



Name: Maria Manchon Cerezo

Registration appeal hearing:

Hearing Venue: Held remotely via Microsoft Teams

Date of hearing: 10 September 2021

Hearing Outcome: Appeal dismissed

Introduction and attendees:

1. This was an appeal against the decision of Social Work England, dated 30 March 2021, requiring Ms Cerezo to demonstrate necessary knowledge of the English language by satisfaction of the requisite rules.
2. Ms Cerezo attended remotely and was unrepresented.
3. Social Work England was represented by Miss Atkin, presenting officer from Capsticks LLP.

Adjudicators	Role
John Walsh	Chair
Suzanna Jacoby	Social Work Adjudicator
Colette Neville	Lay Adjudicator

Simone Ferris	Hearings Officer
Laura Merrill	Hearing Support Officer
Nathan Moxon	Legal Adviser

Background to appeal:

4. Ms Cerezo was awarded a degree in social work in 2013 by the University of Valencia in Spain. She moved to the United Kingdom in 2016 and has worked as a support worker and relief worker before commencing her current role as a mental health recovery coordinator for Apax Support from 2019.
5. Her application for registration upon the social work register was refused on 30 March 2021. In summary, the application was rejected as Ms Cerezo had failed to provide the prescribed evidence to demonstrate her proficiency in the English language. Ms Cerezo contends that she has demonstrated proficiency of English by obtaining Grade B in a Cambridge English Level 1 Certificate ESOL International test (“the Cambridge

test”). Her overall score was 173 and a certificate issued on 5 August 2016. Further, she has lived and worked in the United Kingdom for five years.

6. A case management meeting was held on 11 June 2021 and directions were issued. Social Work England provided written submissions, dated 12 August 2021, in which the relevant law was outlined. Ms Cerezo provided a written response, dated 23 August 2021, evidence of her academic achievements and her employment and testimonials commenting favourably on her proficiency in English.

Preliminary issue:

7. Rule 20(1) of the Removal from the Register and Registration Appeals Rules 2019, provides:

“The adjudicators must determine the outcome of the registration appeal as soon as practicable and in any event within 60 working days of the appeal being received by the regulator.”

8. The panel noted that the appeal should have been heard by 19 July 2021, whereas the hearing was not listed until 10 September 2021.
9. Ms Atkin highlighted that the rules do not provide any consequence for the regulator failing to adhere to the 60-day time limit and it did not follow that the panel would not have jurisdiction to hear the appeal. She said that the regulator would have to notify the Professional Standards Authority (“PSA”) of its failure. If the panel was to decline jurisdiction, it would be to the detriment of Ms Cerezo, who was not at fault for the regulator’s failure to abide by Rule 20(1). She argued that it was in the best interests of all parties for the appeal to be heard by the panel.
10. Ms Cerezo also asserted that she wished for the appeal to be determined today.
11. The panel determined that it was pursuant to the overriding objective and in the interests of justice to proceed. The panel particularly took into account rule 15(1), which provides that hearings should be undertaken fairly and that the adjudicators may regulate its own procedures.
12. The panel also took into account the following factors:
 - a. The Rules do not provide that a consequence of the failure to adhere to regulation 20(1) is that the appeal cannot be heard. The panel considered that it would have been included in the rules if it was the intention of the drafters;
 - b. Rule 15(3) provides consequences for failing to adhere to rules and directions and does not include that an appeal cannot be heard;
 - c. There will be a consequence to the regulator failing to comply with the Rules, namely self-referral to the PSA;
 - d. If the panel was to refuse to hear the appeal it would be to the ultimate detriment of Ms Cerezo, who is not at fault; and

e. Both parties agreed to the hearing being heard today.

The law:

13. Regulation 11(2) of the Social Work England Regulations 2018 provides requirements for initial registration as a social worker in England, which includes, at regulation 11(2)(c) “necessary knowledge of English”.

14. Regulation 11(6) provides that Social Work England must make rules to determine eligibility, including rules:

“setting out the process for determining whether a person has the necessary knowledge of English, including any evidence, information or documents which must be provided”.

15. Rule 16 of the Social Work (Registration) Rules 2019 provides:

“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.”

16. Regulation 11(4)(b) provides that the regulator may require a person to undergo an examination or other assessment.

17. 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.

Submissions and Evidence:

18. Within written submissions, Social Work England identified that satisfaction of Rule 16 was mandatory and the decision maker had no discretion to disapply the requirements that "*must be satisfied*".
19. The submissions outlined that no English test undertaken by Ms Cerezo had been approved by the regulator's education and training approval scheme. The Cambridge test result obtained by Ms Cerezo was comparable to a 5.5 - 6.5 IELTS score, and therefore fell below the threshold of 7. In any event, it was not a prescribed test. Ms Cerezo had continued to fail to undertake the requisite IELTS test. She had neither been registered nor had she completed requisite qualifications within a country where the regulator recognises English as the first and native language. Her social work degree was obtained in Spain, where English is not the first and native language. Further, her degree was not taught in English.
20. Within her written response, Ms Cerezo argued that whilst the Cambridge test may not be to the same level as IELTS, she had spent the following five years in England working within the healthcare sector and so her English had improved. She stated that she speaks and writes English to a high standard within her professional role. She argued that the requirement for her to complete an IELTS test is "*nonsensical*". She adduced documentary evidence of her qualifications and employment, together with positive testimonials, including a letter from her current manager stating that Ms Cerezo spoke sufficient English to undertake her role and to liaise with service users and other professionals.
21. Ms Cerezo argued that she had no difficulty speaking or understanding English and had done so for many years whilst working in England. She had also shown proficiency of English by completing the Cambridge test and her English had improved in the following five years. She therefore argued that she should not be required to undertake the IELTS test.

22. Ms Atkin, on behalf of Social Work England, concluded that Ms Cerezo had failed to satisfy the mandatory requirements within Rule 16 and so Social Work England was reasonable in requiring her to complete the requisite IELTS test.

Panel decision:

23. The panel heard and accepted the advice of the legal adviser and considered the submissions from both parties. The panel took into account all the documents submitted, together with Social Work England's Guidance on Registration Appeals.

24. The panel was advised that rule 15(1) of the Removal from the Register and Registration Appeals Rules 2019 applied to procedural matters but not to the substantive decision it had to make.

25. The panel was impressed with Ms Cerezo's academic achievements and noted that she conducted herself during the hearing in English without any observable difficulty. She had not had the benefit of legal representation but nevertheless argued her case with skill.

26. The Social Work (Registration) Rules 2019 must be followed by the panel. The panel does not have the power to disapply or amend those rules.

27. Ms Cerezo has not satisfied rule 16(1) or (2). The only English test approved by Social Work England is the IELTS test and she has not taken that test.

28. Ms Cerezo does not satisfy rule 16(3) as she has not 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.

29. Ms Cerezo does not satisfy rule 16(4) as she has not completed a recognised qualification in a country where English is the native or first language. Her degree was awarded in Spain, which is not on the recognised list of countries in which English is the first or native language.

30. There is no factual dispute in this case. Ms Cerezo has not argued that she satisfies rule 16, instead she argued that it should be disapplied because of her work experience and other test result. The panel is sympathetic towards Ms Cerezo's situation, but it has no discretion to depart from the rules. The appeal cannot therefore succeed.

31. The panel therefore upholds the decision of Social Work England that Ms Cerezo must satisfy rule 16. She can satisfy the rule by obtaining a score of 7 or more in the International English Language Testing System (Academic). She must notify Social Work England within 28 days if she intends to undertake the test. If she does not, her application for registration will be rejected.

Right of appeal:

32. 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.

33. 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.