



ANNUAL REPORT

For the year -
1 November 2020
to 31 October 2021

Contents

Chair's Introduction	4
Lay Members' Representative's Statement	6
About Us	8
How the Tribunal deals with a case	10
This Year's cases	12
- Grounds of professional misconduct	14
- Sanctions	15
- Summary of this year's sanctions	16
- Secondary Complainers	18
- Section 42ZA Appeals	19
- Appeals to the Court of Session	19
Tribunal Website	20
SSDT Administration Limited	21

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 introduce my first Annual Report for the Scottish Solicitors' Discipline Tribunal. I was elected as Chair of the Tribunal in June 2021, and it has proved to be an eventful time to lead the Tribunal. I speak on behalf of all members when I wish my predecessor Nicholas Whyte all the best for the future. He stood down at the conclusion of his term of office at the end of 2021, having served the Tribunal with excellence for 15 years, five of those years as Chair.

It will come as no surprise that the pandemic continues to influence the way the Tribunal operates. During this reporting year which covers the period from 31 October 2020 to 1 November 2021, most hearings have taken place online. It is likely that much of our procedural and preliminary hearings will continue to be held remotely in the next reporting year. However, we are looking forward to holding some more evidential hearings in person next year, as we have experienced that these are most effective in person. I am very grateful to the Tribunal members, all parties and the Tribunal staff for adapting so well to the challenges of online working. It has required flexibility and compromise and I am delighted that everyone has pulled together so well to allow the Tribunal to fulfil its obligations.

Virtual tribunals have allowed those outside the central belt to participate in hearings more easily. It is sometimes more convenient for interested parties to observe proceedings online.

Complaints to the Tribunal are down this year. However, the higher number of appeals experienced in recent years has held steady. Although the number of complaints has decreased, Tribunal cases are becoming more complex and often require consideration of preliminary issues before substantive hearings. This has led to the Tribunal having to sit on more days this year even though the number of new cases has decreased. As we move out of the pandemic, it is anticipated that the number of new complaints will rise again.

This year, the Tribunal has made progress on redrafting its procedural rules. It is hoped that these will be available for consultation in the next reporting year. The Tribunal's rules must be made with the concurrence of the Lord President. This year the Tribunal also consulted on the way it awards expenses and work on this is ongoing. Any changes will be set out on the Tribunal's website in due course.

The Scottish Government's consultation on the Review of the Regulation of Legal Services in Scotland closed just after the end of this reporting year. As has been noted in previous annual reports, the Tribunal has 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 continues to feed these views into the consultation on legislative change where appropriate.

I look forward to leading the Tribunal into the next year. There are bound to be challenges but the Tribunal is excellently placed to meet these. The Tribunal is an independent judicial body, with legal and lay perspectives.

It always keeps in mind its dual purposes of protecting the public and upholding the reputation of the profession.

Ian Shearer, Lay Members' Representative & Director

As in 2020, the pandemic cast its lengthening shadow over 2021: everyone suffered its impact. Many of us also experienced the illness personally and/or among our families, friends and colleagues. Just as 'business as usual' seemed to be returning, helped by the remarkable mass vaccination programme, a new variant of the disease appeared to present a major new threat, prompting the return of some restrictions.

We all hope for more normality as 2022 progresses. Meanwhile, the difficulties of planning ahead, together with the need to innovate, to adapt to uncertainty and an ever-changing framework, have continued to affect all organisations including the Tribunal. Some adaptations might well become permanent, such as holding the most straightforward hearings online, but we also all look forward to resuming proper meetings in person when possible.

For such a small organisation and its staff and members, facing their own personal and family stresses from this pandemic as well as these business challenges, it is no small achievement simply to have kept the Tribunal running so smoothly. The Tribunal has been very well served by the Clerk, Nicola Ross, and her team; and by the previous and current Chairmen, Nicholas Whyte and Colin Bell. Much credit is once again due to them.

I continued to represent lay members in the group reviewing the Tribunal's rules. It proved a very lengthy process, but thankfully the new draft rules will be published for consultation soon. They aim to modernise procedures but retain their degree of flexibility, and to be written in plainer English – as far as possible, whilst balancing these aims with regulatory frameworks, legal certainty, and over-riding objectives of fairness, justice and efficiency.

Some rules – or even individual words here and there! – turned out to raise complex and detailed questions of legal interpretation or principle, leading the group down tangled avenues of debate. We look forward to feedback on whether the new draft sets the right balance, and is seen as helpful to the Tribunal's users.

Revising a mere set of rules has sometimes been painstaking, but this is partly because they also encapsulate years of the Tribunal's experience, practice and precedent. In that light, the vastly more ambitious and daunting task, recently the subject of consultation by the Scottish Government, of potentially creating an entirely new framework of regulation and possible new regulators, should not be under-estimated – entailing the revision of significant swathes of legislation itself and then practical delivery of new regulatory structures. The Tribunal will await developments with interest, to see which option for reform is taken forward. Its members are keen to play their part in the discussions if helpful.

The reform of regulation emphasises consumer principles. In the more serious conduct complaints which reach the Tribunal, lay members already play an essential role in representing the public interest, partly through considering cases from the perspective of general consumers of legal services. We are as mindful as anyone of consumer protection, and the maintenance of public confidence in the legal profession by upholding discipline and professional standards of conduct.

In the Law Society of Scotland's submission to the Scottish Government, referring to their own earlier stages of the existing complaints process, they also highlight that the "contribution from our network of lay members cannot be overstated. They help ensure we meet our important statutory duties towards the public interest and allow for the interests and protections of the consumer to sit at the very heart of our regulatory regime". We agree, and trust that whatever new regulatory model emerges, lay people will continue to play a central role alongside expert practitioners in overseeing the profession.



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. It is hoped that a consultation on the new draft rules will be opened in the Tribunal year 2021/2022.

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 2021)

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 16 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 recently consulted on its current approach to expenses. The responses to that consultation have been carefully considered. It is anticipated that the Tribunal will make a statement on the way it will deal with expenses in future during the Tribunal year 2021/2022.

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 67 days this year. Last year, it sat on 45 days, and on the year before that, 58. The number of misconduct Complaints lodged with the Tribunal this year has reduced. However, 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 16 new Complaints this year compared to 18 last year, and 35 the year before. The Tribunal tends to receive around 30 new Complaints a year. The reduced numbers in the last two years could be a consequence of the pandemic. The [SLCC's Annual Report](#) also records another year of reduced complaints.

The year concludes with 20 substantive cases outstanding, which is the same as the previous two years.



The Tribunal decided **31** 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 **14** 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 **3** cases, the Tribunal returned not guilty verdicts.

In all 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.

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 four 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. Last year, the Tribunal dealt with **9** appeals.

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

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

2 were 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 accounts rules and anti-money laundering regulations features heavily this year. There were also a number of cases involving dishonesty. Delay and 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**.

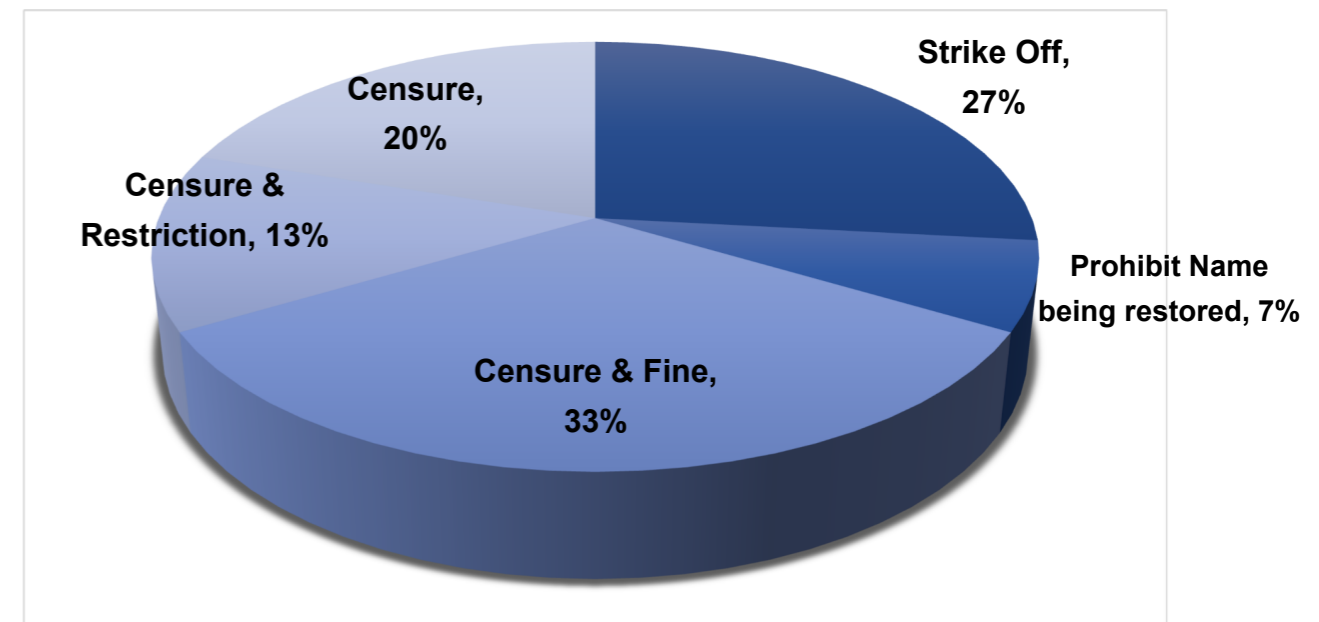
The Tribunal has the power to order that a practitioner's practising certificate is made subject to such terms and conditions as the Tribunal may direct (called a **Restriction**). Often the condition imposed is that the practitioner practises as an assistant to another solicitor approved by the Law 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 2020 to 31 October 2021



CENSURE

This year, three 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

STRUCK OFF THE ROLL OF SOLICITORS IN SCOTLAND

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

One solicitor's name had already been removed from the roll. In that case, the Tribunal prohibited restoration of his name to the roll of solicitors in Scotland. All 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.

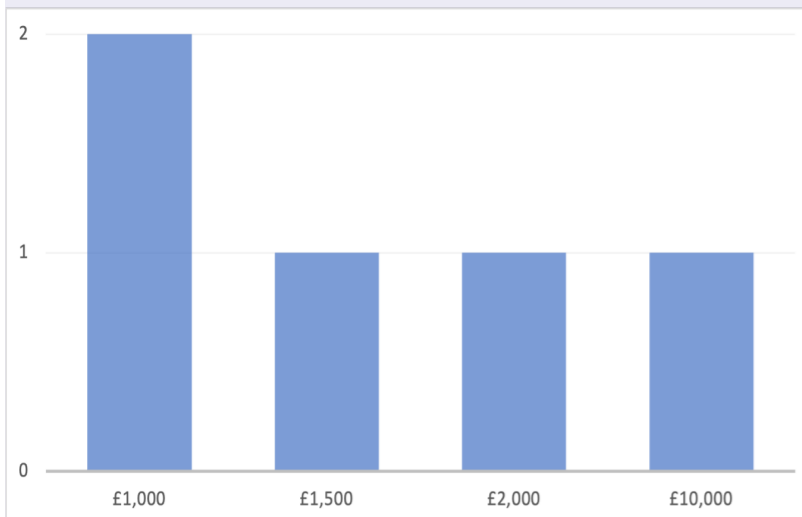
FINES

The Tribunal also imposed fines in five cases.

These fines came to a total of £15,500.

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 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.

Strike Off/Prohibit Restoration

- Dishonesty with clients' money
- Dishonestly facilitated mortgage fraud
- Appeared in Sheriff Courts and dishonestly held himself out to be a solicitor when he knew he did not have a practising certificate
- Acted dishonestly towards a client in a conflict of interest situation

Censure and Restriction

- Accounts rules breaches

Censure and Fine

- Accounts rules breaches
- Anti-money laundering failures
- Failure to act with competence, diligence and skill
- Delay in dealing with cases
- Failure to communicate
- Failure to obtemper mandates
- Provision of highly sensitive personal information to a client in prison

Censure

- Anti-money laundering failures
- Accounts rules breaches
- Conflict of interest

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 10 cases involving Secondary Complainers this year. One case is outstanding and will be dealt with in the next reporting year. Of the 10 compensation cases which were concluded, an award was made in two cases. The Tribunal declined to make awards in two cases. In the remaining 6 cases, no awards were made. In one case, the Secondary Complainer did not seek compensation. In 3 of those cases, the Tribunal found the Respondent not guilty of professional misconduct and remitted the case 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. In the remaining two cases, the Respondents died before the compensation issue was determined.

The maximum amount of compensation which the Tribunal can award is £5,000. In the only award made this year, the Tribunal ordered that the Respondent pay the Secondary Complainer £1,000 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, compared to nine last year. Two of these were successful and two were 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 attempted to assist by proving 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

No Tribunal cases were appealed to the Court of Session this year. No cases were the subject of judicial review.





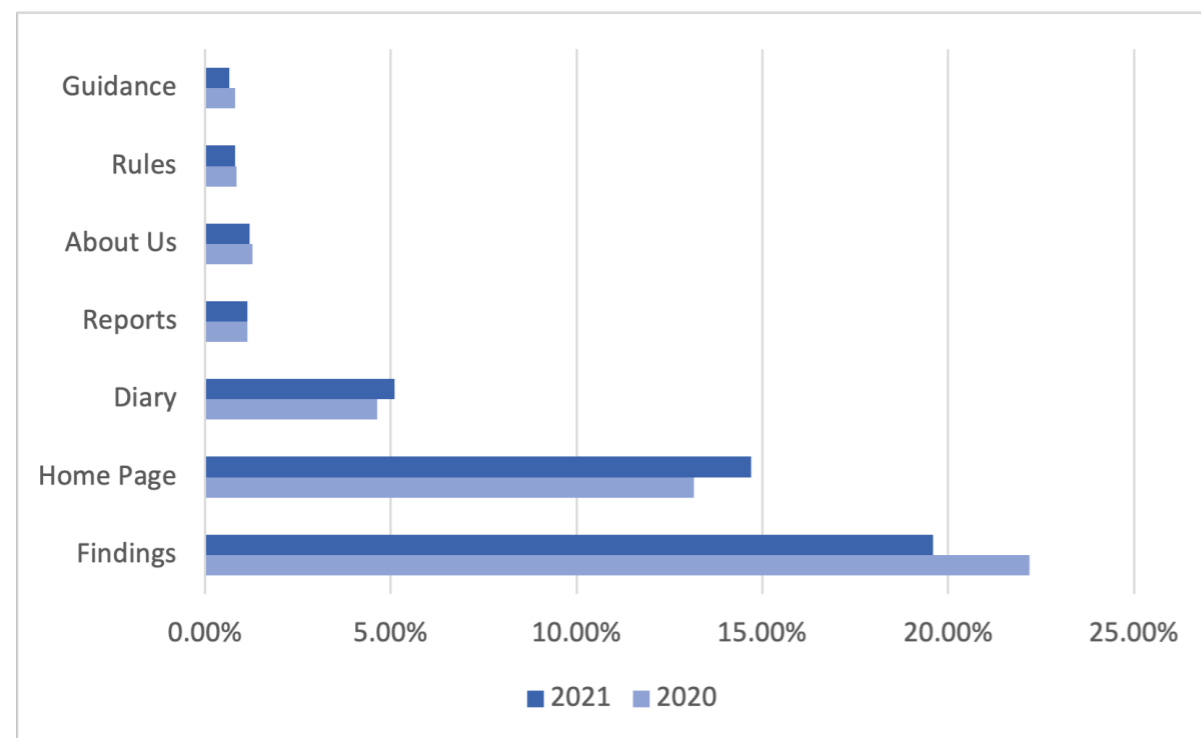
The Tribunal's website is frequently used by Tribunal members and the public. It had 135,572 total page views this year.

The findings page was accessed 26,570 times. Last year, it was accessed 31,224 times.

Other helpful documents are available on the [Guidance page](#) which provides advice for Tribunal users and the media. The FAQs page was viewed 734 times.

The diary page is updated regularly. This was reviewed 6,934 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 and Sally Swinney. The Clerk acts as company secretary. The company employs the Clerk and administrative staff.

	Year to 31.10.2021	Year to 31.10.2020
Total costs of the Tribunal (including lay members' costs)	£196,716.71	£191,764.36
Costs recoverable from Respondents *	£72,745.06	£57,227.77
Costs per solicitor with a practising certificate (excluding lay members' costs paid for by the Scottish Government)	£12.61	£13.28
Costs per solicitor with a practising certificate if all recoverable costs were received from Respondents	£6.85	£8.65

* 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 £196,716.71. This is made up of £159,336.00 funding from the Law Society and £37,380.71 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