



Name: Moinul Khalique

Registration appeal hearing:

Hearing venue: Remote

Date of hearing: Monday 6 December 2021

Hearing outcome: Appeal dismissed

Introduction and attendees:

1. Mr Khalique attended and was not represented.
2. Social Work England was represented by Ms Nimi Bruce.

Adjudicators	Role
Alexander Coleman	Chair
Vicki Lawson-Brown	Social Work Adjudicator
Moriam Bartlett	Lay Adjudicator

Jenna Keats	Hearings Officer
Paige Higgins	Hearings Support Officer
Graeme Dalgleish	Legal Adviser

3. This appeal by Mr Khalique is made under Regulations 11 and 19 of Part 3 of the Social Workers Regulations 2018 (“the Regulations”).

Background to appeal:

4. The background to the appeal is that Mr Khalique, the Appellant, made an application for registration to the former regulator, the Health and Care Professions Council (HCPC) in August 2013. In that application he stated that he had been convicted in September 2004 and sentenced on 5 November 2004 for the following offences:
 - 18 counts of making indecent photographs or pseudo photographs of a child (contrary to Section 1(1)(a) of the Protection of Children Act 1978)
 - 4 counts of possessing an indecent photographs of a child (contrary to Section 160 of the Criminal Justice Act 1988).
5. Mr Khalique had been sentenced to six months imprisonment to be served concurrently on the 22 counts on the indictment, his computer was made subject to a forfeiture order and an entry was made for 7 years on the Sex Offenders Register as set out in the Certificate of Conviction.
6. On 13 November 2013, the application for registration was refused by the Assessing Panel of the former regulator the HCPC. The Assessing Panel at the HCPC considered that Mr Khalique did not meet the good character requirements for registration, underestimated the serious nature of his offences and had not demonstrated insight into his behaviour. That Assessing Panel concluded that the nature of the offence was and remained incompatible with registration notwithstanding the passage of time since the conviction. The Assessing Panel considered that the offences were of such a serious nature that to grant registration would undermine confidence in the profession and the HCPC’s role as a regulator.

7. On 29 October 2014, the HCPC heard an appeal against the decision of the Assessing Panel. The HCPC Appeal Hearing Panel had before it, additional material in the form of an expanded statement from Mr Khalique in which he identified the benefit and value of work he had undertaken with former sex offenders through an organisation called "Restart".
8. The HCPC Appeal Hearing Panel commended the work that Mr Khalique had undertaken with former offenders through Restart. Notwithstanding this the Panel refused the appeal on for the following reasons:

"The Panel has decided that the nature of the offences, the number of counts involved and the fact that a custodial sentence, albeit imposed some time ago, are matters which are incompatible with him being admitted onto the Register of Social Workers".

9. In around June 2021, Mr Khalique made a fresh application for registration with Social Work England. That application was refused by the Head of Registration and the decision was communicated to Mr Khalique by letter dated 7 September 2021. The decision letter stated:

"I have decided to concur with the decision made by the HCPC eight years ago that the offences are of such a serious nature that it would undermine public confidence in the profession and in Social Work England's role as a regulator. I note that the panel at the HCPC also decided that you have limited insight into the nature of the offences; although a further eight years have passed, I note that the statement you have provide to us is very similar to the statement you provided to the HCPC as part of your application in 2013. As such, there is no further evidence of reflection and insight."

10. Mr Khalique now appeals the decision of Social Work England to refuse his application for registration. This appeal is made pursuant to Regulation 19 the Regulations. The panel may, in accordance with Regulation 19(6) of the Regulations, make the following orders:

(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.

Evidence from Mr Khalique :

11. Mr Khalique took the affirmation. Mr Khalique told the panel that he had not hidden anything in his approach and he said he did not hide from or diminish his crime in any way. He said he understood the crime was very serious and he said he was ashamed and now realised that the possession of such material meant that children had been

harmed and his conduct had been unacceptable. He said he served a prison sentence and he wished he could erase what he had done. He said his experience of prison led him to re-evaluate his life and he considered he had much to offer.

12. Mr Khalique said he was acutely aware his role was to safeguard and protect children and he had no convictions before or since. He said people can be rehabilitated. He had after prison between 2006 – 2014 set up an organisation allowing students to complete their practice placement under his supervision. He also referred to his work with Restart which he said had been rehabilitating.
13. Mr Khalique said there had not been a proper assessment of his ability to practice safely and effectively. He said he had reflected and he explained the importance of reflective practice and how to successfully do so. Reflections should focus on what one can control and not replay past mistakes. He had worked with Restart and had there demonstrated safe and effective practice. He had also worked in [PRIVATE] with extremely vulnerable service users on the margins of society and had worked with the local university in that work.
14. Mr Khalique referred to his work in [PRIVATE] including assisting street children and women who had been trafficked. He said he wanted to convey to the panel that at Restart he had shared his experience in prison. He accepted he was a former sex offender and he saw no reason for Social Work England not to take the bold step of allowing him to get back on the Register.
15. Mr Khalique told the panel that he was fit to practice. He said that he fully accepted that his conduct was an important aspect of safe and effective practice. He referred the panel to the references in support of his application to register. He said that he recognised that reflective practice was key and that he embraced that as it improved practice and accountability. He considered the current process should not allocate blame for that past. He stressed that it was important to consider why he chose to become a practice educator and he said that he had wanted to give something back to the profession which he had seriously let down.
16. Mr Khalique said the previous panel had considered he undermined the conviction. He said it was a one off aberration for which he had served a prison sentence.
17. Ms Bruce cross examined Mr Khalique and asked him to consider the Certificate of Conviction. He said he was convicted of 18 counts of “making” indecent photographs of a child. He said that at the time, the police searched his property and took his computer away. He said he thought “made” referred to him downloading from the internet and his use of chat rooms interacting with others. He understood that level 5 images were the most serious or appalling.

18. With reference to Mr Khalique's written statement dated 10 November 2013, he said his mistake was a one off mistake and there had been nothing before or since, but it was "*absolutely*" not a minor mistake. He said he had gone to prison and was not belittling the mistake. He accepted it was not a moment of madness as there were separate incidents of downloading. He said he had not reflected until it had stopped.
19. Mr Khalique was taken to his email of 18 July 2021 to the enquiries team. He accepted he did not say he had "*made*" the images, but possessed the images and he may not have expressed the position properly. He knew these were real children and he accepted that. He accepted that a convicted sex offender on the social work register was a fundamental risk. He accepted that issues about trust arose and he accepted that the reputation of the profession was important. He said it was possible to rehabilitate and he said he had done his utmost to make amends since serving his sentence and that it was possible to "*win back*" the confidence of institutions. He said he could only say he was very remorseful and did not minimise the crime but things had moved on. He said his current work in Bangladesh was worthy and he was saying that his registration would not undermine the social work profession. He did not think he was being unfairly treated.
20. Mr Khalique did not accept that his offending behaviour was fundamentally incompatible with registration.

Closing Submissions for Social Work England:

21. Ms Bruce made Social Work England's primary submission that the appeal should be refused. She referred to *Yeong v General Medical Council* [2009] EWHC 1923 (Admin) and submitted that issues of remediation and mitigation may not have the same weight in a case such as this given the nature and gravity of the conviction. She reminded the panel that there had been 22 counts in the indictment and some were at the most serious level, level 5. She submitted that the conduct is fundamentally incompatible with registration. She said that Mr Khalique has not shown sufficient insight or analysis of the public interest. She submitted that his position was not credible and he had avoided questions about the offence. Ms Bruce said that Mr Khalique was not open and frank about the offence or about its impact on the profession and public perception.
22. Ms Bruce provided a written skeleton argument which set out in conclusion the following submission:-

"The Appellant was convicted of 22 two counts of possession and making of indecent images of children. The Appellant was made subject to a 6 month term of imprisonment and placed on the child sex offenders register.

The case law makes clear that, while there may be subtle differences applied in registration cases (rather than fitness to practise cases) the public interest is not served by the application of a dual standard.

Certain types of misconduct are so fundamental in terms of their impact on public trust and confidence in the profession that expressions of remorse, rehabilitative steps and remediation are of less relevance than in respect of other types of conduct.

The nature of the Appellant's offending behaviour is such, that the Panel should exercise caution in affording undue weight to questions of mitigation or remediation.

In any event, successive decision makers at the HCPC and Social Work England have found insight to be a relevant factor in refusing registration with the HCPC Assessors observing that the Appellant minimised the seriousness of his offending behaviour in written submissions.

There are certain types of misconduct which are not mitigated by the passage of time in relation to public perception.

Social Work England adopts and aligns itself with the observations of the HCPC panel that public confidence in the profession and in the regulatory system would be undermined, if the Appellant, a convicted sex offender in respect of offences against children, were permitted to join the register.

The Panel is respectfully reminded that some of the images the Appellant was convicted in respect of, reached Level 5 in the Oliver categorisation of such offences (sadism and bestiality). In all the circumstances, it is submitted that the Appellant's past offending behaviour is fundamentally incompatible with registration as a social worker and this appeal should be dismissed."

Closing Submissions for Mr Khalique

23. Mr Khalique told the panel that he wanted to thank the panel for the opportunity of the hearing. He said he hoped he had shown his conviction to rehabilitation, and he could see Social Work England's position. He referred to the references he had provided which were from practising social workers. He said he saw the real focus was the offence and not him. He said he could not disagree with the trust issues that Ms Bruce had raised. He said he sincerely considered he was not a risk to public

Panel decision:

24. The panel heard and accepted the advice of the legal adviser and considered all the information before it, the evidence from Mr Khalique and the submissions from him and from Ms Bruce on behalf of Social Work England. There is a persuasive onus on Mr Khalique to show that he is capable of safe and effective practice.

25. The legal adviser referred the panel to Regulations 11 and 19 in Part 3 of the Regulations. He advised the panel that it should consider the registration requirements as set out in Regulation 11, in particular the eligibility for registration, which also applies to applications for restoration to the Register. He reminded the panel of the importance of the public interest in maintaining public confidence in the profession and upholding proper professional standards and he referred the panel to the Yeong case and to CHRE v GDC and Fleishmann [2005] EWHC 87 (Admin) where Newman J stated:-

“The requirement that an application for registration be “of good character” secures the need for the public to be protected by the maintenance of high standards and the high reputation of the profession which has served at the stage of an application for registration as well as in disciplinary proceedings.”

26. The panel took into account the Registrar’s original decision and the background. The panel noted all the evidence and information provided at this hearing and Social Work England’s Guidance on Registration Appeals. The panel took account of all the evidence and the written statements from Mr Khalique.

27. The panel considered the central issue in this case of whether in terms of Regulation 11(2)b Mr Khalique is *“capable of safe and effective practice in accordance with the professional standards relating to proficiency, performance, and conduct and ethics.”* That must also include consideration of whether placing Mr Khalique on the Register would maintain public confidence in the profession and uphold proper professional standards. It is a central part of the role of the panel to protect the wider public interest.

28. The panel considered the terms of the conviction and took account of the seriousness, the nature and the gravity of the conviction. Mr Khalique was convicted of 18 counts of making and 4 counts of possessing indecent images of children. This conviction is of the most serious, particularly so given that the central role of a social worker is to safeguard and protect the most vulnerable members of society, and that includes safeguarding vulnerable and abused children.

29. The panel took into account that Mr Khalique appears to have taken some meaningful steps to rehabilitate himself. However, the panel found that Mr Khalique failed in his evidence to address the central issue of his conduct in making and possessing the indecent images. The panel found that his written reflections and his evidence tended to be about the theory of reflection. The panel did not hear from Mr Khalique what he had actually done by way of reflection specifically about his conduct and the nature of the conviction.

30. The panel found that Mr Khalique did not demonstrate that he sufficiently recognised and understood his conduct, the seriousness of the conviction and the impact on the profession. The panel found that Mr Khalique was evasive in his evidence both

generally, and in particular when he was cross examined on his understanding of the details of the conviction itself and the behaviour it involved.

31. The panel concluded that Mr Khalique demonstrated that he continues to lack sufficient insight into his conduct. The 22 counts in the conviction make clear that this conduct was not a “*one-off aberration*”, as claimed by Mr Khalique. The panel do not consider that this conduct was a moment of madness and the panel concluded that Mr Khalique continues to minimise his conduct. Some of the downloaded images were of the most serious at level 5. The Certificate of Conviction detailed that there were 13 zip discs and 67 floppy discs and a folder containing indecent images of children.
32. The panel concluded that the conviction is so egregious that, despite some positive steps Mr Khalique appears to have taken to remediate and rehabilitate, that it is not possible for him to practice safely and effectively in accordance with professional conduct, standards and ethics given the nature of the offences.
33. The panel considered the central issue of the public interest. The panel decided that an informed and reasonable member of the public would be deeply concerned to learn that a convicted sex offender, having been convicted of such criminal behaviour, was permitted to be a registered social worker with access to some of the most vulnerable members of society, including vulnerable children some of whom may have been victims of sexual abuse.
34. The panel agreed with the submission from Ms Bruce that there are certain types of misconduct that are so fundamental in terms of their impact on public trust and confidence in the profession that expressions of remorse, rehabilitative steps and remediation are of less relevance than in respect of other types of conduct. This is one such case.
35. The panel concluded that public confidence in the profession and the regulator would be seriously undermined were Mr Khalique to be permitted to register as a social worker in England. The panel concluded that in all the circumstances, Mr Khalique’s conviction is incompatible with registration as a social worker in England.
36. Accordingly, on the basis of all the evidence before the panel, the panel decided to dismiss this appeal. It decided that Mr Khalique has not satisfied the panel that he is of good character and capable of safe and effective practice as a registered social worker.
37. The panel dismissed the appeal.

Right of appeal:

38. [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.]
39. 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.