

THE HIGH COURT

[2016 No. 80SA]

IN THE MATTER OF DAVID WALSH FORMERLY PRACTISING AS DAVID WALSH & CO., SOLICITORS, OF MOUNT STREET,  
MULLINGAR, CO. WESTMEATH

AND

IN THE MATTER OF THE SOLICITORS ACT 1954-2011

BETWEEN

DAVID WALSH

APPLICANT

AND

LAW SOCIETY OF IRELAND

RESPONDENT

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 23rd day of January, 2017

**Introduction**

1. This is an application by the applicant (Mr. Walsh) to have his name restored to the Roll of Solicitors.
2. Although no statutory basis is referred to in the notice of motion it is clear that the matter falls to be dealt with pursuant to the provisions of s.10 of the Solicitors (Amendment) Act 1960 which was amended by s.19 of the Solicitors (Amendment) Act 1994.
3. In due course I will turn to a consideration of these statutory provisions but before doing so I set out the facts as deposed to on affidavit.

**Mr. Walsh's grounding affidavit**

4. In his affidavit sworn on 5th July, 2016 Mr. Walsh averred that he qualified as a solicitor and was admitted to the Roll of Solicitors in Michaelmas term 1982. From 1990 to 2012 he practised as the principal in his own firm in Mullingar, Co. Westmeath.
5. In July 2010 he suddenly became unwell and was diagnosed with advanced pancreatic cancer. He underwent a "Whipple's procedure" and following that had chemotherapy and radiotherapy for six months.
6. The affidavit goes on:-

*"In early 2012 as I was still very poorly I was left with no alternative but to retire from practice. I handed back my Practising Certificate to the Law Society and delivered to them all my files and documents.*

*I had my office and client accounts closed and receipted showing nil balances and no deficit and I put in place run-off indemnity cover.*

*I further say that in my almost 30 years of practice up until my cancer diagnosis in 2010 I have never been in front of the Disciplinary Tribunal of the Law Society or had any sanctions imposed on me or my practice.*

*During the period of my illness the Society saw fit to bring before the Tribunal a number of complaints.*

*These complaints were subsequently brought before the then President of the High Court on 27th May, 2014 resulting in my name being struck off the Roll of Solicitors.*

*I will detail the complaints further in this affidavit but as a preliminary point wish to say that when these complaints were first made I was not well enough or capable of putting in a replying affidavit and therefore a prima facie case of misconduct was found and at no time thereafter was I afforded an opportunity to submit such an affidavit."*

7. Mr. Walsh exhibits a series of medical reports from Dr. David Fennelly a Consultant Medical Oncologist. These date from April 2011 to June 2016. They attest to Mr. Walsh's diagnosis of an acinar cell tumour of the pancreas, the carrying out of the "Whipple's procedure" and his subsequent therapy. By April 2011 he was described as remaining well. Dr. Fennelly expressed the view that his diagnosis and treatment had caused considerable stress and concern and he had no doubt but that it had impacted on Mr. Walsh's ability to carry out his duties in an optimal fashion.

8. In June 2011 Dr. Fennelly wrote that Mr. Walsh was not then in a position to give instructions with respect to preparing a replying affidavit because he was completing his chemotherapy. In September 2012 Mr. Walsh was well with no evidence of recurrence of his medical problems. However, Dr. Fennelly pointed out that the long term prognosis for patients with pancreatic cancer is extremely poor.

9. In June 2016 Dr. Fennelly pointed out that the original surgery was carried out in July 2010 and that Mr. Walsh continued to do well from his first diagnosis. He was in complete remission. His physical examination as of then was unremarkable.

10. Mr. Walsh is still in remission and regards himself as being remarkably fortunate. In that regard he is no doubt correct.

11. The affidavit goes on to say that if he had been well he would have been able to deal with the complaints in a manner satisfactory to the Law Society and would have put forward his previous good record to support that assertion. He says that although he attempted to attend the Disciplinary Tribunal whenever required he was not very well either physically or mentally to deal with the proceedings and some determinations were made in his absence. He says that on a number of occasions he asked the Law Society to adjourn matters generally but it would not do so. He alleges that on one occasion a solicitor appearing for the Law Society objected to an adjournment because Mr. Walsh's condition was unlikely to improve and indicated that he might be dead by the adjourned date.

12. Mr. Walsh avers that, despite his illness, he at all times sought to fully cooperate with the Society in dealing with these complaints.

13. The affidavit then goes on to refer to matters which came before the then President of this Court on 27th May, 2014 on foot of reports and recommendations from the Disciplinary Tribunal. He says the following in respect of complaints bearing record number 2014 Nos. 37SA and 39SA:-

*"These matters refer to reports of investigating accountants from the Law Society, Jim O'Dowd and Mary Devereux. At the Tribunal I did not contest the contents of the reports but did point out that I had attended fully and dealt with the items of concern highlighted in the report. The Tribunal recommended as a sanction that I would only be permitted to practise as an assistant solicitor under supervision. This suspension sanction was appealed by the Law Society to President Kearns on 27th May, 2014."*

14. In respect of complaints bearing record numbers 2014 No. 36SA and 38SA Mr. Walsh says the following:-

*"This complaint relates to an alleged failure to honour an undertaking to ACC Bank to register a charge. I was not well enough to attend the Tribunal. The Tribunal imposed a suspension order. This was appealed by the Society. I understand that registration of the charge has now taken place."*

15. Insofar as another matter (4550/DT/04/12) concerning an alleged failure to pay a portion of a professional fee to a firm of solicitors following a file transfer, he says that the hearing took place in his absence and that the Disciplinary Tribunal recommended that he be struck off.

16. In respect of a complaint by the Bank of Ireland (2014 No. 7C SA) concerning a failure on his part to stamp a deed he alleges that the bank withdrew the complaint before the Tribunal but that it nonetheless proceeded to recommend a strike off of his name from the Roll. Insofar as the remaining two matters were concerned (2014 Nos. 40SA and 41SA), one alleged an overcharging of professional fees and he says the Tribunal recommended that he be struck off in respect of that. The last matter concerned a professional fee allegedly charged by him for extensive probate and administration work for an estate. He says that the Tribunal ruled that he was not entitled to charge any fee as he had witnessed the will and it recommended that he be struck off.

17. The affidavit continues:-

*"I say that before President Kearns I consented to the strike off and did not contest the Society's application. I did so because at that time I was still very pessimistic as to my health outcome and did not see myself being in a position to practise in the future."*

*I feel that President Kearns's accepted that I had tried my best in very difficult circumstances and he did not give the Society their costs for the day."*

18. The affidavit then deals with the position of Mr. Walsh's thirteen year old son and his anxiety to be able to make a financial contribution to his welfare. He then avers that he has not worked since he was diagnosed in 2010 and that his financial situation is now extremely poor. He gets a weekly disability payment of €197 and a monthly *ex gratia* payment of €500 from the Solicitors Benevolent Fund. Apart from that he avers that he has no other income and the little savings that he had were used up on his medical needs. In addition, his mortgage on his house is in arrears and the mortgagee is threatening repossession because the mortgage is unsustainable unless he returns to employment.

19. The affidavit proceeds:-

*"I accept that certain payments have been made out of the Compensation Fund of the Law Society. It is my intention if I can return to work to make reparation to the Compensation Fund over a period of time and discharge all costs and expenses owing to the Society."*

20. Mr. Walsh avers that he would benefit enormously both mentally and physically if he could return to his pre-illness work. Before his illness he was a Fellow of the Chartered Institute of Arbitrators. His membership lapsed during the period of his illness and he has applied for reinstatement but that cannot proceed prior to his restoration to the Roll of Solicitors.

21. The affidavit concludes:-

*"I further say that I have not been guilty of any dishonesty in my practice as a solicitor and have never been convicted of a criminal offence."*

*I further say that I am fit and proper to practise as a solicitor and that my restoration to the roll would not adversely affect public confidence in the solicitors' profession as a whole or in the administration of justice."*

22. A fair reading of this affidavit would lead one to conclude that Mr. Walsh's difficulties with the Law Society arose as a result of his illness. His illness precluded him from dealing in an appropriate way with the matters which were the subject of recommendations by the Disciplinary Tribunal and which in turn were dealt with in the High Court on 27th May, 2014. One would also conclude that he handed back his practising certificate to the Law Society and delivered to it all his files and documents and furthermore that his office and client accounts were closed and receipted showing nil balances and that he consented to the strike off orders made in the High Court in May 2014.

### **The Law Society's position**

23. The Law Society, which strongly opposes this application, seeks to put forward a very different picture of Mr. Walsh to that

which is painted in his grounding affidavit. It seeks to do so by reference to evidence which is contained in two affidavits sworn on its behalf. One is sworn by Mr. John Elliot, the Registrar of Solicitors and Director of Regulation of the Law Society. The second is sworn by Sheila O'Sullivan who is a solicitor employed in the Practice Closure section of the Society.

24. Mr. Elliot avers that as a result of investigations into Mr. Walsh's practice as a solicitor and complaints received from financial institutions, former clients of Mr. Walsh and solicitor colleagues, the applications referred to by Mr. Walsh were made by the Society to the Disciplinary Tribunal. Findings of misconduct were made by the Tribunal in respect of each of the applications and the reports of the Tribunal were brought before the court for imposition of sanctions. In each of the matters the Society sought an order striking Mr. Walsh's name off the Roll of Solicitors. On 27th May, 2014 seven (*sic*) separate orders directing that Mr. Walsh's name be struck off the Roll of Solicitors were made. In respect of three of the sets of proceedings the court also made orders for the payment of restitution by Mr. Walsh in an amount totalling €68,589. In addition, costs orders were made against Mr. Walsh in respect of the proceedings before the Tribunal and for the payment of witness expenses.

25. I pause here to comment that an examination of the orders striking Mr. Walsh's name from the Roll makes no mention of such orders having been made on consent, contrary to what he swore in his grounding affidavit.

26. Mr. Elliot's affidavit then points to what he describes as a remarkable feature of the application of Mr. Walsh namely, that he completely failed to refer to the fact that there were seven further sets of disciplinary proceedings in respect of which applications were made for orders striking him off the Roll. These proceedings before the Disciplinary Tribunal resulted in findings of misconduct on the part of Mr. Walsh. That Tribunal recommended that he be struck off in respect of these matters.

27. The reports of the Disciplinary Tribunal in respect of these seven additional matters came before the Court on 12th January, 2015. The Court did not make further orders striking the respondent off the Roll. Mr. Walsh contends that these proceedings "*were dismissed by President Kearns in their entirety*". That assertion is contained in a second affidavit sworn by Mr. Walsh on 17th October, 2016 and it is not true.

### **The orders of 12th January, 2015**

28. It is correct to state that the orders made on 12th January, 2015 did not purport to strike Mr. Walsh off the Roll. Indeed they could not have done so since he was already struck off. But the orders most certainly did not dismiss the proceedings as he contends.

29. Each of the orders made on 12th January, 2015 noted "... *the undertaking by the respondent solicitor not to seek an extension of time to appeal any of the strike off orders previously made the court having previously struck the name of the respondent's solicitor off the Roll of Solicitors on seven occasions on 27th May, 2014*". The court then recorded that it would not make a strike off order against the respondent solicitor and made no order as to costs. That is a very far cry from the applications being "*dismissed in their entirety*". It was not possible for the court to make further strike off orders since Mr. Walsh had already been struck off. The undertaking not to seek an extension of time within which to appeal the earlier orders precluded any possibility of such an appeal being brought thereby confirming such orders. It was in this context that the court did not make any further orders.

### **The handing over of files**

30. In his grounding affidavit Mr. Walsh said that he handed back his practising certificate to the Law Society and delivered to it all his files and documents. The Society does not accept this. It says that it had to apply to this Court in order to force Mr. Walsh to hand over files. In that regard it relies on the affidavit of Ms. O'Sullivan. She says that the Society was forced to apply to court in April 2013 for the handing over of files by Mr. Walsh. That application was before the court on what she describes as a multitude of occasions during the course of which numerous orders were made by the court some of which had to be served personally with penal endorsements.

31. She avers that according to the Society's records Mr. Walsh's practice closed on 18th May, 2012. At that stage he ought to have immediately divested himself of his files. That was not done and the Society had to apply to the High Court to secure the files of the practice. An order was made on 8th April, 2013 ordering Mr. Walsh to deliver up all the files and documents of his practice. She attended at his offices on 29th May, 2013 to assess the volume of files in the office and to make a plan to remove them. Mr. Walsh informed her that he was only prepared to hand over closed files. She pointed out to him that the most important files were the current ones because they represented active cases and transactions. Mr. Walsh refused to hand over such files. He did not give any information concerning those files to her. Knowledge of such files came from either clients or financial institutions who contacted the Society because they were concerned about their current files and sought to recover them so that they could proceed with the various transactions involved. On 18th June, 2013 Society staff removed all the files in Mr. Walsh's offices. That was done after service of the penally endorsed order. Mr. Walsh delivered two boxes of current files on 12th July, 2013. But that did not account for all the current files of which the Society had become aware. On 25th July, 2013 Mr. Walsh swore an affidavit stating that he had now delivered all of the files of the practice to the Society. That, however, proved not to be so. At the end of July 2013 he handed in a further three boxes of files. On 13th February, 2014 a further box of files was handed in by Mr. Walsh to the Society without any explanation as to where those files had been. The proceedings in question came to an end in July 2014 when Mr. Walsh swore an affidavit to the effect that he had no further files in his possession or control. It is clear, however, that following the making of the order of 8th April, 2013 the matter was back before the court on a number of occasions because of the unsatisfactory position which obtained concerning the handing over of files. The fact that such orders had to be made demonstrates the inaccuracy of the sworn statement of Mr. Walsh to the effect that in early 2012 he handed back his practising certificate to the Society and delivered all his files and documents.

### **The seven additional disciplinary matters**

32. It is clear that in respect of the seven disciplinary matters which were not mentioned by Mr. Walsh in his grounding affidavit and which were the subject of the orders made in January 2015 there were findings of misconduct made against Mr. Walsh in numerous respects. Mr. Walsh participated in at least a number of those hearings before the Disciplinary Tribunal and did not appeal against any of the recommendations.

### **Consent order**

33. In his grounding affidavit Mr. Walsh swore that he consented to the orders striking him off the Roll. There is nothing on the face of the court orders to suggest that that was so. The Society contends that its records are to the effect that he did not so consent.

### **Restitution orders**

34. The Society complains that nowhere in his grounding affidavit did Mr. Walsh advert to the fact that three orders for restitution were made against him in conjunction with the orders striking him from the Roll. One order was that he should pay restitution in the amount of €25,208 to James Cody and Sons; the second was that restitution in the sum of €18,970 should be paid to James Tighe in respect of excessive fees and the third was that €24,411 should be paid to Enda Naughton in respect of fees inappropriately charged in a probate matter. None of these sums have been discharged. Mr. Walsh does refer in his grounding affidavit to the fact that payments were made by the Compensation Fund without specifying the amounts.

35. To date the compensation fund of the Society has made payments in excess of €60,000 which include the €24,411 payable to Enda Naughton and €24,768 paid to James Tighe. Other sums have been paid to other persons giving rise to the grand total of €60,690.36.

### **Dishonesty**

36. Mr. Walsh denies any dishonesty on his part. He does so both in his grounding affidavit and in his second affidavit where he says *"I deny that I have being (sic) dishonest or have acted with disregard to the public or members of the profession"*. That contention is denied by the Society which says that it is not borne out by the findings of misconduct made in respect of Mr. Walsh. In particular it calls attention to findings made in proceedings DT04/12 which related to the misappropriation of funds which ought to have been paid to another firm of solicitors and the findings by the Tribunal that he had on two occasions by omission misrepresented or allowed to be misrepresented the position in relation to the recovery of costs. It also calls attention to the multiple findings made in proceedings DT41/10 (2014/37SA) of improperly causing or allowing clients' monies to be drawn to the office account in respect of outlay and searches which had not been carried out and of the updating of deeds together with a deficit on the client account. It also calls attention to the deficit of funds available on the client account and the necessity for the compensation fund to have paid out the sums which it did.

### **Second affidavit**

37. In his second affidavit sworn on 17th October, 2016 Mr. Walsh denies the allegation that he failed to cooperate with the Law Society in handing over files. He furthermore denies that he has been less than frank in not referring in his grounding affidavit to further sets of disciplinary proceedings and asserts that they were dismissed in their entirety. In the course of the hearing before me when I called his attention to the actual terms of the orders he accepted that this was not in fact correct.

38. He also alleges that the deponent of the principal replying affidavit is disingenuous in failing to give any allowance for his critical illness and the fact that his medical reports made clear that his diagnosis impacted on his ability to carry out his work in an optimal fashion. He acknowledges his responsibility to reimburse the Society in respect of costs and compensation. He denies dishonesty or to have acted with disregard to the public or members of the profession and he says that against all medical odds he has been given a second chance of life and asks to be restored to the Roll.

### **The Society's objections**

39. The Society objects to Mr. Walsh's restoration to the Roll upon a number of grounds. They are as follows:-

(a) His lack of candour in the making of the application for restoration as demonstrated by his failure to refer to seven further sets of disciplinary proceedings and the undertaking given by him to the court on 12th January, 2015. It refers to his failure to refer to the problems encountered by the Society in trying to achieve an orderly wind down of his practice and the incorrect averment that he had consented to the orders striking him off the Roll. It also refers to what it describes as his portrayal of all his difficulties as having arisen subsequent to his becoming unwell. The findings of the Disciplinary Tribunal demonstrate that in the majority of cases the matters arose prior to his ill health.

The Society also refers to the dishonesty underlying a number of the findings of misconduct, in particular, those in relation to the misappropriation of funds due to another solicitor and the improper taking of amounts of client monies for outlay.

(b) The number and nature of the findings of misconduct made in 48 sets of disciplinary proceedings.

(c) The findings of misconduct display unfitness not just in an isolated respect but across a broad spectrum of matters relating to a solicitor's practice and repeatedly so. These include multiple findings of failure to comply with undertakings and with the Solicitors Account Regulations, updating transfer deeds presented to the Revenue Commissioners for stamping – thereby avoiding possible interest on penalties and failures to comply with directions of the Society's committees to refund monies.

(d) His disregard for the public and other members of the profession as demonstrated not only by the findings of misconduct but also by the payments which the Society has had to pay from the Compensation Fund.

(e) The lack of cooperation with the Society in respect of the winding up of his practice necessitating court orders being sought for the handing over of files.

(f) The age and maturity of the applicant when the misconduct was committed. He was an established solicitor long in practice and cannot therefore, it is said, claim inexperience as an excuse for the failures on his part.

40. Having regard to these matters the Society contends that the applicant has not demonstrated that he is a fit person to be restored to the Roll.

### **Mr. Walsh's submission**

41. Mr. Walsh contends that he is a fit and proper person to be restored to the Roll of Solicitors. He argues that restoration to the Roll would not adversely affect public confidence in the solicitors' profession or in the administration of justice.

42. He contends that he is an entirely proper person to be a solicitor and has the necessary good character and integrity to render him suitable to once again be a solicitor.

43. He accepts that whilst he might have been careless or neglectful he was not guilty of such wrongdoing as would justify him remaining off the Roll of Solicitors.

44. If restored, he says that he will put in place a schedule of payments to discharge any sums which he was directed to pay.

Furthermore, he would not seek a practising certificate until January 2018. An order restoring him would permit him to resume his Fellowship of the Chartered Institute of Arbitrators and he could resume work in that capacity without a practising certificate from the Law Society.

### **The statutory provisions**

45. The High Court is empowered to strike the name of a solicitor off the Roll after consideration of a report from the Disciplinary Tribunal.

46. Section 10 of the Solicitors (Amendment) Act 1960 provides:-

*"10.—(1) The High Court shall have power to order that the name of a solicitor, whose name has been struck off the Roll by an order made by the High Court under section 8 of this Act ... shall be restored to the Roll.*

*(2) A person seeking to have his name restored to the Roll under this section may apply to the High Court and shall give notice of his intended application to the Society, who shall be entitled to appear and be heard on any such application.*

*(3) On the hearing of an application under this section the High Court may refuse the application or may order that the name of the applicant be restored to the Roll and may order the payment by the applicant of the costs and expenses of the Society in relation to the application."*

47. Section 19 of the Solicitors (Amendment) Act 1990 amended section 10 of the Act of 1960, by the addition of the following subsection:-

*"(4) Where, on the hearing of an application under this section, it is shown that the circumstances which give rise to the striking off the Roll of the applicant's name involved an act or acts of dishonesty on the part of the applicant arising from his former practice as a solicitor or that the applicant was convicted of a criminal offence, the High Court shall not restore the applicant's name to the Roll, either conditionally or unconditionally, unless it is satisfied that, having regard to all the evidence, the applicant is a fit and proper person to practise as a solicitor and that the restoration of the applicant to the Roll would not adversely affect public confidence in the solicitors' profession as a whole or in the administration of justice."*

48. In *In Re Burke* (2001) 4 I.R. 445 these statutory provisions had to be considered by the Supreme Court on an appeal from a decision of Morris P. He refused an application for conditional restoration to the Roll of Solicitors. In delivering his judgment Keane C.J. said the following:-

*"There can be no doubt that subsection 4 envisages that a solicitor may be restored to the Roll although the circumstances which gave rise to his being struck off involved an act or acts of dishonesty on his part. But it is also clear that, before the court can accede to such an application, it must be satisfied that the two preconditions imposed by the subsection are met and that the onus of so satisfying the court is on the applicant. It is also clear that both these preconditions must be met where, as here, the applicant is applying for a conditional certificate only.*

*As I have noted, subsection 4 did not appear in section 10 of the Act of 1960 as originally enacted. It was inserted for the first time by the Act of 1994. In determining how subsection 4 should be applied in individual cases such as the present, it is important to bear in mind that the Oireachtas, in cases which are within the subsection, thought it necessary to make special provision for such cases and, in particular, to require that the two specific preconditions be met before a solicitor's name is restored.*

*A member of either branch of the legal profession enjoys rights and privileges in representing and advising members of the public denied to others. The public are, accordingly, entitled to repose a high degree of trust in both barristers and solicitors in the conduct of their respective professions. Unlike barristers, solicitors are regularly entrusted with the custody of monies belonging to their clients and, if public confidence in the solicitors' profession is to be maintained, any abuse of that trust inevitably must have serious consequences for the solicitor concerned. Viewed in that context, the range of cases in which a solicitor, who has been struck off because of dishonesty, can properly be restored to the register pursuant to subsection 4 is, of necessity, significantly limited. In a case where the acts of dishonesty appear to have been wholly out of character and were committed when the solicitor was under severe pressures of some kind, the exercise of the discretion vested in the court in his or her favour may be justifiable. The fact, if it be the fact, that in his or her subsequent career, the solicitor had been entrusted with positions of trust and responsibility without any further lapses would be an additional factor in enabling the court to exercise the jurisdiction in his or her favour. However, it would be inappropriate to attempt an exhaustive definition of the circumstances in which a solicitor might properly be restored to the rolls in cases to which subsection 4 apply: it is sufficient to emphasise again that the category of cases in which re-admission to the profession is permissible will inevitably be limited. That this is the approach which should be adopted is, I think, borne out by the authorities from other jurisdictions which were cited in the course of argument: see the observations of Lord Donaldson M.R. in *In the Matter of a Solicitor No. 5* of 1990 and *In the Matter of the Solicitors Act 1974* (Unreported, Court of Appeal, 27th April, 1990) and of the majority of the High Court of Australia in *Ex parte Lenehan* (1940) 77 CLR 403.*

*The issue that arises on this appeal is as to whether, in the light of these principles, Morris P. was entitled to refuse the present application on the ground that the solicitor had not satisfied him that he was a fit and proper person to practise as a solicitor. I have no doubt that he was. It must, regrettably, be pointed out that the conduct which ultimately led to the applicant being struck off was not in any sense an isolated act explicable, if not justifiable, because of special circumstances. He had narrowly escaped being struck off for similar conduct on a previous occasion and, even after his ultimate removal from the roll, held himself out as being a solicitor. While it is to his credit that substantial repayments have been made by him, there is no indication that in the period which has elapsed since he was struck off in 1991, he has secured any employment in any position of trust or responsibility."*

49. In July 2016 the Supreme Court delivered judgment in an appeal brought against an order made by Finnegan P. in February 2005. The case is *Carroll v. Law Society of Ireland* [2016] IESC 49. In that case Finnegan P. held and declared that Mr. Carroll was not a fit and proper person to be admitted to the Roll of Solicitors.

50. Mr. Carroll argued that Finnegan P. applied an incorrect legal test in assessing whether he was a fit and proper person to be admitted to the profession. The appeal was unsuccessful. In the course of his judgment McKechnie J. made a number of observations

pertinent to the instant case. First, he considered the decision of the Supreme Court in *Re Burke*. This is what he said:-

*"It is of course immediately clear that the situation of Mr. Carroll is different from that of Mr. Burke. A person who seeks readmission has history in that he or she has previously been struck off. He has therefore exhibited established form which rendered him unsuitable for his profession. Moreover the court has not been referred to any statutory provision comparable to section 10(4) of the 1960 Act by which an aggrieved apprentice, once having been refused admission, could reapply on some subsequent occasion. These considerations do not therefore apply to the instant case. Nonetheless, whilst acknowledging that the value of Burke is at a general level, it is the case that the subsection in question uses the same phraseology, on the character issue, as a condition for restoration as it used to cover one's initial entry to the Roll. In that way, therefore, but subject to the observations as made, some assistance may be obtained from that case."*

*What Burke clearly demonstrates is the enormity of the task facing any person who has been struck off and who attempts to re-enter the profession. Whilst the situation may be somewhat less daunting for a non-qualified person who has an unfitness finding standing against him, nonetheless it remains hugely problematic for the intended entrant to see if and how that could ever be overcome."*

51. That judge then went on to consider the notion of "fit and proper". He said:-

*"65. The phrase 'fit and proper' combines two broad elements, fitness and properness. Both, whilst complementary, are intended to convey different requirements and to cover the different aspects of a persons overall suitability for the solicitors' profession."*

*66. In broad terms, 'fitness', which covers the necessary academic qualifications and practical experience, also relates to matters such as knowledge, skill, understanding, expertise, competence and the like, all of which impact on one's capacity to appropriately discharge the obligations which the practice of his profession imposes. The second aspect of the term 'being a proper person' is much more directly related to character and suitability. Critical in this respect are matters such as honesty, integrity and trustworthiness: a person of principled standards, of honest nature and of ethical disposition; a person who understands, appreciates and takes seriously his responsibilities to the public, to the administration of justice, to individual colleagues and to the profession as a whole."*

52. McKechnie J. then went on to consider a decision of Sir Thomas Bingham M.R. in *Bolton v. Law Society* [1994] 2 All ER 486. I myself quoted this decision with approval in a judgment which I delivered on 4th April, 2016 in the case of *Law Society of Ireland v. Patrick Enright* [2016] IEHC 151. McKechnie J. said of the judgment of Bingham M.R. that he had:-

*"... analysed some aspects of the range of conduct which might call for regulatory intervention in respect of a solicitor. Every solicitor and all intending solicitors should take time to engage with it. While some of what is stated is echoed in Burke, what emerges from the overall decision are the unforgiving consequences which would most likely follow from any proven misconduct, save that at the lowest level of the scale."*

*69. The learned Master of the Rolls identified proven dishonesty, whether attended by a criminal conviction or not, as the most serious such conduct. Where established, 'no matter how strong the mitigation' is a strike off will almost invariably follow. Furthermore even where the solicitor in question has, over the following several years, made every effort to rehabilitate himself and has even done so honourably and in a position of trust and responsibility, a restoration to the Roll will be very rare indeed. He described why this approach which may seem harsh was necessary: it was to maintain the reputation of the solicitors' profession in general, and to sustain unreserved public confidence in its integrity."*

*70. There can be little doubt about the general correctness of these and the other remarks made by Bingham M.R. in Bolton. There is therefore placed on the regulatory body, at first instance, a high level of public responsibility to this end. Equally so, however, there is a corresponding obligation on that body to be ever so discerning in its evaluation of the facts and the findings arrived at. In all cases the sanction imposed, if any, must be proportionate as determined by the principles of Irish law, which, perhaps unlike in England, contain a constitutional dimension. This is because any sanction akin to a disqualification or a suspension will impact upon one's declared but qualified right to practise his or her profession. Therefore the strictness of the presumptive approach, as evident in Bolton, may not be altogether appropriate in this jurisdiction. Consequently, until the issue directly arises, I would prefer to offer no definitive opinion on the circumstances, limited as they may be, in which an individual who has been struck off could properly be readmitted to the roll."*

53. I read this passage as being completely in keeping with the stance taken by Keane C.J. in *Re Burke* where he said that it would be inappropriate to attempt an exhaustive definition of the circumstances in which a solicitor might properly be restored to the Roll. It is an approach which I will follow. Every case will depend upon its own facts. It is impossible to anticipate what those facts might be, therefore rendering it unwise to endeavour to identify all such circumstances.

54. McKechnie J. then set out a summary of principles gleaned from a consideration of the relevant authorities. I mention only those which are relevant for the purposes of this application.

55. McKechnie J. said that the concept of being fit and proper are requirements which "do not stand only at the entry door; their presence and application continues throughout the entirety of one's professional life". He went on:-

*"(x) Once removed from the Roll, the likelihood of a name restoration is not encouraging. Whether the rigidity of the Bolton decision is appropriate in this constitutional jurisdiction is an issue that does not have to be resolved and one on which I will defer from offering any view for the moment ..."*

*(xii) The reasons for demanding such an exacting standard start with the nature of the profession and the service it provides: the right to represent any member of the public in any area of his or her expertise and the right to appear in that capacity in every court established by law and under the Constitution. Such involves the deepest level of personal and mutual trust as between the solicitor and client;*

*(xiii) Not infrequently one's liberty, one's wellbeing and one's assets, even one's future, are unconditionally entrusted to a solicitor: there are notorious examples which demonstrate that neither the civil law nor the prospect of criminal*

*sanctions, even with the personal and public shame attached, have been sufficient to deter the occasional but nonetheless most serious form of malpractice. Therefore regulatory control and enforcement of the standards, under direct judicial supervision, to the level demanded, is fully justified."*

## **Decision**

56. In my view this application cannot succeed. Any applicant for an order of the type sought, whether a section 10(4) application or not, has a duty and obligation to put before the court all relevant matters. In other words, to behave with candour. I regret that in this case Mr. Walsh failed in that obligation. His nondisclosure of the seven further sets of disciplinary proceedings and the undertaking given by him to the court on 12th January, 2015 demonstrates either a complete lack of understanding on his part of what the duty of candour is all about or alternatively, an intent to mislead. Whether it be one or the other matters little in the context of this application.

57. His assertion that the later sets of disciplinary proceedings were dismissed is simply not so, a fact which he ultimately accepted during the course of oral argument. That also amounted to a substantial mis-description of the true position.

58. When one considers just one of the sets of proceedings namely, DT41/10 (2014, 37SA) one finds 40 findings of misconduct made against him in relation to his practice accounts and, in the main, specifically in relation to his handling of client monies. A finding was made that he had caused or allowed a deficit of in or about €26,039 to arise on his client account. Furthermore, sixteen findings were made of improperly causing or allowing clients' monies received for searches and specific outlay to be drawn to the office account without the searches being carried out or the specific outlay discharged. Findings were also made of causing or allowing deeds to be updated thereby avoiding possible interest on penalties on stamp duty. A finding was also made in respect of providing an investigating accountant of the Society with incorrect or inaccurate information during an investigation. All of these are findings of dishonesty on the part of Mr. Walsh contrary to what he asserts. This case therefore falls to be dealt with under section 10(4) of the 1960 Act.

59. A further feature of note in respect of these acts of dishonesty relating to proceeding DT41/10 alone is that they all occurred prior to 2007 and long before the applicant's ill health. It is not correct that Mr. Walsh's troubles find their roots in his unfortunate serious illness.

60. Given the way in which Mr. Walsh failed to disclose all relevant material and then misrepresented the correct position on a number of occasions I am quite satisfied that he cannot be regarded as a fit and proper person to be restored to the roll of solicitors.

61. Quite apart from both the failure to disclose and the misrepresentations, I also have regard to the number and nature of findings of misconduct made against Mr. Walsh over a period of years. I also take into account that these were not isolated incidents. They were carried out when Mr. Walsh was an established solicitor of considerable experience. It is not to his credit that orders had to be made by this court concerning the handing over of files, thus demonstrating a lack of cooperation with the Law Society.

62. Mr. Walsh, in my view, demonstrated a disregard for the public and other members of the profession which is characterised not merely by the findings of misconduct but also by the payments which the Law Society has had to make from the Compensation Fund.

63. Whilst one cannot but have sympathy for Mr. Walsh's unfortunate health problems the plain fact is that a substantial number of the matters in respect of which complaints of misconduct were successfully made against him occurred prior to his health difficulties.

64. I therefore conclude that Mr. Walsh is not a fit and proper person to practise as a solicitor.

65. I am of opinion that, having regard to the matters to which I have alluded, the restoration of Mr. Walsh's name to the Roll of Solicitors would adversely affect public confidence in the solicitors' profession and in the administration of justice.

66. I therefore dismiss this application.