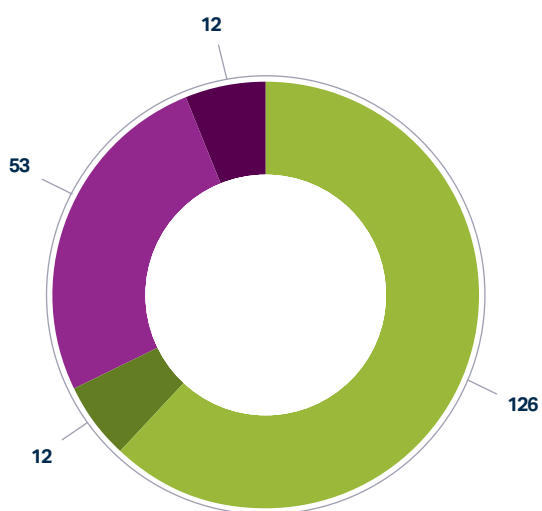
- Prima facie found
- Prima facie found/not found
- Prima facie not found
- Prima facie withdrawn

2014 at inquiry stage



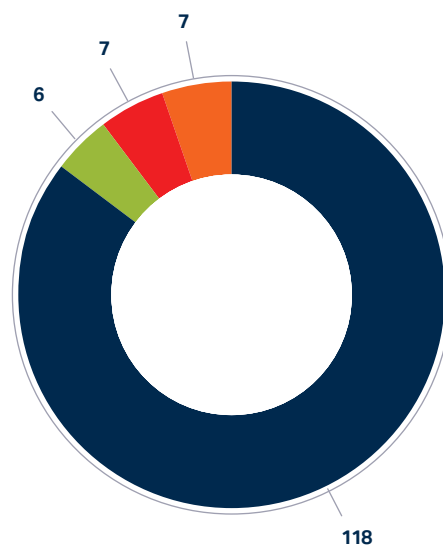
- Misconduct
- No misconduct
- Inquiry part-heard
- Withdrawn after inquiry directed

2013 prior to inquiry stage



- Prima facie found
- Prima facie found/not found
- Prima facie not found
- Prima facie withdrawn

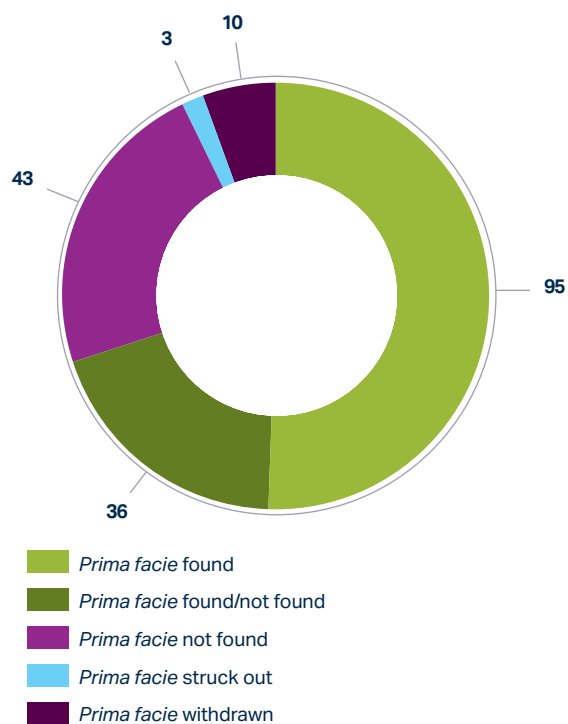
2013 at inquiry stage



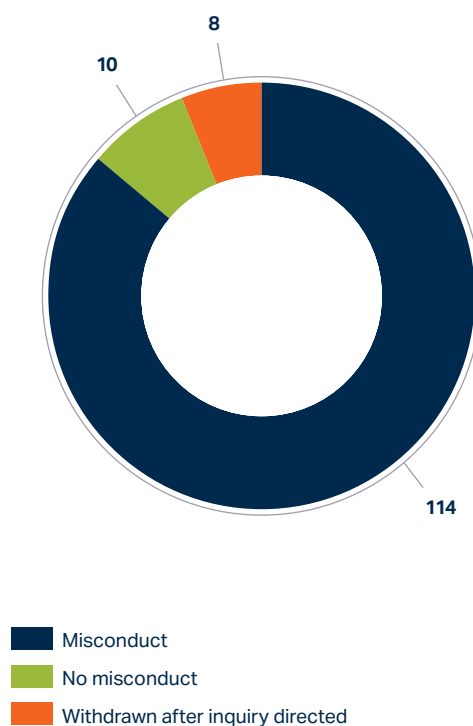
- Misconduct
- No misconduct
- Inquiry adjourned
- Withdrawn after inquiry directed

## Status of applications received, as at 31 December

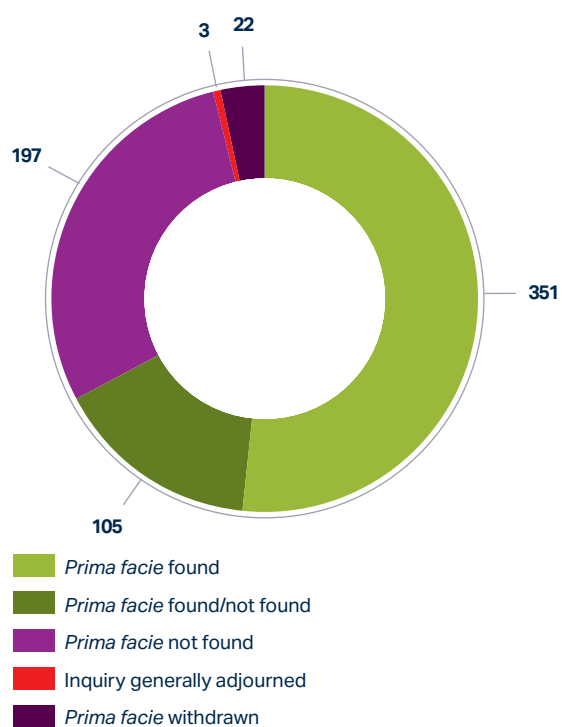
### 2012 prior to inquiry stage



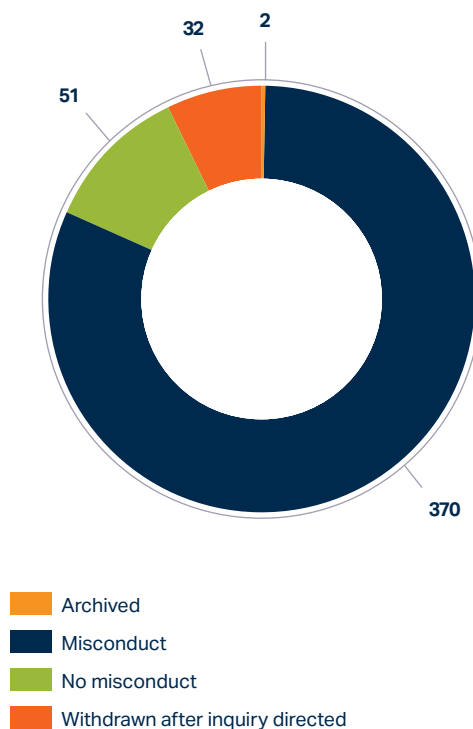
### 2012 at inquiry stage



### 2007-2011 prior to inquiry stage



### 2007-2011 at inquiry stage



## Appendix 2

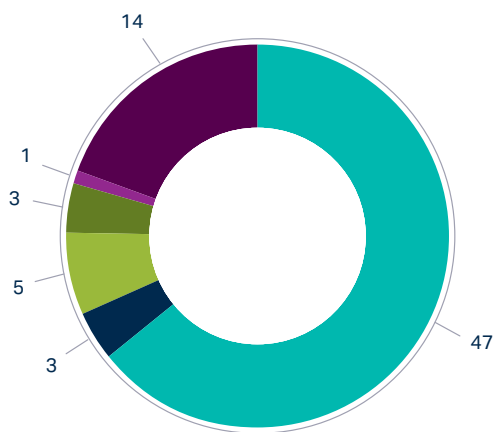
### Analysis of applications and decisions

Solicitors Disciplinary Tribunal statistics, as at 31 December 2018								
Status of applications	2018	2017	2016	2015	2014	2013	2012	2007-2011
Law Society of Ireland:	51	56	41	130	118	136	120	412
Others:	57	58	59	55	46	69	67	265
<b>Total received</b>	<b>108</b>	<b>114</b>	<b>100</b>	<b>183</b>	<b>164</b>	<b>203</b>	<b>187</b>	<b>677</b>
Prior to <i>prima facie</i> consideration								
Exchanging affidavits	54	1	2	1	0	0	0	0
Awaiting <i>prima facie</i> decision	13	0	0	0	0	0	0	0
<i>Prima facie</i> cases found/yes	17	46	35	112	104	126	95	351
<i>Prima facie</i> cases rejected/no	18	50	44	42	37	53	43	197
<i>Prima facie</i> cases found/rejected	5	13	17	23	15	12	36	105
<i>Prima facie</i> decision adjourned	0	1	0	4	0	0	0	0
Struck out before <i>prima facie</i>	0	0	0	0	0	0	3	0
Adjourned before <i>prima facie</i>	0	0	0	0	0	0	0	3
<i>Prima facie</i> application withdrawn	1	3	2	5	8	12	10	21
<b>TOTAL</b>	<b>108</b>	<b>114</b>	<b>100</b>	<b>183</b>	<b>164</b>	<b>203</b>	<b>187</b>	<b>677</b>
Inquiry stage								
Cases scheduled for inquiry	14	6	1	2	0	0	0	0
Misconduct found	7	48	39	109	101	118	114	370
Misconduct not found	1	5	5	13	10	6	10	51
Part heard	0	0	0	0	1	7	0	3
Withdrawn after <i>prima facie</i>	0	0	7	11	7	7	8	32

## 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*).

### 2018 orders and referrals



- Referred to the High Court
- Advise and admonish
- Advise, admonish and costs
- Advise, admonish, fine and costs
- Censured and fine
- Censured, fine and costs



## 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 2018	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	21*
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	8^
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 by order of the High Court, and costs.	1	2
That the respondent be suspended from practice until such time as he is fully compliant with his obligations under the <i>Solicitors Accounts Regulations</i> ; that he pay a fine to the Compensation Fund, such sum to be reduced at the discretion of the President of the High Court should the respondent's outstanding accounts be filed prior to the matter coming before the High Court, and costs.	1	1
That the respondent be suspended from practice until such time as he is fully compliant with his obligations under the <i>Solicitors Accounts Regulations</i> ; that he pay a fine to the Compensation Fund 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; that he pay a fine to the Compensation Fund and costs.	2	3+
That the respondent not be permitted to practise as a sole practitioner or in a partnership; that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance of the Law Society, and costs.	2	7"
That the court note the further findings of misconduct, but that it does not impose any further sanction, and costs.	1	2

\* These include ten applications in respect of the same respondent, and one application in respect of two respondents.

^ These include six applications each in respect of the one respondent.

+ These include one application in respect of one respondent, already referred in the immediate row below.

" These include six applications in respect of the one respondent, also referred to the High Court with the recommendation that his name be struck off the Roll of Solicitors.

## 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 2018, following consideration of the recommendations made by the tribunal	Number of respondents	Number of applications
That the respondent is not a fit person to be a member of the solicitors' profession; that, in the event of an extant appeal being successful, with immediate effect the name of the respondent shall be struck off the Roll of Solicitors in lieu of the aforementioned declaration, and costs.	1	3
That the recommendation of the tribunal be set aside and, in lieu thereof, that the name of the respondent be 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; that the name of the respondent be struck off the Roll of Solicitors, and costs. It was also ordered that the applicant furnish the papers lodged with the court, to include the transcript of the hearing before the tribunal to the National Bureau of Fraud Investigations.	1	1*
That the respondent is not a fit person to be a member of the solicitors' profession.	1	5*
That the name of the respondent solicitor be struck off the Roll of Solicitors, costs, and other ancillary orders.	1	1^
That the respondent is not a fit person to be a member of the solicitors' profession, the respondent's name having already been struck off the Roll of Solicitors.	1	2^
That the name of the respondent be struck off the Roll of Solicitors, and costs.	1	1
That the respondent not be permitted to practise as a sole practitioner or in partnership, and 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; pay a fine to the Compensation Fund and costs.	1	2
That the application to strike the name of the respondent off the Roll of Solicitors do stand refused; that the recommendation of the tribunal be approved and varied so that the respondent be now not permitted to practise as a sole practitioner or in partnership, but only as an assistant solicitor in the employment and under the direct control and supervision of another solicitor, to be approved in advance by the Law Society, and costs.	1	7
That the respondent be censured, pay a fine to the Compensation Fund and costs.	1	1
That the respondent pay a fine to the Compensation Fund and costs.	2	2
That the respondent is suspended from practising as a solicitor until further order, or until such time as the respondent complies with the provisions of the <i>Solicitors Accounts Regulations 2014</i> by filing his accountant's report for the year end 31 January 2017 with the Law Society, and other ancillary orders and costs.	1	1

\* These cases relate to the one respondent.

^ These cases relate to the one respondent.

## **Solicitors Disciplinary Tribunal**

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