

Annual Report

Of the

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Scottish
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Solicitors'
D
Discipline
T
Tribunal

for the year to
31st October

2002

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
Constituted under the Solicitors (Scotland) Act 1980
for the year to 31st October 2002

TRIBUNAL

G.F. Ritchie (Chairman)

Solicitor Members

Mrs D.M. Boyd
Miss M.E. Brown
A.M. Cockburn
G.L. Cunningham
M. McPherson
I.D. Morrison
G.H. Pagan
K.R. Robb
P.W. Rockwell (Vice Chairman)

Lay Members

John Anderson
Peter Burdon
Mrs Elizabeth Cameron
Professor Monojit Chatterji
Dr Bronwen Cohen
Michael Hastie
Mrs Gillian Pearey
Professor Pauline Weetman CA

CLERK

J.M. Barton
(retired 31st December 2001)

CLERK

J.V. Lea
(from 1st January 2002)

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CHAIRMAN'S INTRODUCTION

Details of the Tribunal's workload over the past twelve months are set out in this report. It has been a busy year and there has been an increase in the number of cases coming to the Tribunal. There were a number of cases where sole practitioners found themselves in difficulties.

The Tribunal was concerned by the number of cases involving a failure to communicate with clients and the Law Society. This undoubtedly brings the profession into disrepute and is taken very seriously by the Tribunal.

The Tribunal has been examining the way that it operates to see if there are any areas where improvements can be made and this is referred to later in the Annual Report.

It is important to remember that one of the Tribunal's most important roles is to ensure that the standards and reputation of the profession as a whole are upheld. It is hoped that solicitors in reading this report will be reminded of their duty to maintain the highest standards of this profession.

I wish to thank all members of the Tribunal and the Tribunal Clerk and her secretary for their help and support during the year.

G.F. Ritchie
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 as amended. The Tribunal usually sits with four solicitor members and two lay members. The Tribunal is independent of the Law Society 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 is governed by the Scottish Solicitors' Discipline Tribunal Procedure Rules 2002.

Membership

John Spencely, Gavin A. Hepburn and Mrs Lorna Jackson who were lay members retired during the year and their contributions to the deliberations of the Tribunal were greatly appreciated.

General

The Tribunal has had a computer installed and has now an e-mail address.

The Tribunal held a training day for members in June and it is intended that there will be a training day annually together with an Annual General Meeting of the Tribunal.

Competencies for Tribunal members have been developed and the Tribunal is looking at ways to improve the service which it provides.

Work has commenced with regard to the setting up of a Tribunal website. This will make Tribunal Findings more accessible to members of the profession and members of the public.

The Tribunal gave evidence to the Justice 1 Committee enquiry into regulation of the Legal Profession.

TRIBUNAL BUSINESS

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.
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.

PROCEDURAL

There were four cases during the year where Respondents failed to appear at the Tribunal hearing and matters had to be dealt with in their absence. The Tribunal was concerned by the attitude of these Respondents. The Tribunal also received a number of last-minute motions for adjournments which it found particularly unhelpful. Some Respondents failed to lodge Answers or deal with the Complaint until the last possible minute. By contrast, in quite a number of cases the Respondent co-operated at an early stage and a Joint Minute was entered into with regard to any facts and averments which were not in dispute. The Tribunal finds this helpful and takes it into account when dealing with the case.

There were a number of Appeals and Complaints which were abandoned by the parties concerned. The Tribunal wishes to make it clear that once an Appeal or a Complaint has been lodged with the Tribunal it cannot be withdrawn without the consent of the Tribunal and the Tribunal can make an order with regard to expenses.

In two cases the Tribunal did not make a finding of professional misconduct. In one case the Tribunal was not satisfied beyond reasonable doubt that the Respondent's alleged delay in the winding up of an executry was unconscionable because the evidence adduced failed to establish the date on which the Respondent was first instructed. Lacking satisfactory evidence the Tribunal did not find professional misconduct established. In another case the Tribunal found that all the averments of misconduct were either *res judicata* (because they had already been the subject of previous misconduct findings for which the Respondent had already been dealt with) or irrelevant and accordingly no finding of professional misconduct was made.

ORDERS UNDER SECTION 53C

The Tribunal made an order under section 53C of the Solicitors (Scotland) Act 1980 where the Law Society had made a finding of inadequate professional service against a solicitor who had then failed to comply with the Determination and Direction given by the Council of the Law Society. The Tribunal made an order under section 53C which is enforceable in like manner as an extract registered decree arbitral in favour of the Council. Solicitors should bear in mind that if they do not comply with orders made under section 42A the matter can be taken to the Tribunal who may issue an order under section 53C.

HUMAN RIGHTS

The Tribunal received two remits back from the Court of Session in respect of two previous

decisions of the Tribunal where the Tribunal had found that there had been a failure to take proceedings "within a reasonable time". The Court of Session held that the Tribunal had taken an erroneous start date for the purposes of calculating the reasonable time and had erred by taking account of criminal case law when the Tribunal proceedings are civil. This is an emerging area of law and the submissions made to the Court of Session differed from the submissions made at the first Tribunal hearing. A further period of time had elapsed during the appeal process and the Tribunal had to consider whether this amounted to an "unreasonable time". The Court of Session also invited the Tribunal to consider whether or not it would now be in the public interest for these Complaints to continue. In one of the cases the Law Society decided not to proceed. In the other case the Tribunal found that the appeal process could not be taken into account in calculating whether or not there had been a failure to take the proceedings "within a reasonable time" and that given the subject matter of the Complaint, to proceed was in the public interest and in the interests of the profession.

There are presently two appeals outstanding with the Court of Session with regard to the issue of whether or not lack of entitlement to legal aid for representation before the Tribunal is a breach of the Respondent's human rights. The Tribunal has looked at this issue in a number of cases. In all these cases there was nothing particularly complex about the subject matter and the relevant facts were within the knowledge of the Respondents and accordingly the Tribunal found that legal representation was not indispensable. In one case the Respondent was said to be suffering from mental illness and alleged that he was unable to represent himself. The outcome of the appeals is awaited with interest.

FAILURE TO REPLY AND/OR MISLEADING CLIENTS AND THE LAW SOCIETY AND/OR DELAY IN CARRYING OUT INSTRUCTIONS

A large number of the Complaints dealt with by the Tribunal during the year fell within this category. One Respondent appeared before the Tribunal twice within the year for the same type of conduct. The Respondent had continued to fail to reply to the Law Society with regard to queries in connection with various clients and had not honoured his undertaking to the first Tribunal to deal with matters and to co-operate with the Law Society in future. The Tribunal was of the opinion, given the history of non-co-operation and broken undertakings, that the Respondent was not a fit and proper person to remain on the Roll of Solicitors in Scotland. (This matter is presently under appeal.)

In two cases the Respondents were found guilty of professional misconduct and found to have provided an inadequate professional service. In one case the Respondent was found guilty of misleading clients, failing to keep his clients advised, failing to respond to fellow agents and the Law Society, failing to implement a mandate and delay in completing work and was suspended for a period of two years. Also, in respect of inadequate professional service he was found not to be entitled to fees for the work that had been done. In the other case the Respondent failed to deal with requisitions made by the Keeper, failed to reply timeously to correspondence sent by fellow agents and failed to respond to the reasonable requests of the Law Society for information. The Respondent was fined £2,000, had his Practising Certificate restricted for a period of five years, and was found to have provided an inadequate professional service.

In another case the Respondent was found guilty of failure to keep his clients adequately informed, failure to perform instructions diligently and expeditiously, failure to respond timeously to repeated reasonable enquires made of him by his client and allowing an inordinate and unreasonable delay to occur in the prosecution of a claim on behalf of a client. The Tribunal fined the Respondent £4,000. As this case concerned the affairs of only one client the Tribunal did not find it necessary to restrict the Respondent's Practising Certificate.

Another Respondent was found guilty of professional misconduct in respect of accepting improper instructions from a client in respect of an executry. The Respondent showed obvious remorse and had done her best to put matters right. The Tribunal considered that it would be very unlikely that anything similar would happen again in future and accordingly imposed a minimal fine of £500. In another case the Tribunal found the Respondent guilty of professional misconduct in respect of failure to respond to the reasonable enquiries made of him by the Complainers and failure to settle professional fees and accounts. The Respondent was suffering from mental illness. The Tribunal did not find this to be a defence to the charge of professional misconduct but considered it a strong mitigating factor. The Tribunal restricted the Respondent's Practising Certificate for two years and until such time as he satisfies the Tribunal that he is fit to hold a full Practising Certificate. The Respondent will be required to satisfy the Tribunal that his medical condition is such that he is able to operate with an unrestricted Practising Certificate. The Tribunal is concerned by the number of Complaints of this type. If Respondents do not reply to reasonable enquiries made of them by the Law Society, the Law Society will be unable to

deal with complaints from members of the public. This is damaging to the reputation of the profession. Solicitors have a duty to co-operate with the Law Society and to provide full, accurate and honest explanations of any matters raised. Failure on the part of solicitors to do this hampers the Law Society in the performance of its statutory duty.

DISHONESTY

The Tribunal dealt with two cases involving dishonesty during the year. In one these cases the Respondent had misappropriated client's funds, breached Rule 4(1) and 4(6)(1) of the Solicitors (Scotland) Accounts Rules 1997 and deliberately hampered and obstructed the investigations of a judicial factor. The Respondent was struck off the Roll of Solicitors in Scotland. In the other case the Respondent was found guilty of knowingly and deliberately presenting formal documents to the Court and an Insurance Company containing dishonest information of which he was aware. It is a fundamental principle and a cornerstone of the legal profession that a solicitor must not lie to a Court. The Tribunal imposed a maximum fine of £10,000 owing to the serious view it took of this case.

OTHER CONDUCT UNBECOMING A SOLICITOR

The Tribunal had to consider a case where the Respondent was found guilty of professional misconduct in respect of his committing acts of shameless indecency and using lewd, libidinous and indecent practice against males in circumstances where he was in a position of trust and also in respect that he acted for both parties in a conveyancing transaction where the interests of the parties conflicted and where he had a personal interest in the outcome of that transaction and failed to send the necessary written advice to both parties. The Tribunal found the Respondent's conduct disgraceful and dishonourable and wholly unbecoming of a solicitor and accordingly struck the Respondent's name off the Roll. In another case the Tribunal found the Respondent guilty of professional misconduct in respect of the circumstances which gave rise to a conviction at Glasgow Sheriff Court. The Tribunal was concerned that the Respondent's conduct had involved violence and that the assault had led to

an injury. It is important for the Tribunal to demonstrate to the public that the profession of solicitors seeks to maintain the highest standards of conduct and that the solicitor cannot separate his or her personal conduct from his or her membership of the profession. One of the essential qualities of a solicitor is integrity which extends to personal as well as professional conduct of the solicitor. The Tribunal found that the Respondent's conduct was regrettably disgraceful and dishonourable and warranted a finding of professional misconduct. The Tribunal imposed a fine of £500 in addition to the penalty already imposed by the Court.

The Tribunal also had to deal with an unusual case where the Respondent was found guilty of professional misconduct in respect of his repeated use of intemperate language in correspondence which was completely lacking in dignity and restraint in a manner inconsistent with his obligations in terms of the Code of Conduct for Scottish Solicitors. The Respondent had resorted to intemperate language concerning officers of a Council, a doctor and other solicitors. The Tribunal felt that the Respondent's judgment had become so flawed that it would not be safe for him to practise on his own without supervision and accordingly directed a restriction on the Respondent's Practising Certificate for a period of two years. (This case is under appeal.)

PUBLICITY

In terms of paragraph 14 of Schedule 4 to the Solicitors (Scotland) Act 1980 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, whether or not an appeal is lodged, publicity is given to the decision.

EXPENSES

The Tribunal has the power to award expenses in terms of Schedule 4 to the Solicitors (Scotland) Act 1980. 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

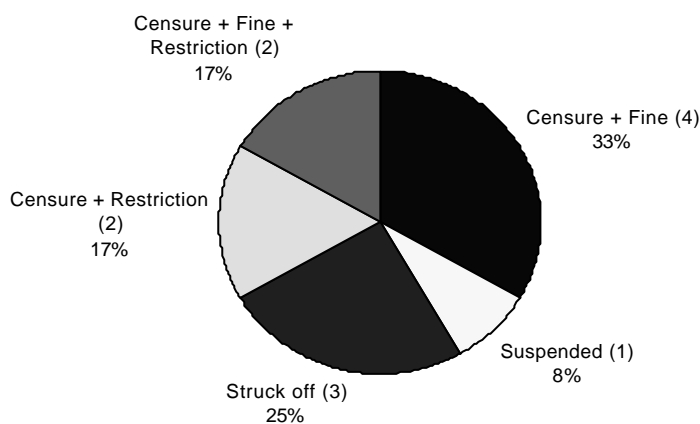
STATISTICS FOR THE YEAR TO 31st OCTOBER 2002

	Year to 31/10/02	(Year to 31/10/01)
Number of days on which the Tribunal met to hear complaints	17	(14)
Number of Complaints	18	(13)
Complaints containing a Report under Section 53(1)(b) of the Solicitors (Scotland) Act 1980	-	(-)
Business outstanding or partly heard at end of year	10	(11)
Appeals to Court of Session	4	(2)
Complaints received direct from members of public	7	(3)
Miscellaneous Applications	1	(-)
Appeals under Section 42A of the Solicitors (Scotland) Act 1980	4	(4)
Appeals to Court of Session concluded during the year		
Appeals abandoned	-	(1)
Appeals heard	5	(1)
Successful appeals	2	(-)

Number of Cases Heard and Decisions Issued-22

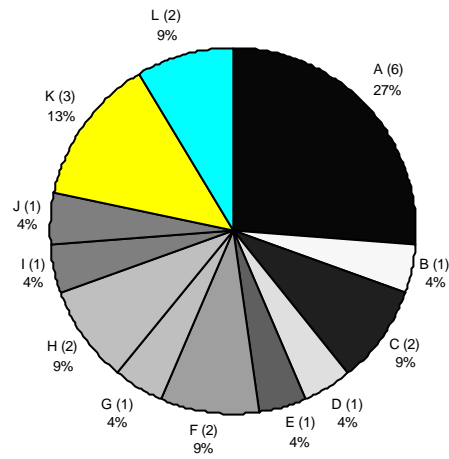
Findings of Professional Misconduct - 12
 S42A Appeals Decisions – 2
 S53C Findings Made – 1
 Cases Withdrawn or No Finding Made – 7

Sentences Imposed in Respect of Findings of Professional Misconduct



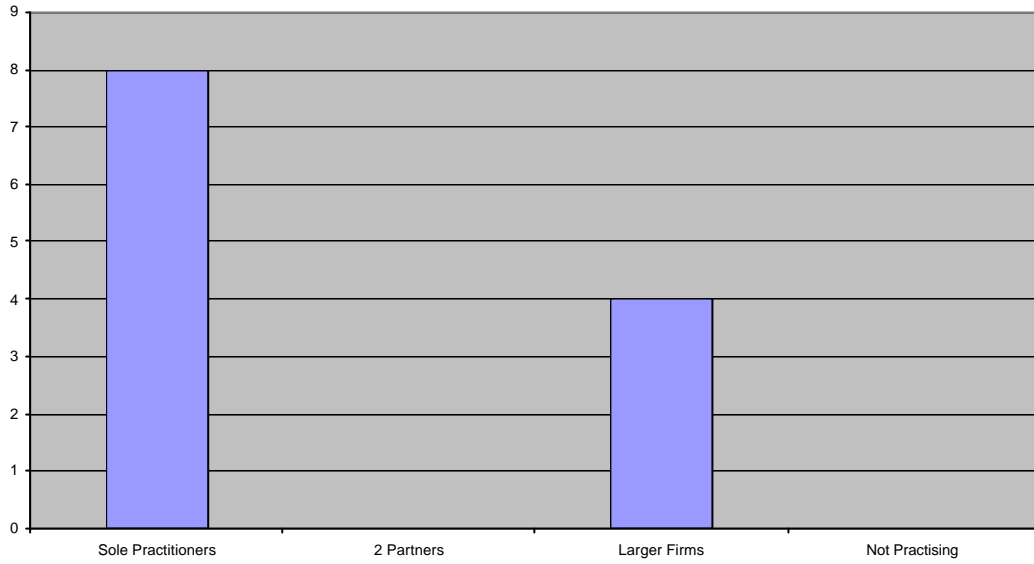
Principal Grounds on which Misconduct Established

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

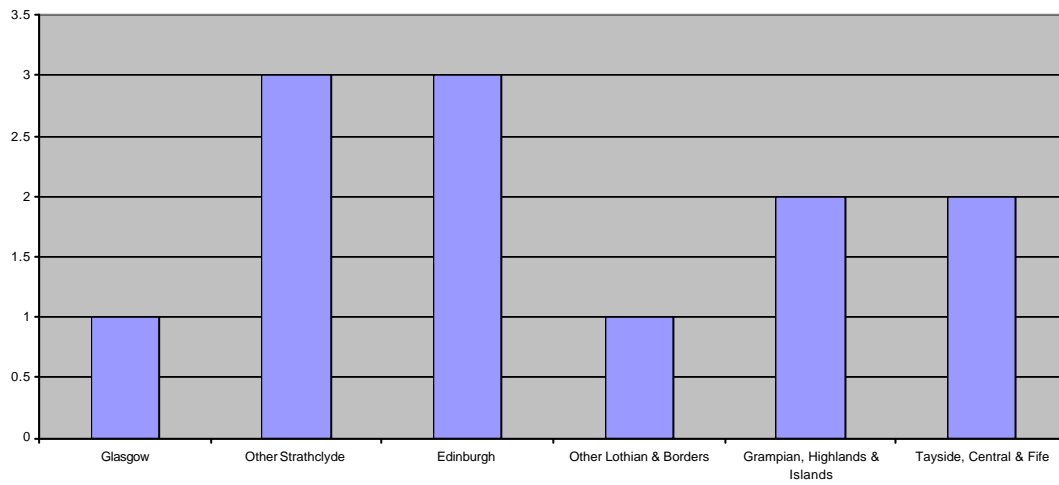


- A. Failure to reply to Law Society and/or clients.
- B. Conflict of Interest
- C. Failure to deal with Trust/Executry in a proper manner.
- D. Failure to deal with Court Proceedings and Prosecuting claims in a proper manner.
- E. Failure to complete conveyancing procedures in a proper manner.
- F. 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.

Distribution of Solicitors Convicted or Found Guilty of Professional Misconduct



Location of Solicitors Convicted or Found Guilty of Professional Misconduct



BIOGRAPHICAL DETAILS

Solicitor Members

G.F. Ritchie (Chairman)

Member of the Tribunal since 1988. Chairman since 2001. Admitted in 1968. Partner in eighteen-partner firm in Tayside. Head of Commercial Department. Main area of practice now commercial property. Member of Council of Law Society (1979 – 1988). Dean of Faculty of Procurators and Solicitors in Dundee (1989-1991).

Mrs D.M. Boyd

Member of the Tribunal since 1993. Partner in Shepherd & Wedderburn WS, specialising in commercial property and PPP.

Miss M.E. Brown

Member of the Tribunal since 1993. Partner in Biggart Baillie since 1983. Main areas of work are commercial and private client and conveyancing.

A.M. Cockburn

Member of the Tribunal since 1998. Admitted in 1972. Court partner with professional background as a litigation solicitor. Past convenor 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. Legal Adviser in Scotland to members of the Scottish Master Builders Federation. Acts as Clerk in various arbitration procedures.

G.L. Cunningham

Member of the Tribunal since 2000. Admitted in 1981. Partner in a three-partner firm with offices in Paisley and Glasgow. Member of sub-committee of the Paisley Faculty of Solicitors helping to adjust standard Schedule of Missive Conditions for use among the various firms within the Faculty to facilitate conclusion of missives in relation to domestic property.

M. McPherson

Member of the Tribunal since 2001. Admitted in 1977. Chairman of a twenty-five partner firm specialising in company and commercial law. Holder of number of non-executive directorships and lay member of the Institute of Chartered Accountants of Scotland.

I.D. Morrison

Member of the Tribunal since 1999. Admitted in 1968. Senior of ten-partner firm, Macleod & MacCallum, Inverness. Past President of Scottish Law Agents Society. Past Dean of Faculty of Solicitors of the Highlands. Convenor of Scottish Solicitors' Benevolent Fund. Governor of Eden

Court Theatre, Inverness. Practice mainly commercial.

G.H. Pagan

Member of the Tribunal since 1995. Graduated BL, Edinburgh University 1957. Joined Hosack & Sutherland, Oban 1960. Senior partner since 1981. Founder member of Scottish Law Society's Trouble Shooters Scheme helping aggrieved clients to find other solicitors to take over. Part-time Procurator Fiscal at Oban (1970 - 1979). Appointed Honorary Sheriff at Oban in 1988. Founder of Will Aid, the solicitors' charitable scheme to raise money for famine relief and overseas development and to encourage members of the public to make wills.

K.R. Robb

Member of the Tribunal since 1998. Admitted in 1978. In private practice principally in civil litigation and employment law until 2000. Holder of part-time judicial appointments in Appeals Service and in Immigration Appellate Authority. Member of Fitness to Practise Committees of the General Medical Council and of the Disciplinary and Regulatory Committees of the Association of Chartered Certified Accountants. Independent Assessor to the Food Standards Agency. Formerly member of Council of the Law Society of Scotland, trustee of the Scottish Child Law Centre and trustee of Castlemilk Law Centre.

P.W. Rockwell (Vice Chairman)

Member of the Tribunal since 1995. Vice Chairman since 2001. Senior partner in an Aberdeen firm; main areas of practice are agricultural and housing association law. Served on Law Society Legal Aid Central Committee and former local legal aid secretary. Chairman of Albyn House Association Ltd.

Lay Members

J. Anderson

Member of the Tribunal since January 2002. Professional Officer (Conduct and Competence) for General Teaching Council for Scotland, former teacher and trade union official, graduated in law from Edinburgh University in 1991, Children's Panel member since 1992, Chairman of City of Edinburgh Panel since 2000 and also an Independent Assessor in the public appointments process in Scotland.

P. Burdon

Member of the Tribunal since 2000. Retired actuary. Formerly managing director of Britannia Life, Chief Executive of Glasgow Chamber of Commerce, Vice Chairman of Court of Glasgow Caledonian University and non-executive Director

of Scottish University for Industry. Currently lay member of Financial Services and Markets Tribunal and Independent Assessor for Scottish Executive and DfES.

Mrs E. Cameron

Member of the Tribunal since 2001. Member of Council on Tribunals and its Scottish Committee since 2002. Deputy Manager of Edinburgh Central Citizens Advice Bureau (1989 -2002) and Mediation Co-ordinator and Manager of the In Court Advice Service in Edinburgh Sheriff Court (1997-2002). Current member of Scottish Mediation Network.

Professor M. Chatterji

Member of the Tribunal since January 2002. BA (Bombay),MA,Ph.D.(Cambridge). Bonar Professor of Applied Economics at University of Dundee. Visiting Professor in USA, Australia, Mexico, India. Member of Advisory Board of BBC World Service since 1997. Vice Chairman of National Appeals Panel of Scotland (1996-1999).

Dr B. Cohen

Member of the Tribunal since 1993. Chief Executive of Children in Scotland, the national agency representing statutory and voluntary

organisations and professionals working with children and their families across Scotland. Visiting Professor at the University of London.

M. Hastie

Member of the Tribunal since January 2002. Chartered quantity surveyor in own private practice. Served as J.P. in Aberdeen since 1976 and graduated to the Bench of District Court in 1984. Former Governor of Robert Gordon University(1986-1998) Member of Aberdeen City Council (1973-1999).

Mrs G. Pearey

Member of the Tribunal since 1996. Admitted as English solicitor in1971. Moved to Scotland in1978. Former member of the Children's Panel. Part-time Chairman of Medical, Disability and Social Security Tribunals since 1986.

Professor P. Weetman, CA

Member of the Tribunal since 1996. Professor of Accounting at the University of Strathclyde. Member of the Pay Review Body for Nurses, Midwives and Professions Allied to Medicine. Non-executive member of the management board of the Students Awards Agency for Scotland. Member of Council of the Institute of Chartered Accountants of Scotland (1990-1993).