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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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IN THE MATTER OF AN APPEAL TO THE LADY CHIEF JUSTICE PURSUANT TO ARTICLE 6(4) OF THE SOLICITORS (NORTHERN IRELAND) ORDER 1976

Between:

LAURA MARIE GALLAGHER

Applicant

and

THE LAW SOCIETY OF NORTHERN IRELAND

Respondent

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Mr O'Donoghue KC with Mr McDonnell (instructed by John Fahy Solicitors) for the Applicant
Mr Egan KC (instructed by Francis Hanna & Co Solicitors) for the Respondent

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KEEGAN LCJ

Introduction

[1] This is an appeal brought by the applicant against the decision of the Appellate Committee of the Law Society of Northern Ireland ("the Appellate Committee") dated 13 August 2024, whereby the applicant was refused registration as a student, pursuant to powers contained in Regulation 8(5) of the Solicitors Admission and Training Regulations 1988 as amended ("the 1988 Regulations"). By its decision, the Appellate Committee determined that the applicant had not satisfied that she had acquired such special qualifications and/or experience as to render her suitable to be accepted as a registered student. This decision followed a meeting of the Education Committee of the Law Society ("the Education Committee") on 8 March 2024, which decided that the application for admission should be refused. That application is dated 11 January 2024.

The basis for the refusal

[2] The minutes of the meeting of the Education Committee of the Law Society on 8 March 2024 reference the decision in the following terms:

> "An application, under Regulation 8(5) was received from Ms Laura Gallagher. The Committee considered Ms Gallagher's application and supporting documents. The applicant does not hold a degree qualification but has worked as a legal secretary with John Fahy & Co, Solicitors, since 2006. Extensive references and the detailed covering letter were supplied with Ms Gallagher's application. The Committee reflected on the judgment in the case of *Burns* and noted that for applications under Regulation 8(5), it was stated by the Lord Chief Justice that such 'it should require a truly exceptional case' to be established. It was resolved that the Committee felt Ms Gallagher's application did not meet the threshold of the *Burns*' judgment and as such would not be permitted registration as a student with the Society under Regulation 8(5)."

[3] Thereafter, the Appellate Committee convened a meeting on 30 July 2024 and provided a decision on appeal. This is the decision now under challenge.

[4] In the course of the appeal evidence was heard from the applicant. Evidence was also heard from Mr Crilly in support from John Fahy & Co. Evidence was further heard from a junior barrister. Legal submissions were made.

[5] The gravamen of the decision is found in a number of paragraphs which I set out as follows. First, para [25] records as follows:

> "The Appellate Committee were impressed by the personal qualities of the applicant. She clearly was well regarded and well respected, with an amazing work ethic and heart for the clients, many of whom were disadvantaged, challenged or in some way requiring the help that she could provide. These qualities were admirable and readily apparent. Those qualities were also backed up by the extensive support her application received both from written references and from the information and evidence provided to the Committee by her employer, Mr Crilly, and by Mr McDonnell BL.

[26] The Appellate Committee were also impressed by the applicant's breadth of experience and knowledge across a range of subject areas, while noting that at present, and for some time, her work had been mainly, if not exclusively, in the criminal law field.

…

[30] While details of the experience provided in both the written application, and in all of the references and testimony received in person by the Appellate Committee were impressive, the experience was of a supportive nature and not of an executive decision making nature. The applicant had been candid in saying that work that she did was supervised by and was in support of the principal solicitor in her law firm. She did not claim to have undertaken independent research or to provide guidance or supervision of others. She did not claim, nor was there any evidence provided of articles written or talks provided or training delivered to local associations or local practitioner groups. The experience was extremely limited with regard to conveyancing and probate, although some evidence was given of drafting wills. Experience of matrimonial law and negotiating matrimonial settlements was limited, although the Committee was aware of emergency applications for non-molestation over residency orders. Experience in court was mostly confined to Strabane Petty Sessions or the county court in Derry. Neither in the written application nor, during the evidence provided, was any information given about High Court proceedings or judicial review. It was accepted that there was no experience of commercial or public law. There was no experience of commercial property.

[31] There was, therefore, an impressive but relatively narrow experience, within a number of the areas of work of a solicitor, and in these circumstances, the Committee did not consider that at this stage, the applicant had sufficient experience to render her suitable to be accepted as a registered student. While that may have involved considerations of the no longer applicable Regulation 8(3) which, accepting Mr O'Donoghue's submission, the Committee in its discretion took into account, the Committee were unable to ignore the judgment of the former Lord Chief Justice Carswell in the *Burns'* case.

> [32] In that case, accepting the weight given to the submission of Mr O'Donoghue that it was in the context of Regulation 8(3) still existing, nevertheless, the former Lord Chief Justice made the decision that the Society would be correct "in being slow" to accept special cases under the powers contained in Regulation 8(5). The Appellate Committee noted that the learned former Lord Chief Justice stated he considered it "should require a truly exceptional case to be established before it should allow registration under Regulation 8(5)."
>
> [33] The Society has not commonly granted registration as a student under Regulation 8(5) undoubtedly because of the high bar that was described by the former Lord Chief Justice in the *Burns* case."

Relevant statutory provisions and regulations

[6] The Law Society's powers in regulating the qualification admission and training of solicitors are contained in Part II of the Solicitors (NI) Order 1976 ("the 1976 Order"). The Society has made and amended a number of regulations pursuant to its powers under the 1976 Order, so far as admission and training are concerned. These are comprised in the 1988 Regulations as amended. For present purposes, Regulation 8(5) is the most relevant. However, to gain full context as to this, it is important to set out Regulation 8 in total and to include, for this debate, the terms of Regulation 8(3) which are now amended.

[7] Regulation 8 reads as follows:

> "8. An applicant who has complied with Regulation 7 shall be registered (subject to Regulation 9), but such registration shall be conditional upon the registered student producing proof to the satisfaction of the Society that he:
>
> (1)(a) possesses a degree in law acceptable to the Committee and satisfies the Society by way of examination or otherwise that he has attained a level of knowledge acceptable to the Society, of the following subjects namely:
>
> Law of Evidence;
> Company Law; and
>
> (b) has been offered a place in the Institute; or

(2)(a) possesses a degree acceptable to the Committee in another discipline; and

(b) satisfies the Society by way of examination or otherwise that he has attained a level of knowledge acceptable to the Society, of the following subjects namely:

Constitutional Law;
Law of Tort;
Law of Contract;
Criminal Law;
Equity;
Land Law;
Law of Evidence;
Company Law; and

(c) has been offered a place in the Institute; or

(3) has served in an executive capacity;

(a) as a bona fide law clerk or employee of a solicitor for a continuous period of seven years; and
(b) attain the age of 29 years; and
(c) satisfy the Committee as to his standard of general education and knowledge and experience of the work of a solicitor; or

(4) has been admitted as a solicitor or called to the Bar in any jurisdiction within the Commonwealth or in the Republic of Ireland and, in the case of a barrister, has procured himself to be disbarred; or

(5) has satisfied the Committee that, being a person of not less than 30 years of age, he has acquired such special qualifications and/or experience as to render him suitable to be accepted as a registered student."

[8] Two decisions are of particular relevance in this area. The first is *Re CH: Re The Solicitors (Northern Ireland) Order 1976* [2000] NI 62. In that case, the appellant had applied unsuccessfully to the Education Committee of the Law Society to be registered as a student solicitor because by virtue of his youth and lack of experience, he did not qualify for student admission. He could not meet the period stipulated under Regulation 8(3) which was then in force as he had worked as a law clerk in an executive capacity for approximately three years and was aged 26 years.

He had, therefore, not obtained the age requirement or the seven years required for admission as a law clerk. The court decided that the decision of the Law Society on this was unimpeachable but went on to discuss how the Law Society should construe the Regulations.

[9] In particular, the court referred to the following policy considerations:

> "The Council of the Law Society accordingly has a firm policy not to allow the provision for law clerks to be used as a backdoor method of entry for those who have been unable to obtain admission to the Institute by means of its regular entrance procedure. I see considerable merit in this policy, for it was the clear intention of the Bromley Committee that the full-time course at the Institute, which the Committee regarded as very valuable, should be the standard method of entry to the profession and that other routes should be regarded as exceptions."
>
> This being so, the Law Society, is in my opinion, correct to apply the provisions of Regulation 8(3) with some strictness and to be slow to dispense with its requirements."

[10] The court also went on to state as follows:

> "The dispensing power under Regulation 18 is conferred upon the Council of the Law Society so that it may retain a measure of flexibility and treat an exceptional case upon its merits. I think that the Council should be slow to exercise it so as to dispose with the requirements of Regulation 8(3) and should do so only in a truly exceptional case, where there are reasons which would make it wrong to refuse the registration of an applicant who does not satisfy the strict requirements of the 1988 Regulations."

[11] The subsequent case which is relevant is that of *In the matter of George Burns* (1999, unreported). In this case, again, an appeal was brought from a refusal to register a person as a student of the Law Society. In that case, the appellant was 43, he was born in Northern Ireland and lived in Northern Ireland but had completed his qualifications in England at De Montfort University in Leicester. These qualifications entitled him to be accepted as a training solicitor in England. Instead, of becoming a trainee with a firm of solicitors in England, he took up employment as a law clerk in Northern Ireland.

[12] Mr Burns applied to the Education Committee of the Society for admission as a student, asking it to permit him to complete two years training in Northern Ireland and then to admit him as a solicitor. The appellant appears to have obtained an indication from the Law Society in England that it would look favourably on an application to allow a year spent with the solicitors in Northern Ireland to account as one year of his training period which he used in support of his application in Northern Ireland.

[13] As the court pointed out the strength of the appellant's case was that if he went to England to complete his period of training he could be admitted there and seek automatic admission in Northern Ireland under the reciprocal arrangements now operating, whereas if he stayed in Belfast and completed another period as a law clerk, he would obtain more relevant experience and training. The court also found as follows:

> "A reason which weighs heavily with the Society is that if persons, such as the appellant, were to be admitted as students, they could follow courses in legal education in England or elsewhere, commence their training there, come to Northern Ireland to complete it, then seek admission as solicitors. In this way they would not have to attend the Institute by reason of which their legal education might not be of the nature or standard which the Society regards as necessary for solicitors to practice in this jurisdiction. It is true to say that such persons could complete their training in England and become admitted there, whereupon they would be entitled without more to be admitted in Northern Ireland. Such reciprocity was felt to be necessary in order to comply with European legislation, but the Society feels strongly that it should not allow further inroads into the requirements that solicitors should obtain recognised legal qualifications and follow the full-time vocational course at the Institute before bringing them into practice in this jurisdiction."

[14] The court concluded by repeating what was stated in *Re CH*:

> "I see considerable merit in this policy and the Society is, in my opinion, correct in insisting with some strictness on the requirements of Regulation 8(2) being satisfied and in being slow to accept special cases under the powers contained in Regulation 8(5). I consider that it should require a truly exceptional case to be established before it should allow registration under 8(5). Although the appellant's commitment to his chosen profession is

> manifest, and it will undoubtedly involve expense and the hardship of separation from his family for him to complete his training in England, I am unable to differ from the conclusion reached by the Society. In my judgment, it was correct in deciding that it should not accept his application for registration as a student."

The legal framework on appeal

[15] The statutory right to appeal decisions of the Society is contained in Article 6(4) of the 1976 Order which provides:

> "(4) An applicant aggrieved by a decision of the Society under paragraph (3) may, after giving notice to the Society, appeal to the Lord Chief Justice; and on such appeal—
>
> (a) the Society may appear and be heard; and
>
> (b) the Lord Chief Justice may make such order (including an order for the payment of costs) as he thinks proper."

[16] The role of the court in dealing with cases of this nature was explained by me in *Murtagh v Law Society of Northern Ireland* [2024] NICA 49. In particular, I approached the appeal as a rehearing with the freedom to review the findings of fact and draw inferences from them. However, in keeping with previous authority I pay substantial regard to the views of the specialist adjudicatory body, and the conclusions reached by the Law Society. The test to be applied is whether the Society decision was wrong or vitiated because of some serious procedural or other irregularity.

[17] In the case at hand, there is no claim of procedural or other irregularity, and so, the simple consideration for me is whether or not the decision of the Appellate Committee was wrong. At para [35] of *Murtagh*, I summarised the position as follows:

> "Therefore, the following principle may be distilled from the case law – an appropriate level of respect is to be given to the decision of the Committee but that does not prevent the appellate court, in this context, from engaging with the merits and reaching its own conclusion."

[18] I have also had the benefit of a supplementary note from both counsel which agrees that I have a broad discretion to dispose of the case if I determine that the

decision was wrong and that remittal to the Law Society is open to me as a potential remedy.

Consideration

[19] A stand out feature of this case is the high commendation the applicant has received for the work that she has undertaken over the last 18 years in John Fahy Solicitors' office in Strabane. As her counsel's skeleton argument states, at the time when others of her age were embarking on third level education due to extremely difficult family circumstances, she voluntarily assumed responsibility for rearing younger siblings. To care for the family, she commenced full-time employment in the office of John Fahy & Co rather than continue with education after her A levels where she has remained since, and where she has, in fact, been doing the work of a solicitor. Therefore, since 2006 the applicant has worked in a solicitor's office as a personal assistant to the senior partner. She has attended courts, drafted legal documents, obtained instructions from clients and liaised with different agencies including social services, Police Service of Northern Ireland, Northern Ireland Courts and Tribunals Service and insurance companies. She has dealt with file management liaising with clients as well as attending police station interviews to act as an appropriate adult and has also dealt with diary handling and liaising with the legal aid authorities.

[20] The evidence which was accepted validates her impressive work history with John Fahy & Co in circumstances which were clearly not easy for her. In particular, I note that she undertook care responsibilities, had difficult matters to deal with in her own life and also due to the need to raise two children felt that she could not take time out of her full-time employment and lose money in order to take up a part-time law course or an Open University course. I have to say that her testimonial is compelling in this regard.

[21] In addition, the supportive evidence from Mr Crilly is extremely strong in vouching for this applicant. In addition, I have read numerous testimonials from counsel including a KC who all vouch for her in terms of professionalism and effectively her ability to handle the role of a solicitor day to day which they have first hand experience of. I should say that the evidence from the Bar covers areas as diverse as criminal law and civil law and so it does seem that she has an experience that goes beyond what the Committee described in para [30] of the Appellate Committee decision. In that regard, I agree with Mr O'Donoghue's submissions that para [30] is not fully reflective of the evidence before the court.

[22] In particular, the fact that para [30] referred to "no evidence" in High Court proceedings is contrary to the reference provided by Mr McDonnell BL in which he states that the applicant had dealt with probate, commercial and King's Bench cases. He opined that the applicant had learned the underlying principles, whether in probate matters or commercial actions, and is able to bring that experience into her

work. Mr Devlin KC also confirmed the applicant's input in a complex fraud case and in a complex murder case.

[23] However, the core of this appeal is whether the Appellate Committee applied the correct legal test to the facts. There are two elements of the argument. Firstly, Mr O'Donoghue makes the case that the word "special" in Regulation 8(5) only applies to qualifications and not experience. The Appellate Committee did look at this but reached no conclusion. On this point, it seems to me that the Society's argument should prevail. Regulation 8(5) is very much a catch-all category which must deal with special cases, and, to my mind, that should include special qualifications and/or special experience. The sentence should be read as a whole, and the word special should not be disaggregated into either of the two categories. So, I am not with Mr O'Donoghue on this aspect of his argument.

[24] However, I think the applicant is on safer ground and a better point is made whenever it comes to the application of the *Burns'* decision in this area. This decision was understandably instrumental in shaping the decision as the Appellate Committee records that the threshold is set at an extremely high level in that a case must be "truly exceptional" to fall within the 8(5) Regulation category.

[25] I am not convinced that *Burns* should be interpreted in the way that it has been for a number of reasons. First, and most obviously, both *CH* which preceded *Burns* and *Burns* itself are cases involving very different factual circumstances. As will be clear from the discussion of *CH* above, that case involved a young man who had less than half the years' experience required and was underage to satisfy the law clerk route. In *Burns,* the Law Society's refusal was validly based upon a concern that by qualifying in the way suggested the Institute could be bypassed. It can clearly be seen why these two cases were decided on their own facts. In addition, both *CH* and *Burns* were decided in the context of Regulations 8(5) and 8(3). To be fair to the Appellate Committee, this distinction is recognised in its decision. However, I am not convinced that it was then properly analysed.

[26] Second, the position of the court in *Burns* was clearly that if Regulation 8(5) was relied on when 8(3) was available to somebody in a law clerk position there would have to be a truly exceptional circumstance to allow admission. This approach makes logical sense. However, whenever the provision for the law clerk route was removed in 2015, the opportunity to qualify in that way was removed.

[27] Third, is that to satisfy Regulation 8(5) an applicant must have special qualifications and/or special experience. That is the legal test. The phrase "truly exceptional" found in *Burns* forecasts the rarity of cases that may pass the test in a particular context. This phrase does not establish a legal test in itself and should not be used as such. Whether or not the special qualifications and special experience requirement is established should be assessed on a case-by-case basis by the Law Society.

[28] Regulation 8(5) provides an exception to the other entry requirements which will be satisfied by most applicants. This will be in exceptional circumstances due to special qualifications or special experience. To my mind the adverb "truly" is unnecessary. The regulation should be construed strictly which means that there will be few people who can meet the strict requirements. However, it would be wrong if satisfaction of the test was rendered impossible.

[29] There is no countervailing policy reason for proceeding in this way. If the applicant were successful in establishing special experience, she does not get a free pass into the solicitor's profession. Rather, she would have to attend the Institute of Professional Legal Studies, study and pass all of the required areas before becoming a solicitor. Therefore, I am not satisfied that the Appellate Committee applied the correct legal test.

[30] The legal profession has also moved on since the cases discussed above were decided. This reality is illustrated by the affidavit of Mr Darren Patterson sworn on 11 November 2024 which is extremely helpful. Mr Patterson sets out the history of the applications in this area, which I will not repeat *in extenso* in this judgment. He also refers to the fact that the consideration of Regulation 8(5) and 8(3) has been reviewed in the following way.

[31] In summary, in 2007 the Society established the Education Review Working Group to re-examine the arrangements for training and qualification of solicitors. Various recommendations were made following on from which the Society determined that the route for solicitors' clerks contained in Regulation 8(3) be revoked, as by then there existed ready access for suitable candidates to obtain an undergraduate or master's degree in law via full-time, part-time and remote university study. That decision was given effect by amendment of the 1988 Regulations by the Solicitors Admission and Training Amendment Regulations 2015.

[32] Conversely, as Mr Patterson states, the Law Society determined that the Regulation 8(5) route be retained to allow for a residual discretion in such matters. This was subsequently confirmed by the Law Society as acceptable.

[33] The affidavit goes on to state that in 2022 the Society commissioned a study by external consultants, the results of which underscored the need to modernise the qualification and admission routes to the profession. In this regard the affidavit states as follows:

> "The study highlighted the importance of adapting to a shifting legal landscape in Northern Ireland, addressing high attrition rates and alleviating the shortage of early career solicitors. In response, the Society's Education Committee has undertaken a series of initiatives to gather data and assess the need for change. This included the Committee commissioning research to benchmark

> qualification pathways and alternative entry routes in other jurisdictions and professions as well as a large-scale survey of trainees, early career solicitors and master/training firms. Furthermore, between July and September 2024, an engagement exercise was completed to gather qualitative feedback to inform future dialogue across the profession. The findings of that exercise included views on the need for alternative training routes with reference to expanding access for non-law graduates. The Committee's resulting report was published in October 2024. The report's various proposals are now to be the subject of consultation with the profession before further consideration of possible modernisation/reform by the Council of the Society."

[34] During the course of this hearing, I received the consultation document referred to by Mr Patterson dated November 2024 entitled "Enhancing Access to the Profession." Page 23 of this document refers to options relating to the introduction of alternative qualification routes. This refers to an option of an introduction of a solicitor modern apprenticeship scheme, the objective being to create a robust, inclusive and practical pathway that diversifies the entry routes into the profession. The introduction of a modern apprenticeship scheme aims to enhance the accessibility and diversity of aspiring solicitors, who are skilled, adaptable, and aligned with the evolving needs of the solicitor profession. The rationale for this is expressed as follows:

> "The current qualification rate for solicitors in Northern Ireland typically follows a traditional academic path, primarily through university study and subsequent vocational training. However, as the solicitor profession evolves, there is an increasing demand for alternative entry routes that balance academic learning with practical hands-on experience. A modern apprenticeship scheme for school leavers (post A level) and/or graduates could provide an accessible pathway, allowing individuals to enter the profession through a structured programme that combines in-office experience with academic and professional development."

[35] I do not know the outcome of this consultation process, but it is interesting to note that various new options are now being discussed to meet the challenges presented by the modern legal landscape. Peppered within the papers is reference to the fact that solicitors are hard to recruit outside of large firms and yet in Northern Ireland our society relies on local solicitors in local towns. The Law Society has rightly reacted to that need by looking at alternative routes. The academic background of solicitors is an important quality assurance. But against that some

people, including women in particular, may encounter impediments which may militate against them due to childcare or caring commitments. The modern approach is not to create barriers to those who are able to undertake the important work of a solicitor whilst also assuring the public that solicitors are suitably qualified given the important role they perform. Quality assurance is also provided by the Institute of Professional Legal Studies who will train most, if not all, of our solicitors in Northern Ireland to the highest of standards.

Conclusion

[36] Therefore, having considered this case as a whole and having regard to the conclusions of the Law Society who has experience in discharging its responsibility of educating and training entrants, I have reached the following conclusions.

[37] First, I consider that the Appellate Committee has underestimated the extent of the applicant's experience contained in the testimonials and that para [30] of the decision is not reflective of her full profile. Second, I consider that the *Burns* case needs to be read in light of the subsequent amendment to the regulations which removed Regulation 8(3). That is not to say that Regulation 8(5) should not be interpreted strictly, I agree that it should be. However, the simple test is whether an applicant who cannot meet the other requirements of the regulation has special qualifications and/or special experience by way of exception. This must be qualitatively and quantitively vouched to maintain public confidence in the professional entry requirements.

[38] In terms of disposal, the fairest way of dealing with this case is to remit the matter for reconsideration before another Appellate Committee of the Law Society. I form no view on the ultimate outcome. In terms of timing, I suggest that there should be a pause given the consultation process which is underway. Whether the applicant will succeed in a fresh consideration is for the specialist body to decide in due course.

[39] I will hear the parties as to any other matters that arise.