

# ANNUAL REPORT

2019/2020

SCOTTISH  
SOLICITORS'  
DISCIPLINE  
TRIBUNAL

For the Year -  
1 November 2019  
to 31 October 2020

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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.

## Nicholas Whyte, Chair & Director



This has been an unusual year for all of us and that experience has been no different for the Tribunal. During the first part of the year all Tribunal hearings were conducted in person. Part way through this reporting year, in March 2020, restrictions due to coronavirus were introduced. The Tribunal responded swiftly to the challenges imposed by the pandemic and by June 2020 all of its business moved online. “Virtual” Tribunals became the norm and these have proved to be very effective. While not appropriate for all kinds of hearings, the Tribunal hopes to maintain their use, particularly for procedural and preliminary matters, even once things return to some semblance of normality. Virtual tribunals have allowed greater participation by those geographically distant from Edinburgh and have also made it easier for Tribunal proceedings to be observed by interested parties. There have been cost savings to the Tribunal and parties’ expenses. Moving to online hearings was smoother due to the introduction of electronic papers, a transition which has taken place over the last few years. I am very grateful to the Tribunal members and all parties for adapting so well to these changes and challenges which have allowed the Tribunal to continue to fulfil its obligations. Hearings in person are still taking place in cases where a virtual hearing

would not be suitable and it is safe to do so. The Tribunal held one hearing in person in November 2020 at Perth and another is scheduled for the next reporting year. The Tribunal has worked hard to ensure that these hearings can take place safely in accordance with relevant guidance.

Progress relating to the Review of the Regulation of Legal Services in Scotland continued this reporting year, although delayed now by the pandemic. Last year, the Tribunal participated in the Government’s consultation on the recommendations contained in Esther Robertson’s report, “Fit for the Future”. The Tribunal highlighted its concerns about the convoluted complaints process, the delay in cases reaching the Tribunal, the absence of a fitness to practise regime for solicitors, the current arrangements for appointing solicitor members, and the inability to impose

interim orders on solicitors whose actions may be a danger to the public. The Tribunal believes that a disciplinary tribunal for solicitors that is completely independent of any regulator is essential. It will continue to feed these views into the Scottish Government’s process when it consults again on the issue and makes proposals for legislative change.

This year, the Tribunal has also made progress on redrafting its procedural rules. A small group of Tribunal members met several times over this reporting year to discuss the new rules and to consider the first draft which has been prepared with external assistance. Once a final draft has been formulated, stakeholders will be consulted before the draft rules are submitted for the Lord President’s approval. Linked to the consideration of its procedural rules, the Tribunal is also thinking about the way it awards expenses. A consultation on this topic is likely in the next reporting year.

On a personal note, the term of my current appointment to the Tribunal is due to expire in September 2021. By then I will have been on the Tribunal for 15 years and will be standing down. This will therefore be the last annual report which I issue on behalf of the Tribunal. A new Chair will introduce next year’s report. A number of changes and challenges have occurred over the last four and half years while I have been Chair. No

doubt there will be more in future. However, I am confident that moving forward, the Tribunal will continue its excellent work to protect the public and uphold the reputation of the profession.

## Ian Shearer, Lay Members' Representative & Director

As 2020 began, the mysterious new coronavirus outbreak was just emerging in China. Few, except possibly the sagest of public health experts, could have predicted the subsequent global disaster and death toll, nor the still grim situation now in early 2021, with people largely 'locked down' at home, and national health systems terribly overstretched by the disease. Innovative vaccines, now being deployed, offer some encouragement. We think of those on the front line of tackling the pandemic, and all others it has affected in so many ways. We hope that the crisis will ease over the months ahead – and that a year from now, things may be better.

Likewise no-one could have imagined that judicial bodies such as this Tribunal would be holding complex hearings, involving several parties, almost entirely online – nor that this would even be possible or appropriate. Like many areas of our lives, the justice system has been transformed by the virus, in a remarkably short period during which we have also all faced other unprecedented personal and professional concerns, and uncertainties.

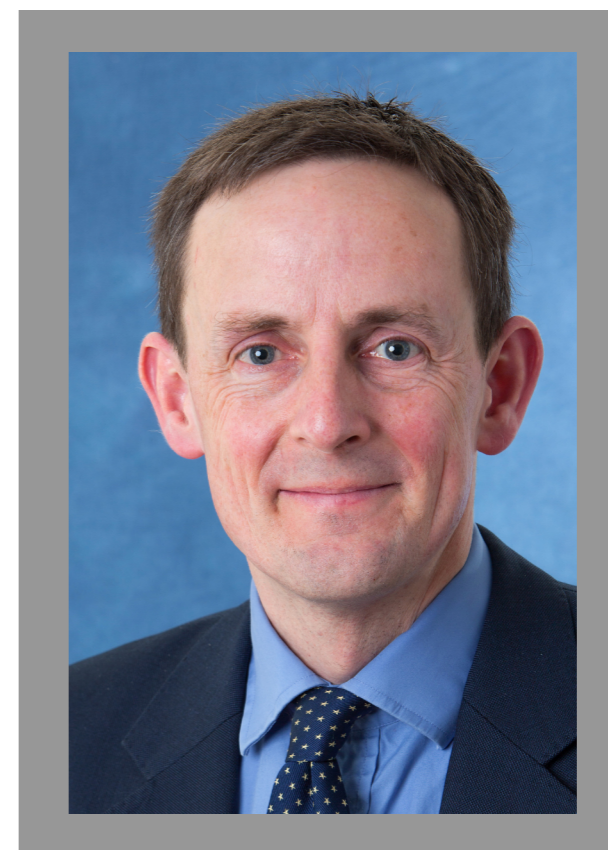
The video platform adopted and customised by the Tribunal has generally worked smoothly, successfully and cost-effectively. It compares favourably with bespoke systems now being deployed in larger national jurisdictions, and has useful features including separate virtual 'rooms' where parties can consult, or the panel can deliberate, privately. For such a small organisation, it has been a significant achievement to develop this, to manage such major change, and to maintain service through this pandemic. Congratulations and thanks to the Clerk, Nicola Ross, and her team for their dedicated continuing support to the Tribunal under great pressure, and at a time when, as this report notes, some ever more demanding and complicated cases create added burdens.

The Tribunal's lay members play an essential role in representing the public interest, partly through considering cases from the perspective of general consumers of legal services. They support the Tribunal's independence, and its objectives of protecting the public and maintaining confidence in the legal profession through the upholding of professional standards. What does the move towards online hearings, which may be maintained to some extent beyond the pandemic, mean from the public's point of view? There are some benefits: online hearings are open and accessible to lay participants, and to observers anywhere, easily and without expense (and incidentally, the continuing rise, noted in this report, in annual viewings of our web site's findings page is welcome too).

Digital technology, however, may be difficult or unsuitable for some. As restrictions ease, the Tribunal will need to review arrangements to allow all who should take part to do so. We also miss the real interaction between panel members, parties and witnesses during proceedings.

Lay members will continue to contribute to the ongoing reviews of complaints handling and of the regulation of the legal profession. Separately, I also continue to represent the lay members within the group (referred to by the Chairman) which has made good progress in modernising the Tribunal's rules and which looks forwards to publishing its proposals for consultation.

Nicholas Whyte has mentioned that this is to be his last year as the Tribunal's Chairman. Nicholas has modestly but superbly steered us through times of change and exceptional challenge, freely devoting incredible amounts of hard work, time and expertise to serving the Tribunal, yet maintaining discretion, great empathy and good humour. In the third of four generations of his family to work in a small practice in Forfar, he is in the best tradition of Scottish solicitors, and has been a kind and supportive colleague to all the members and staff, all of whom will surely join in warmly thanking him and wishing him well.



# 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 is in the process of redrafting its rules following a consultation exercise.

### 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.

### 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 fifteen 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.

There are no strict rules of evidence. Hearsay is admissible. There is no requirement for corroboration. The Tribunal has the right to control its own procedure. 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 Service.”

### 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.

## 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 Tribunal received eighteen new Complaints this year compared to thirty five last year. This is a significant reduction compared to recent years. The Tribunal tends to receive around thirty new Complaints a year. The reduction may be due to the effects of the pandemic.

The Tribunal notes that the SLCC has experienced a drop in overall complaints in its last reporting period from July 2019 to June 2020. ([SLCC Annual Report](#))

The year concludes with twenty substantive cases outstanding, which is the same as last year. There are also three compensation cases which have been carried over to the new reporting year.



The Tribunal met **45** times this year. It decided **29** cases.

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.

## 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 results in sanctions from censure at the least serious end of the scale to strike off at the most grave.

In **3** cases, the Tribunal returned not guilty verdicts.

In all of these the Tribunal declined to remit the Complaint to the Law Society under section 53ZA of the Solicitors (Scotland) Act 1980 for consideration of unsatisfactory professional conduct.

Although overall cases are down, 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 six Interlocutors and Notes following procedural or preliminary hearings.

## Appeals

The Tribunal dealt with **9** appeal cases under section 42ZA of the Solicitors (Scotland) Act 1980.

The number of appeals being made to the Tribunal has increased compared to recent years.

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

**7** 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.

Failure to comply with the Practice Rules is the most common basis for establishing misconduct. Failing to abide by the accounts rules features heavily. This year, there were also a number of cases involving conflict of interest. Delay, failing to respond and misleading others have 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**.

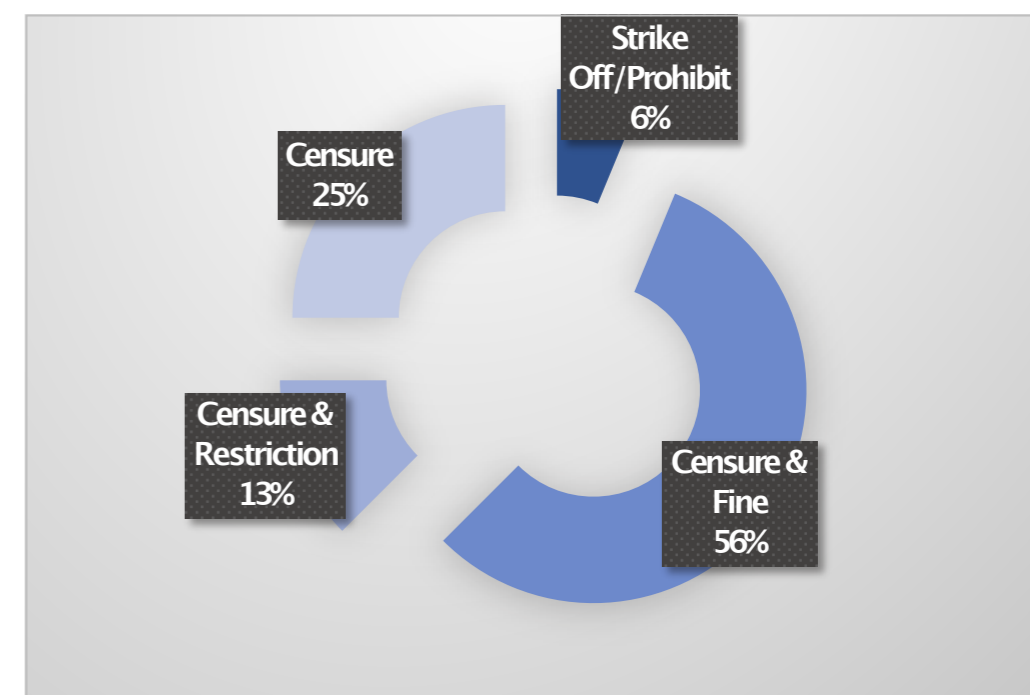
The Tribunal has the power to order that a practitioner's practising certificate is made subject to such terms and conditions as the Tribunal may direct (called a **Restriction**). Often the condition imposed is that the practitioner practises as an assistant to another solicitor approved by the Law 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 2019 to 31 October 2020





## CENSURE

This year, four 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.

# Summary of the Sanctions Imposed

## FINES

The Tribunal also imposed fines in nine cases.

These fines came to a total of £22,000.

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.



## RESTRICTIONS

Two solicitors had their practising certificates restricted for two years each. 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.

## STRUCK OFF THE ROLL OF SOLICITORS IN SCOTLAND

One solicitor was struck off the roll of solicitors in Scotland.

This solicitor had been 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

- Dishonest conduct by telling a client a petition had been lodged with the Court when he knew that it had not been submitted. Reckless conduct by providing his personal bank details to a client rather than the firm's account. Conducting himself in a way which lacked integrity by failing to return £600 paid into his bank account due to his reckless error.

### Censure and Restriction

- Accounts Rules breaches
- Breach of practice rules regarding borrowing from a client
- Conflict of interest
- Anti-Money Laundering compliance
- Failure to cooperate with the Law Society of Scotland
- Failure to act in the best interests of a client

### Censure and Fine

- Accounts Rules breaches
- Conflict of interest
- Anti-money laundering failures
- Acting contrary to Council of Mortgage Lenders' Handbook requirements
- Misleading conduct
- Failing to act with competence, diligence and skill
- Failure to communicate
- Lack of integrity concerning Scottish Legal Aid Board accounts
- Failure to make a disclosure under Proceeds of Crime Act 2002

### Censure

- Inappropriate, derogatory and offensive emails sent to a client and another
- Failure to settle another firm's fee note
- Failure to communicate
- Failure with mandates

# Secondary Complainers

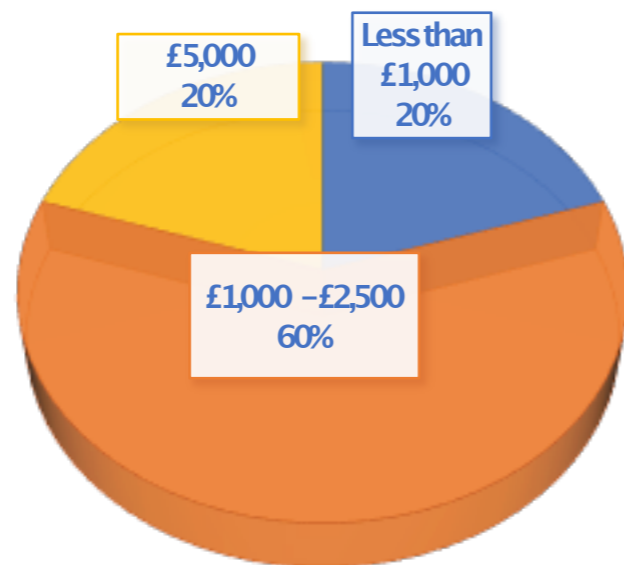
Secondary Complainers become parties to the proceedings only after a finding of professional misconduct is made. Prior to this, they have no direct input into the Tribunal process.

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.

This year, fifteen Complaints lodged with the Tribunal identified Secondary Complainers. In three cases, no claims were lodged. In two cases the matters were settled and the claims for compensation withdrawn. Awards were made in five cases. There are three claims outstanding to be dealt with in the next reporting year. The remaining two Secondary Complainers were unable to claim compensation as the Tribunal had found the Respondents not guilty of professional misconduct.



The level of award ranged from £750 to £5,000. The maximum amount of compensation which the Tribunal can award is £5,000. The total amount of compensation awarded to Secondary Complainers was £10,250. 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 nine appeals. Two of these were successful. Seven 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 attempted to assist by providing guidance notes on its website but this remains a persistent problem.

## 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 Tribunal case was appealed to the Court of Session this year:

([Law Society v Kevin MacPherson](#)). The Court refused the petition on the Law Society's unopposed motion without the appeal being heard.

The judicial review case [Ahmed-Sheikh v Scottish Solicitors Discipline Tribunal](#) was heard in the last reporting year but the decision was issued this year. This case was reported in the Tribunal's [Annual Report 2019](#).

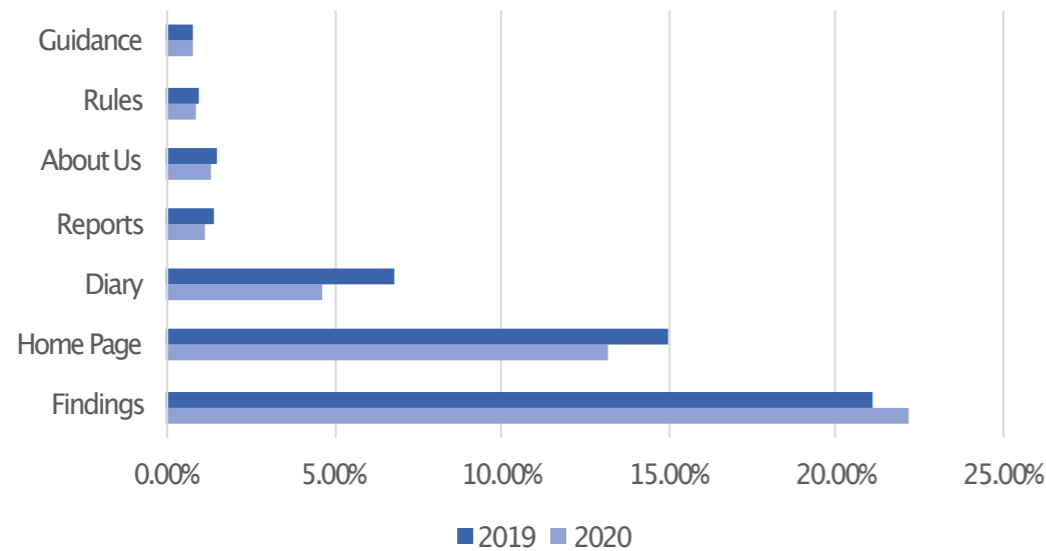
The Tribunal's website is frequently used by Tribunal members and the public. It has continued to be heavily used, despite the reduced number of decisions issued this year.

This year, the findings page was accessed 31,224 times. In 2019, it was accessed 31,044 times.

Other helpful documents are available on the [Guidance page](#) which provides advice for Tribunal users and the media. This page was accessed 1,146 times this year.

The diary page is updated regularly. This was reviewed 6,524 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 Nicholas Whyte, Colin Bell, Ian Shearer and Kay Hampton. The Clerk acts as company secretary. The company employs the Clerk and administrative staff.

	Year to 31.10.2020	Year to 31.10.2019
Total costs of the Tribunal (including lay members' costs)	£191,764.36	£260,458.99
Costs recoverable from Respondents *	£57,227.77	£96,188.85
Costs per solicitor with a practising certificate (excluding lay members' costs paid for by the Scottish Government)	£13.28	£17.06
Costs per solicitor with a practising certificate if all recoverable costs were received from Respondents	£8.65	£9.30

\* 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 £191,764.36. This is made up of £164,051.00 funding from the Law Society and £27,713.36 paid by the Scottish Government in respect of lay members' costs.