EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 7
P814/24

Lord Doherty
Lady Wise
Lord Armstrong

OPINION OF THE COURT

delivered by LORD DOHERTY

in the appeal under section 16(2) of the Solicitors (Scotland) Act 1980

by

PATRICK HENRY McAULEY

Petitioner

against a decision of the Practising Certificate Sub-Committee of

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND

Respondent

Petitioner: Party
Respondent: Breen; Balfour & Manson LLP

28 February 2025

Introduction

[1] The petitioner graduated with an LLB honours degree in 2010, and in 2011 he obtained the Diploma in Professional Legal Practice. He was a trainee solicitor between 23 April 2013 and 21 April 2015. Since then he has not worked with a firm of solicitors or as an in-house solicitor. He maintained his practising certificate subscription for 2015/16

and 2016/17, but he did not renew it in 2017. His name was removed from the roll of solicitors at his request on 31 October 2020.

[2] The respondent is the governing body of the Law Society of Scotland. A person who wishes to practise as a solicitor in Scotland must be admitted as a solicitor, be on the roll of solicitors, and hold a practising certificate. The respondent is responsible for keeping the roll and issuing practising certificates.

[3] In July 2024 the petitioner applied to the respondent to be restored to the roll and to have a practising certificate issued to him. On 6 August 2024 the respondent restored him to the roll. On 8 August 2024 the respondent's Practising Certificate Sub-Committee granted him a practising certificate which was subject to a condition that he would not practise as a manager in a practice unit for a period of 12 months. The practical effect is that the petitioner may practise as an employed solicitor, but not as a partner, sole practitioner, or director or member of an incorporated practice. The petitioner appeals the decision by petition to this court under section 16(2) of the Solicitors (Scotland) Act 1980. The respondent resists the appeal.

The petitioner's application to the respondent's Practising Certificate Sub-Committee

[4] Section 1 of the Solicitors (Scotland) Act 1980 states:

> "…
>
> (2) The objects of the Society shall include the promotion of—
> (a) the interests of the solicitors' profession in Scotland; and
> (b) the interests of the public in relation to that profession.
>
> (3) The Society may do anything that is incidental or conducive to the exercise of these functions or the attainment of those objects."

Sections 14 and 15 provide:

> "**14 Issue of practising certificate**
>
> (1) The Council shall issue to an enrolled solicitor on application being duly made by him, a practising certificate in accordance with rules made by them under section 13.
>
> …
>
> **15 Discretion of Council in special cases.**
>
> (1) In any case where this section has effect, the applicant shall, unless the Council otherwise order, give to the Council, not less than 6 weeks before he applies for a practising certificate, notice of his intention to do so; and the Council may in their discretion—
> (a) grant or refuse the application, or
> (b) decide to issue a certificate to the applicant subject to such conditions as the Council may think fit.
>
> (2) Subject to subsections (3) and (4), this section shall have effect in any case where a solicitor applies for a practising certificate
> …
> (c) when a period of 12 months or more has elapsed since he held a practising certificate in force;
> …"

In the petitioner's case, a period of 6 years and 9 months elapsed between the expiry of his 2016/17 practising certificate on 31 October 2017 and his application for a practising certificate on 31 July 2024. Accordingly, section 15(2)(c) applied, with the result that section 15 had effect in his case.

[5] In his application the petitioner set out his legal qualifications. He indicated that in addition to his LLB and Diploma in Legal Practice, he held the degrees of LLM and MRes (in legal research). The application did not specify the dates the LLM or MRes were awarded. He explained how he had been engaged since he completed his traineeship in April 2015. He indicated that he had "raised legal actions, including … a multi-day Court

trial, & handled complex appeals." There had "been regular provision of pro-bono legal consultation as well as Mackenzie (*sic*) Friend representation" (*McKenzie* v *McKenzie* [1971] P 33). He further stated:

> "**Founder of legal-tech company, GTJ1247 Ltd**: The applicant is the founder of the legal-tech company, GTJ1247 Ltd. The applicant converted his MRes into a thesis-book called the 'Global Tablet of Jurisprudence' - this creates a version of the Periodic Table for the legal discipline converting the legal discipline into 124 subjects within 7 Categories. This book was converted by the applicant into a database called the Global Tablet of Jurisprudence for his legal-tech company (the applicant wrote the code for this), available at www.gtj1247.com. 1000 case-law summaries from across the world have been published on this database, including the vast majority of UKSC Judgment from the past 3 years. The applicant has a software product called 'Lex Metamorphis' to train people on the definitions from Osborn, Jowitt & Stroud legal dictionaries of the 7 Categories & 124 subjects of the GTJ, so they can objectively understand & apply this standardise legal research method. There are also other legal-tech products that are to be developed from this GTJ1247 concept, in particular a subscription database called 'Lex Cerebro: The Law's Brain' which is an advanced form of AI, & 'Law Machine' software to allow people to sharpen their jurisprudence technique on principles & caselaw within a law subject to a razor-sharp level. This subscription database & software product are not on the market as yet, but are used by the Applicant himself, & these shall hopefully reach the market as the company evolves.
> …
> **Successful experience of patent Registration process**: For the Global Tablet of Jurisprudence database, a Preliminary patent from the UK Intellectual Property Office was successfully attained for this. The 124 subject & 7 category system for all 200 countries in the world is essentially like a Titanic sized filing cabinet. This protects GTJ1247 Ltd from copycatting **if** this database goes on to be commercially successful in the UK.
> …"

The Practising Certificate Sub-Committee's decision

[6] The minute of the sub-committee's consideration and determination of the petitioner's application states:

> "**PRACTISING CERTIFICATE SUB-COMMITTEE**
>
> Extract Minute of the Meeting of the Practising Certificate Sub-Committee of the Law Society of Scotland held by audio and video conference on 8 August 2024.

Present: 2 solicitor and 3 non-solicitor members of the Sub-Committee

3.1 Application for Practising Certificate (1980 Act, Section 15(2)(c) applies)
Applicant: Patrick McAuley (Society ID:45504)

Material considered:
Submission from Applicant
Summary of Membership History

Relevant Legislation/Rules:
Section 15(2)(c) of the Solicitors (Scotland) Act 1980

Background to Application:
The applicant held a practising certificate from September 2014 to October 2017. He has explained his history since then and why he now seeks a practising certificate.
As the applicant has not held a practising certificate during the last 12 months section 15(2)(c) of the 1980 Act applies and such a certificate may be granted subject to conditions.

Decision:
Following a detailed discussion of the application, the Sub-Committee considered that achievement of the regulatory objectives would best be served by granting the applicant a practising certificate, but subject to conditions aimed at reducing any risk to clients which could arise from the applicant engaging in private practice without appropriate supervision, given the comparatively restricted extent and nature of the applicant's most recent work experience. The Sub-Committee determined to grant a practising certificate to the applicant subject to the condition that the holder of the certificate would not practise as a manager in a practice unit (as those terms are defined in the Society's Practice Rules) for a period of 12 months following the date of issue of the certificate."

The petitioner's submissions

[7] The petitioner submitted that the court should exercise the power in section 16(3)(b) of the 1980 Act and direct the respondent to issue a practising certificate which is free of conditions; failing which, it should reduce the sub-committee's decision of 8 August 2024 and remit the application to the respondent to be considered of new. He advanced nine submissions.

[8] First, the minute of the sub-committee's meeting was not in accordance with the requirements of the Companies Act 2006, sections 248 and 249. Those provisions applied because the respondent was "a body corporate" (Solicitors (Scotland) Act 1980, Schedule 1, Rule 1). Since the minute had not been authenticated by the chairman of the meeting or the chairman of the next directors' meeting, it was not sufficient evidence of the proceedings at the meeting. There had been procedural impropriety in that respect. Reference was made to *Oswald* v *The Ayr Harbour Trustees* (1883) 20 SLR 327.

[9] Second, a further procedural impropriety was that the sub-committee had been inquorate. It was not apparent from the minute that the members who made the decision had been validly appointed. It was accepted that the 1980 Act and Article 22 of the respondent's Articles of Association empower the respondents to arrange for any of their functions, including their regulatory functions, to be discharged by a committee or sub-committee, and for lay persons to comprise a majority of the members thereof; and that Article 22 makes provision for the appointment and removal of members of committees and sub-committees. The problem was that the minute of 8 August 2024 did not specify the members who took the decision. Accordingly, it was not clear that at the time of the decision each of the members had been, and continued to be, validly appointed. The listing of the entire membership of the sub-committee on the respondent's website did not elide the problem. For all the petitioner knew, that listing might not be up-to-date. Members could have been appointed or removed since it was published. In any case, it was not apparent from the minute which of the members listed had in fact been part of the sub-committee that dealt with the petitioner's application.

[10] Third, the sub-committee had erroneously proceeded on the basis that they had been obliged to impose the condition they imposed because the petitioner had not held a practising certificate in the previous 12 months. That was not the case. They had a discretion as to how to proceed. The error was clear from the minute. The only reference to a statutory provision was to section 15(2)(c) of the 1980 Act, but the discretion was conferred by section 15(1). Reference was made to *R* v *Hull University Visitor, Ex parte Page* [1993] AC 682, Lord Browne-Wilkinson at pp 701-702.

[11] Fourth, if the sub-committee had exercised their discretion, the power to impose a condition had been used for an improper purpose, namely reducing risks to clients. That was not one of the respondent's objects in terms of sections 1(2) or 1(3) of the 1980 Act. Reference was made to *Padfield* v *Minister of Agriculture, Fisheries and Food* [1968] AC 997.

[12] Fifth, the sub-committee's decision was irrational. It failed to have regard to the current dearth of solicitors prepared to do legal aid work. The petitioner wished to alleviate that problem. It was perverse not to permit him to do so. Reference was made to *Wordie Property Co Ltd* v *Secretary of State for Scotland* 1984 SLT 345.

[13] Sixth, the decision was irrational and erroneous in law because the sub-committee misdirected themselves as to the extent and nature of the petitioner's legal experience. They ought to have taken a broader view of what practising as a solicitor entailed. They ought to have concluded that some of the things the petitioner had done since he completed his traineeship had been practice as a solicitor. He had published thousands of case notes on the internet. The case of *Miller* v *Council of the Law Society of Scotland* 2000 SLT 513 showed that such work was analogous to practice as a solicitor. The decision was also irrational

because adequate and intelligible reasons had not been given for imposition of the condition.

[14] Seventh, the decision breached the petitioner's ECHR, Protocol No 1, Article 2 right to education. Article 2 provides:

> "**Right to education**
>
> No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

There was an infringement of the first sentence here because the condition prevented the petitioner from profiting from his legal education and qualification. Unless he could do that, he would be prevented from the effective exercise of the right. Reference was made to *Şahin* v *Turkey* (44774/98) (2007) 44 EHRR 45, at paragraphs 152-155, and in particular to paragraph 152:

> "152. The right to education, as set out in in the first sentence of Article 2 of Protocol No. 1, guarantees everyone within the jurisdiction of the Contracting States 'a right of access to educational institutions existing at a given time', but such access constitutes only a part of the right to education. For that right
>
> > 'to be effective, it is further necessary that, *inter alia*, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed.'[90]
>
> …
>
> [90] *Belgian Linguistic* case, cited above [No.2) (1968)(A/6), (1979–80) 1 EHRR 252] at [3]-[5]; see also *Kjeldsen, Busk Madsen and Pedersen* v *Denmark* (A/23) December 7, 1976 [(1979-80) 1 EHRR 711], at [52]."

The interference with the petitioner's Article 2 right was not justified or proportionate. It had been motivated by an improper consideration - the protection of clients.

[15] Eighth, the petitioner had been discriminated against in the enjoyment of his Protocol No 1, Article 2 right to education, in breach of Article 14 of the Convention. Article 14 provides:

> "**Article 14 - Prohibition of discrimination**
>
> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The ineptness of the minute was in stark contrast to the generality of the respondent's minutes, which were excellent. The explanation must be that the respondent had discriminated against the petitioner. He had done nothing wrong, but he was being treated differently from others. Reference was made to *Wheeler* v *Leicester City Council* [1985] AC 1054.

[16] Ninth, the decision was reached in breach of the petitioner's Article 6 ECHR rights. Article 6 provides:

> "**Right to a fair trial**
>
> 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> …"

The petitioner had not had a fair and public hearing within a reasonable time. He ought to have been invited to the meeting and been given the opportunity to make oral

representations to the sub-committee. Moreover, the reasons in the minute were inadequate. Reference was made to *Stefan* v *General Medical Council* [1999] 1 WLR 1293.

Submissions for the respondent

[17] Counsel for the respondent submitted that none of the arguments advanced by the petitioner were well-founded. The court should refuse the appeal and affirm the decision.

[18] The petitioner's first submission was mistaken. The respondent is a body corporate constituted in terms of the 1980 Act, not a company incorporated under the Companies Acts. Apropos his second submission, the petitioner had not identified any invalidity or impropriety concerning the appointment of the members of the sub-committee. It was not the respondent's practice to name sub-committee members in minutes, but the full membership of the sub-committee was listed on the respondent's website. The petitioner had asked that a particular member would not sit on his application, and that member had not sat. There was no substance in the petitioner's third submission. On a fair reading of the minute it was clear that the sub-committee had properly exercised the discretion conferred on the respondent by section 15(1). The petitioner's fourth submission was plainly wrong. Reducing risk to clients was a matter which fell squarely within the respondent's statutory objectives. As for the fifth submission, the suggested shortage of solicitors prepared to undertake legal aid work did not remove the need for clients to be protected from risks associated with solicitors who were insufficiently experienced to practise without supervision. The sub-committee's decision had not been unreasonable. Turning to the sixth submission, there had been no error. The sub-committee took account of the information in the petitioner's application but they concluded, as they were entitled

to, that his recent legal work experience had been relatively restricted in its nature and extent. The reasons for the decision to impose the condition were both intelligible and adequate.

[19] The submissions that there had been breaches of ECHR Articles 6, 14 and Article 2 of Protocol No 1 were misguided.

[20] Article 2 of Protocol No 1 was not engaged. There had been no failure to recognise the petitioner's academic qualifications. The decision had been concerned with a different question, whether the petitioner should be granted a practising certificate subject to a condition. If Article 2 had been engaged, it had not been breached. Any limitation of the petitioner's Article 2 right was compatible with the Article. The limitation was in furtherance of a legitimate aim. It was proportionate. There was a reasonable relationship between the means employed and the aim sought to be achieved.

[21] There was no breach of Article 14. The petitioner had failed to specify any basis of discrimination. The provisions of the 1980 Act and Rule D1 (Practising Certificates) of the Law Society of Scotland Practice Rules applied equally to all applicants for a practising certificate.

[22] Article 6 was not engaged. The petitioner did not have a "right" to an unrestricted practising certificate - the respondent had a discretion whether to attach conditions (cf *Masson and Van Zon* v *Netherlands* (1996) 22 EHRR 491). The decision whether to attach a condition did not involve the determination of the petitioner's civil rights and obligations. Even if Article 6 was engaged, there had been no breach. There was no right to an oral hearing in the circumstances. The reasons provided were intelligible and adequate. In any case, the right of appeal to this court met the requirements of Article 6 (*Robson* v *Council of*

the Law Society of Scotland 2008 SC 218, per Lord Macfadyen at para [39]). There was no breach of the reasonable time requirement.

Decision and reasons

[23] We shall deal in turn with the petitioner's submissions.

[24] The first submission is based on an error. The respondent is not a company incorporated under the Companies Acts. Sections 248 and 249 of the Companies Act 2006 do not apply to it. The minute of 8 August 2024 is the record of the sub-committee's decision and reasons. It is entirely appropriate that the court has regard to it.

[25] The second submission is also ill-founded. It was not necessary for the minute to narrate details of each member's appointment to the sub-committee. The petitioner does not contend that any particular member of the sub-committee was not duly appointed. In those circumstances, the presumption *omnia praesumuntur legitime facta donec probetur in contrarium* (all things are presumed to be done legitimately until the contrary is proved) applies. It would have been good practice (in the interests of transparency) for the members of the sub-committee to be named in the minute (unless there was a cogent reason why that course should not be followed): but the fact that they have not been named does not invalidate the decision. If transparency was the gravamen of this aspect of the petitioner's complaint, the relevant details could be provided on request (unless there is a cogent reason to retain anonymity).

[26] The third submission fails on a plain reading of the minute, the terms of which are clear. The sub-committee recognised that a period of 12 months or more had elapsed since the petitioner had held a practising certificate in force (section 15(2)(c)). It followed that

this was a case where section 15 had effect, and that in terms of section 15(1) they had a discretion to grant or refuse the petitioner's application or to decide to issue a certificate to him subject to such condition as they might think fit. It is evident from the terms of the minute that they were well aware of that. They discussed the petitioner's circumstances and, with those circumstances and the interests of clients in mind, they decided that granting a certificate with a condition was the appropriate course. The sub-committee did not consider themselves legally bound to issue a practising certificate subject to the condition just because section 15(2)(c) applied.

[27] The fourth submission takes too narrow a view of the respondent's statutory objectives. It is plainly in the interests of the profession, their clients, and the general public that inexperienced solicitors and those who have not practised recently may be granted a practising certificate subject to a condition or conditions for a period. Oversight by a practitioner with more recent experience of practice may be prudent for the protection of clients. The sub-committee were entitled to have regard to that consideration when exercising their discretion. They did so. In doing so they were not acting for an improper purpose.

[28] It is convenient to deal with the fifth and sixth submissions together since they cover similar territory. We are not persuaded that the sub-committee failed to have regard to any material consideration. We are not convinced that in this context the number of solicitors prepared to act for legal aid clients was a material consideration, but we think the sub-committee are likely to have been aware of any difficulties there may be in that regard. However, legal aid clients require no less protection from the risk of poor services than other clients: indeed many of them may need more protection. The sub-committee were entitled

to assess the petitioner's recent work experience in the way which they did. The Practising Certificate Sub-Committee deals with all applications for practising certificates. They were in the best position to assess the petitioner's recent experience, and to decide what, if any, condition was required in light of it. Their membership comprised experienced practitioners and lay members, who were attentive not just to the interests of the petitioner, but also to the interests of the profession, clients, and the broader public. The sub-committee's decision was not perverse. On the contrary, we think it is entirely understandable that they would wish to impose the condition on the basis of the information in the petitioner's application. It would have been surprising if they had not. The sub-committee's reasons for imposing the condition were intelligible and adequate in the circumstances.

[29] That brings us to the human rights submissions.

[30] In our opinion Article 2 of Protocol No 1 is not engaged. The petitioner's case does not concern access to an educational institution. Nor has he been denied official recognition of the educational qualifications that he has completed (the issue discussed in *Belgian Linguistic Case (No 2)* (1968), (1979-80) 1 EHRR 252 at [4], in *Kjeldsen, Busk Madsen and Pedersen* v *Denmark* (1979-80) 1 EHRR 711 at [52], and in *Şahin* v *Turkey* (2007) 44 EHRR 5 at [152]). On the contrary, his educational qualifications have been officially recognised. What has occurred is that, because of the petitioner's limited recent experience of legal practice, a condition has been attached to his practising certificate.

[31] If, contrary to our opinion, Article 2 is engaged, we are satisfied that it has not been breached. The condition imposed pursues a legitimate regulatory aim in the interests of the profession, clients and the wider public. It is proportionate. There is a reasonable relationship between the means employed and the aim sought to be achieved. We are

also satisfied that the condition is compatible with the first sentence of Article 2 read in conjunction with Article 14, largely for the same reasons. The provisions of the 1980 Act and Rule D1 (Practising Certificates) of the Law Society of Scotland Practice Rules apply equally to all applicants for a practising certificate. In oral submissions the petitioner contended that an inference of discrimination ought to be drawn from comparison with the suggested poor quality of the minute of 8 August 2024 and the usual "excellent" quality of the respondent's minutes. We do not accept that the minute is of poor quality or that any such inference ought to be drawn. The petitioner did not specify what the discrimination in question was said to be, although in the written material he lodged with the court he suggests that there may have been discrimination because he was male and because of his religion. Neither of those matters was pressed or developed in oral submissions, and there is no indication at all in any of the material we have seen that the imposition of the condition was discriminatory on those or any other grounds.

[32] We are not persuaded that Article 6 is engaged. The petitioner does not have a right to an unrestricted practising certificate - the respondent has a discretion whether to attach conditions (*Masson and Van Zon* v *Netherlands* (1996) 22 EHRR 491). Article 6 is not applicable to proceedings which concern the evaluation of knowledge and experience by professional bodies (*Reed and Murdoch: Human Rights Law in Scotland* (4th ed), paragraph 5.26; *Van Marle* v *Netherlands (A/101)* (1986) 8 EHRR 483 at [36]; *Herbst* v *Germany (20027/02)* [2007] ELR 363 at [54]). The decision whether to attach a condition did not involve the determination of the petitioner's civil rights and obligations.

[33] Even if, contrary to our view, Article 6 is engaged, we are not satisfied that there has been any breach.

[34] In his written submissions the petitioner maintained that his application had not been determined within a reasonable time. There is no substance to that contention. The sub-committee's decision was made on 8 August 2024, a very short time after the petitioner had submitted his application and his appeal to this court has been determined within a reasonable time.

[35] The petitioner's main complaints in relation to Article 6 are that the sub-committee's meeting should have been in public, that he ought to have been offered an oral hearing, and that their reasons were inadequate. As already indicated, we are content that the sub-committee's reasons are intelligible and that they are adequate in the circumstances. In view of the nature of the meeting, the matters to be decided at it, and the detailed information submitted within the petitioner's application, we do not consider that fairness dictated that the meeting be public or that the petitioner be invited to attend and be given the opportunity to make oral representations. The petitioner has not identified any material matter which he maintains would have been addressed in oral representations which was not referred to in his written application. In any case, if, contrary to our view, any of these matters infringed the petitioner's Article 6 rights, those defects have now been cured by this court's review of the sub-committee's decision - the review being by a court with full jurisdiction (*Robson* v *Council of the Law Society of Scotland* 2008 SC 218, per Lord Macfadyen at para [39]; *Reed and Murdoch: Human Rights Law in Scotland* (4th ed), paragraphs 5.153 - 5.134).

Disposal

[36] The respondent's decision of 8 August 2024 is affirmed. The appeal is refused.