



Name: Nyasha Mabara

Case Number: 15143

Registration appeal hearing:

Hearing venue: Remote

Date of hearing/meeting: 7 December 2020

Hearing outcome: Appeal dismissed

### Introduction and attendees:

1. Mr Mabara did not attend and was not represented.
2. Social Work England was represented by Ms Atkin of counsel as presenting officer from Capsticks LLP.

Adjudicators	Role
Moriam Bartlett	Chair
Karen Phillips	Lay Adjudicator
Jill Wells	Social Worker Adjudicator

Tom Stoker	Hearings Officer
Simone Ferris	Hearings Support Officer
Gerrard Coll	Legal Adviser

### Service of Notice:

3. Mr Mabara did not attend and was not represented. The panel of adjudicators (“**the panel**”) was informed by Ms Atkin that notice of this hearing was sent to Mr Mabara by email to the address provided by Mr Mabara. Ms Atkin submitted that the notice of this hearing had been duly served.
4. The panel accepted the advice of the legal adviser in relation to service of notice.
5. Having had regard to Rule 23 of the Removal from the Register and Registration Appeals Rules 2019 (“the Rules”) and all of the information before it in relation to the service of notice, the panel was satisfied that Mr Mabara had been given notice of the hearing in accordance with the Rules.

### Proceeding in the absence of the Appellant:

6. Ms Atkin invited the panel to proceed in Mr Mabara’s absence. She took the panel to a series of recent emails between Social Work England and Mr Mabara and the emails already in the main bundle. She submitted that Mr Mabara had in effect conceded that he cannot succeed in his appeal today and has asked for more time to complete the IELTS test. The panel received advice from the legal adviser as to its power under rule 18 of the Rules to proceed with the appeal in Mr Mabara’s

absence and the factors discussed by the Court of Appeal in *General Medical Council v Adeogba* [2016] EWCA Civ 162 etc. The panel were satisfied that all reasonable steps had been taken to ensure that Mr Mabara was aware of today's appeal hearing and had been given an opportunity to request an adjournment. The panel took into account recent emails between Social Work England and Mr Mabara including his email of today received at 8:30 am in which he said, *"Thank you, So sorry I will not be able to attend but I am sending a plea to be given more time and write the English IELTS exam."*

7. The panel concluded that Mr Mabara had voluntarily decided to absent himself and there was no reason to believe that an adjournment would result in Mr Mabara's participation in the appeal at a later date. Having weighed the interests of Mr Mabara in regard to his attendance at the appeal hearing with those of Social Work England and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Mr Mabara's absence.

#### Background to appeal:

8. This is an appeal against the decision of Social Work England ("**the Registrar**") contained in a letter dated 18 March 2020 to require Mr Mabara to provide evidence of having passed the academic IELTS test at 7.0, failing which his application would no longer be progressed. Mr Mabara was informed that he had to give notice of his intention to sit the academic International English Language Testing System (IELTS) test although the date of the test could be after that time limit. Mr Mabara appealed that decision on 20 March 2020 on the basis that he was educationally and professionally fully proficient in the English language. He had been accepted on to the register of social workers by the Health Care Professionals Regulatory Body (CORU) in the Republic of Ireland. The costs to Mr Mabara of taking the IELTS test were substantial. 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.

9. A case management meeting in respect of the appeal took place between the adjudicators on 10 September 2020. The adjudicators made the following directions at the case management meeting:

The adjudicators direct that this appeal should be heard at a meeting, and give the following further directions;

*1. At least 7 days before the date set down for the hearing, Mr Mabara must submit a chronology of his social work professional history including any social work placements in relation to English language requirements.*

*2. At least 7 days before the date set down for the meeting, Mr Mabara must, if he has worked in the Republic of Ireland as a social worker using his social work registration, submit a letter from an employer or line manager concerning his employment history there and proficiency in the English language.*

*3. At least 7 days before the date set down for the meeting, Social Work England must provide the adjudicators with clarity on what they should understand from their letter to Mr Mabara dated 18 March 2020 at page 1, paragraph 2 advising him that his application for registration does not meet its requirements '...as your degree was not undertaken in a country where English is the first and native language. While English is the official language in Zimbabwe, it is not the first and native language'. Is that distinction essential, and if so, why?*

*4. At least 7 days before the date set down for the meeting Social Work England is asked to submit a written submission dealing with how the*

*adjudicators are invited to exercise its powers to decide the case with regard to Rule 16 (reproduced below) of The Social Work England (Registration – Removal from the Register and Registration Appeals) Rules 2019. Must the panel follow the precise requirements set out in that Rule in regard to knowledge of English language? Is there a discretion available to it to find that other evidence so substantially meets the aims of the English language requirements that the requirement can be met in another way?*

### **Knowledge of English**

*Rule 16: To determine that an applicant has the necessary knowledge of English, the regulator must be satisfied that the applicant:*

*(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.*

10. At least 7 days before the date set down for the meeting, Mr Mabara is asked to explain in writing how he believes he meets the English language requirements taking into account Rule 16 above.

11. The panel confirms that it is satisfied that Social Work England had complied with the directions fully although Mr Mabara had not done so completely. On 14 October 2020, Mr Mabara exercised his right to have his appeal heard at a hearing rather than by a meeting.

12. Mr Mabara is a Zimbabwean national. In October 2016 he graduated from Bindura University of Science Education in Zimbabwe BSc (hons) in Social Work (upper Second Class). Evidence obtained from the University confirms that the course was taught and examined wholly in English. He registered as a social worker in Zimbabwe and has produced his certificate of registration as a social worker in Zimbabwe dated 26 October 2018 and his practising certificate dated 10 October 2019 from the Council of Social Workers Zimbabwe. Since 1 April 2017 Mr Mabara has been practising with Childline in Zimbabwe, which provides assistance to vulnerable and abused children and their families. In an email of 5 December 2020 Mr Mabara wrote that he had recently taken up a new position as a case management officer working in a remote area of Zimbabwe.

#### Statutory scheme for Registration:

13. 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.

14. The Registrar is constrained by 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 declared in the Guidance for Applicants to be 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 Rules with 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 the first

and native language, the applicant is presented with a number of options including where appropriate passing an academic IELTS test at 7 or better.

15. Social Work England has a scheme for registration which accommodates applications from persons applying as overseas applicants for registration who have not been educated or professionally trained in a country where English is the first and native language. Regulation 11(2) of the Social Work England Regulations 2018 (the 2018 Regulations) provides requirements for initial registration as a social worker in England, which includes, at Regulation 11(2)(c) that such overseas applicants must be able to demonstrate the "necessary knowledge of English."

### Submissions:

#### **The Appellant:**

16. Mr Mabara made written submissions that the panel should quash the decision of the Registrar which are set out below.

17. "RE: SUPPORTING LETTER EXPLAINING HOW MY SOCIAL WORK QUALIFICATION, TRAINING AND/OR PROFESSIONAL EXPERIENCE MEETS UK SOCIAL WORK PROFESSIONAL STANDARDS.

*I graduated in October 2016 with a Honours Bachelor of Science Degree in Social Work, upper second class degree. My social work degree was a 4 year programme, English Taught assessed through written, practical and oral presentations.*

*The study period included internship as well as dissertation writing which both contributed to the overall degree 2.1 class that I got.*

*I did my internship at Childline Zimbabwe which was work related learning and was privileged to have a probation officer as my supervisor, who assessed my duties on a monthly basis and worked hand in hand with university lecturers who visited my placement and twice assessing my social work duties as well.*

*Over the past 3 years I have worked with children and families, dealing with statutory and non-statutory cases, promoting the rights, strengths and wellbeing of people*

within different communities. This seemed easy because I did courses on social work ethics and values, child welfare policy and social work integrated methods during my social work study. In other words, these courses enabled me as a social worker to carry out my duties and responsibilities in a professional ethical way and know how to behave with integrity and honesty. I utilised the person centred approach, enabling clients to turn their lives in a positive way, recognising themselves as masters of their own lives. For instance, when dealing with a child in conflict with the law and with maladaptive behaviour, the child is the one who can change his life valuing his family views and the community as well since it stands as a support system. In social work practice during these years, legal and ethical frameworks, case assessments and risk analysis were used to make informed decisions. For example, Sexual abuse cases were treated as emergency and immediate interventions were provided so that the survivors would get to make informed decisions as well as reporting further sexual abuse cases on time. Psychosocial support was done, I would engage the clients in counselling sessions (one on one and therapeutic support group sessions) for continuous healing and support. The family needs counselling too to accept the changes which come surviving sexual abuse so that they can support the survivor as a family, according to the Multi-Sectoral Approach on the Assistance of Sexual Abuse Survivors (2018). There is a minimum package to be provided for every client who is sexually abused. These included counselling sessions from social workers within the department of social welfare, legal support from Zimbabwe Republic Police, Magistrate's courts and clinical services for HIV prevention. So it's an interagency collaboration of assisting a survivor in a joint venture for holistic interventions so that the client is assisted 360 degrees on everything. As a social worker who has done sociology of medicine, referrals were key in areas that are not of my expertise, I would refer for the services that the client needs after my assessment as a social worker. At Childline Zimbabwe there where I am working as a social worker there is Case Tracking System. This system traces cases from the 116 Childline Helpline to the social worker who is making a follow up in the community so its real time child-friendly reporting platform for quick interventions. Follow ups are done in the form of phone calls as well as home visits and it is through these follow ups that I

*have improved my social work practice. For instance, when conducting home visits, I have learnt that best interests of the child is of paramount importance when dealing with child welfare issues, which is reiterated in the Children's Act as well as the United Nations Convention on the Rights of Children (UNCRC). Thus it is through the best interests of the child that other underlying issues such as Gender based violence and sexual exploitation are brought about. Recently, I had to challenge the public prosecutor and the intermediaries who wanted my client to stand before children's court as a witness facing the accused which I saw not fit as a child's social worker because she was afraid and still in trauma of the domestic violence. So I had to ask for a closed court so that she could testify what transpired only to the intended people. I could relate in my practice, training and professional experience how this reliable interventions promote ethical practice and report concerns. To add on to the above, I have learnt to uphold the principle of acceptance when assisting clients. No client is to be discriminated on basis of culture, sex, sexual orientation but rather all clients are to be viewed as they are and what they believe in. I assisted people living with disabilities, realised their full potentials that they can do more using their bodies besides having a disability and during case assessments I managed to make referrals for them so that they could get assistance from other 1521*

*stakeholders who specialized in helping people living with disabilities. At one time, I dealt with a case where by a deaf and dumb little girl was sexually abused and she did not go to school. We had problems in understanding what she meant with her signs because she was not taught sign language at school but rather developed her own signs at home so that she could communicate with her family. Her mother and other siblings were the ones who could understand better what she was trying to say. The abuse was confirmed after medical assessments were done and the medical personnel said she had a Sexually Transmitted Infection. She got treatment and further assistance was provided by the other stakeholders so that she could go to school. In terms of advancing my professional development. I have done a lot, I went through a training on Telephone Counselling to answer Childline 116 Helpline calls. This has boosted my practice in learning new areas of social work, also clinical*

*supervision after a case which makes you emotionally involved and will be needing debriefing. Got a training on case management, through the department of social welfare and also attended refresher training on court practices at victim friendly courts/children's courts and I learnt on new referral pathways, new policies that inform change in child and family care practice. The Council of Social Workers in Zimbabwe supports good social work practice through coordination of provincial social work seminars and dialogues which I am part of for professional development on trending issues, like child marriages, child trafficking, gender based violence, violence and drug abuse. I am also a registered social worker with the CORU Regulator of Health and Social Care Professionals in Ireland (see certificate attached) which I comply to. Its code of professional conduct and ethics gives me more knowledge on acting on best interests of service users, respect, confidentiality, privacy of service users, maintain high standard personal conduct and behaviour thus advancing my skills at international level. So the above highlights how my social work qualification, training and/or professional experience meets the social work professional standards stated and I am confident I can be part of the register and deliver the expected goals by the*

*Social Workers England and by my employer. I do want to acknowledge that it will be a new environment and a lot of learning is needed and I believe as a team player I will be able to adjust and blend well in the new environment. I will be looking forward to your response, thank you"*

### **Social Work England**

18. Ms Atkin on behalf of Social Work England invited the panel to dismiss the appeal on the basis that Mr Mabara did not succeed in any of the four statutory routes to registration with Social Work England. The submissions set out the statutory background under which applicants may be registered as social workers in England and the scheme for overseas nationals can establish that English is their national first and native language. This is done in pursuit of the overarching objective of public safety.

19. Ms Atkin submitted that Mr Mabara's email of 5 December was a recognition by him that he could not succeed today and that he intended to comply with the requirement of

the Registrar to give notice that he would submit evidence of competence in the English language by of the IELTS test. His email read as follows:

*'Dear All*

*Based on what I have seen in all the reports submitted by Social Work England they really need me to write English iletts and they have quoted so many laws and even revealed the countries were English is of native language.*

*This has reminded me that I have no evidence to base that I am proficient in english besides doing an English taught degree, also practicing in English, even that I have learnt English from tender age meaning from junior education up to now. All this will not mean anything to them. This puts me in a position to ask for a chance to do the English test, which cost at least 278USD which I will need to raise I work in remote areas now I got a new job in a as a case management officer in the Ministry so it a remote area I doubt if there will be network that day as we are receiving too much rains. That's why it is very hard for me to see the emails on time.*

*So if it's possible I will do the English test in February next year I would have saved the money for that.*

*Sorry for any inconveniences caused, it's only that I thought HCCP was still in place for Social workers and could have done the NARIC like what macollegues did.*

*Regards*

*Nyasha Mabara'*

20. In her written presentation, Ms Atkin on behalf of Social Work England made two preliminary points as part of its written presentation at paragraphs 10 and 18 of the written submissions noted below before making its substantive submissions at paragraphs 22 to 30 of the written submissions as follows:

*10. The burden is on the Appellant to demonstrate that he 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.*

*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.*

### **Submissions**

21. Social Work England has been asked to provide submissions dealing with:-

- a. Whether there is an essential distinction between English as an “official language” and English as the “first and native language”, and if so why;
- b. Whether there is a discretion available to allow the Panel to find that “other evidence so substantially meets the aims of the English language requirements that the requirement can be met in another way [i.e. outside of Rule 16].

### **English as the first and native language**

22. It is submitted that there is an essential difference between English as an official language and English as a first and native language. An “official” language refers to a language which is used by a country's government. A country can have more than one “official” language; Zimbabwe for example has 16 “official” languages, of which English is one. English will only be a “first and native” language however in a majority-English speaking country. English is not the first and native language of Zimbabwe.

23. As set out at paragraph 18 above, the requirement that English be the first and native language, as opposed to being simply an official language, is consistent with the need to protect the public and secure high standards of practice from social workers. It is vital that social workers are able to understand and communicate effectively with service users, carers and other professionals in order to practise safely and effectively.

24. The requirement for social workers to demonstrate their knowledge with reference to experience of English as a first and native language is consistent with the practice of other

regulators and ensures that there is a fair, consistent and objective approach taken with regards to applicants from countries where English is not the first and native language.

### **General Discretion**

25. As set out at paragraph 10 above, 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. Regardless of any information which is made available to the adjudicators therefore, unless that information demonstrates that the Appellant falls within one of the four options within Rule 16, there is no discretionary power which would allow the adjudicators to conclude that the Appellant can meet the requirements for registration outside of Rule 16.

### **Application of Rule 16**

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

a. The Appellant has not provided any evidence that he has obtained an overall score of 7 or more in the International English Language Testing System (Academic) test within the last five years and therefore does not satisfy either of the options for demonstrating the necessary knowledge of English in accordance with Rule 16(1) or Rule 16(2). The International English Language Testing System (Academic) test is currently the only test of English language test which has been approved by Social Work England.

b. Although the Appellant has provided evidence of his registration with the Social Workers Registration Board of Ireland, he has been registered for less than a year and has not provided any evidence that he has practised within Ireland at any point within the last five years. The Appellant would only meet the requirements of Rule 16(3) with reference to his registration in Ireland by demonstrating that he has "been registered and practising" there for "at least one year". Consequently, the Appellant cannot demonstrate his knowledge of English under Rule 16(3).

c. The Appellant received a Bachelor of Social Work degree on 31 July 2016 from the Bindura University of Science Education. The Bindura University of Science Education

is in Bindura, 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 his knowledge of English under Rule 16(4) by reference to his social work degree awarded by the Bindura University of Science Education.

27. It is submitted on behalf of Social work England that the Appellant has not been able to demonstrate his knowledge of English in accordance with the four gateways in Rule 16.

28. 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.

29. The Adjudicators are respectfully invited to dismiss the appeal pursuant to Regulation 19(6)(a). By virtue of Rules 17(2)(b) and 17(4) of the Registration Rules 2019, upon the Appeal being dismissed the Appellant will have a full period of 28 days to respond to the request to undergo the International English Language Testing System (Academic) test. Social Work England's expectation is that steps would be taken within that period to make arrangements for the test if the Appellant elects to take it, but do not require the Appellant to undertake the test within that timeframe.

#### Panel decision:

30. The panel heard and accepted the advice of the legal adviser and considered the written submissions made by Ms Atkin on behalf of Social Work England]. The panel took into account the Registrar's original decision to require that Mr Mabara undertake and pass an IELTS academic test as 7.0. The panel also took into account all of the documents submitted together with Social Work England's Guidance on Registration Appeals:

31. The panel noted the basis of Mr Mabara's appeal and determined that for the reasons which follow it would dismiss the appeal.

32. Mr Mabara's email of 5 December 2020 was a clear submission by him that he no longer insisted on his appeal. Instead, he had decided to undertake the IELTS test required and said that he should be in a position to do that in February 2021. Mr Mabara referred to the costs to him in taking the test and that he was saving up for it. The panel recognised that raising these funds may cause hardship to Mr Mabara. The panel also recognised that Mr Mabara has accepted the Registrar's requirements and will aim to meet them. Ms Atkin had submitted that if the appeal were to be refused, Mr Mabara would have a full 28 days from today in which to write to the Registrar to give notice that he will provide evidence of competence in the English language in due course. She said that the Registrar would not expect that the IELTS test would be completed within 28 days. The panel considered that in the circumstances, Mr Mabara's email could be read as having the effect of meeting that time limit today. In the panel's view, given that Mr Mabara had expressed difficulties in accessing emails in earlier exchanges referred to, it would be helpful if the Registrar was also inclined to accept the 5 December email as complying with the 28-day notice requirement.

33. On the basis of the evidence and information before this panel, it determined to dismiss the appeal

#### Right of appeal:

34. [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.]

35. 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.