



Scottish Solicitors'  
Discipline Tribunal

# Annual Report 2018

1 November 2017  
to  
31 October 2018

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# Chair's Introduction

Nicholas Whyte



This year has seen some changes to the membership of the Tribunal. We were sorry to lose the experience of several of our established members due to the expiry of their terms of appointment. We said a fond farewell to Andrew Jones, Irene Kitson, Catriona Whitfield, Rosemarie McIlwhan and Alistair Cockburn. We wish them all the best for the future. Our thanks go to Alistair Cockburn for his many years of service to the profession and the Tribunal, particularly in his role as Chair of the Tribunal for many years. We wish him a long and happy retirement. Seven new members have joined the Tribunal. Dozie Azubike, Sally Swinney, Paula Charlesworth, Carla Fraser, John Duffy, Douglas Cochrane and Christine Pacitti have taken their positions with enthusiasm and we are grateful for the skills and experience they bring to their roles.

The Tribunal noted Esther Robertson's recommendations in her "Fit for the Future" report following the Independent Review of the Regulation of Legal Services. The Tribunal was pleased to participate in the review and looks forward to providing its views and experience to any consultation launched by the Scottish Government.

As you can see from the findings produced this year, the Tribunal has taken a more proactive approach to protecting personal data. However, it is obliged by paragraphs 14 and 14A of Schedule 4 to the 1980 Act to publish its decisions in full and it is only allowed to refrain from publishing any names or other details if these would damage or by likely to damage the interest of persons other than the solicitor or their partners or families. The Tribunal also produced a media policy to assist members of the press.

The Tribunal continues to evolve and 2019 will provide further opportunities for change. Among other things, the Tribunal will start the process of re-drafting its procedural rules. I am confident that our members are able to meet the challenges next year will bring and that they will continue to uphold the standards and reputation of the profession and protect the public.

**Nicholas Whyte**  
**Chairman**

# Lay Members' Representative

Ian Shearer




At the June AGM, after being on the Tribunal for nearly five years, it was an honour to be elected by other members as the new Lay Members' Representative, following Andrew Jones whose own second five-year term on the Tribunal was ending.

Andrew deserves credit for doing so much to shape this role; for helping to support us when we were first appointed; and for representing the lay members so effectively within the Tribunal's internal and external discussions. As he said last year, with such positive interaction and dialogue with the SSDT's solicitor members and office staff, the Tribunal has become a cohesive and collegiate body. We thank Andrew, and the other members recently demitting office, and wish them the best for the future.

It was then a pleasure to welcome the recent influx of new members, including five non-lawyers. The biographies on the SSDT web site demonstrate their diversity of backgrounds, bringing expertise from areas as wide-ranging as: hi-tech manufacturing; the police and fire services; mental health, pharmacy and the NHS; human resources, training and development; and offshore health and safety. Several have served on other professional disciplinary bodies. With the review of the regulation of the Scottish legal profession remaining a current matter of uncertainty, it is useful to look at our operation and procedures with fresh eyes and in the light of experience from other similar jurisdictions: suggestions from members, and good ideas which can be borrowed from elsewhere, will always be welcomed.

These will continue the process, which Andrew encouraged, of modernising the SSDT's approach and communications, and of making it easier for the public to understand and engage with our work. The refreshed, clearer SSDT website has been followed by the now-routine use of electronic papers during Tribunal hearings, and a transparent Register of Interests. An excellent bi-annual newsletter is now sent to members. Rachel Graham, office manager, deserves praise for all her work on these initiatives – and co-ordinating the important social side to our activities (from which some other Tribunal jurisdictions might learn...!), all helping to integrate the Tribunal as an organisation.



Lay members play a vital part in the tribunal system in representing the public interest. To some extent, in considering the matters before them, they place themselves in the shoes of ordinary citizens – in the SSDT, of consumers of legal services. They also apply their broad professional – and life – experience, as described above, to often complex and sometimes finely-balanced cases. The public can be assured that lay members play a full role in decisions, and in dealing rigorously with issues of professional conduct; and frequently influence case outcomes.

In this light, more could still be done to communicate to the public, politicians and user groups the Tribunal’s independence, and its full involvement of lay people. In the months ahead, we particularly look forward to seeing how the Scottish Government plans to take forward the review of regulation, and to working with all parties in that reform process.

***Ian Shearer***  
***Lay Members’ Representative***

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# Introduction

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## About the Tribunal

The Scottish Solicitors' Discipline Tribunal deals with serious disciplinary issues in the solicitors' profession in Scotland. It is independent of the Law Society of Scotland. More information about the Tribunal can be found on the [SSDT website](#). The Tribunal consists of 12 lay members and 12 solicitor members. 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.

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

## 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.

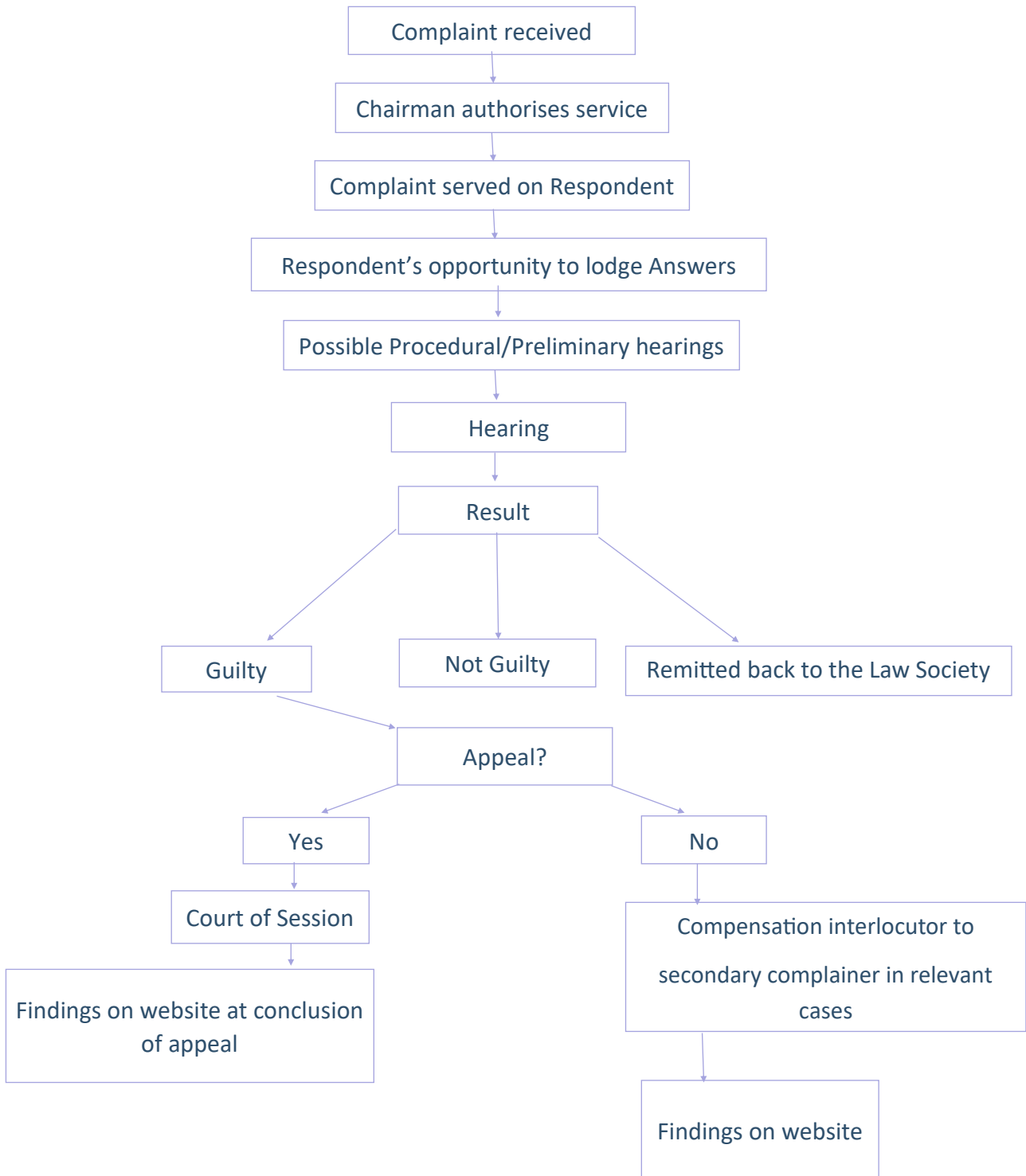
## Tribunal Business

The Tribunal sat on thirty eight days this year. The vast majority of the Tribunal's work involves hearing complaints of professional misconduct. As has been the recent trend, complaints are becoming more complicated and require more Tribunal time. The Tribunal also deals with complaints which relate to criminal court convictions but no such complaints were submitted this year. The Law Society can bring complaints against solicitors convicted of an act involving dishonesty, or sentenced to imprisonment of twelve months or more or a fine equivalent to or greater than level four on the standard scale. The Tribunal deals with appeals by solicitors and lay complainers against the Law Society's findings or failure to make findings of unsatisfactory professional conduct. The Tribunal can also deal with applications for restoration to the Roll of Solicitors and applications for Removal of a restriction on a practising certificate, but did not receive any such applications this year.

# The Tribunal Process

## Professional Misconduct Complaints

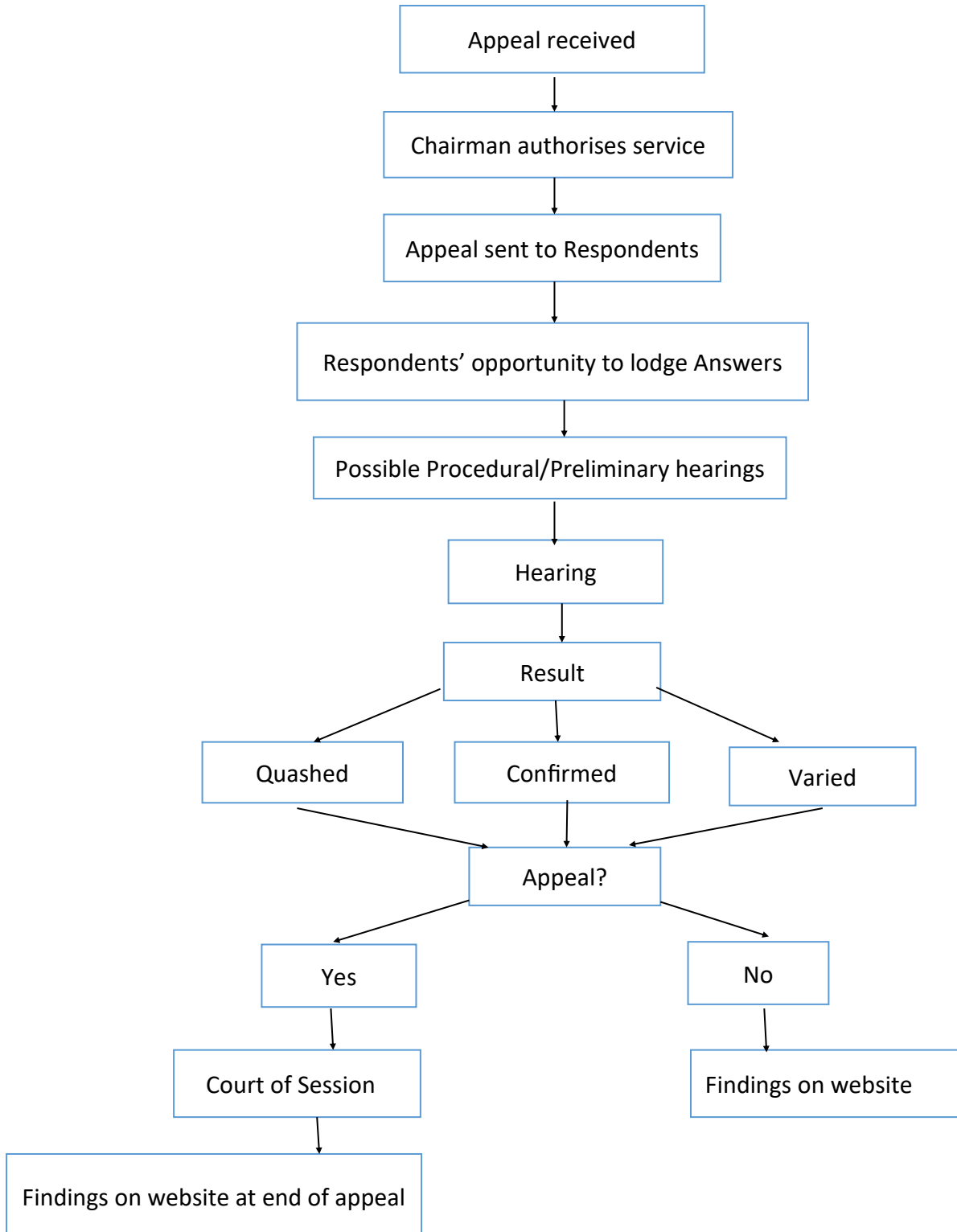
Information on Tribunal procedure is available in the [Tribunal Rules](#) and on the Tribunal website. Most Tribunal business involves hearing Complaints of professional misconduct. The following diagram is a streamlined illustration of the Tribunal's involvement in a professional misconduct Complaint.



# The Tribunal Process

## Section 42ZA Appeals

The Tribunal also deals with appeals against unsatisfactory professional conduct decisions made by the Law Society's Professional Conduct Sub Committee. The following diagram is a streamlined illustration of the Tribunal's involvement in a Section 42ZA Appeal.





# Cases

## Appeals to the Court of Session


Two Tribunal decisions were appealed to the Court of Session this year. One was abandoned and the other dismissed by the Court for want of insistence.

## Tribunal Cases

The Tribunal received 34 new Complaints this year. Last year it received 27 new Complaints. The year concludes with twenty cases outstanding.



The Tribunal decided 33 cases this year. No cases were brought under s53(1)(b) of the Solicitors (Scotland) Act 1980. In 25 cases, findings of professional misconduct were made. The cases cover a wide range of misconduct which covers matters such as failures to communicate effectively, failures to cooperate with the Law Society of Scotland, acting in conflict situations, accounting errors and dishonesty. These attract sanctions from censure at the least serious end of the scale to strike off at the most grave.



In four cases the Tribunal returned not guilty verdicts. In three of these, the Tribunal remitted the Complaints to the Law Society under section 53ZA of the Solicitors (Scotland) Act 1980 to deal with issues of potential unsatisfactory professional misconduct. These cases involved record keeping deficiencies, breach of anti-money laundering provisions, failures to communicate, failing to act with other solicitors in a matter consistent with people having mutual trust and confidence in each other, and a solicitor's criminal conviction for assault. One case was a simple not guilty verdict due to lack of evidence. One Complaint was withdrawn by the Law Society.

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

## Grounds

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. Executries, conveyancing and litigation work have provided the basis for several established cases of professional misconduct. Recurring themes included failure to communicate with clients and the Law Society, failure to progress cases, accounts rules breaches and overcharging. The chart below shows the grounds of professional misconduct established this year. A single case may have multiple grounds.



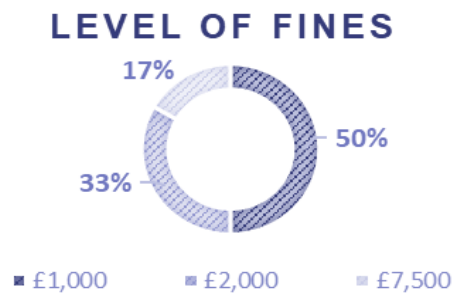
This year, of the solicitors prosecuted before the Tribunal for misconduct, 12 were reported to be sole practitioners, 10 were partners and 3 were employed solicitors.

# Sanctions

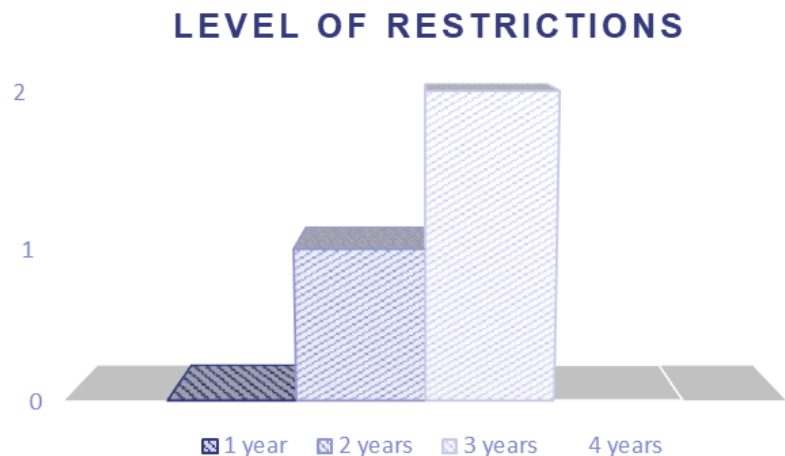
The Tribunal's sanctions range from censure to strike off. The Tribunal applies [indicative sanctions guidance](#).

This year, eight 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 applied where there is no risk to the public and so no requirement for supervision.

This year, the Tribunal also fined solicitors £14,500 in total. 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.



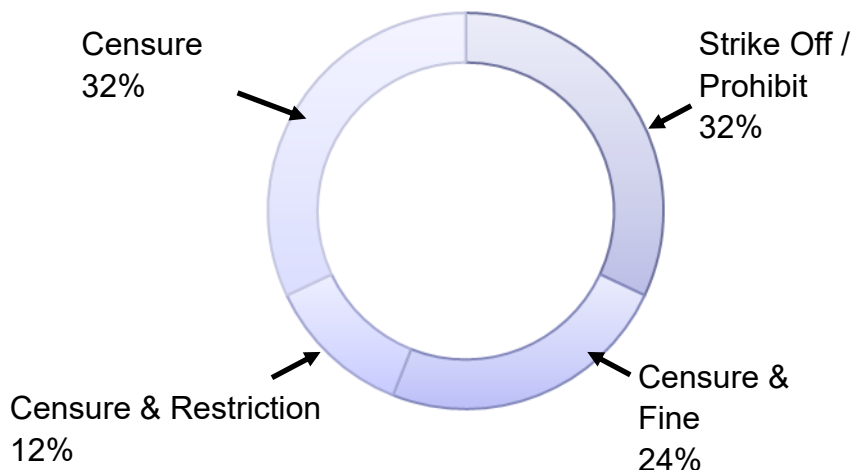
Three solicitors had their practising certificates restricted so that they are only allowed to practise under the supervision of a solicitor approved by the Law Society of Scotland. In these cases, the Tribunal considered that the solicitor might be a danger to the public if allowed to work unsupervised. 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. Solicitors with restricted practising certificates cannot, for example, practise as a manager. Therefore, they cannot be partners or sole practitioners in solicitors' firms.



The individuals struck off the roll of solicitors in Scotland tended to have committed an act of dishonesty. Frequently, this involved clients' money. However, some also involved dishonesty in the way solicitors had conducted themselves with clients, other solicitors or advocates, or the courts.

In one case the Tribunal found that the solicitor's conduct and record showed that his attitude towards his clients and regulator was incompatible with him remaining a solicitor.

This year, the Tribunal ordered that seven solicitors' names be struck from the Roll of Solicitors in Scotland. In one case, where the solicitor's name had already been removed from the Roll, the Tribunal prohibited restoration of his name to the Roll. His conduct was so serious that he should not be allowed to resume practice.



All cases turn on their own facts and circumstances. However, in order to provide a flavour of the Tribunal's work, included below are examples of conduct which led to each sanction. More detailed information on individual cases can be found on the Tribunal website.

### **Strike Off/Prohibit Restoration to Roll**

- Dishonesty
- Serious accounts rules breaches
- Misrepresentations to solicitors and clients
- Charging grossly excessive fees
- Failing to progress a client's claim for several years and lying to the client

### **Censure and Restriction**

- Failure to communicate with clients
- Failure to engage with Law Society as regulator
- Withdrawal from acting without informing client

## **Censure and Fine**

- Wrongly withholding money from a client for a period of time
- Failure to engage with Law Society as regulator
- Failure to render fee notes
- Acting in a conflict of interest situation
- Failure to fulfil cashroom manager duties
- Misleading a client
- Failure with mandates and communication

## **Censure**

- Conduct towards other solicitors lacking mutual trust and confidence
- Acting in a conflict of interest situation
- Failure to deal with mandates and correspondence
- Failure to engage with the Law Society as regulator
- Failure to act in the client's best interests
- Accepting improper instructions
- Minor record-keeping breaches where there was no dishonesty or risk to clients

## Appeals under Section 42ZA

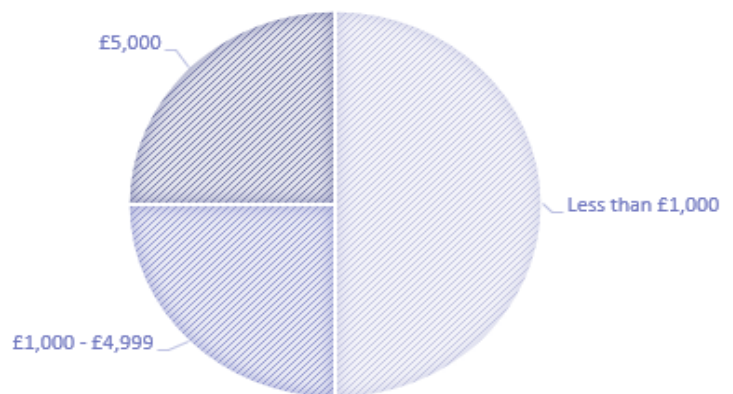
Section 42ZA appeals against unsatisfactory professional conduct decisions made by the Law Society are received from solicitors and lay appellants. The appeal should identify any error of fact or law made by the Law Society. The Tribunal has noted that appellants can find it difficult to set out clear and succinct grounds of appeal. The Tribunal has attempted to assist by providing guidance notes on its website. One appeal was allowed. The Tribunal quashed the Law Society sub committee's determination of unsatisfactory professional conduct in the context of a complaint about gazumping and gazundering. One appeal was withdrawn and the other dismissed.

## 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. 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 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 the website.

This year, 16 Complaints lodged with the Tribunal identified Secondary Complainers. Awards were made in four cases. The level of award ranged from £150 to £5,000. The maximum amount of compensation which the Tribunal can award is £5,000.

### Level of Compensation awarded



# SSDT Administration Limited

## The Company

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 company number is SC537615. The current directors of the company are Nicholas Whyte, Colin Bell and Ian Shearer. The Clerk acts as the company secretary. The company employs the Clerk and administrative staff. The registered office of SSDT Administration Limited is Unit 3.5, The Granary Business Centre, Coal Road, Cupar, Fife KY15 5YQ.

## Financial Information

	Year to 31/10/18	Year to 31/10/17
<b>Total Costs of the Tribunal (including lay members' costs)</b>	£198,145.30	£220,257.56
<b>Costs recoverable from Respondents</b>	£96,789.54	£113,550.23
<b>Costs per <i>solicitor</i> with a practising certificate (excluding lay members' costs paid for by the Scottish Government)</b>	£13.97	£15.34
<b>Costs per <i>solicitor</i> with a practising certificate if all recoverable costs were received from Respondents</b>	£5.87	£5.69



# Tribunal Website

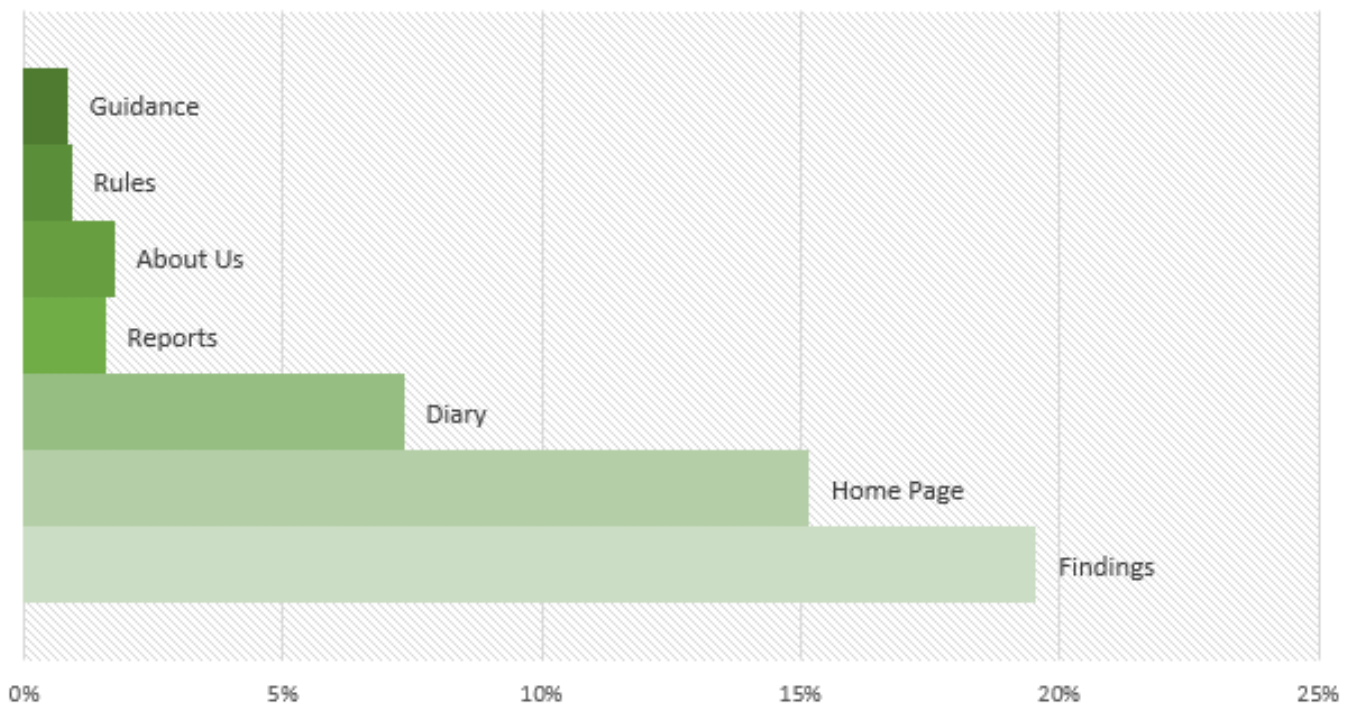
[www.ssdtd.org.uk](http://www.ssdtd.org.uk)

The Tribunal's website continues to be utilised frequently by Tribunal members and public.

The findings page was accessed **28,895** times this year, up from 26,148 last year.

The diary page is updated regularly, this was viewed **10,847** times this year compared with 7,672 times last year.

## Most visited section on the Tribunal Website





**Scottish Solicitors'  
Discipline Tribunal**

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The Granary Business Centre  
Coal Road  
Cupar, Fife  
KY15 5YQ

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Website: [www.ssdt.org.uk](http://www.ssdt.org.uk)