

# Annual Report 2022

**For the Year  
1 November 2021  
to  
31 October 2022**

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# Introduction

The **Scottish Solicitors' Discipline Tribunal** deals with serious disciplinary issues in the solicitors' profession in Scotland.

The Tribunal is an important part of solicitors' regulation. It helps protect the public and maintain the reputation of the profession by upholding its standards. It is independent of the Law Society of Scotland.

## SSDT Administration Limited

The Tribunal is assisted in its administration by a private company limited by guarantee, SSDT Administration Limited. The company employs the Clerk and administrative staff.

## Values and Objectives

The Tribunal strives to ensure so far as possible that all cases brought before it are dealt with in accordance with the legislative framework and the principles of natural justice, bearing in mind the importance of protecting the public from harm and maintaining public confidence in the legal profession. The Tribunal endeavours to deal with cases efficiently and expeditiously. The Tribunal has a duty to be independent, impartial and transparent.



## Colin Bell, Chair & Director



I am delighted to present the SSDT's Annual Report for 1 November 2021 to 31 October 2022. The beginning of this year was dominated by COVID restrictions. Although those have now been lifted, the Tribunal continues to use the measures developed during the pandemic to help it deal with cases fairly, efficiently and cost effectively. As was predicted in last year's annual report, the Tribunal now holds most of its procedural and preliminary hearings by video conference. However, evidential hearings are generally held in person. The Tribunal is of the view that this flexible approach allows it to meet its obligations in terms of acting within the legislative framework and the principles of natural justice. The Tribunal endeavours to deal with cases efficiently and expeditiously while being independent, impartial and transparent.

This year the Tribunal has rolled out iPads to all members to assist them with remote hearings and to ensure even better compliance with data protection requirements. Papers are provided to members in electronic bundles. In cases with lots of productions, authorities and documents, the Tribunal Office has provided the relevant electronic bundles to the parties

too. This will be done in suitable cases in the next year and the Tribunal Office would be pleased to receive users' feedback on this procedure.

In recent years, the Tribunal has received a reduced number of Complaints and Appeals. That downward trend continued this year. However, the Scottish Legal Complaints Commission reported an increase in complaints in its [annual report for 2021-2022](#). The Tribunal therefore expects its cases may rise in the next few years as these cases filter through the system.

The Scottish Government recently published its response to the finding of the consultation on Legal Services Regulation Reform in Scotland. The Tribunal looks forward to seeing more detail about the Scottish Government's proposed approach.

It hopes that the reforms will deal with its concerns regarding the delay in cases reaching the Tribunal, the absence of a fitness to practise regime for solicitors, the arrangements for appointing solicitor members to the Tribunal and the inability to impose interim orders on solicitors whose actions may be a danger to the public.

The UK Government has recently proposed within [the Economic Crime and Corporate Transparency Bill](#) that the Tribunal's powers to fine are increased in cases involving economic crime. The Tribunal is monitoring developments with interest while advocating at appropriate junctures for increased powers to fine in all cases. It may be that this can be addressed as part of the Scottish Government's proposals following its consultation on Legal Services Regulation Reform in Scotland.

The Tribunal has drafted new procedural rules. The Lord President has provided some feedback to the Tribunal on the draft rules and its proposed approach to expenses. The Tribunal seeks views on both these matters. The consultation documents are available on the [Tribunal website](#). The consultations close on 1 June 2023.

I wish to express my thanks to the Tribunal members for their support, dedication and encouragement this year. I am also grateful to the Tribunal Office staff for all their assistance. I look forward to leading the Tribunal into the next year and dealing with the inevitable challenges that arise.

## Ian Shearer, Lay Members' Representative & Director

We have all been emerging cautiously from the COVID-19 pandemic, whilst then enduring further shocks and uncertainty from the appalling war in Ukraine, political upheaval in the UK, and an inflationary economic crisis. These events have affected our lives in so many unsettling ways. They also forced most organisations, including the Tribunal, to review and change how we operated, especially in the use of Internet-based technologies.

Perhaps the adversity may have catalysed a process of modernisation and improvements which are in some ways better. It should certainly have given organisations a greater degree of resilience.

With the decision to roll out iPads across all the Tribunal members, it was an achievement to manage smoothly this introduction of new digital systems for secure remote management of all case papers. The Clerk, Nicola Ross, and her team once again deserve our huge gratitude for running the Tribunal so professionally and efficiently – as well as organising the return at last of gatherings in person for our members' training and other events, which so help to instil a sense of the Tribunal as a collegiate community of both solicitor and lay members.

Our resilience has also been boosted by two other changes during the year.

First, the Tribunal increased the number of members on the Board of its administration company, incorporating a wider diversity of views and experience into its strategic direction and decision-making. Thanks are owed especially to our Chair, Colin Bell, for giving so much time and dedication to the Tribunal, and also to the other Directors for their service in that capacity.

Secondly, the Lord President, in consultation with the Scottish Government, has changed the policy on the re-appointment of lay members, who have until now been restricted to serving a maximum of two five-year terms. Subject to satisfactory performance, there will now be no limit on the number of terms. This gives more parity with the solicitor members, and means that valuable experience can be retained when appropriate: it is also now more in line with judicial office-holders elsewhere in the tribunal and courts system.

The lay members play a particular role, alongside expert practitioners, in overseeing the profession through upholding discipline and professional standards of conduct. They represent the public and consumer interest effectively in the Tribunal's casework and deliberations. Consumer protection should be at the heart of the system of legal regulation, and is vital to maintaining public confidence in lawyers.

As the Chair has noted, the Scottish Government is now moving at greater pace to introduce its Bill to implement the reform of regulation of the legal profession. In unveiling its final plans, it too has emphasised that consumer principles and the public interest are at the centre of its thinking.

As the specialist Tribunal with long experience in considering matters of Scottish solicitors' discipline and conduct, we hope to be able to play a useful role as the Bill develops; and that our perspective and suggestions about what could be improved, and conversely about what already works well, will be found to be of value.

It seems likely from the stated scope of the proposals that the Tribunal itself will be largely retained, with some possible changes. If so then together with the implementation of our own modernised new set of rules of procedure, the next 5-10 years should promise an interesting evolution and strengthening in the workings of the Tribunal.



# The Scottish Solicitors' Discipline Tribunal

## About Us

The Tribunal is governed by the Scottish Solicitors' Discipline Tribunal Procedure Rules 2008 which are approved by the Lord President. The Tribunal has drafted new Procedural Rules. The Tribunal seeks views on these, and the proposed approach to expenses in Tribunal cases. The consultation documents are available on [the Tribunal website](#).

### Tribunal Members

The Tribunal is made up of twelve solicitor and twelve non-lawyer members (sometimes referred to as lay members).

Solicitor members are not paid while lay members are paid by the Scottish Government.

Solicitor members are nominated by the Law Society and appointed by the Lord President. As well as nominating the solicitor members, the Law Society prosecutes practitioners before the Tribunal and also has an obligation to fund the Tribunal.

Vacancies are advertised on the Tribunal's website, the Society's website and in the Journal.

Non-lawyer members are nominated through the Public Appointments system and appointed by the Lord President.

At each hearing, the Tribunal comprises two solicitor and two non-lawyer members.

### Our Current Members

(as at 31 October 2022)

**Beverley Atkinson**  
**Dozie Azubike**  
**Colin Bell**  
**Paula Charlesworth**  
**Douglas Cochrane**  
**David Dickson**  
**John Duffy**  
**Edward Egan**

**Kay Hampton**  
**Catherine Hart**  
**Mark Hastings**  
**Thomas Hempleman**  
**Paul Hindley**  
**Ben Kemp**  
**Deborah Lovell**  
**Chris Mackay**

**Vincent McGovern**  
**Kenneth Mitchell**  
**Christine Pacitti**  
**Kenneth Paterson**  
**Martin Saville**  
**Ian Shearer**  
**Sally Swinney**

### Complaints

All complaints about legal practitioners are made in the first instance to the Scottish Legal Complaints Commission (SLCC).

It refers conduct matters to the Law Society.

After investigation, the Law Society prosecutes cases it considers might constitute professional misconduct before the Tribunal.

A Complaint of professional misconduct is lodged with the Tribunal.

## What We Do

- + Complaints of professional misconduct,
- + Complaints that a solicitor has been convicted of an act involving dishonesty or any other criminal offence which resulted in a fine equivalent to level 4 on the standard scale or imprisonment of more than 12 months,
- + Appeals stemming from the Law Society's determinations regarding unsatisfactory professional conduct and
- + Applications for restoration to the roll of solicitors in Scotland or for removal of a restriction on a practising certificate.

### What is Professional Misconduct?

Professional misconduct is defined in *Sharp v Law Society of Scotland 1984 SLT 313* as a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors.

It is necessary to consider all the circumstances and the degree of the practitioner's culpability. There are many ways of committing professional misconduct, both in a practitioner's work and private life.

The Tribunal's website contains all Tribunal decisions of the last 18 years.



# How the Tribunal deals with a case

The Complainers (most frequently the Law Society), produce a Complaint which is lodged with the Tribunal and the Respondent practitioner is invited to submit Answers to that Complaint. Frequently, there is adjustment of the pleadings. This is similar to civil procedure, but some terminology is borrowed from criminal procedure. For example, the solicitor acting on behalf of the Complainers is called the “Fiscal” and the Tribunal decides whether a Respondent is “guilty” or “not guilty” of professional misconduct. Solicitors sometimes represent themselves at Tribunal hearings. Others are represented. Representation does not require to be by a solicitor.

## Who are Respondents?

Solicitors, conveyancing and executry practitioners and registered European and foreign lawyers can be prosecuted before the Tribunal.

In terms of evidence, hearsay is admissible and there is no requirement for corroboration. Procedural hearings are used for case management. More frequently in recent years, the Tribunal has had to deal with legal debates and pleas in bar of trial. Evidence is given on oath or by way of affirmation. The Tribunal can receive evidence by way of affidavit.

The burden of proof in professional misconduct cases is on the Complainers. The facts in a professional misconduct case must be proved beyond reasonable doubt notwithstanding that the Tribunal deals with the civil rights of solicitors. In respect of appeals relating to unsatisfactory professional conduct, the standard of proof is on the balance of probabilities.

## Tribunal hearings

are generally held in public. The [website diary](#) details all Tribunal hearings, both substantive and procedural. Tribunal [decisions](#) generally appear on the website about three months after the date of the Tribunal hearing.

If the Tribunal is not satisfied that the practitioner is guilty of professional misconduct, it will find the practitioner not guilty. However, if it considers that the practitioner may be guilty of unsatisfactory professional conduct it must remit the complaint to the Council of the Law Society for consideration.

## What is Unsatisfactory Professional Conduct?

### Section 46 Legal Profession and Legal Aid (Scotland) Act 2007

“Professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor but which does not amount to professional misconduct and which does not comprise merely inadequate professional services.”

### Hood v Council of the Law Society of Scotland [2017] CSIH 21

“Unsatisfactory professional conduct lies on a spectrum that runs from professional misconduct at the more serious end to inadequate professional services at the lesser end, and determining where the conduct complained of lies on that spectrum is a question for evaluation by the relevant disciplinary tribunal, either the Council of the respondents or the Scottish Solicitors’ Discipline Tribunal.”

## Expenses

The Tribunal has the power under the 1980 Act to award expenses. Expenses are usually awarded to the successful party and include the expenses of the Tribunal. These can run to several thousand pounds and are a serious consideration when solicitors are considering how to run their defence or whether to bring an appeal. Late adjournments can result in an unnecessary increase in expenses.

Expenses in Tribunal proceedings usually follow success. In general, the Tribunal makes awards of expenses on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society’s Table of Fees for general business with a unit rate of £14.00. However, parties have the opportunity to make submissions on expenses at the conclusion of the case. Accounts of Expenses can be taxed by the Auditor of the Court of Session.

The Tribunal seeks views on its proposed approach to expenses in Tribunal cases. The consultation documents are available on [the Tribunal website](#).

## Publicity

Every decision of the Tribunal is published in full subject to the terms of paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. Occasionally publicity is deferred, for example, pending the conclusion of criminal proceedings. The impact of publicity on solicitors found guilty by the Tribunal is significant. The decisions appear on the Tribunal website and are reported in the Journal.



# Tribunal Cases

The vast majority of the Tribunal's work involves hearing complaints of professional misconduct. These Complaints are becoming more complicated and require more Tribunal time. The Tribunal sat on 52 days this year. Last year, it sat on 67 days, and on the year before that, 45. The number of misconduct Complaints lodged with the Tribunal this year has increased but is still below pre-pandemic levels. As in recent years, the Tribunal has received increased numbers of appeals. Following the trend of the last few years, several additional days have been required to deal with preliminary issues.

The Tribunal received 23 new Complaints this year compared to 16 last year, and 18 the year before. Before the pandemic, the Tribunal tended to receive around 30 new Complaints a year. The Scottish Legal Complaints Commission has recorded a rise in new complaints this year.<sup>1</sup> The Tribunal therefore expects to receive more Complaints of professional misconduct in the coming years as these cases filter through the system.

The year concludes with 22 substantive cases outstanding, which is the same as the previous two years.

<sup>1</sup> <https://www.scottishlegalcomplaints.org.uk/about-us/who-we-are/our-annual-report/>



The Tribunal decided **33** cases this year.

No cases were brought under section 53(1)(b) of the 1980 Act.

The Tribunal granted leave for one Complaint to be withdrawn on the Complainers' motion, due to the death of the Respondent.

## Complaints

In **16** cases, findings of professional misconduct were made.

The cases cover a wide range of misconduct which is explored further in the "Grounds" section on the next page.

Findings of professional misconduct result in sanctions from censure at the least serious end of the scale to strike off at the most grave.

In **2** cases, the Tribunal returned not guilty verdicts.

In **1** of these cases, the Tribunal remitted the Complaint to the Law Society under section 53ZA of the Solicitors (Scotland) Act 1980 for consideration of unsatisfactory professional conduct.

The trend of cases becoming more complicated with regard to their subject matter and procedure, has been reflected in the figures again this year.

In addition to its final decisions following substantive hearings, this year the Tribunal also issued seven Interlocutors and Notes following procedural or preliminary hearings.

## Appeals

The Tribunal dealt with **8** appeal cases under section 42ZA of the Solicitors (Scotland) Act 1980. This is the same number as last year.

This year, **2** appeals were successful.

**1** was partially successful.

**1** was refused.

**4** were withdrawn or dismissed before a substantive appeal hearing.





# Grounds of Professional Misconduct

The subject matter of the Tribunal's cases can be researched using the Tribunal's [searchable database of findings](#). As usual, the Tribunal dealt with a wide variety of cases this year.

Failing to abide by the practice rules and accounts rules features heavily this year. As in previous years, there were a number of cases concerning solicitors acting in conflict of interest situations and taking excessive time to deal with matters. There were two cases involving dishonesty. Failing to respond to the Law Society and others has also regrettably been the subject of a number of misconduct cases.

The chart below shows the grounds of professional misconduct established this year. A single case may have multiple grounds.



# Sanctions

The Tribunal's sanctions range from **censure** to **strike off**.

The Tribunal applies [indicative sanctions guidance](#).

In professional misconduct cases the Tribunal can **censure** practitioners. This is the equivalent of an admonition in the criminal courts.

It can impose a **fine of up to £10,000**. It is possible that the Tribunal's fining power will increase during the year as a result of the Economic Crime and Corporate Transparency Bill.

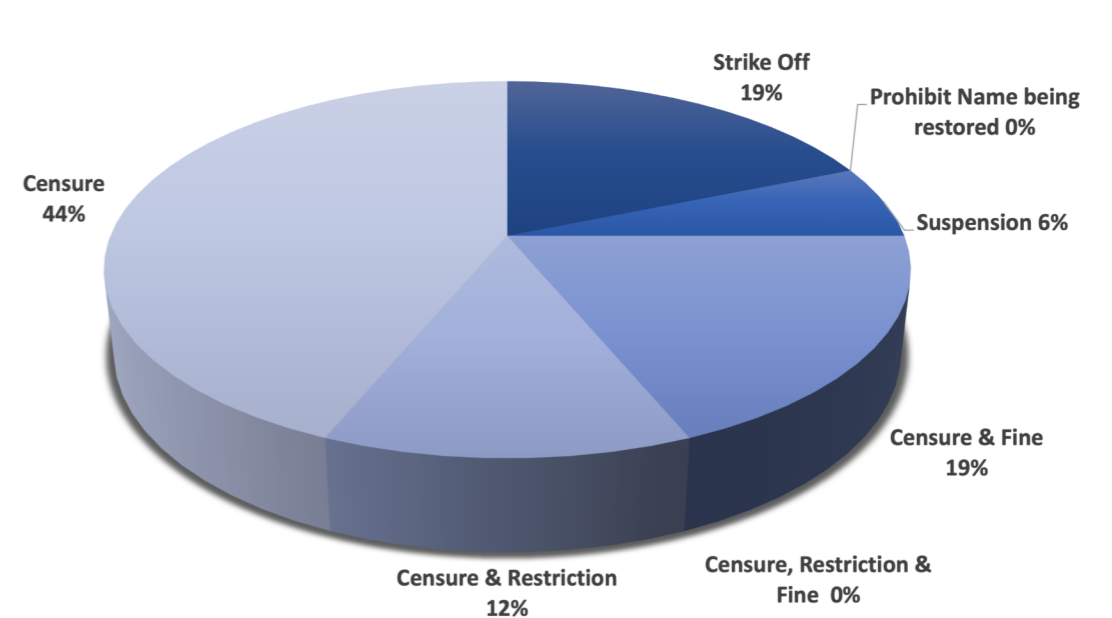
The Tribunal has the power to order that a practitioner's practising certificate is made subject to such terms and conditions as the Tribunal may direct (called a **Restriction**). Often the condition imposed is that the practitioner practises as an assistant to another solicitor approved by the Law Society. However, any condition can be imposed.

The Tribunal can **suspend** a solicitor from practice for such time as it determines.

The Tribunal can also order that a practitioner's name is **struck from the roll of solicitors in Scotland**. If a person has already removed his/her name from the roll, the Tribunal can prohibit restoration to the roll. The sanctions for solicitors convicted of crimes of dishonesty or other serious offences are similar to those for misconduct, although there is no power to issue a fine or compensation in these cases.

The Tribunal also has the power to award **compensation** of £5,000 for any loss, inconvenience or distress to any secondary complainer directly affected by the misconduct. Secondary complainers are the people who have made the original complaint about a solicitor. They are often, but not limited to, clients of the Respondent solicitor.

Sanctions imposed in year 1 November 2021 to 31 October 2022





# Summary of the Sanctions Imposed

## CENSURE

This year, seven solicitors were censured.

This sanction is used when the matter is at the less serious end of the scale, is an isolated incident and the solicitor demonstrates remorse and insight. It is used where there is no risk to the public and so no requirement for supervision.

## FINES

The Tribunal also imposed fines in three cases. These fines came to a total of £6,250.



Fines are imposed when there is no risk to the public. Fines can be added to censures to show the seriousness of the solicitor's conduct.

The maximum fine the Tribunal can impose against a solicitor is £10,000, although proposals have been made to increase this fine in cases involving economic crime.

## RESTRICTIONS

Two solicitors had their practising certificates restricted so they are only allowed to practise under the supervision of a solicitor approved by the Law Society of Scotland.

In these cases, the Tribunal considered that the solicitor might be a danger to the public if allowed to work unsupervised. The professional misconduct revealed areas of the solicitors' practice which required review, retraining and supervision but the public would not be at risk if they were working under supervision.

Solicitors with restricted practising certificates cannot, for example, practise as a manager. Therefore, they cannot be partners or sole practitioners in solicitors' firms.

## SUSPENSION

One solicitor was suspended.

## STRUCK OFF THE ROLL OF SOLICITORS IN SCOTLAND

Three solicitors were struck off the roll of solicitors in Scotland.

Two of these solicitors were found guilty of acting dishonestly. This is often the basis for imposing the most serious sanction available to the Tribunal.

All cases turn on their own facts and circumstances. However, the following are examples of the conduct which led to each sanction this year. More detailed information can be found on the searchable database of findings on the Tribunal website.

### Strike Off

- Misled clients, overcharged and acted dishonestly.
- As executor, failed to account for money taken from his father's estate, induced a bank by fraud to write off a debt, and embezzled funds.
- Took instructions to act and then ceased to act without just cause and without telling the client he was no longer acting.

### Suspension

- Convicted for sending a menacing and threatening electronic message which specifically referred to the solicitor's role as a senior prosecutor.

### Censure and Restriction

- Accounts rules breaches.
- Undue delay in progressing claims, failure to communicate, failure to obtemper mandates.

### Censure and Fine

- Failure to respond to the Law Society.
- Failure to return loan funds to lender and failure to communicate.
- Failure to communicate, acting in a conflict situation and failure to act with competence, diligence and skill.

### Censure

- Accounts rules breaches.
- Failure to communicate regarding a conflict of interest.
- Undue delay in returning funds to client, failures of communication.
- Retained client funds and failed to respond to Law Society.

# Secondary Complainers

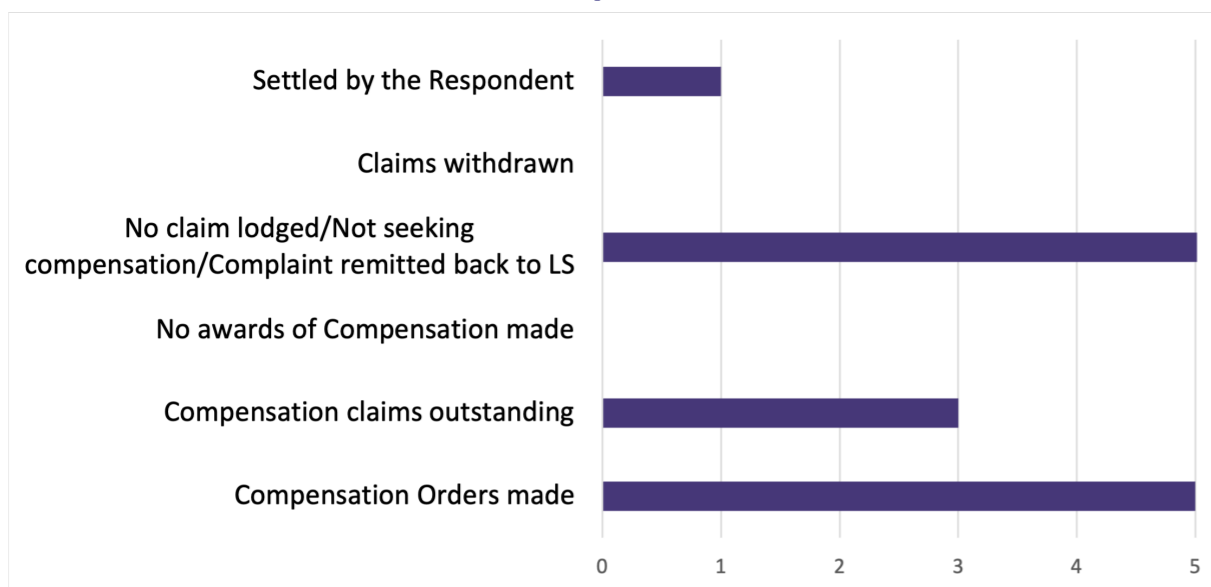
Secondary Complainers become parties to the proceedings only after a finding of professional misconduct is made. Prior to this, they have no direct input into the Tribunal process.

Once a finding of professional misconduct is made, Secondary Complainers are invited to make a claim for compensation and provide evidence of their loss, inconvenience or distress which must arise as a consequence of the misconduct. The Tribunal hears evidence and submissions and decides whether it is appropriate to make an award of compensation. This can take place on the same day as the hearing on professional misconduct but more usually occurs at a separate compensation hearing.

There can be cost implications for Secondary Complainers if additional Tribunal time is required to deal with their claim and an award is not made in their favour.

The Tribunal recognises that it can be difficult for Secondary Complainers to deal with the formal Tribunal procedures and has provided [guidance notes](#) on its website.

## Outcome of Compensation Claims



The Tribunal made decisions in 14 cases involving Secondary Complainers this year. 3 cases are outstanding and will be dealt with in the next reporting year. Of the 11 compensation cases which were concluded, awards were made in four cases. 1 case was settled by the Respondent. In the remaining cases, no claim was lodged or the case did not progress to consideration of compensation because the Respondent was found not guilty of professional misconduct, or the Complaint was dismissed. In cases where the Tribunal remitted Complaints to the Law Society under section 53ZA of the Solicitors (Scotland) Act 1980, compensation can be awarded by the Law Society in the event that it finds unsatisfactory professional conduct established.

The maximum amount of compensation which the Tribunal can award for each individual claim is £5,000. This year, the Tribunal awarded a total of £16,992.26 in compensation. In the event that Respondents do not pay the compensation awarded by the Tribunal, Secondary Complainers have to take steps themselves to recover the money.

# Section 42ZA Appeals

Section 42ZA appeals against unsatisfactory professional conduct decisions made by the Law Society are received from solicitors and lay appellants.

This year, the Tribunal dealt with eight appeals, the same as last year. Two of these were successful, one was unsuccessful and one was partially unsuccessful. Four were withdrawn or dismissed.

The appeal should identify any error of fact or law made by the Law Society when the Sub Committee reached its decision or describe the fundamental error in the Sub Committee's approach. Appellants can find it difficult to structure their appeals appropriately and set out clear and succinct grounds of appeal. The Tribunal has updated its [guidance for potential appellants](#) on its website and those thinking of lodging an appeal should consult that carefully.

## The Powers of the Tribunal in a Section 42ZA Appeal:

- The Tribunal can quash or confirm the determination of the Law Society.
- It can quash the censure accompanying the determination.
- It can quash, confirm or vary the direction being appealed against.
- It can order retraining of the practitioner, impose a fine not exceeding £2,000 and award compensation up to £5,000.

# Appeals to the Court of Session

One case was appealed to the Court of Session this year but it was withdrawn. No cases were the subject of judicial review.







The Tribunal's website is frequently used by Tribunal members and the public. It had 122,390 total page views this year compared to 135,572 last year.

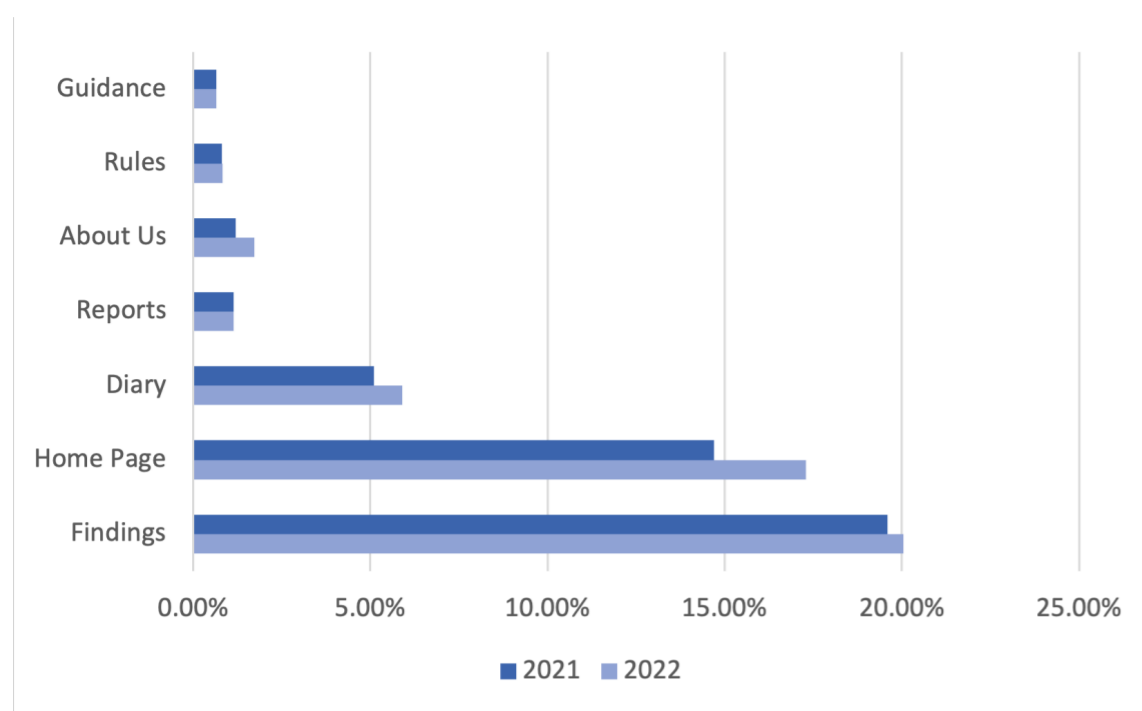
The findings page was accessed 24,529 times. Last year, it was accessed 26,750 times.

Helpful documents are available on the [Guidance page](#) which provides advice for Tribunal users and the media. This page was accessed 811 times this year.

The FAQs page was viewed 724 times.

The diary page is updated regularly. This was reviewed 7,233 times this year.

Most visited sections on the Tribunal Website



The Tribunal is assisted in its administration by a private company limited by guarantee, SSDT Administration Limited. The company was incorporated on 9 June 2016.

The current directors of the company are Colin Bell, Ian Shearer, Kay Hampton, Sally Swinney, Ben Kemp, Beverley Atkinson, Christine Pacitti and Paula Charlesworth. The Clerk acts as company secretary. The company employs the Clerk and administrative staff.

	Year to 31.10.2022	Year to 31.10.2021
Total costs of the Tribunal (including lay members' costs)	£200,120.84	£196,716.71
Costs recoverable from Respondents *	£48,689.79	£72,745.06
Costs per solicitor with a practising certificate (excluding lay members' costs paid for by the Scottish Government)	£12.80	£12.61
Costs per solicitor with a practising certificate if all recoverable costs were received from Respondents	£9.02	£6.85

\* Estimated figure



The Tribunal is funded by the Law Society in accordance with its obligations under paragraph 22 of Schedule 4 to the Solicitors (Scotland) Act 1980.

Total Tribunal funding for the reporting year was £200,120.84. This is made up of £164,579.00 funding from the Law Society and £35,541.84 paid by the Scottish Government in respect of lay members' costs.

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