

2020

Standing Committee on Compliance



THE
LAW SOCIETY
OF HONG KONG
香 港 律 師 會

STANDING COMMITTEE ON COMPLIANCE



The Standing Committee oversees The Law Society's administrative and regulatory functions, these responsibilities having been delegated to it by the Council.

The Standing Committee met 11 times during the year and considered 192 agenda items (compared to 208 agenda items in 2019). A further 13 matters were dealt with by circulation of two agenda

The Compliance Department (Conduct and Registration Sections) of the Secretariat supports the work of the Standing Committee.

Conduct Section

The Conduct Section of the Compliance Department is mainly responsible for investigating allegations of professional misconduct against solicitors, foreign lawyers, trainee solicitors and employees of solicitors and foreign lawyers. In 2020, it handled 913 complaints (926 in 2019), of which 381 complaints (398 in 2019) were lodged or referred by members of the public and government organisations and 45 complaints (44 in 2019) were made by solicitors.

Particulars about the subject matters of the complaints and the nature of the alleged professional misconduct are set out in the charts below. Complaints against a respondent which involved the same subject matter and nature of professional conduct are counted as one complaint.

814 files were closed during the year; of which 379 were closed without seeking an explanation.

INVESTIGATION COMMITTEE

Investigation Committees are ad-hoc sub-committees of the Standing Committee. Three members of the Standing Committee are appointed to each Investigation Committee to consider reports prepared by the Conduct Section and to adjudicate on complaints.

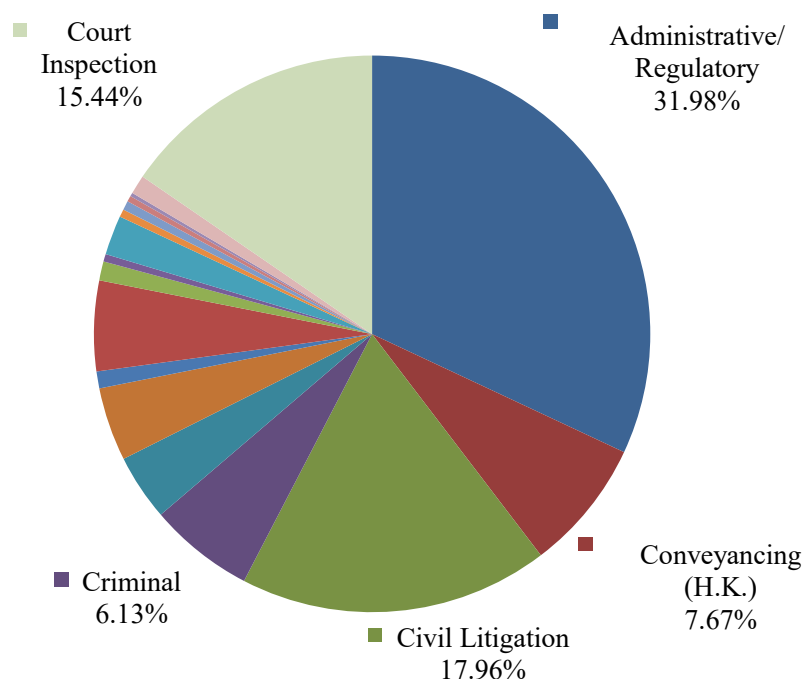
Investigation Committees may recommend to the Standing Committee to issue letters of good practice, regret, or disapproval, and to submit matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.

Investigation Committees considered 316 complaints by circulation of 316 agenda. (In 2019, 311 complaints were considered by circulation of 311 agenda.)

The Standing Committee reviewed four decisions of the Investigation Committees and all four decisions were upheld. (In 2019, 9 decisions were reviewed.)

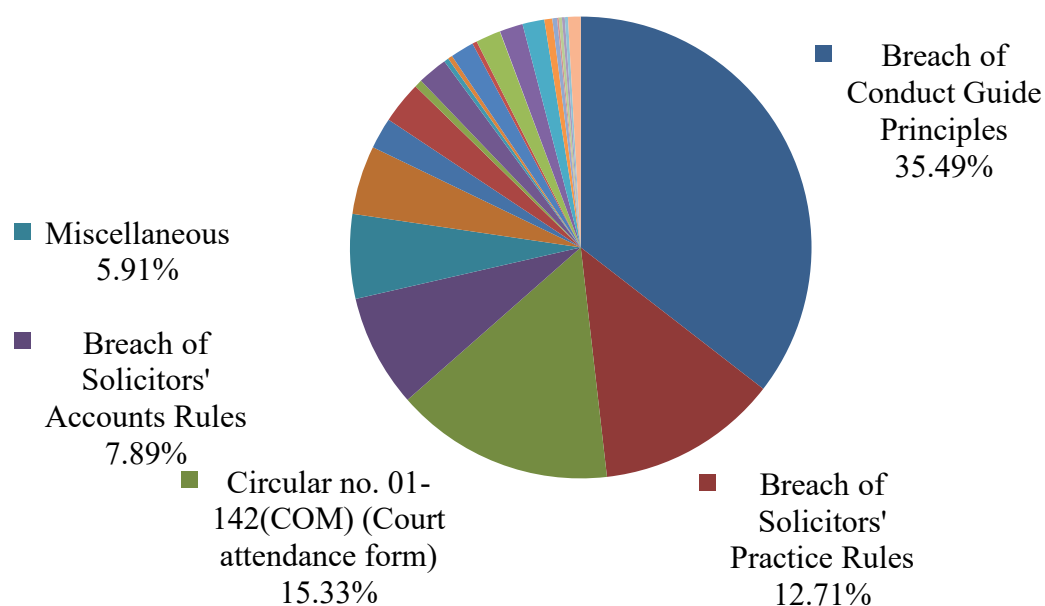
Determination of Complaints in 2020

Figure 1: Subject matters of complaints



Subject Matters of Complaints	2020	2019	2018
Administrative/regulatory	31.98%	35.85%	39.29%
Civil litigation	17.96%	19.44%	16.55%
Court inspections	15.44%	13.39%	8.02%
Conveyancing (H.K.)	7.67%	8.53%	10.36%
Criminal	6.13%	2.16%	2.03%
Company/commercial	5.26%	4.10%	4.26%
Miscellaneous	4.27%	3.13%	5.08%
Matrimonial	3.83%	3.02%	5.58%
Reports of purported law firms	2.30%	2.38%	1.62%
Bankruptcy	1.10%	0.43%	0.91%
Owners'/incorporated owners' disputes	1.10%	1.08%	1.62%
Probate	0.99%	2.92%	2.54%
Contract	0.55%	—	0.30%
Landlord & tenant	0.44%	1.51%	0.10%
Civil Celebrant	0.44%	0.76%	0.71%
Media/promotion	0.33%	0.43%	0.20%
Inspections	0.22%	0.22%	0.20%
Recovery agents	—	0.22%	—
Election	—	0.22%	—
Conveyancing (other than H.K.)	—	0.11%	0.61%
Legal Visit	—	0.11%	—

Figure 2: Nature of professional misconduct

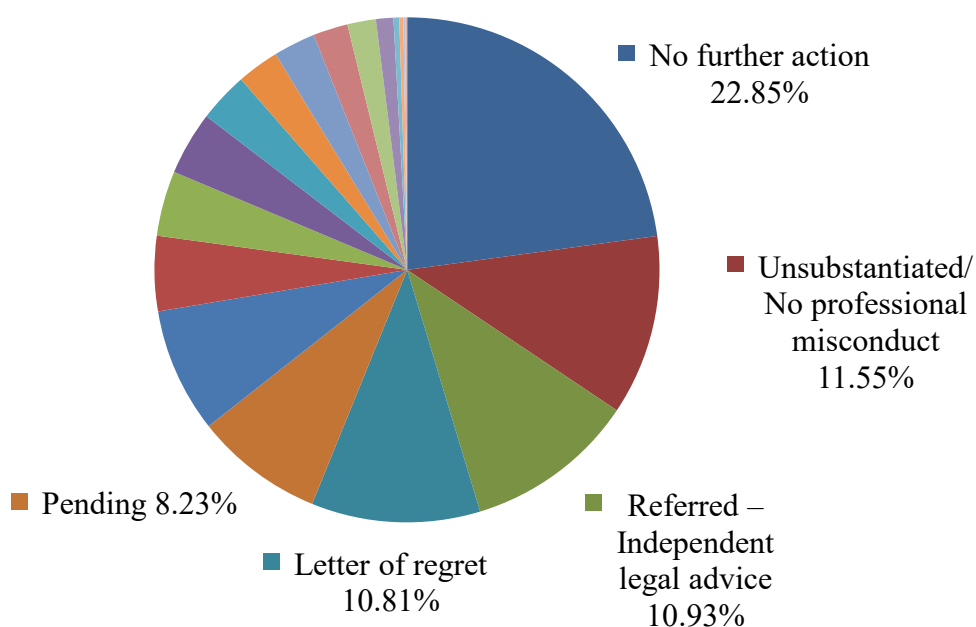


Nature of professional misconduct	2020	2019	2018
Breach of <i>Conduct Guide</i> Principles	35.49%	34.99%	37.36%
Circular no. 01-142(COM) (Court attendance form)	15.33%	13.39%	8.73%
Breach of <i>Solicitors' Practice Rules</i>	12.71%	17.17%	19.29%
Breach of <i>Solicitors' Accounts Rules</i>	7.89%	5.29%	3.86%
Miscellaneous	5.91%	5.29%	2.44%
Late submission of Accountant's Reports	4.82%	4.54%	8.32%
Commission-taking	2.96%	2.27%	0.10%
Unqualified persons acting or pretending to be a solicitor (ss.45-48 of the <i>LPO</i>)	2.19%	2.38%	1.83%
Breach of <i>Foreign Lawyers Registration Rules</i>	2.08%	1.73%	2.13%
Breach of <i>Foreign Lawyers Practice Rules</i>	1.75%	0.86%	1.73%
Breach of <i>Solicitors' Practice Promotion Code</i>	1.64%	0.86%	0.30%
Misbehaviour	1.64%	0.97%	0.61%
Breach of <i>Practice Directions</i>	1.53%	0.76%	1.02%
Property fraud	0.88%	0.11%	0.10%
Breach of undertaking	0.55%	1.73%	2.54%
Conflict of interest	0.55%	0.65%	0.71%
Dishonesty	0.33%	1.62%	2.03%
Failure to reply to letters on behalf of a client or to inquiries from The Law Society	0.33%	0.97%	0.10%
Negligence	0.33%	1.08%	0.61%
Overcharging	0.33%	0.54%	1.02%
Breach of <i>Solicitors (Professional Indemnity) Rules</i> (general)	0.22%	0.43%	0.41%
Offences in relation to foreign lawyers, etc. (s.50B of the <i>LPO</i>)	0.22%	0.32%	0.81%

Nature of professional misconduct	2020	2019	2018
Non-payment of barristers' fees	0.22%	0.22%	0.20%
Delay	0.11%	0.43%	0.51%
Inadequate service	—	0.97%	—
Practising without a practising certificate	—	0.32%	—
Breach of <i>Continuing Professional Development Rules</i>	—	0.11%	2.94%
Breach of <i>Trainee Solicitors Rules</i>	—	—	0.30%

“Conduct Guide” = *The Hong Kong Solicitors' Guide to Professional Conduct* (Volume 1, 2nd and 3rd editions)
“LPO” = *Legal Practitioners Ordinance*, Cap. 159

Figure 3: Analysis of closed files decided by Investigation Committees



	2020	2019	2018
No further action	22.85%	27.57%	16.36%
Unsubstantiated/No professional misconduct	11.55%	11.22%	12.10%
Referred – Independent legal advice (incl. District Office)	10.93%	11.58%	10.70%
Letter of regret	10.81%	5.49%	9.31%
Pending	8.23%	8.11%	10.97%
Letter of Good Practice	7.99%	11.58%	11.05%
Referred – Tribunal Convenor	4.79%	2.98%	1.04%
Letter of disapproval	4.18%	2.51%	4.87%
Unpursuable	4.05%	5.97%	7.14%
Referred – relevant Authorities	3.19%	4.30%	2.09%
Referred – enforcement agencies	2.70%	2.39%	3.92%

Withdrawn	2.70%	2.86%	4.61%
Referred – taxation	2.21%	0.95%	1.65%
Strong letter of disapproval	1.84%	0.84%	2.61%
Resolved amicably	1.11%	1.43%	1.13%
Summary Disposal	0.37%	—	0.17%
Referred – Joint Tribunal	0.25%	—	0.09%
Referred – others (incl. intervention agents)	0.12%	0.24%	—
Referred – other departments of The Law Society	0.12%	—	0.09%
Circular issued	—	—	0.09%

Applications to the Chief Judge under section 9A(2) of the *Legal Practitioners Ordinance, Cap. 159* (“LPO”)

Under section 9A(2) of the *LPO*, where a complaint is made to the Council and the Council does not submit a matter to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel ("the Tribunal Convenor") under section 9A(1) of the *LPO* within six months after receiving the complaint, the Chief Judge may, on application by any person or on his own initiative, submit the matter to the Tribunal Convenor if he considers that the Council ought to have done so.

In 2020, there was no application made to the Chief Judge under section 9A(2) of the *LPO*.

Inspections and visits

Under section 8AA of the *LPO*, the Council is empowered to appoint inspectors to verify compliance with the provisions of the *LPO* or any *Practice Direction* (“*PD*”) issued by The Law Society, and to determine whether the conduct of those against whom an inspection was made should be inquired into or investigated. Section 8AA of the *LPO* stipulates the powers of an inspector in making such inquiries and investigations.

In the past year, the COVID-19 pandemic has not deterred the Investigation Counsel from conducting 16 visits to 13 law firms. (16 visits to 13 law firms in 2019). Two of these visits were made under section 8AA of the *LPO*. In addition, two court inspections were conducted by inspectors at magistrates’ courts. For these court inspections, the Council appointed inspectors to verify compliance with rule 5D of the *Solicitors’ Practice Rules* (“*SPR*”), Cap. 159H and to monitor the proper completion of court attendance forms.

The Monitoring Accountants paid visits to law firms to provide assistance in their accounting procedures/systems and to inspect their books and accounts to ensure compliance with the rules relating to solicitors’ accounting. 81 visits were made to 60 solicitors’ firms and foreign law firms; some firms required more than one visit (91 visits to 66 firms in 2019).

Interventions

The Council's power of intervention is exercised for the protection of the public and occurs when clients' interests are at risk. The powers vested in the Council for the exercise of an intervention under Sections 26A, 26B or 26C of the *LPO* are set out in Schedule 2 to the *LPO*. Once a firm has been intervened, it ceases practice. Through the intervention agents, The Law Society first takes control of the office and clients' monies of the intervened firms and takes possession of the intervened firms' documents. If necessary, The Law Society may commence court applications to implement the Council's resolution to intervene. The intervention agents return documents to clients who have specifically requested their return or forward clients' documents to other firms of solicitors on the instructions of clients. The process of distributing clients' money of the intervened firms may involve court proceedings and in order for the intervention agents to verify and determine the claims, claimants must complete a statement of truth and declaration and produce supporting documents to substantiate their claims. Documents in the possession of the Council are indexed and kept in storage in accordance with the guidelines in The Law Society circular 12-475 (PA) or until there is a Court order as to disposal or destruction.

Subject to any Court order for the payment of costs, any costs incurred by the Council in the intervention shall be paid by the solicitor or the foreign lawyer whose practice was being intervened.

The Council has intervened in the practice of two solicitors' firms in 2020.

In 2020, The Law Society continued to give instructions and support to the Intervention Agents and the assisting firms, organize the indexing and storage of files, deal with taxation and assist Police investigations in the current and past interventions.

INVESTIGATION COMMITTEE ON DISCIPLINARY MATTERS

The Investigation Committee (Disciplinary Matters) is the only Investigation Committee with a fixed membership drawn from senior members of the Standing Committee. The Committee's work includes monitoring the progress of disciplinary proceedings, appeals and court proceedings (including bankruptcy petitions), giving instructions to prosecutors and The Law Society's legal representatives, and authorising the payments of fees incurred in disciplinary proceedings, appeals and court proceedings.

The Committee considered 128 matters by circulation of 44 agenda. (In 2019, 90 matters were considered by circulation of 21 agenda.)

Disciplinary proceedings and summary disposals

A Solicitors Disciplinary Tribunal is a statutory tribunal established by the *LPO*. It is independent of The Law Society which is the prosecuting body. Members of the Solicitors Disciplinary Tribunal Panel are appointed by the Chief Justice. The Chief Justice also appoints the Tribunal Convenor and the Deputy Tribunal Convenors who have the responsibility to appoint a panel of three or four members to sit as a Tribunal to determine applications, and who have the power to dispose of certain classes of complaint on a summary basis.

In 2020, the Council resolved to submit one matter to the Tribunal Convenor concerning the conduct of one solicitor (three matters concerning three solicitors in 2019) and in addition, the Standing Committee on Compliance resolved to submit to the Tribunal Convenor (i) 13 matters concerning the conduct of 10 solicitors, one trainee solicitor and two clerks under section 9A(1) of the *LPO* (six matters concerning six solicitors and two clerks in 2019); and (ii) three matters concerning the conduct of three solicitors under section 9AB of the *LPO* (there was no referral made under this section in 2019).

A total of five matters had been submitted to the Tribunal Convenor in 2020 (nine in 2019).

Due to the outbreak of the COVID-19 pandemic, the Solicitors Disciplinary Tribunal adopted various precautionary measures including declarations of travel history and plans, vetting of venues and in one case, the giving of evidence by a witness via the Zoom app. Some hearing dates were re-fixed or adjourned.

Three disciplinary proceedings were determined by the Solicitors Disciplinary Tribunal in 2020 (nine in 2019). One application was dismissed by the Solicitors Disciplinary Tribunal; in another application, the Solicitors Disciplinary Tribunal found that there was no prima facie case and ordered that the complaints be dismissed. In the remaining application, all the complaints were proved and the following orders were made:

Respondent	Position	Charge(s)	Penalty	Fine (HK\$)
1	Solicitor	<ul style="list-style-type: none">• 1 count of rule 7(a)(iii) of the SAR and rule 2(a), (c), (d) and (e) of the SPR• 2 counts of rule 10(1) and rule 10(2) of the SAR• 1 count of rule 7 of the SAR• 2 counts of rule 10A(b)(ii) of the SAR• 1 count of section 8AA of the LPO and rule 2(a) and (d) of the SPR	<ul style="list-style-type: none">• to be struck off from the Roll of Solicitors• to be censured• to pay fixed costs	HK\$485,000.00

Respondent	Position	Charge(s)	Penalty	Fine (HK\$)
		<ul style="list-style-type: none"> • 1 count of principle 9.03 of the Guide and rule 2(a), (c), (d) and (e) of the SPR • 1 count of principles 7.01 and 7.02 of the Guide and rule 2(a), (c), (d) and (e) of the SPR • 1 count of principle 14.02 of the Guide and rule 2(d) of the SPR 		

“Guide” = *The Hong Kong Solicitors’ Guide to Professional Conduct (Volume 1, 2nd edition)*

“LPO” = *Legal Practitioners Ordinance, Cap.159*

“SPR” = *Solicitors’ Practice Rules*

“SAR” = *Solicitors’ Accounts Rules*

Appeals and other Litigation proceedings

Appeal Proceedings

In November 2020, the Court granted The Law Society’s application for leave to appeal against the decision of the Solicitors Disciplinary Tribunal that there was no prima facie case to answer. Also, in November 2020, five Respondents lodged an appeal to the Court of Appeal against the decision of the Solicitors Disciplinary Tribunal dismissing their application for permanent stay of the disciplinary proceedings against them.

Bankruptcy Proceedings /Charging Order Proceedings

In November 2020, a Charging Order Absolute was obtained against the properties of a Respondent in a disciplinary proceedings in an application of The Law Society. In December 2020, a Respondent in a disciplinary proceedings was adjudged bankrupt by the Court in an application of The Law Society.

Litigation Proceedings

In May 2020, an application taken out by The Law Society under section 4(3) of the LPO to remove the name of a solicitor from the Roll of Solicitors by way of Originating Summons was allowed with costs. In September 2020, an application taken out by a solicitor by way of an Originating Summons under section 6(6A) of the LPO for an order that The Law Society’s refusal to disapply section 6(6) of the LPO be set aside was dismissed with costs. In October 2020, an application taken out by The Law Society to strike out the Plaintiff’s claim was allowed with costs.

CONSENTS COMMITTEE

The Consents Committee is a sub-committee of the Standing Committee on Compliance.

The Consents Committee decides on applications made under the *LPO*, its subsidiary legislation and The Law Society's *PD* for (i) registration by solicitors; (ii) registration as a (a) trainee solicitor, (b) foreign lawyer and (c) foreign law firm; and (iii) consent and waiver.

The Committee met 21 times during the year and considered 453 items (in 2019, 22 meetings and 706 items). A further 42 matters were dealt with by circulation of four agenda (in 2019, 20 matters by circulation of two agenda).

The Standing Committee on Compliance reviewed eight decisions of the Consents Committee, five of them was upheld, two of them were reversed and one was remitted back to Consents Committee for further inquiring.

Registration Section

The Registration Section of the Compliance Department processes applications and handles applications considered by the Consents Committee.

As with previous years, in conjunction with the Conduct Section, the Registration Section reviewed, processed and filed the “employees’ returns” submitted by all solicitors’ firms and foreign law firms in January of each year, and the Notification of Changes to a Practice on firms’ particulars submitted by solicitors’ firms and foreign law firms throughout the year.

Nature of applications

Applications considered by the Consents Committee and those processed by the Registration Section during the year included:

Nature of applications	2020	2019	2018
Admissions	666	654	669
Certificates of eligibility for admission	729	753	654
Practising certificates:	10,790	10,344	*9,903
	—	—	*4,736
Practising certificates – removal of conditions under s.6(6) <i>LPO</i> (solicitors)	168	219	236
Membership	12,296	11,764	11,266
First registration as a foreign law firm	5	11	8
First registration as a foreign lawyer	199	411	473
Renewal of registration as a foreign lawyer	1,669	1,664	1,509

Nature of applications	2020	2019	2018
Removal of conditions on certificates of registration (foreign lawyers)	63	61	60
Registration as an Association	4	8	10
Removal of name from the roll of solicitors	4	7	5
Restoration of name to the roll of solicitors	2	1	0
Qualifications for admission s.4(1A) <i>LPO</i>	86	131	102
Employment of staff: s.53(1) <i>LPO</i>	1	4	3
s.53(3) <i>LPO</i>	2	7	7
Practising certificates – removal of conditions under s.6(6A) <i>LPO</i>	30	55	30
Practising certificates – Special Conditions	8	21	10
Registration of first trainee solicitor contracts	511	616	628
Registration of subsequent trainee solicitor contracts	106	128	97
Special leave to employ trainee solicitors	8	8	6
Other trainee solicitor matters	123	263	236
Law costs draftsmen	2	1	2
Accountant’s report – solicitors’ firms	937	926	899
Accountant’s report – foreign law firms	93	90	87
Firm name and letterhead	27	29	28
Waiver applications – general	7	*2	*3
Waiver applications – <i>PD</i>	3	1	4
Registration of new associate member	1	—	3
Certificates of standing for solicitors or foreign lawyers	656	797	816
Certificates of standing for solicitors' firms or foreign law firms	20	20	—
Letters regarding employment or training visas	198	494	467
Authorised solicitors’ clerks	44	50	33

“*LPO*” = *Legal Practitioners Ordinance, Cap. 159*

“*PD*” = *The Law Society’s Practice Directions*

* Applications were under the *SPR, Cap. 159H*

★ Practising certificates in 2018 were issued in the English language. An additional 4,736 practising certificates were issued in the Chinese language upon request.

Figure 4: Admission of solicitors 2011—2020

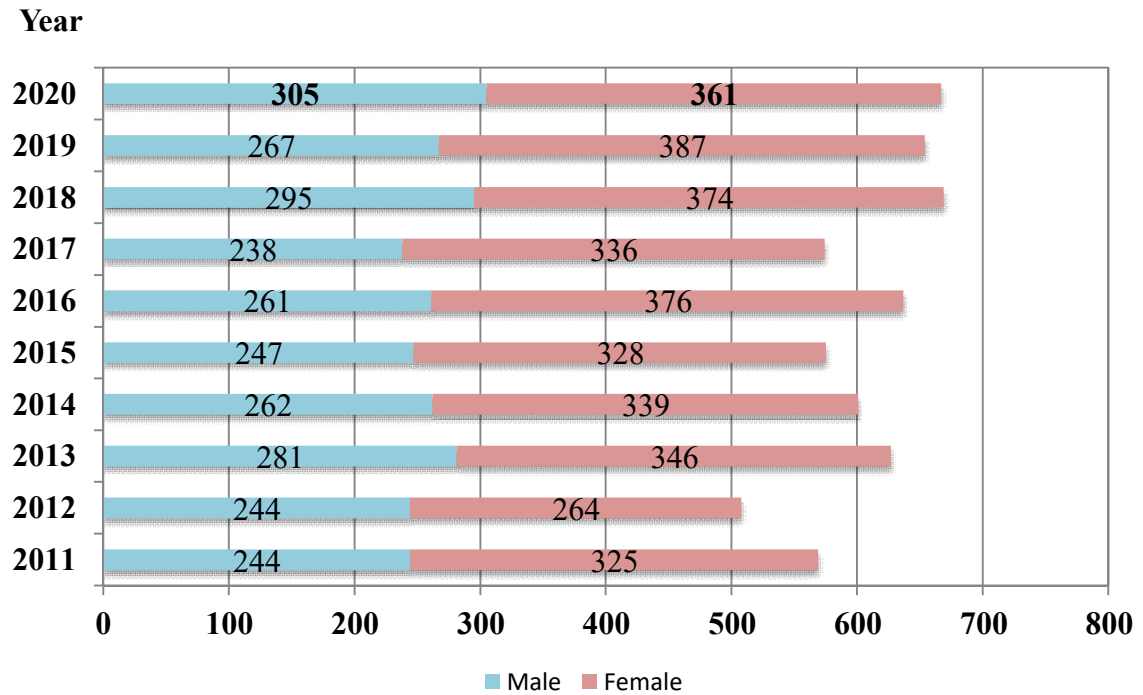


Figure 5: Solicitors holding practising certificates 2011—2020

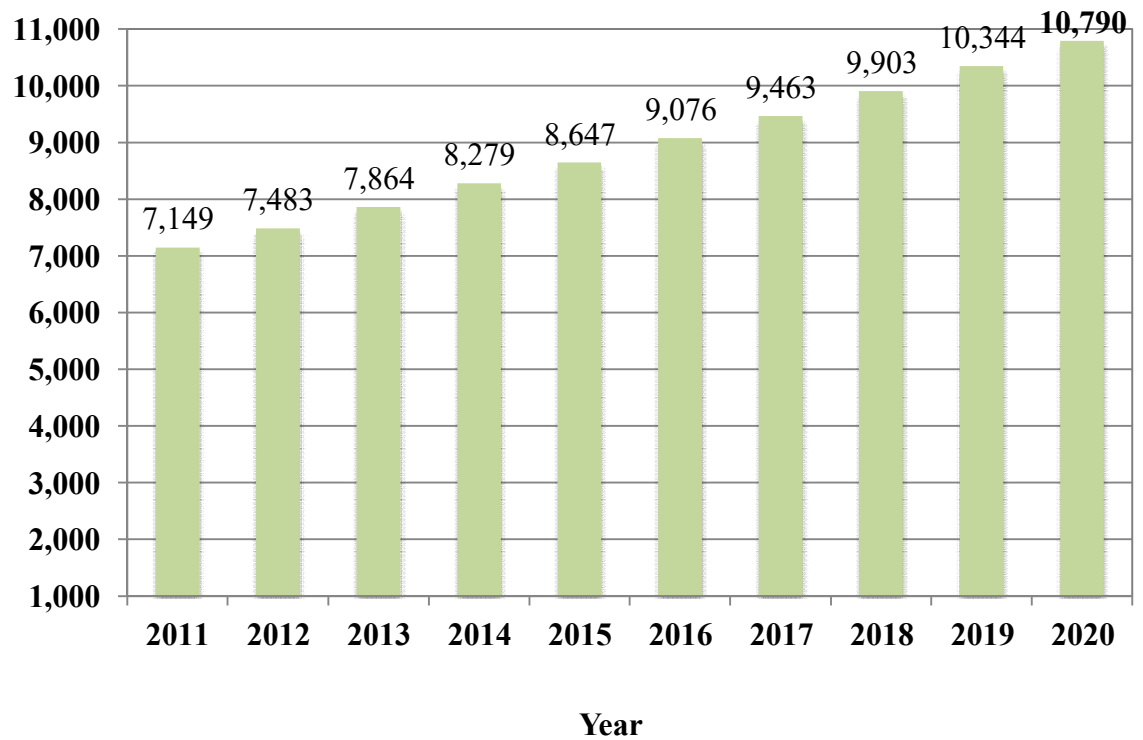


Figure 6: Years of admission - solicitors holding a 2020 practising certificate

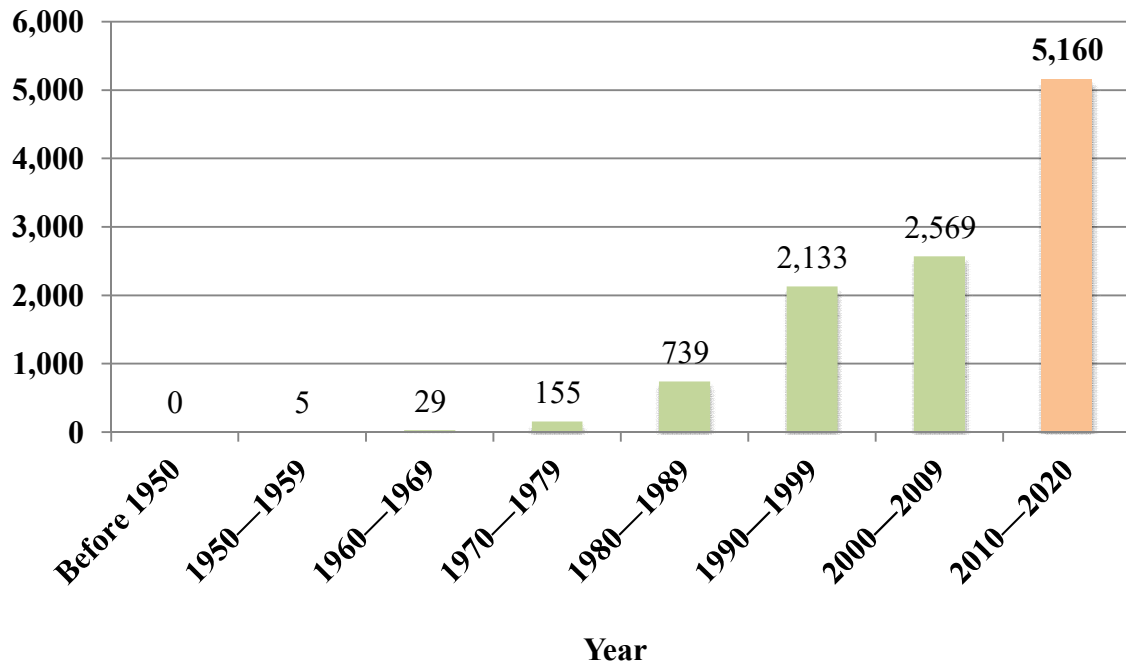


Figure 7a: Gender ratio – Solicitors holding a practising certificate (2014 – 2020)

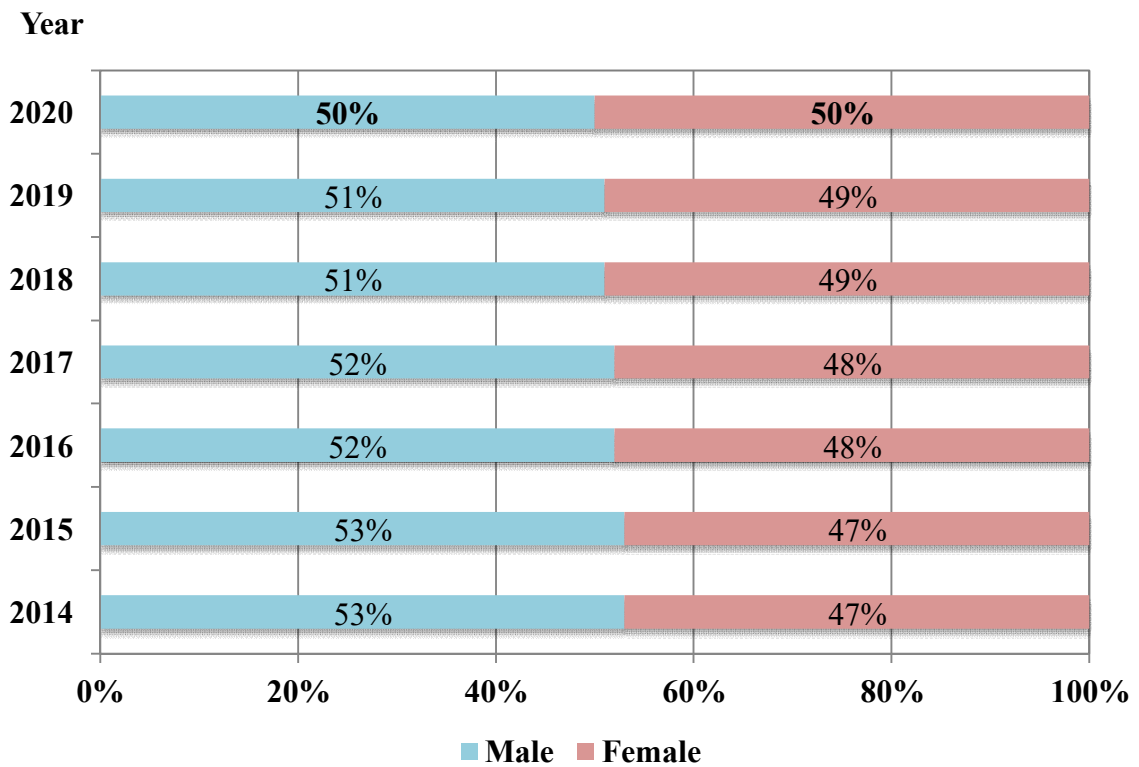


Figure 7b: Gender ratio – Trainee solicitors 2015 – 2020

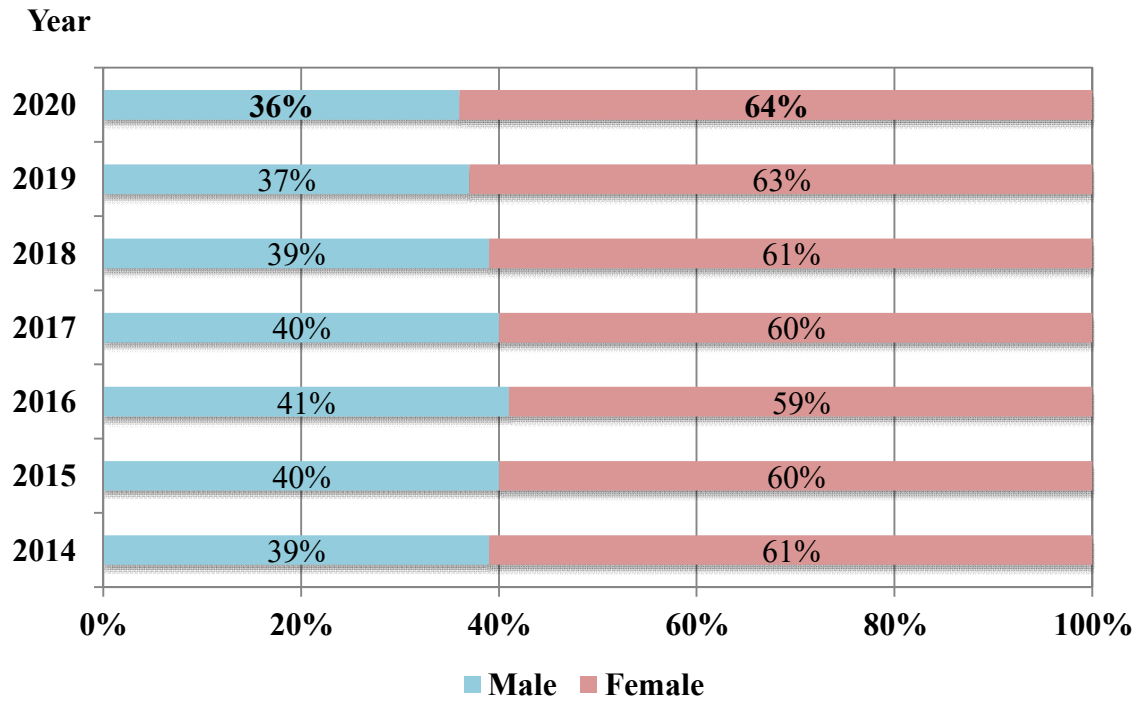


Figure 7c: Gender ratio – Partners 2015 – 2020

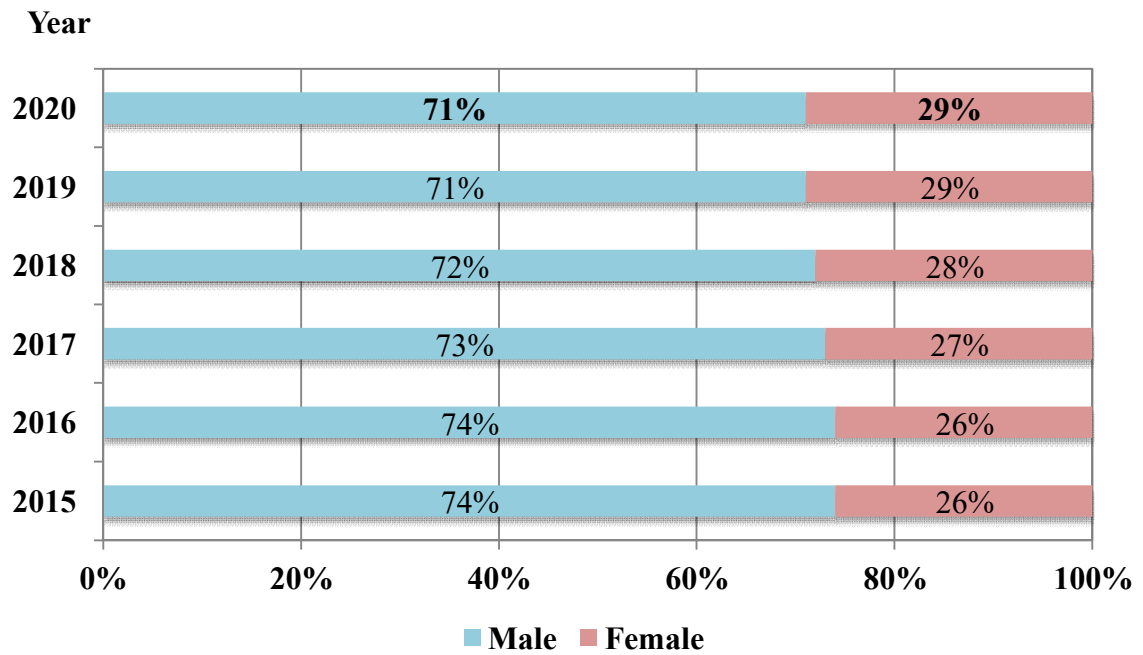


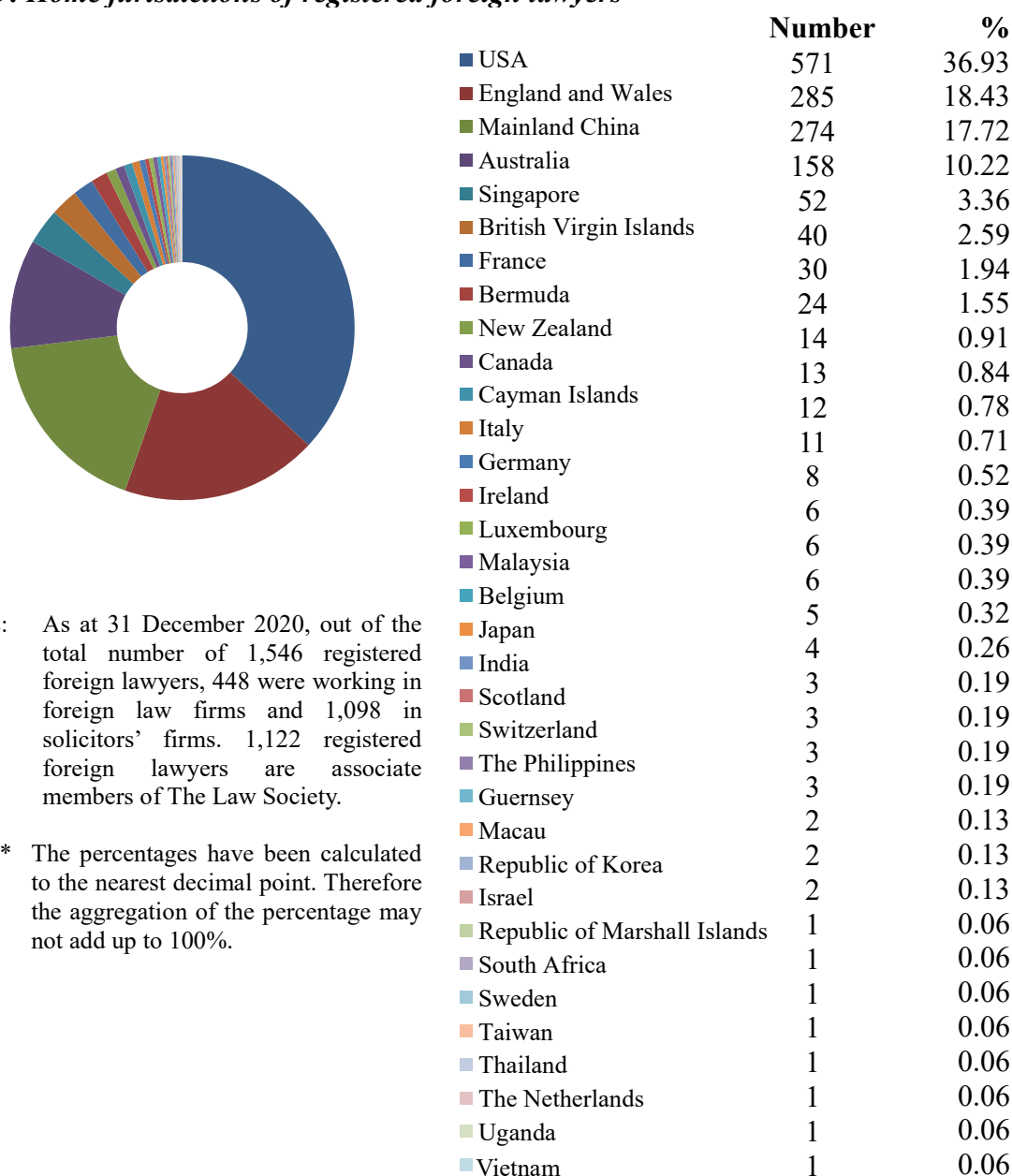
Figure 8: Size of solicitors' firms and number of trainee solicitors in 2020

Size of firm	No. of firms		No. of trainee solicitors	
	2020	2019	2020	2019
Sole practitioners	446	434	54	60
2—5 partners	390	394	310	346
6—10 partners	50	49	181	220
11—20 partners	41	40	294	328
Over 20 partners	15	15	234	243
Total	942	932	1073[#]	1197[*]

[#] excluding 15 in government and 3 working “in-house”

^{*} excluding 18 in government and 4 working “in-house”

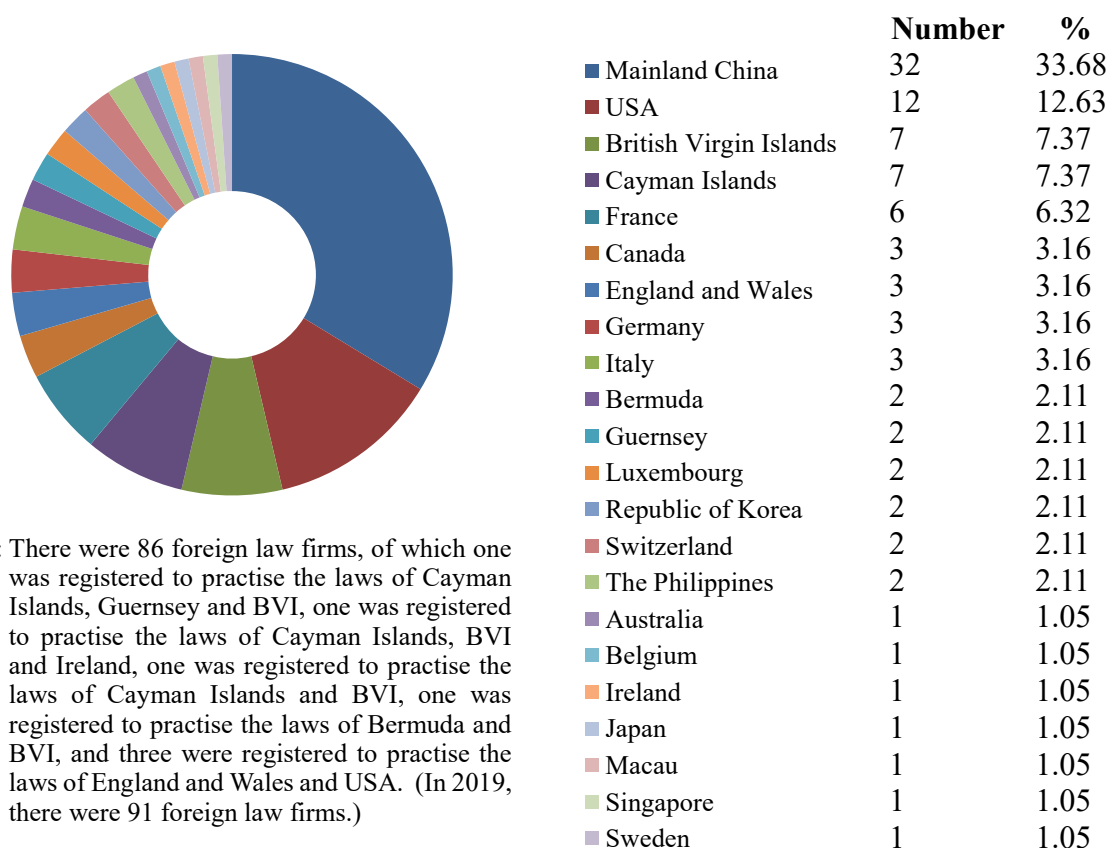
Figure 9: Home jurisdictions of registered foreign lawyers



Notes: As at 31 December 2020, out of the total number of 1,546 registered foreign lawyers, 448 were working in foreign law firms and 1,098 in solicitors' firms. 1,122 registered foreign lawyers are associate members of The Law Society.

* The percentages have been calculated to the nearest decimal point. Therefore the aggregation of the percentage may not add up to 100%.

Figure 10: Home jurisdictions of foreign law firms



Notes: There were 86 foreign law firms, of which one was registered to practise the laws of Cayman Islands, Guernsey and BVI, one was registered to practise the laws of Cayman Islands, BVI and Ireland, one was registered to practise the laws of Cayman Islands and BVI, one was registered to practise the laws of Bermuda and BVI, and three were registered to practise the laws of England and Wales and USA. (In 2019, there were 91 foreign law firms.)

* The percentages have been calculated to the nearest decimal point. Therefore the aggregation of the percentage may not add up to 100%.

There were 38 Associations registered between foreign law firms and solicitors' firms (41 in 2019). Five new foreign law firms commenced practice (11 in 2019). 10 foreign law firms were closed, five of which established local practice. (In 2019, six foreign law firms were closed, three of which established local practice.)

There were 15,683 unqualified staff members employed by solicitors' firms at the end of the year (16,181 at the end of 2019). In addition, there were 612 unqualified staff members employed by foreign law firms at the end of 2020 (604 in 2019).

The Standing Committee oversees the work of the Conduct Section in administering the authorised solicitors' clerks scheme and has delegated its power to the Consents Committee to consider applications. By December, there were 742 authorised solicitors' clerks (758 in 2019).

The Law Society continued to waive subscription fees for student members in 2020. By the end of the year, there were 290 student members registered with The Law Society (371 in 2019).

At the end of December, the number of Law Society Approved Law Costs Draftsmen was 36 (35 in 2019).