

**THE SCOTTISH SOLICITORS'
DISCIPLINE TRIBUNAL**
Constituted under the Solicitors (Scotland) Act 1980
as amended

ANNUAL REPORT 2008/2009
for the period 1 November 2008
to 31 October 2009

THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
Constituted under the Solicitors (Scotland) Act 1980 as amended
for the year to 31 October 2009

TRIBUNAL

Alistair M Cockburn Chairman

Solicitor Members

Colin Bell

Dorothy M Boyd

Dr David C Coull (Vice Chairman)

Gordon L Cunningham

Joseph Hughes

Kirsteen Keyden (Vice Chairman from June 2009)

Tom McCartney (Member until March 2009)

Alan McDonald

Douglas McKinnon

Graeme McKinstry

Malcolm McPherson (Vice Chairman)

Kenneth Paterson

Nicholas Whyte

Lay Members

John Anderson, MBE

Sophia B Ayre

Peter Burdon

Elizabeth Cameron

Professor Monojit Chatterji

Michael Hastie

Mark Irvine

Andrew Jones (Member from Nov 2008)

Irene Kitson (Member from Nov 2008)

Rosemarie McIlwhan (Member from Nov 2008)

Elaine Noad, OBE (Member from Nov 2008)

Catriona Whitfield (Member from Nov 2008)

CLERK

Judith V Lea

DEPUTE CLERK

Audrey Watson

ADDRESS

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CHAIRMAN'S INTRODUCTION

Details of the Tribunal's workload over the past 12 months are set out in this report. The Tribunal met on the same number of occasions as in the previous year, approximately three or four times per month. There was a decrease in the number of decisions issued by the Tribunal but the Tribunal spent a lot of time dealing with a long-running case which is yet to be concluded. The volume of business coming to the Tribunal decreased significantly in the latter part of the year. It is not known exactly why this is the case but it may be due to the fact that there is a delay in cases coming to the Tribunal as matters require to go first to the new Scottish Legal Complaints Commission, then the Law Society and then the Tribunal. The Tribunal has not yet received any cases governed by the Legal Profession and Legal Aid (Scotland) Act 2007 and accordingly has not had experience of dealing with any cases under its new 2008 Rules. The reason for this is that the new Rules only apply to conduct which occurred after 1 October 2008. It is understood that the Tribunal will shortly receive Complaints under the new Rules.

The Tribunal findings continue to be put on the website which is fully searchable and can be accessed at www.ssd.org.uk The Tribunal hearings are held in public and the forthcoming Tribunal hearings are detailed on the diary part of the website.

The Legal Services (Scotland) Bill was published on 30 September 2009. This includes an important section giving the Tribunal power to deal appropriately with solicitors who have administratively had their names removed from the Roll prior to coming before the Tribunal.

This report highlights some of the main points from the decisions during the previous year. It is hoped that solicitors will take the time to read this report and learn from the mistakes of others.

Tom McCartney, a legal member of the Tribunal, stepped down during the year due to other professional commitments. I would like to thank him for his input to the Tribunal during his term of office. Five new lay members, Elaine Noad, Andrew Jones, Catriona Whitfield, Rosemarie McIlwhan and Irene Kitson, were appointed during the year and have already shown themselves to be valuable members of the Tribunal. Kirsteen Keyden was appointed as an additional Vice Chairman in June 2009.

I would like to thank my Vice Chairmen, all the Tribunal members, the Tribunal Clerk, Depute Clerk and Tribunal secretaries for their help and support during the year.

Alistair M Cockburn
Chairman

CONSTITUTION

The Scottish Solicitors' Discipline Tribunal is an independent Tribunal constituted under the provisions of sections 50–54 of and Schedule 4 to the Solicitors (Scotland) Act 1980 (the 1980 Act) as amended in particular by the Legal Profession and Legal Aid (Scotland) Act 2007 (the 2007 Act). The Tribunal sits with two solicitor members and two lay members. The Tribunal is independent of the Law Society of Scotland with none of the solicitor members being on the Council of the Law Society. The lay members are drawn from a wide variety of backgrounds. All Tribunal members are appointed by the Lord President. The Tribunal presently has 13 solicitor members and 12 lay members. The Tribunal operates under the Scottish Solicitors' Discipline Tribunal Procedure Rules 2005 and the Scottish Solicitors' Discipline Tribunal Procedure Rules 2008.

GENERAL

Tribunal hearings continue to be held in public either at George House, 126 George Street, Edinburgh or the Scotsman Hotel in Edinburgh. The diary part of the Tribunal website details the business scheduled to be heard. In certain cases, business is not put into the diary if there is a motion for the hearing to be held in private. Procedural hearings are not included in the diary.

The Tribunal website at www.ssdt.org.uk includes details of all Tribunal members, Tribunal Rules, Tribunal Annual Reports, general information on the workings of the Tribunal and all the Tribunal findings issued since 1995 where publicity has been given. Findings subject to deferred publicity or which are under appeal to the Court of Session are not put on the website until any criminal proceedings are concluded or until the appeal has been concluded. Tribunal findings usually go on the website approximately three months after the date of the Tribunal hearing.

The 2007 Act came into force on 1 October 2008. It however only applies to business instructed or conduct which occurred after 1 October 2008 with a few exceptions. The Tribunal has still not dealt with any cases under the provisions of the new Act. The Tribunal however understands that a number of cases have been sent by the Commission to the Law Society under the 2007 Act and it is expected that the Tribunal will see some of these cases in the very near future.

The Legal Services (Scotland) Bill, published in September 2009, will give the Tribunal the power that it requested to be able to deal appropriately with solicitors whose names have been removed from the Roll administratively, an event which considerably restricted the Tribunal's powers and precluded striking off. The Bill also allows for alternative business structures which may have future implications for the Tribunal. The Tribunal was a consultee in the review into Solicitor Advocates currently being undertaken by Ben Thomson.

TRIBUNAL BUSINESS

The volume of Tribunal business remained high during the first part of the year but then decreased significantly in the second part of the year. The Tribunal met on the same number of occasions as in the previous year.

The Tribunal deals with the following types of business:

1. Complaints with regard to professional misconduct.
2. Complaints that a solicitor/firm of solicitors has provided an inadequate professional service.
3. Appeals by a solicitor/firm of solicitors against a finding by the Law Society of an inadequate professional service (section 42A Appeals).
4. Applications for restoration to the Roll of Solicitors.
5. Applications for enforcement of inadequate professional service Orders made by the Council of the Law Society.

Business under 2, 3 or 5 will no longer be dealt with by the Tribunal under the 2007 Act but it will take some time for the historical cases to be dealt with. The Tribunal is still dealing with a lot of Appeals under section 42A of the 1980 Act. These should reduce however as time passes. Once the Tribunal starts to see cases come through under the provisions of the 2007 Act, the Tribunal will have new jurisdiction to deal with Appeals by solicitors and lay complainers against the new power of the Law Society to make findings of unsatisfactory professional conduct. The Tribunal will also have the power to award compensation to lay complainers where a finding of professional misconduct is made against a solicitor. The Tribunal has been considering how the power to award compensation will work in practice and has had useful discussions with the Scottish Legal Complaints Commission who may have already awarded compensation in respect of a matter which then comes to the Tribunal.

PROCEDURAL

There were again a lot of cases where Respondents entered into joint minutes admitting the facts and averments in the Complaints. This saves time and money, avoids the need for complainers to give evidence and is taken into account by the Tribunal when considering penalty. The power to award compensation under the 2007 Act may reduce the number of joint minutes but it remains to be seen how this will work in practice. There was one case where the Respondent brought an action of reduction against a Tribunal finding which was successful. In this case the Respondent's secretary had kept all his mail from him and he had accordingly been unaware of the Tribunal proceedings and had not had an opportunity to defend the case against him. In this case the Respondent had been found guilty of failing to respond to the Law Society but his position was that his secretary had kept the mail and he had been unaware of the correspondence. Another Respondent was allowed to lodge an appeal late against Tribunal findings which had already been issued. This case is presently still under consideration at the Court of Session. Two Respondents lodged an appeal against a Tribunal decision and made challenges to matters which were accepted by them in a joint minute before the Tribunal. The Respondents argued that they had not made the admissions as contained in the joint minute but this argument was abandoned. This appeal has recently been abandoned by the Respondents. The Tribunal also dealt with a complicated legal debate connected with a number of pleas-in-law made by a Respondent. The Tribunal repelled the Respondent's submissions in relation to competency and relevancy but upheld the Respondent's submissions in relation to specification and deleted the majority of the averments in the Complaint. The Tribunal did not feel constrained to interpret the

phrase “professional misconduct” relative to the period of time in the profession, it preferred the interpretation that it is merely descriptive of the conduct that will result in the powers contained in section 53(2) of the 1980 Act being exercised. The Tribunal however found that some of the averments in the Complaint gave no indication of the inferences which the Law Society intended to draw from them and considered that these averments were irrelevant and that what was left in the Complaint even if proved could not result in a finding of professional misconduct beyond reasonable doubt. The Law Society decided not to proceed with the remainder of the Complaint. The Complaint was accordingly dismissed.

COMPLAINTS UNDER SECTION 53C OF THE SOLICITORS (SCOTLAND) ACT 1980

The Tribunal dealt with nine Complaints under section 53C where the Law Society determined that an inadequate professional service had been provided by the solicitor concerned and had directed awards of compensation or refund of fees. These solicitors then failed to comply with the determinations and directions made by the Law Society and did not lodge an appeal against them. The Tribunal was accordingly required to issue Orders under section 53C(2) of the 1980 Act, resulting in the determinations and directions being enforceable in like manner as a warrant from any Sheriffdom in Scotland. In three of these cases the section 53C Complaint was put forward to the Tribunal along with a Complaint of professional misconduct against the same Respondent.

APPEALS UNDER SECTION 42A OF THE SOLICITORS (SCOTLAND) ACT 1980

The Tribunal dealt with four Appeals which were argued before it during the year. In one Appeal the Appellants had appealed a number of findings of inadequate professional service made by the Council of the Law Society of Scotland and a direction that the Appellants pay the sum of £1,300 compensation to the lay complainer. The Tribunal found that the service provided to the lay complainer by the Appellants was inadequate but varied the determination and direction in respect of two of the issues in respect of which the findings of inadequate professional service had been made. The Tribunal did not amend the compensation awarded. In another Appeal the Appellant appealed a determination and direction of the Law Society that the Appellant should pay £1,500 compensation to the lay complainer and abate his fees by 35%. The Tribunal found that the service provided to the lay complainer in respect of one of the heads of Complaint did not amount to inadequate professional service and quashed this finding of inadequate professional service. The Tribunal varied the determination so that the Appellant should pay compensation of £1,300 and had his fees abated by 30%. In another Appeal the Appellant had appealed a finding of inadequate professional service and a direction that the fees and VAT charged by the Appellant be abated by 20% and that the Appellants pay £750 by way of compensation to the lay complainer. The Tribunal found that the decision of the Law Society had been wholly supplanted by a second decision made by the Law Society in respect of the same matter following the reconsideration which was directed by the Ombudsman following the lay complainer’s complaint to the Ombudsman. The Tribunal further found that all rights flowing from the first decision fell and there was no longer any valid Appeal before the Tribunal and accordingly nothing for the

Tribunal to rule on. The other Appeal was refused and the determination and direction of the Law Society confirmed. The Appellant had challenged the competency of the Law Society's decision on a number of grounds. The Tribunal did not accept that the Appellant had been deprived of an opportunity to comment on a matter of materiality and found no breach of Article 6. The Tribunal also found that the Law Society decision was not lacking in specification and contained adequate reasoning. This decision has been appealed to the Court of Session by the Appellant. In three cases, on joint motion of the Law Society and the Appellants, the Appeal was allowed and the determination and direction of the Law Society quashed. In another Appeal the Appellants were given leave to withdraw their Appeal.

WITHDRAWAL OF COMPLAINTS

There were ten cases where Complaints which had been lodged with the Tribunal were withdrawn or dismissed. In three cases the Complaints against two Respondents were deserted pro loco et tempore due to the ill health of one of the Respondents. In another case the Law Society did not proceed with the Complaint after the majority of the Complaint was found to be lacking in specification as commented on previously. In five cases, the Complaints were dismissed or withdrawn on joint motion of the Law Society and the Respondent. In one case the Tribunal made no finding of professional misconduct because the Tribunal did not find it proved beyond reasonable doubt that the Respondent's actions in obtaining confirmation in the name of a solicitor who did not wish to act as an executor were deliberate rather than being as a result of an oversight.

COMPLAINT UNDER SECTION 53(1)(b) OF THE SOLICITORS (SCOTLAND) ACT 1980

The Tribunal dealt with a case where a Respondent was found to have been convicted of an offence involving dishonesty and sentenced to a period of imprisonment of two years eight months and accordingly section 53(1)(b) of the 1980 Act applied to the circumstances of the case. The Tribunal also found the Respondent guilty of professional misconduct in respect of his failure to respond to the reasonable enquiries of the Law Society. The Respondent's name was no longer on the Roll of Solicitors. The Tribunal accordingly Censured the Respondent and fined him £1,000.

CONDUCT UNBECOMING A SOLICITOR

The Tribunal dealt with one case where a Respondent was found guilty of professional misconduct in respect of his conviction for a breach of the peace with a considerable sexual background which involved behaviour which fell short of the standards of honesty, truthfulness and integrity expected from members of the solicitors' profession and which was a breach of Article 7 of the Code of Conduct for Scottish Solicitors 2002. The Tribunal noted that this was an isolated incident which did not directly pertain to his work as a solicitor but considered that the public is entitled to expect a solicitor to be a person of integrity. The Tribunal considered that the Respondent's conduct was unfortunately disgraceful and dishonourable and Suspended the Respondent from practice for five years.

DISHONESTY/ATTEMPTED MISAPPROPRIATION

There were two cases during the year involving elements of dishonesty. In one case the Respondent was found guilty of professional misconduct in respect of his acting on behalf of a client in a situation where there was a conflict of interest between his own interests and that of his client, his failure to advise the client to seek independent legal advice, his breach of Article 7 of the Code of Conduct for Scottish Solicitors 2002 by acting in a dishonest fashion, his breach of section 23 of the 1980 Act by practising as a solicitor or holding himself out as entitled by law to practice as a solicitor without having a current practising certificate, his breach of section 32 of the 1980 Act by preparing an application for a grant of confirmation in favour of executors when he was unqualified to do so by virtue of not having a practising certificate, his acting in a situation in which he had neither a practising certificate nor professional indemnity insurance, his failure to respond to correspondence from the Law Society, his attempt to mislead the Law Society in relation to his client's attitude to the complaint and his failure to obtemper statutory notices. In this case a member of the public with no previous connection with the Respondent was specifically targeted and the Respondent used his position as a solicitor to gain his client's trust and defraud him. There was no explanation for the Respondent's actions and the Tribunal concluded that he was not a fit and proper person to remain as a solicitor and struck the Respondent's name from the Roll. In the other case, the Tribunal found the Respondent guilty of professional misconduct in respect of his between 27 February and 13 April 2007 instructing the Britannia Building Society to have funds which he held with them in trust for third parties or as a signatory on the account of a third party, transferred to him for his own use as an individual and his attempt to misappropriate the sum of £3,104.24. The Tribunal considered that for someone in the Respondent's position to attempt to misappropriate money is regrettably disgraceful and dishonourable and very damaging to the reputation of the legal profession. The Tribunal however noted that there was no actual gain to the Respondent or any actual loss to anyone. The Tribunal noted that the Respondent had been fined £5,000 in respect of previous findings against him and considered that Censure plus a Fine of £7,500 and a Restriction on his practising certificate for five years was appropriate.

FAILURE TO COMPLY WITH THE ACCOUNTS RULES/CONVEYANCING

There were three cases involving both breach of the Accounts Rules and failures with conveyancing. In one case, two Respondents were found guilty of professional misconduct in respect of their breach of rules 4, 6, 8, 11, 14 and 24 of the Solicitors (Scotland) Accounts etc Rules 2001, their failure to timeously stamp and record deeds, their failure to issue conflict of interest letters in the correct form and their persistent failure to respond to correspondence from the Law Society. The Tribunal was not provided with any evidence to show that all the matters had been sorted out to the Law Society's satisfaction but noted that the Respondents had employed a new financial manager and had a new software system in place. The Tribunal Censured and Fined each Respondent £10,000. In another case the Respondent was found guilty of professional misconduct in respect of his failure to reply to correspondence from the Law Society, his failure to obtemper statutory notices, his failure to keep the books and records of his practice written up as required by the Solicitors (Scotland) Accounts etc Rules 2001, his allowing his client account to operate in deficit, his failure to invest clients' funds as required by rule 11, his failure to lodge an accounts

certificate timeously in accordance with rule 14, his failure to comply with the Money Laundering Regulations in terms of rule 24, his failure to designate clients' cheques with the client name on the payee line in terms of rule 6, his failure to record deeds timeously and his failure to obtain written authority for inter client transfers in terms of rule 6. In view of the Respondent's numerous and repeated failures to comply with the Accounts Rules and the risks to clients through the delay in recording deeds, the Tribunal imposed a Censure plus a Fine of £5,000 and a Restriction on the Respondent's practising certificate to ensure that the progress which had been made recently in keeping the practice books up to date was sustained. The Tribunal Ordered that the firm's books be inspected on six occasions at six-monthly intervals commencing in December 2009 at the Respondent's expense. In the third case two Respondents were found guilty of professional misconduct in respect of their repeated and numerous breaches of the Solicitors (Scotland) Accounts etc Rules 2001 and the Solicitors (Scotland) Practice Rules 1986, their failure to protect the interests of lending institutions to their clients and the interests of their clients by delaying unreasonably to present for registration conveyancing deeds in relation to transactions and their failure to protect the interests of the lending institutions on whose behalf they were acting by drawing their attention to the unusual occurrences in the conveyancing transactions in which they were instructed. There was no information provided to the Tribunal which gave the Tribunal confidence that the Respondents had put in place sufficient mechanisms to ensure that if they were to allowed to continue in practice their firm would be adequately managed. The Tribunal accordingly imposed a Censure, a Fine of £5,000 and a Restriction on each Respondent's practising certificate for an aggregate period of at least five years. This case was appealed to the Court of Session. The appeal has since been abandoned.

CONFLICT OF INTEREST/FAILURE TO COMPLY WITH THE MONEY LAUNDERING REGULATIONS

There have been a number of cases this year involving conflict of interest. Apart from the cases already mentioned, one Respondent was found guilty of professional misconduct in respect of his failure to advise his client about a conflict of interest, his acting for his client where there was a conflict of interest between him and his client in two respects, namely a potential claim for damages for professional negligence and in relation to his personal interest in the purchase by him from his client and his failure to issue a terms of business letter as required by rule 12 of the Independent Qualified Conveyancers (Scotland) Regulations 1997. This case concerned an independent qualified conveyancing and executry practitioner. The Tribunal accepted that the Respondent was trying to keep his client happy and had had the right motive. The Tribunal Censured the Respondent and Fined him in the sum of £1,500. In another case the Respondent was found guilty of professional misconduct in respect of his failure to advise the Money Laundering Reporting Officer in his firm of a set of circumstances when he was under a duty to do so, his continuing to act for his client in the knowledge of his client's fraud and his preparation of a discharge of the standard security in circumstances where there existed an obvious risk of further fraud in relation to the execution of the discharge and his forwarding the deed for execution other than via the solicitors whom he knew to be acting and his failure in terms of the Solicitors (Scotland) Practice Rules 1986 to give advice in writing about the possible legal consequences of signing the deed and about the entitlement to legal advice. The Tribunal considered that the Respondent had acted in a very foolish manner and that

this case highlighted the importance of complying with the money laundering provisions. The Respondent was Censured and Fined £10,000. This matter is subject to deferred publicity. In another case a Respondent was found guilty of professional misconduct in respect of her failure to disclose to her client the extent of her knowledge of her husband's actings, her failure to timeously advise her client to seek separate independent advice and her failure to withdraw from acting for her client, all in breach of the Code of Conduct for Scottish Solicitors 2002. The Tribunal considered that there was not only a conflict of interest in this situation but also an absolute duty on the Respondent to advise her client to seek separate independent legal advice. The Tribunal considered that a Restriction on the Respondent's practising certificate was required in order to ensure protection of the public and Ordered a Restriction for three years and also imposed a Censure and Fine of £2,500.

CONVEYANCING/EXECUTRIES

There was one case involving an executry during the year. This solicitor was found guilty of professional misconduct in respect of his unconscionable delay and failure to complete the administration of an estate between January 2004 and August 2006, having previously delayed unreasonably in the administration of the said estate between 1993 and 2003. The Tribunal noted that it was not in the Respondent's power to sort out certain matters which had contributed significantly to the delay in finalising the executry. However, the delays taken together with the Respondent's failure to respond to letters and phone calls from fellow agents, resulted in a finding of misconduct. The Respondent was Censured. In addition to the cases already mentioned, there were another two cases concerning conveyancing. One Respondent was found guilty of professional misconduct in respect of his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society, his failure to respond to statutory notices, his failure and unreasonable delay in recording or registering title deeds, his breach of Article 9 of the Code of Conduct for Scottish Solicitors 2002 by failing to deliver conveyancing deeds in terms of a formal undertaking issued by him despite receiving repeated requests for him to implement his undertaking and his breach of rule 5 of the Solicitors (Scotland) Practice Rules 1986 in relation to acting for both parties in a sale and purchase of a heritable property in that he did not write to the parties explaining the position as quickly as he ought. The Respondent did not lodge answers or attend the Tribunal hearing. The Tribunal noted that in relation to the failure to register deeds and implement a letter of obligation, the Respondent had been given numerous opportunities to rectify matters but continued to ignore all reminders and enquiries from fellow solicitors and from the Law Society and also ignored correspondence from the Tribunal. The Tribunal struck the Respondent's name from the Roll. In another case the Tribunal found the Respondent guilty of professional misconduct in respect of his failure to have a disposition in favour of his clients timeously stamped and recorded and his persistent failure to answer correspondence from other solicitors. The Tribunal Censured the Respondent and Fined him £2,000.

FAILURE TO COMPLY WITH PROFESSIONAL OBLIGATIONS/ MISLEADING THE LAW SOCIETY AND OTHERS / MANDATES

In an unusual case two Respondents were found guilty of professional misconduct in respect of their breach and/or failure to follow the Code of Conduct for Scottish

Solicitors 2002, rules 2, 7 and 9, their breach of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 2006, rule 4, their failure to follow the Law Society of Scotland's guidance on mandates and in relation to their actings at the time of the dissolution of the partnership in that they redirected firm mail without the knowledge and consent of their partner and they misrepresented the position regarding their partner's practice to a number of organisations. In this case the Tribunal had grave concerns with regard to the apparently inaccurate advice that the Respondents received from an experienced solicitor. The Tribunal however considered it important that the Respondents follow the rules of their professional body in order for the integrity of the legal profession to be maintained. The Tribunal Censured and Fined each Respondent £5,000. In another case the Respondent was found guilty of professional misconduct in respect of his failure to comply with undertakings given to an individual and that individual's solicitor, his unreasonable delay in having a lease completed and registered and his misleading the individual and the individual's solicitor in that regard and his failure to advise the individual and the individual's solicitor of the true position, his failure to comply with the guidelines on mandates 1998, his misleading the Law Society and his unreasonable delay on a number of occasions in responding to the reasonable enquiries of the Law Society. The Tribunal Censured the Respondent and Ordered a Restriction on his practising certificate for a period of five years. In another case the Respondent was found guilty of professional misconduct in respect of his failure repeatedly to answer professional correspondence from the Law Society, his failure to obtemper statutory notices, his failure to account for funds received by him from a client, his failure repeatedly to answer correspondence from Balfour & Manson, his failure to secure settlement of agency fees and outlays, his failure to provide an accounting in relation to the funds paid to him by two clients, his between 2 May 2008 and 8 October 2008, in the knowledge that his practising certificate had been withdrawn and that he was suspended from practice, continuing to practise as a solicitor and hold himself out to various persons as being entitled to practise as a solicitor and his submitting claims to the Armed Forces Criminal Legal Aid Authority for payment of fees under the legal aid scheme and his receiving payment of fees for legal aid services provided during that period notwithstanding the suspension, his taking fees from a client's executry without the consent of the executor and his taking fees from the said executry on two occasions without a fee note being rendered to the executor. The Tribunal was particularly concerned that there was a wilful disregard of the terms of section 23 of the 1980 Act and that the Respondent continued working when he knew it was a requirement that such work be undertaken by a solicitor. The Tribunal stopped short of striking the Respondent's name from the Roll as it was noted that he had cooperated fully with the Law Society and entered into pleas in respect of all the Complaints. The Tribunal Suspended the Respondent from practice for a period of ten years. Another Respondent was found guilty of professional misconduct in respect of a failure between 1 November 2005 and 31 October 2006 and between 1 November 2006 and 31 October 2007 to keep a record of his compliance in undertaking the required hours of continuing professional development and his failure to produce a record of compliance on demand. The Tribunal Censured the Respondent and Fined him £2,000. In another case a Respondent was found guilty of professional misconduct in respect of his fabrication of three letters which he addressed to the Scottish Health Services Central Legal Office and his placing them within two files in the offices of Kerr Stirling LLP and by doing so implying they were genuine and that the principals had been transmitted to the addressee, which was untrue. The Tribunal took account

of the fact that the Respondent had cooperated and had the courage to attend and address the Tribunal and was clearly remorseful about what had happened. The Tribunal Censured the Respondent and Ordered a Restriction on his practising certificate for an aggregate period of at least three years.

There was a reduction in the number of cases involving failure to reply to the Law Society compared to previous years. It is not known whether this is as a result of better compliance or because the Law Society is dealing with these matters without involving the Tribunal.

PUBLICITY

In terms of paragraph 14 of and Schedule 4 to the 1980 Act as amended, every decision of the Tribunal is published in full, subject to the terms of paragraph 14A. Once the written Tribunal findings are intimated to parties, three weeks are allowed for an appeal and at the end of this three-week period, if there is no appeal, publicity is given to the decision. Occasionally publicity is deferred, for example if a criminal prosecution is pending.

EXPENSES

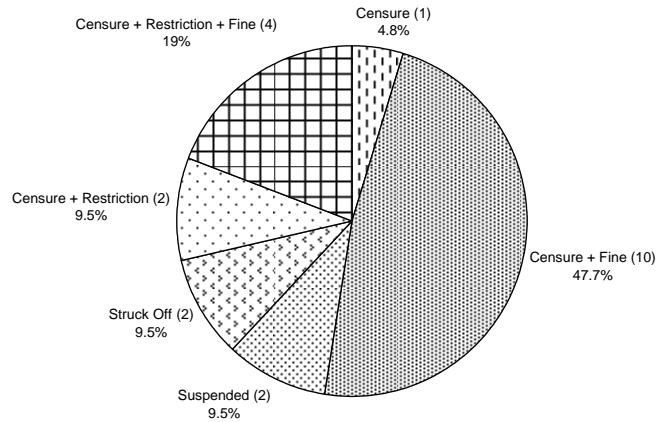
The Tribunal has the power to award expenses in terms of Schedule 4 to the 1980 Act. Expenses are usually awarded to the successful party and include the expenses of the Tribunal. Last-minute adjournments can result in an unnecessary increase in expense.

APPENDIX

STATISTICS FOR THE YEAR TO 31 OCTOBER 2009

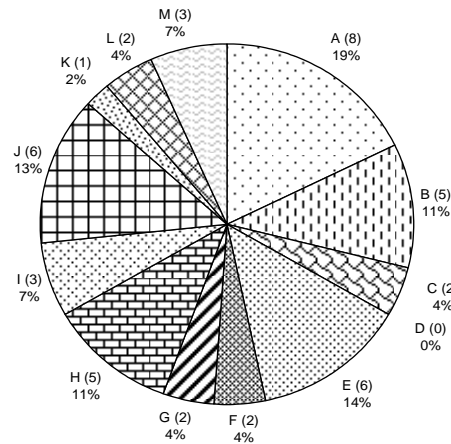
	Year to 31/10/09	(Year to 31/10/08)
Number of days on which the Tribunal met to hear Complaints	41	(41)
Number of Complaints received	36	(59)
Complaints containing a report under section 53(1)(b) of the Solicitors (Scotland) Act 1980	1	(0)
Business outstanding or partly heard at end of year	25	(31)
Appeals to Court of Session	2	(1)
Application for reduction	1	(0)
Complaints received direct from members of public	0	(0)
Miscellaneous applications	1	(0)
Appeals under section 42A of the Solicitors (Scotland) Act 1980	9	(18)
Appeals to Court of Session concluded during the Year		
Appeals remitted	0	(1)
Appeals abandoned	0	(0)
Appeals heard	0	(2)
Successful appeals	0	(0)
Successful Application for reduction	1	(0)
Number of Cases heard and Decisions issued		
	50	(69)
Findings of professional misconduct – 20		
Findings under section 53(1)(b) – 1		
Section 42A appeal decisions – 4		
Section 53C findings made – 9		
Complaints withdrawn, dismissed or no finding made – 10		
Section 42A Appeals withdrawn or dismissed – 1		
Section 42A Appeals allowed of consent – 3		
Procedural decisions – 1		
Decisions on application for restoration to the Roll or re restriction on practising certificate – 1		

Sentences Imposed in Respect of Findings of Professional Misconduct and section 53(1)(b)



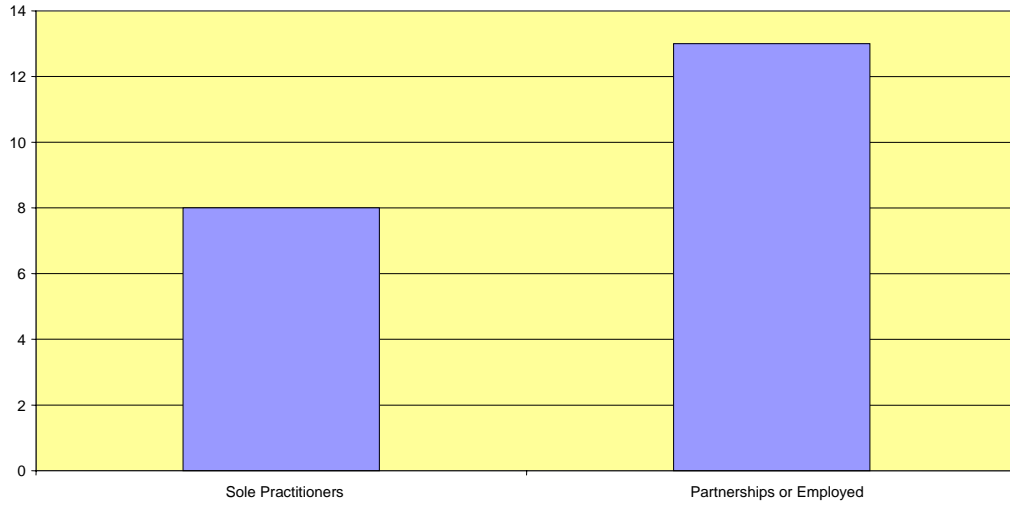
Principal Grounds on which Misconduct Established

Note: Some cases had misconduct established on more than one ground

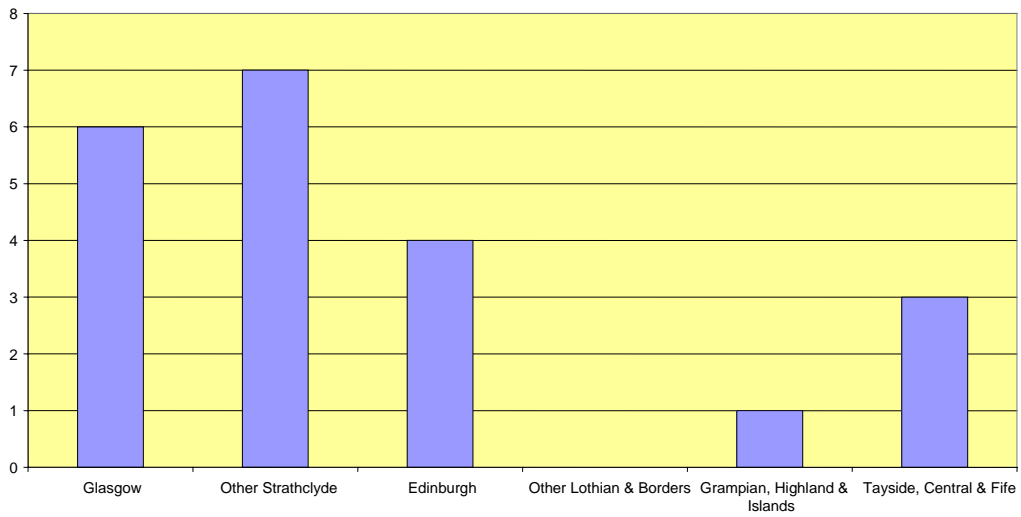


- A. Failure to reply to Law Society and/or clients.
- B. Conflict of interest.
- C. Failure to deal with trust/executory in a proper manner.
- D. Failure to deal with court proceedings and prosecuting claims in a proper manner.
- E. Failure to complete conveyancing procedures in a proper manner.
- F. Excessive delay.
- G. Failure to implement mandates.
- H. Misleading the Law Society and/or other parties.
- I. Failure to comply with the Accounts Rules.
- J. Failure to comply with other professional obligations.
- K. Other conduct unbecoming a solicitor.
- L. Dishonesty.
- M. Money laundering.

Distribution of Solicitors Convicted or Found Guilty of Professional Misconduct and section 53(1)(b)



Location of Solicitors Convicted or Found Guilty of Professional Misconduct and section 53(1)(b)



BIOGRAPHICAL DETAILS

Solicitor Members

Alistair M Cockburn (*Chairman*)

Member of the Tribunal since 1998. Vice Chairman 2003–2005. Chairman from June 2005. Admitted in 1972. Partner in an eight-partner firm with offices in Glasgow and Edinburgh since 1974. His professional background is as a litigation solicitor; past convener of the Sheriff Court House Committee of the Royal Faculty of Procurators in Glasgow; accredited by the Law Society of Scotland as a specialist in employment law since 1993; past member of the Glasgow and North Argyll Legal Aid Committee. Acts as Clerk in various arbitration procedures.

Malcolm McPherson (*Vice Chairman*)

Member of the Tribunal since 2001. Vice Chairman since June 2005. Admitted in 1977. Senior partner of a 103-partner firm specialising in company and commercial law. Holder of a number of non-executive directorships.

Dr David C Coull (*Vice Chairman*)

Member of the Tribunal since October 2004 and Vice Chairman since June 2008. Admitted in 1973. Formerly a sole practitioner practising principally in the fields of residential property, wills and executries. Former Law Society Complaints Reporter and former member of a Law Society Client Relations Committee.

Kirsteen Keyden (*Vice Chairman from June 2009*)

Member of the Tribunal since October 2004. Admitted 1979. Tribunal Judge (Criminal Injuries Compensation). Specialises in civil litigation, in particular defender-based reparation and insurance law. Accredited as a specialist in Personal Injury Law in 2003. A Writer to the Signet and lectures and tutors in Civil Litigation and Time Management for the WS Society in the Law Society's Professional Competency Course. Awarded a Certificate in Forensic Medicine and Science from the University of Edinburgh in 2004.

Colin Bell

Member of the Tribunal since 2006. Admitted 1994. Sole practitioner principally in the fields of property law, wills, trusts, executries and tax law. Member of the Institute of Chartered Accountants of Scotland. Treasurer of the Faculty of Procurators of Dumfriesshire.

Dorothy M Boyd

Member of the Tribunal since 1993. Partner in Shepherd & Wedderburn specialising in commercial property. Member of the Society of Writers to the Signet.

Gordon L Cunningham

Member of the Tribunal since 2000. Admitted in 1981. Partner in a three-partner firm with offices in Paisley and Glasgow for 23 years. Moved to HBJ Gateley Wareing in April 2008 to concentrate on tax, trust and succession planning matters.

Tom McCartney (*Member until March 2009*)

Member of the Tribunal since October 2004. Admitted in 1981. Sole practitioner, principally in the field of family law and civil litigation. Accredited family law specialist. Accredited family law mediator. Extended rights of audience in civil cases. Part-time judicial appointment in the Appeals Service. Part-time Sheriff since July 2005.

Alan McDonald

Member of the Tribunal since October 2004. Partner in South Forrest, Solicitors, Inverness, specialising in company and commercial law.

Douglas McKinnon

Member of the Tribunal since October 2004. Consultant in Ayrshire firm specialising in court-related matters, primarily criminal. Former member of the Council of the Law Society of Scotland and former Convener of the Client Relations Committee. Past Dean of the Faculty of Solicitors of Kilmarnock.

Kenneth Paterson

Member of the Tribunal since 2006. Admitted as a solicitor in 1973. Previously a Reporter to the Client Relations Committee of the Law Society for three years. Has been with Rankin & Aitken since 1977, being appointed a partner in 1979. Currently the senior partner of the firm dealing largely with private client work. Honorary Sheriff at Stranraer since 1998. Past Dean of Wigtown District Faculty of Solicitors.

Nicholas Whyte

Member of the Tribunal since September 2006. Partner in MacHardy Alexander & Whyte, Forfar, mainly dealing with conveyancing and executry work. Previously held a part-time appointment in the Appeals Service.

Graeme McKinstry

Member of the Tribunal since September 2008. Senior and Managing Partner of The McKinstry Company Solicitors in Ayr. Graduated Bachelor of Laws from Dundee University in 1975 and MBA in Legal Practice from Nottingham Trent University in 2000. His main areas of work are now in the fields of commercial business, property, licensing and all private client-related work. He acts for small businesses in acquisitions, disposals, mergers and general business law. He is a former member of the Local Health Trust in Ayrshire and the Scottish Legal Aid Board and has served on Law Society Committees.

Joseph Hughes

Member of the Tribunal since September 2008. Admitted in 1984. Set up own practice in 1986 and now Managing Partner in J C Hughes, Glasgow. Previous Reporter to the Law Society. Extended Rights of Audience (Criminal). Obtained MSc (Criminal Justice) in 2006. Legal member of the Mental Health Tribunal, the Additional Support Needs Tribunals, the Scottish Charity Appeals Panel, the Doctors and Dentists Disciplinary Appeals Panel, the Pensions Appeal Tribunals and the Scottish Legal Aid Board. Vice Chair of NCH Scotland, the Children's Charity.

Lay Members

John Anderson, MBE

Member of the Tribunal since January 2002. Head of Professional Practice at the General Teaching Council for Scotland, former teacher and trade union official, graduated in law from Edinburgh University in 1991, Children's Panel member (1992–2006, Chairman 2000–2006), and also an Independent Assessor to the Office of the Commissioner for Public Appointments in Scotland (2002–2008), Member of the Education Honours Committee and member of the Faculty of Advocates Complaints Committee and Disciplinary Tribunal.

Sophia B Ayre

Member of the Tribunal since January 2004. Sophia Ayre is a lay member of the Employment Appeal Tribunal and a Consultant in Human Resources and was previously Human Resources Specialist with the Bank of Scotland and Polaroid UK Ltd.

Peter Burdon

Member of the Tribunal since 2000. Retired actuary. Currently a lay member of the Financial Services and Markets Tribunal, Pensions Regulator Tribunal, the Claims Management Services Tribunal and an Independent Public Appointments Assessor for DCSF and DIUS.

Elizabeth Cameron

Member of the Tribunal since 2001. Membership of the Council on Tribunals from 2002 to October 2007. Membership of the Administrative Justice and Tribunals Council from November 2007.

Professor Monojit Chatterji

Member of the Tribunal since January 2002. BA (Bombay), MA, PhD (Cambridge). Bonar Professor of Applied Economics at the University of Dundee. Visiting Professor in USA, Australia, Mexico, India. Member of Advisory Board of BBC

World Service (1997–2006). Vice Chairman of National Appeals Panel of Scotland (1996–1999). Member of School Teachers Review Body (England and Wales) since January 2004. Chair, National Joint Council of UK Fire and Emergency Services since October 2007.

Michael Hastie

Member of the Tribunal since January 2002. Chartered quantity surveyor in own private practice. Served as JP in Aberdeen since 1976 and graduated to the Bench of the District Court in 1984. Former Governor of Robert Gordon University (1986–1998). Member of Aberdeen City Council (1973–1999). Depute Lord Lieutenant of the City of Aberdeen. Various directorships in property companies.

Mark Irvine

Member of the Tribunal since January 2004. Mark Irvine is an independent consultant and works with a wide range of clients in the public, private and “not for profit” sectors – both in the UK and in Europe. Mark was previously a senior official with the public services union, UNISON (formerly NUPE), acting as its chief negotiator and Head of Local Government in Scotland during the 1990s. Mark is also a member of the Scottish Local Authorities Remuneration Committee (SLARC) – a body established by Scottish Ministers to review remuneration and pay arrangements for elected local councilors.

Andrew Jones

Member of the Tribunal since November 2008. Andrew Jones is a member of the Parole Board, a Chair of Children’s Hearings, a member of the Ofcom Advisory Committee and has been a member of the Dunbartonshire Economic Forum. He undertakes media consultancy and business mentoring through the LINC network.

Irene Kitson

Member of the Tribunal since November 2008. Fellow of the Chartered Institute of Personnel and Development. Previously lectured in Management and Labour Studies, became full-time Official for Teachers Union, EIS and Councillor in City of Edinburgh. Currently JP, served as Chair of Justice of Peace Committee in Edinburgh and is now a member of Executive Scottish Justices Association. Currently a consultant in Employment and Human Resource Management, Member of the Employment Tribunal, Member of the Parole Board Scotland and Non-Executive Director of Lothian Buses.

Rosemarie McIlwhan

Member of the Tribunal since November 2008. Rosemarie McIlwhan is a human rights and equality consultant. She works with a wide range of clients including public bodies such as the Scottish, Welsh and UK Governments, the Equality Commission for Northern Ireland and the GB Equality and Human Rights Commission, as well as voluntary organisations such as Citizens Advice Scotland and SCVO. Rosemarie is also an associate lecturer in law with the Open University and an Associate with

Edinburgh University Centre for Education for Racial Equality in Scotland. Rosemarie is the discrimination law editor of the Scottish Human Rights Law Group and has written and lectured on a range of human rights subjects including the interplay between equality and human rights, asylum, children's rights and mental health. Rosemarie was previously the Programme Director for the Commission for Equality and Human Rights and prior to that was the Director of the Scottish Human Rights Centre.

Elaine Noad, OBE

Member of the Tribunal since November 2008. Elaine Noad has spent most of her career in senior positions in local government most recently as the Director of Social Work, Housing and Health with South Ayrshire Council. Between 2004 and 2006 she was on secondment to the Scottish Executive. She is a member of the Parole Board for Scotland, the Chair of the Disability Employment advisory committee with the Department of Work and Pensions and is an independent assessor with the Commissioner of Public Appointments for Scotland.

Catriona Whitfield

Member of the Tribunal since November 2008. Catriona Whitfield has a degree in law and qualified as a chartered accountant in 1991. She has a professional background in audit, investigations, dispute resolution and commercial litigation. She is currently a member of the board of management of North Highland College, and a director of a charity in the heritage and arts sector. Catriona is also a member of the Scottish Charity Appeal Panel.