



**Name: Tsitsi Chakanya**

**Case Number: REG\_AP-15139**

**Registration appeal hearing:**

Hearing venue: Remote hearing

Date of hearing: 23 October 2020

Hearing outcome: Appeal dismissed

## Introduction and attendees:

1. Ms Tsitsi Chakanya attended and was not represented.
2. Social Work England was represented by Mr Matthew Kewley, presenting officer from Capsticks LLP.

Adjudicators	Role
Paul Grant	Chair
Stella Elliott	Social Worker Adjudicator
Angela Duxbury	Lay Adjudicator

Tom Stoker	Hearings Officer
Laura Merrill	Hearings Support Officer
Gerry Coll	Legal Adviser

## Background to appeal:

3. This is an appeal against the decision of Social Work England (“**the Registrar**”) contained in a letter dated 11 February 2020 to require Ms Chakanya to complete an academic International English Language Test (IELTS) before determining her application for registration. Ms Chakanya asked that the decision be reconsidered which was taken as an appeal in order to allow her an opportunity to be heard on the issue. This appeal is made pursuant to Regulation 19 of the Social Workers Regulations 2018 (“**the Regulations**”). The panel may in accordance with Regulation 19(6) of the Regulations:
  - (a) dismiss the appeal;
  - (b) quash the decision;
  - (c) substitute for the decision being appealed any other decision that the decision maker could have made; or,
  - (d) remit the decision to the regulator to be disposed of in accordance with the adjudicators’ directions.
4. A case management meeting in respect of the appeal took place between the adjudicators on 29 July 2020. The adjudicators made the following directions at the case management meeting:

## Decision:

The registration appeal shall be heard by way of a hearing. The adjudicators also believe that directions must be complied with prior to the hearing.

- 1. Social Work England shall, by 4 pm on Friday, 5 August 2020, contact Ms Chakanya to agree how she will participate in the hearing remotely, whether this be by Microsoft teams, zoom or otherwise;*
- 2. Social Work England shall, by 4 pm on 12 August 2020, provide detailed written submissions to support the argument that Ms Chakanya has failed to demonstrate necessary knowledge of English. The submissions shall address the evidence supplied by Ms Chakanya in relation to her proficiency of English and outline why it is argued to be insufficient to demonstrate the necessary knowledge of English. The submission shall detail why Social Work England requires the completion of the letter IELTS test in circumstances where a person has been educated in English in Zimbabwe, and why it is argued that English is not considered by Social Work England as the first or native language in Zimbabwe for the purposes of Social Work England registration in light of the fact that English is used as the primary language of education in Zimbabwe; and*
- 3. Ms Chakanya shall, by 4 pm on 26 August 2020 provide detailed written submissions in response of those submitted by Social Work England, including full details as to why she is unable or unwilling to undertake an IELTS English test, despite it being a prescribed requirement within Rule 16 of the Social Work England (Registration) Rules 2019. The submissions should be accompanied by any further evidence she wishes to rely upon and a list of any witnesses that she intends to call.*
- 4. The panel are satisfied that both parties fully complied with the adjudicators' directions.*

## Circumstances of the appeal:

- 5. Social Work England is the regulator for social workers in England. It has the statutory obligation to maintain the Register of social workers in terms of the Social Workers Regulations 2018, Regulations 8 to 11 (the 2018 Regulations). This includes*

making determinations of eligibility for registration and so admission to the Register of any suitably qualified person who is able to demonstrate that they are able to practise safely and effectively.

6. The Registrar is bound by the Registration Rules 2019 (the 2019 Rules) which sets out the conditions for admission that must be met in any case. Applicants for admission to the Register who are from overseas are affected by an additional admission requirement, set out in the relevant Guidance and the 2019 Rules. Competence in the English language (knowledge of English) is an important qualification for admission to the Register and is dealt with in detail in Rule 16. If the Registrar is not satisfied in this regard, then in terms of Regulation 11(4)(b) they may require that the candidate undertake an examination. The Regulations link to strict Rules in regard to such examinations among other things in determining eligibility for registration under Regulation 11(6)(d). In that context, where the applicant lives overseas and does not live in a country where English is held to be the first and native language, the applicant is presented with a number of options including where appropriate passing an academic IELTS test at 7.0 or better.
7. The Appellant lives overseas in Zimbabwe where she earned her degree in social work and registered as a social worker with the appropriate national authority. She applied to join the Register in 2020. The Registrar began consideration of her application which is not yet determined, and is paused pending resolution of this issue. The issue is that Zimbabwe is not a country where English is the first and native language. The applicant supplied on request evidence in support of her having studied academically and her work in an English language environment. The Registrar was not satisfied that this met the Rules and so required that the applicant must undertake the academic IELTS test before making a final decision on Ms Chakanya's application for registration.
8. In a letter to Ms Chakanya dated 11 February 2020, she was informed that in accordance with Rule 16 of the Social Work England (Registration) Rules 2019, the Appellant did not fulfil the requirements laid out in Rule 16, because the Appellant's

evidence of English language assessment does not meet the standard necessary for registration. The decision letter continued;

9. "In order for you to demonstrate that you have the necessary knowledge of English, we require you to undergo an English-language assessment. If you wish us to progress your application further you must, within 28 days, arrange an English-language assessment and inform us of the date that this will take place. The date of the assessment does not need to fall within the 28 days."
10. The Appellant was informed of her right of appeal within 28 days in terms of Regulation 19(1) (b) of the 2018 Regulations. The Appellant's email letter of 27 February invited a reconsideration of that decision for reasons which required that the decision be subject to the appeal process.

## Submissions:

### The Appellant:

11. Ms Chakanya affirmed her wish that her appeal be withdrawn. She said that she maintained that the process was unfair to her, for the reasons set out in her written submissions which are set out below.

*"RE: APPEAL ON KNOWLEDGE OF ENGLISH*

*The above matter refers;*

*I wish to appeal against the decision to demonstrate my knowledge of English by undertaking an English language assessment for the purposes of registration with Social Work England. I feel that this decision which has been made is incorrect because I have proof from the University of Zimbabwe, which is my course provider, that my social work qualification was entirely taught and examined in English.*

*Furthermore, I would also like to query the decision based on the notion that the curriculum for training social workers at the University Of Zimbabwe- Department Of Social Work resembles that of the United Kingdom. In Zimbabwe, English is recognised as an official language hence it is used as a language of instruction in Universities where social work is taught. Moreover, English is a compulsory language at all levels of education (nursery, primary secondary, tertiary level). Thus English is considered as a pre-requisite when one wants to further educational training and job recruitment. As an employed social worker, using English language at my workplace is a mandate.*

*I would also like to state that earlier on, applicants from non-English-speaking countries had the option to submit an official letter from their Universities confirming their knowledge of English which was accepted by Health and Care Professions Council (HCPC). This option was very convenient and encouraging such that I was motivated to also apply*

*for registration with SWE as I had always aspired to have the opportunity to relocate and explore new experience in social work profession. The removal of these options and the requisition that I provide my knowledge of English through the IELTS proves to be a deterrent to my professional ambitions and aspirations. Currently, the IELTS examinations are expensive and inaccessible as the examinations are already booked till July 2020. It is therefore a financial challenge for me to book for the test given the time period of 28 days in which I am supposed to have provided SWE with a confirmed date of assessment.*

*It has also been brought to my knowledge, through interactions with other Zimbabwean social workers based in UK experience, that there is the Recognition Information Centre (UK NARIC) which is acceptable evidence of one's knowledge of English. This certificate not only worked for registration as a social worker but also is acceptable proof of English knowledge when applying for a Tier 2 General visa. From my understanding UK NARIC assessments are not only accessible, affordable, but also meet the Regulation stipulated in Regulation 11 (2) (c) of the Social Workers Regulations 2018 which reads "In the case of a registration under Regulation 10, a person is eligible to be registered where the regulator is satisfied that they necessary knowledge of English. In Regulation 2, necessary knowledge of English is interpret as "Knowledge of the English language which is necessary for safe and effective practice as a social worker." If the above Regulations are read together with Rule 16 of the Social Work England Registration Rules 2019, it can be argued that Rule 16 does not include the needs and circumstances of social workers from English speaking countries for example Anglophone countries in Africa. In these countries, English is recognised as an official language and language of instruction in Universities where social work is taught. Their exclusion therefore is unjustifiable. Shockingly, Zimbabwe has been excluded from countries whose degrees are conducted in English. This means paying for English tests which are both expensive and inaccessible and this is quite discouraging for social workers who want to practice in England.*

*It is therefore my appeal to you that you reconsider your decision for me to demonstrate my knowledge of English by undertaking an English language assessment based on the above reasons".*

## **Social Work England:**

12. Mr Kewley, on behalf of Social Work England invited the panel to dismiss the appeal on the basis of his written submissions which are set out below. He said however that he acknowledged the creditable care and engagement with legislative detail Ms Chakanya had demonstrated in her written submissions and her oral submissions today.

### Introduction

1. These are the written submissions on behalf of Social Work England in accordance with directions made by the Adjudicators at a Case Management Meeting on 29 July 2020.

2. *Tsitsi Chakanya (“the Appellant”) is challenging the decision of Social Work England dated 11 February 2020 that she undergo an English language assessment.*

3. *These written submissions explain why Social Work England contends that the Appellant has not demonstrated that she has the required knowledge of English in accordance with the four options for doing so as set out in Rule 16 of the Registration Rules 2019.*

Statutory framework

4. *The overarching objective of Social Work England under Section 37 of the Children and Social Work Act 2017 is the protection of the public.*

5. *Regulation 11(2) of the Social Workers Regulations 2018 sets out the eligibility criteria for registration as a social worker:*

*11(2) In the case of a registration under regulation 10, a person is eligible to be registered where the regulator is satisfied that they—*

*(a) have a recognised qualification which was awarded—*

*(i) within such period, not exceeding five years ending with the date of the application for registration, as is set in rules made under paragraph (6)(a), or*

*(ii) before the period mentioned in paragraph (i), and the person has met such requirements as to additional education, training and experience as are determined by the regulator to apply to them,*

*(b) are capable of safe and effective practice in accordance with the professional standards relating to proficiency, performance, and conduct and ethics,*

*(c) **have the necessary knowledge of English**, and (emphasis added)*

*(d) have not been convicted of a listed offence (other than a conviction that has been quashed).*

6. *Regulation 2 defines ‘necessary knowledge of English’ as:*

*(2) “necessary knowledge of English” means a knowledge of the English language which is necessary for safe and effective practice as a social worker;*

7. *If the regulator is not satisfied that an applicant has the necessary knowledge of English to be eligible for registration, the regulator may take the action set out in Regulation 11(4) of the Regulations:*

*11(4) In any case where the regulator is not satisfied, having considered any evidence, information or documents provided in support of their application for registration or renewal, that a person has the necessary knowledge of English to be eligible to be registered, or to continue to be registered, the regulator may, subject to paragraph (5)—*

*(a) request the person to provide further evidence, information or documents, and  
(b) require the person to undergo an examination or other assessment, and provide information in respect of that examination or assessment, provided that it notifies the person of their right to appeal under regulation 19(1)*

*(b), within such period as is determined by the regulator in rules, and the regulator may draw such inferences as it deems appropriate if the person fails to undergo an examination or assessment, or fails to provide or disclose any evidence, under this paragraph.*

*8. In determining whether an applicant has the necessary knowledge of English, Rule 16 of the Registration Rules 2019 provides as follows:*

*16. To determine that an applicant has the necessary knowledge of English, the regulator **must be satisfied** that the applicant: (emphasis added)*

*(1) has within the last five years passed a test of their knowledge of English that has been approved under the regulator's education and training approval scheme; or*

*(2) has within the last five years obtained an overall score of 7 or more in the International English Language Testing System (Academic) test; or*

*(3) has been registered and practising for at least one year within the most recent five years in a country where the regulator recognises English is the first and native language and an English language assessment was required for registration; or*

*(4) has obtained a recognised qualification within the meaning of schedule 1 to the regulations within the most recent five years that was awarded in a country where the regulator recognises English is the first and native language and can provide evidence that the qualification was entirely taught and examined in English.*

*9. Rule 17(1) provides:*

*17. (1) Where the regulator is not satisfied that an applicant has the necessary knowledge of English, it may take action in accordance with regulation 11(4).*

*10. The burden is on the Appellant to demonstrate that she has the required knowledge of English through one of the four options in Rule 16 of the Registration Rules 2019. These options in Rule 16 are the only routes by which an applicant can demonstrate that they have the required knowledge of English. There is no provision in the legislation that permits the regulator or the adjudicators to make an assessment of an applicant's knowledge of English outside the scope of Rule 16.*

*11. The Registration Rules 2019 were subject to public consultation prior to their implementation and the legislation was reviewed by the Secretary of State for Education, in line with the Regulations. Requiring all applicants to demonstrate their knowledge of English in accordance with the four options in Rule 16 ensures a fair and consistent approach to the assessment of an applicant's knowledge of English.*

## Guidance

12. English language proficiency is a key element in safe and effective social work practice. Social Work England needs to be satisfied, and have demonstrable evidence of, an applicant's knowledge of English.

13. Social Work England has produced guidance headed 'Guidance for applicants who qualified overseas' (May 2020). The Guidance explains that:

*The proposal to introduce English language requirements for social workers follows the Law Commission's recommendation that regulatory bodies should carry out proportionate language controls on those applying to join professional registers. In its response to the Law Commission's review the government agreed, stating this was a priority given the need to ensure public protection. This recognises that in order to practise safely and effectively it is vital that every social worker is able to understand and communicate effectively with the people they work with, those involved in their care and other professionals.*

*This proposal follows the introduction of language controls for other regulated professionals including doctors, nurses, dentists and pharmacists, as well as a code of practice on English*

14. Consistent with the approach adopted by other regulators, such as the General Medical Council, Rule 16 (3) and (4) require an applicant to have practised or studied in a country where English is the 'first and native language'.

15. The Guidance provides as follows:

### **First and native language**

*You can find a list of the countries and territories we currently recognise as having English as their first and native language at the end of this guidance document. Please note that a first and native language is different to an official language.*

16. The Guidance contains the current definitive list of countries which are recognised as having English as the first and native language:

### **Countries where English is the first and native language**

*These are the countries and territories we currently recognise as having English as their first and native language. Please note that a first and native language is different to an official language.*

- Ascension
- Australia
- Bermuda
- British Antarctic Territory (BAT)
- British Indian Ocean Territory (BIOT)
- Canada

- *Falkland Islands*
- *Gibraltar*
- *Guernsey*
- *Guyana (formerly British Guiana)*
- *Ireland*
- *Isle of Man*
- *Jersey*
- *New Zealand*
- *Pitcairn*
- *Singapore*
- *South Africa*
- *Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus (CBA's)*
- *South Georgia and the South Sandwich Islands*
- *St Helena*
- *Tristan da Cunha*
- *United Kingdom*
- *United States of America*
- *US Virgin Islands*
- *Caribbean Islands*
- *Antigua and Barbuda*
- *Anguilla*
- *Bahamas*
- *Barbados*
- *British Virgin Islands*
- *Cayman Islands*
- *Dominica*
- *Grenada*
- *Grenadines*
- *Jamaica*
- *Montserrat*
- *St Kitts and Nevis St Lucia*
- *St Vincent*
- *Trinidad and Tobago*
- *Turks and Caicos Islands*

*17. The current list of countries in the Guidance which are accepted as having English as the first and native language is consistent with the list of countries currently accepted by the General Medical Council.*

*18. The requirement that English be the first and native language, as opposed to being a country's official language, is consistent with the need to protect the public and secure high standards of practice from social workers.*

*19. Other regulators, such as the General Dental Council, also require that English be the country's first language: When we refer to a country where English is the first language we mean any country which is on the UK government's list of countries that are exempt from proving knowledge of English in relation to British citizenship and settling in the UK.*

*20. The list of countries held by Social Work England and also the General Medical Council which are recognised as having English as the first and native language originates from the Foreign and*

Commonwealth Office. The list currently provides that for the purposes of citizenship, an applicant would not need to prove their knowledge of English if they are a citizen of:

- Antigua and Barbuda
- Australia
- The Bahamas
- Barbados
- Belize
- Canada
- Dominica
- Grenada
- Guyana
- Jamaica
- New Zealand
- Ireland (for citizenship only)
- St Kitts and Nevis
- St Lucia
- St Vincent and the Grenadines
- Trinidad and Tobago
- USA

21. The list set out in the Guidance, which is adopted from the General Medical Council's current list, has grown incrementally, predominantly in relation to British Overseas Territories. Each time that a country was added on the basis that English was the country's first and native language, contact was made with the relevant ministry of health and medical regulator to confirm that this was the case.

### **Submissions**

22. Applying Rule 16 and Guidance to the facts of this appeal:

a. The Appellant received a Bachelor of Social Work (Honours) degree on 11 July 2012 from the University of Zimbabwe. Zimbabwe is not a country that is recognised as having English as the first and native language. The degree was not awarded, as is required under Rule 16(4), in a country 'where the regulator recognises English is the first and native language'. Consequently, the Appellant cannot demonstrate her knowledge of English under Rule 16(4) by reference to her social work degree awarded by the University of Zimbabwe.

b. The Appellant has adduced evidence of registration as a social worker in Zimbabwe (practising certificate of the Council of Social Workers of Zimbabwe). Zimbabwe is not a country where, as required under Rule 16(3), 'the regulator recognises English is the first and native language'. Consequently, the Appellant cannot demonstrate her knowledge of English under Rule 16(3) by reference to her practice in Zimbabwe.

23. It is submitted on behalf of Social Work England that the Appellant has not been able to demonstrate her knowledge of English in accordance with the four options in Rule 16.

24. The Regulator was entitled to ask the Appellant to undergo an English language assessment. It is open to the Appellant to take the academic IELTS test and if the test is satisfactorily completed, the Appellant's application for registration as a social worker will continue to be assessed.

*25. The Adjudicators are respectfully invited to dismiss the appeal.*

### Panel decision:

13. The panel heard and accepted the advice of the legal adviser and considered the oral and written submissions made by Ms Chakanya and by Mr Kewley on behalf of Social Work England. The panel took into account the Registrar's original decision to pause consideration of Ms Chakanya's application for registration and requiring that she undertake an academic IELTS test before resuming consideration and the reasons for that decision. The panel also took into account all of the documents submitted together with Social Work England's Guidance on Registration Appeals:
14. The panel paid close attention to the clear and coherent written and oral submissions made by Ms Chakanya. She had approached the difficult task of engaging with a daunting statutory framework of connected provisions, which had to be read together. The panel was impressed by the standard that she achieved in doing this and the acceptance by her that the decision made was based on the limitations imposed by the way that the Rules relating to evidence of English language are applied to overseas applicants for registration. She expressed her determination to complete the necessary IELTS test. The panel commends her for this as it suggests a candidate who may well be an asset to the public were her application for registration ultimately to be successful. The panel would encourage her to continue her application for registration.
15. On the basis of the evidence and information before this panel, it determined to dismiss the appeal. The panel is bound by the Regulations in the same way as the Registrar. It has no discretion to apply the Rules in a way which would permit an application to be considered outside of the limitations of the Regulations and associated Rules. The panel is required to apply the Regulations as written, and there is no basis on the facts of this case that would suggest that the decision to require Ms Chakanya to undertake an academic IELTS test is wrong.
16. The panel therefore dismissed the appeal.

## Right of appeal:

17. [A person may appeal to the County Court against a decision of the regulator under Part 3 of the European Union (Recognition of Professional Qualifications) Regulations 2015 or, in the case of a social worker falling within Regulation 78(3)(a) of those Regulations, a decision of the regulator under Part 3 of the European Communities (Recognition of Professional Qualifications) Regulations 2007, requiring an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to have access to, and to pursue, the social work profession in the United Kingdom.]
  
18. On an appeal under paragraph (9) the County Court may:
  - (a) dismiss the appeal;
  - (b) quash the regulator's decision;
  - (c) substitute for the regulator's decision any other decision that the regulator could have made; or,
  - (d) remit the matter to the regulator to be disposed of in accordance with the directions of the Court, and may make any order as to costs as it thinks fit.