



Scottish Solicitors'
Discipline Tribunal

Annual Report

1 November 2022

to

31 October 2023

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.

Contents

04

Chair's
Introduction

06

Lay Members'
Representative
Statement

08

About the
Tribunal

09

Tribunal
Members

10

How the
Tribunal
deals with a
case

11

The Year in
Review

12

Tribunal
Cases

16

Tribunal
Website

17

SSDT
Administration
Limited

Chair's Introduction

Welcome to the Scottish Solicitors' Discipline Tribunal's Annual Report for the period from 1 November 2022 to 31 October 2023. This was another busy year for the Tribunal, even though the number of Complaints lodged with the Tribunal this year has not quite reached pre-pandemic levels.

Regulation of Legal Services (Scotland) Bill

The Scottish Government published its Regulation of Legal Services (Scotland) Bill in 2023. The Tribunal is pleased to see that compensation has been removed from its remit. It is also encouraged to note the extension to the Tribunal's power to fine in misconduct cases.

I gave evidence to the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament on behalf of the Tribunal in November 2023. The Tribunal has provided feedback at various stages and continues to engage with the Scottish Government on the key parts of the Bill which affect the Tribunal. The Tribunal looks forward to engaging positively with all stakeholders as the Bill makes its way through Parliament.

Draft Rules

The Tribunal has extensively revised and redrafted its procedural rules. These are currently with the Lord President for approval. The Tribunal hopes that these will become operational in the next reporting year (2023-2024).

Expenses

Following the Tribunal's consultation on its approach to expenses, and feedback from the Lord President, it has decided that its general approach should be to award expenses on the party and party scale rather than the agent and client, client paying scale. The Tribunal has prepared guidance for users on this change. This will be published shortly, and it is hoped that the Tribunal will start using this new approach at the same time as the new draft rules come into force.

“ The Tribunal is ready to use its new powers in appropriate cases as they come before the Tribunal. ”



Judgment Publication Policy

This reporting year, the Tribunal consulted on its proposal to institute a Judgment Publication Policy in relation to its written decisions. The final decision on this will be taken in the next reporting year (2023-2024).

Economic Crime and Corporate Transparency Act 2023

This Act of the Westminster Parliament has introduced unlimited fines to the Tribunal in cases involving economic crime. It is not yet known at the time of writing when these provisions will come into force but the Tribunal has followed the Bill's progress with interest. It is ready to use its new powers in appropriate cases as they come before the Tribunal.

Payment of Solicitor Members

At its AGM in June 2023, the Tribunal agreed that it should pay its solicitor members the same preparation and attendance fees which are paid to the non-lawyer members by the Scottish Government. Solicitor members will therefore be paid from 1 November 2023.

Thanks

Thanks are due to all the Tribunal members for their support, engagement and hard work this year. I am also grateful to the Tribunal Office staff for all their assistance. I look forward to the next Tribunal year with confidence and optimism that the Tribunal will meet its challenges head-on.

*Colin Bell
Tribunal Chair*

Lay Members' Representative's Statement

Ian Shearer



The Tribunal's routine business is to hear and dispose of complaints and appeals. The numbers of sitting days and decisions all increased slightly and have approximately returned to pre-COVID levels, but also with a sense of increased complexity in a few cases.

Through its annual reporting, the Tribunal seeks to show that it manages these core functions effectively, at only a moderate cost to the profession and the public purse – in context of our aims to protect the public from harm, and to maintain public confidence in solicitors.

Strikingly, few of the Tribunal's decisions are appealed – none this year, whilst one overhanging from the previous year was dismissed on the appellant's own motion. Perhaps, to some extent, this indicates general robustness in the Tribunal's independent and collegiate decision-making, often involving very thorough debate between the professional and lay members.

The Tribunal's core costs to the profession will admittedly now increase a little, given the decision to start paying solicitor members for preparation and attendance fees at the same rate as lay members. This followed years of internal deliberation about several disparities between the two different types of member. It was the lay members who particularly felt that the disparity on remuneration should end. This may encourage a wider diversity of solicitors to apply to become members. Whilst many are more than happy to serve their

profession in voluntary roles, it has become increasingly unrealistic for others, especially in busy small practices. It puts solicitor members on a similar footing to other paid roles they might take on as part of professional life.

The number of sub-headings in the Chairman's own introduction reflects an unusually high level of non-routine, but important, topics also needing to be addressed. These created a considerable additional workload and burden for all involved. We thank the Clerk, Nicola Ross, and her team for all their dedicated, efficient and ever-cheerful efforts. Thanks too to the Chairman and other members for their unstinting commitment – especially to the additional working groups required – and for their mutual support and advice.

It is especially interesting and significant to have seen the Scottish Government's eventual Bill to implement the reform of regulation of the legal profession, and to be following its current progress through the Scottish Parliament – not without controversy in some aspects.

The long debate about the need for regulation not just to be independent – both of the profession and of government – but also to be seen to be so, has again featured during parliamentary scrutiny. It is worth emphasising again that this specialist Tribunal, with long experience in considering the most serious matters of Scottish solicitors' discipline and conduct, is already an independent statutory body, overseen by the Lord President within the judicial system.

Our 50% lay membership play a particular role, alongside expert practitioners, in upholding standards of professional conduct. They represent the public and consumer interest effectively in the Tribunal's casework and deliberations. Consumer protection is rightly placed at the heart of the system of legal regulation, and is vital to maintaining public confidence in lawyers.

The Bill recognises consensus on all sides that the Tribunal should be retained without substantial changes. During discussions on the Bill, we have proposed various minor and technical improvements and amendments, and are pleased these are being carefully considered too. We also make the point that the Tribunal could possibly exercise an equally valuable independent role in entity regulation to a greater extent than currently.

At the time of writing, we have been in the process of appointing a number of new lay members, and look forward to working with them. We warmly thank those who have stepped down and wish them well. Together with the impending changes in legislation, Rules and other policies referred to by the Chairman, the Tribunal can indeed be confident about its ongoing evolution.

What We Do



Complaints

of professional misconduct

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 then lodged with the Tribunal.

The vast majority of the Tribunal's work involves hearing complaints of professional misconduct. These are becoming more complicated and require more Tribunal time.



Section 53(1)(b) 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



Section 42ZA Appeals

from the Law Society's determinations regarding unsatisfactory professional conduct



Applications

for restoration to the Roll of Solicitors in Scotland or for removal of a restriction on a practising certificate.

Tribunal Members

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

Solicitor members were not paid during this reporting year. However, from 1 November 2023, solicitor members will be paid by SSDT Administration Limited which is in turn funded by the Law Society of Scotland. 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 by the Scottish Ministers 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 2023)

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

Julius Erolin
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

How the Tribunal deals with a case

The Tribunal is governed by the Scottish Solicitors Discipline Tribunal Procedure Rules 2008 which are approved by the Lord President. The Tribunal recently redrafted its Rules following a consultation exercise. It is hoped that the new Rules will be implemented in 2024.

In misconduct cases, 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. Solicitors can be represented at a hearing and sometimes they represent themselves. Evidence can be led and submissions are made to the Tribunal on the question of misconduct.

Who are Respondents?

Solicitors, conveyancing and executry practitioners and registered European and foreign lawyers..

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. The Tribunal has recently reconsidered the basis upon which it awards expenses. In future, it intends to use the party and party scale as its starting point. Further information on this case will be made available to users on the Tribunal website in 2024.

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.

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.

The Year in Review

The Tribunal received

24 new complaints.

5 new appeals.

The Tribunal sat **56** times to hear cases compared to 52 last year.

Section 42ZA Appeals

8 Appeals dealt with.

5 Appeals were dismissed as being manifestly unfounded without proceeding to a hearing.

2 Appeals were dismissed after a hearing was held.

1 Appeal was withdrawn by the Appellant.

Complaints

29 Complaints were decided.

5 complaints withdrawn or dismissed.

17 Findings of Professional Misconduct made.

3 Not Guilty Findings.

4 Not Guilty Findings and Remitted back to the Law Society.

7 Interlocutors and Notes following procedural or preliminary hearings were issued.

12 outstanding cases to be dealt with.

1 Appeal made to the Court of Session in 2021-22. This was dismissed on the Appellant's motion in November 2022.

Tribunal Cases

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.

In a case this year, the Respondent failed for 6 months to provide a file to his regulator. The SLCC commenced court proceedings before the Respondent acted to fulfil his obligations. Failure to respond to the SLCC and provide files where necessary, frustrates the regulatory process. Solicitors must respond timeously to the regulators. This has been repeatedly highlighted to the profession in recent years, and solicitors must take heed of their obligations. It is not acceptable for solicitors to ignore the SLCC. The public interest is affected because complainers cannot progress their complaints. It hampers the SLCC in performance of its statutory duties. It also brings the profession into disrepute. The Respondent's failure to act was a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct.

In another case, the Respondent unduly delayed in winding up an estate for over nine years. There were some challenges such as the action for specific implement of the missives in relation to a property and failure by one of the beneficiaries to engage with the Respondent. However, these were not insurmountable, and they did not excuse or explain the inordinate amount of time it took to wind up the executry. It was of great concern to the Tribunal that the Respondent agreed following SLCC mediation in December 2018 to market the property in January 2019, that this was not done by the agreed deadline, and that in 2021, this matter was still outstanding. The Respondent delayed in answering the Secondary Complainer's correspondence. This kind of conduct brings the profession into disrepute, not just with the individual beneficiaries in this case, but also to the wider public.

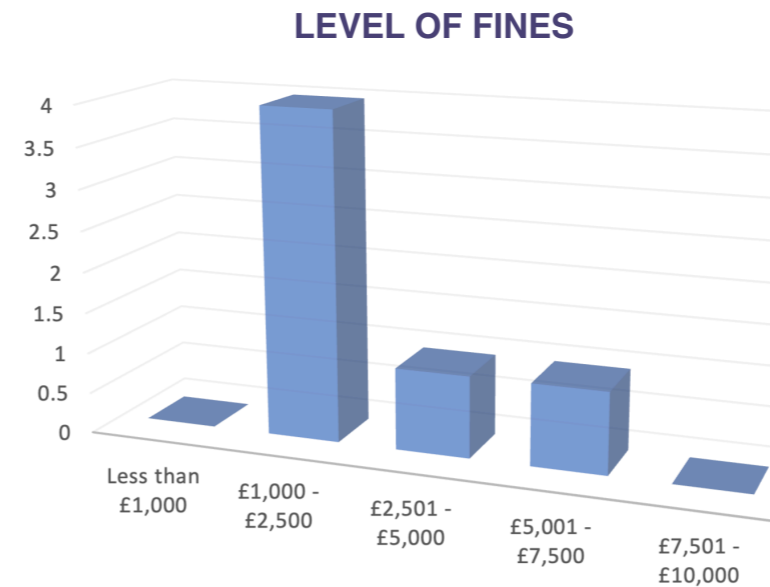
The chart shows the grounds of professional misconduct established this year. A single case may have multiple grounds.



Sanctions

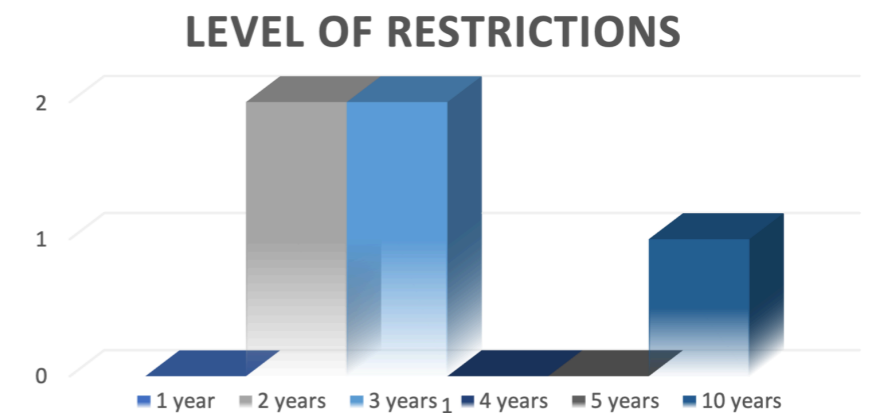
The Tribunal's sanctions range from censure to strike off. The Tribunal applies indicative sanctions guidance.

This year, **3** 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.



The Tribunal also imposed fines in **7** cases. These fines came to a total of £17,500. 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 on a solicitor is currently £10,000 although the Economic Crime and Corporate Transparency Act 2023 introduces an unlimited fine for the Tribunal in cases involving economic crime.

5 solicitors had their practising certificates restricted so that 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.

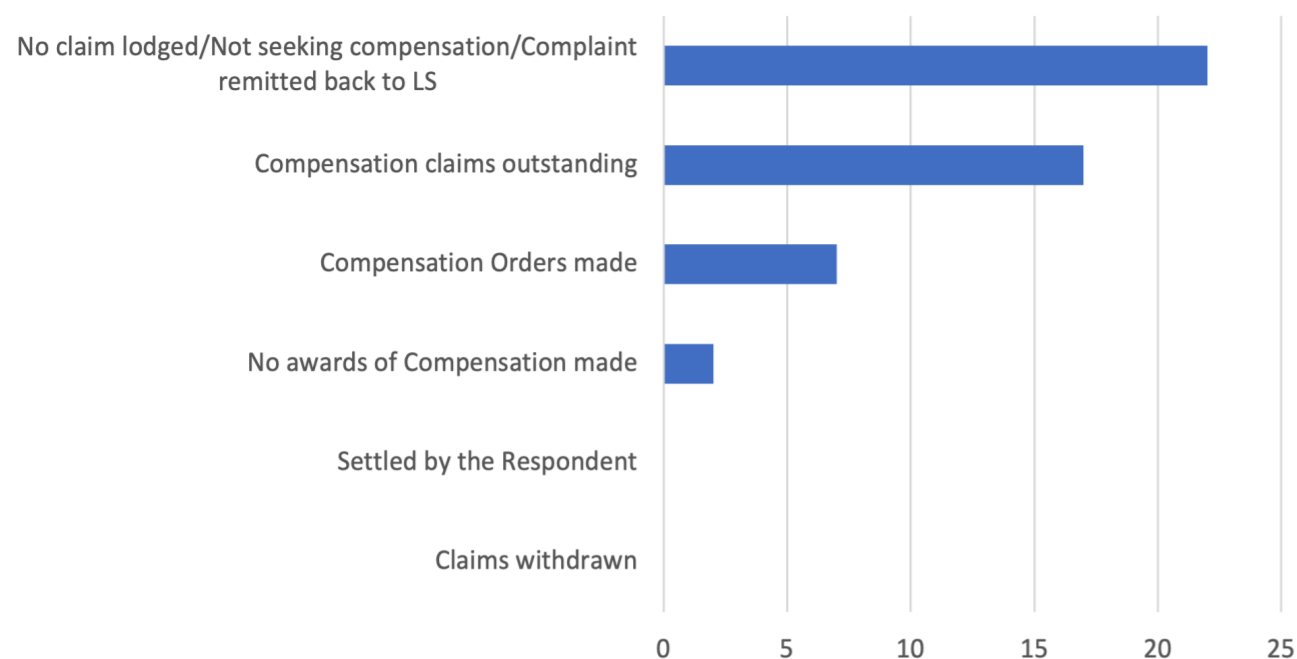
No solicitors were suspended this year.

2 solicitors were struck off the roll of solicitors in Scotland. They had acted dishonestly.

In one of the dishonesty cases, the Respondent was on the Roll of Solicitors in Scotland but had not held a practising certificate for many years. Despite this, he held himself out to be a practising solicitor and notary public entitled to sign and serve a statutory demand for payment and an initial writ. He was found guilty of acting dishonestly and was struck off the roll of solicitors in Scotland. The Tribunal noted that it is essential that solicitors act honestly and with integrity. The court system can only work if the trust placed in representatives is well placed. The court and parties to a litigation are entitled to expect that a representative lodging a writ is qualified to do so. Solicitors with practising certificates are part of a regulated profession which maintains standards and protects the public. The public interest and the reputation of the profession are harmed if unqualified persons carry out work reserved to solicitors with practising certificates.

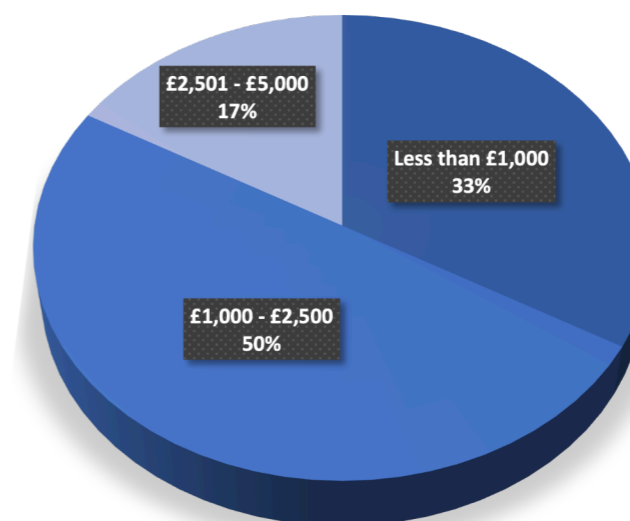
Secondary Complainers & Compensation

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 has provided [guidance notes](#) on its website for Secondary Complainers.



The Tribunal made decisions in 20 cases involving Secondary Complainers this year, compared to 14 last year. 17 cases are outstanding and will be dealt with in the next reporting year. Of the 9 compensation cases which were concluded, awards were made in 7 cases. In 22 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 if unsatisfactory professional conduct is 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 £9,988.40 in compensation.



Appeals under Section 42ZA

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 8 appeals, the same as last year. See the table on page 11 for more detail on disposal of these appeals.

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. There is [guidance for potential appellants](#) on the Tribunal's website.

In appeals cases 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.

Tribunal Website

www.ssd.org.uk

The Tribunal's website is frequently used by Tribunal members and the public. The updated Google analytics figures show page views for the last six months of the reporting year.

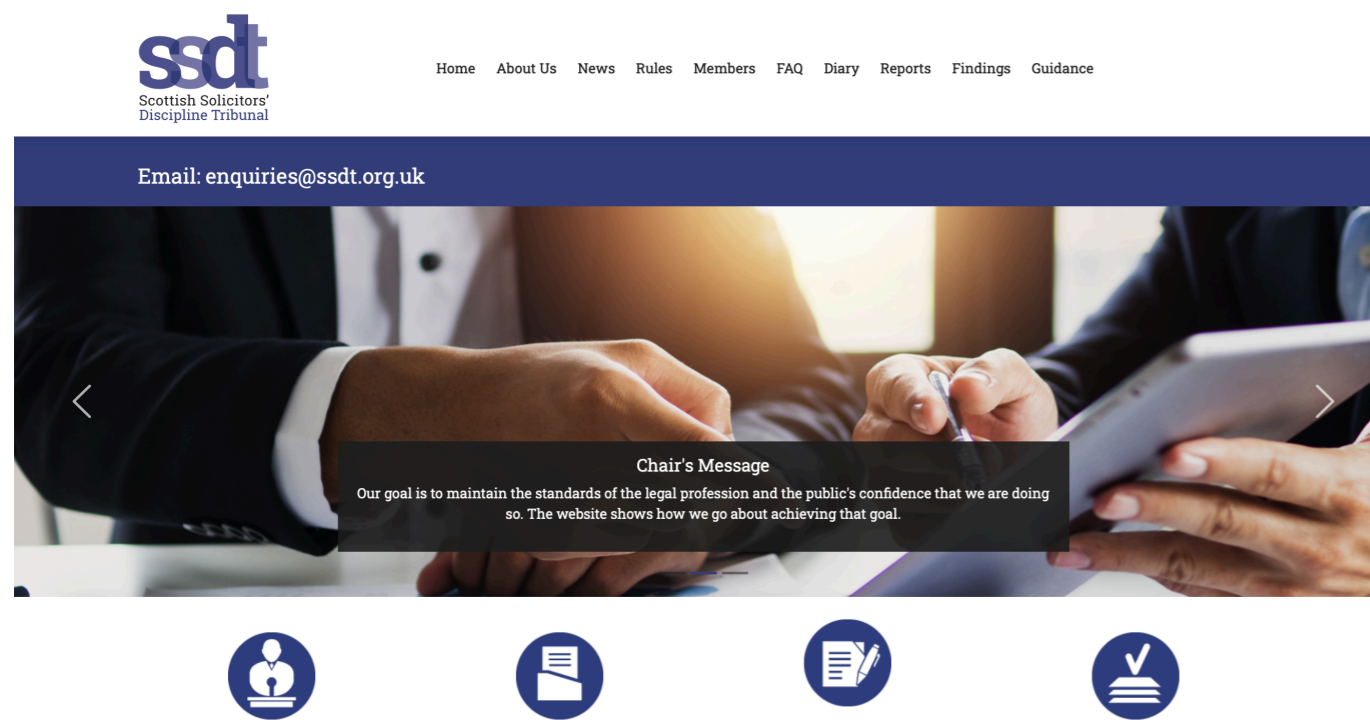
The website was viewed 38,638 times from 1 April 2023 to 31 October 2023.

The findings page was accessed 17,525 times.

The home page 4,455.

The diary page 2,264 times.

"About Us" 317 times.



SSDT Administration Limited

Company Number SC53615

Registered Office: Unit 3.5, The Granary Business Centre, Coal Road, Cupar, Fife KY15 5YQ

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. Further information about the company can be found on the [Companies House](#) page.

| | Year to 31.10.2023 | Year to 31.10.2022 |
|--|--------------------|--------------------|
| Total costs of the Tribunal (including lay members' costs) | £227,829.64 | £200,120.84 |
| Costs recoverable from Respondents * | £56,003.44 | £48,689.79 |
| Costs per solicitor with a practising certificate (excluding lay members' costs paid for by the Scottish Government) | £14.07 | £12.80 |
| Costs per solicitor with a practising certificate if all recoverable costs were received from Respondents | £9.87 | £9.02 |

* 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 £227,829.64. This is made up of £187,792.50 funding from the Law Society and £40,037.14 paid by the Scottish Government in respect of lay members' costs.

**UNIT 3.5, THE GRANARY BUSINESS CENTRE
COAL ROAD
CUPAR, FIFE
KY15 5YQ**



www.ssdt.org.uk



enquiries@ssdt.org.uk