

**Hearing held in public**

**Summary**

<b>Name:</b>	<b>MICHALAK, Elzbieta Malgorzata [Registration number:11293004]</b>
<b>Type of case:</b>	<b>Registration Appeal Committee (initial)</b>
<b>Outcome:</b>	<b>Appeal Dismissed</b>
<b>Date:</b>	<b>10 July 2018</b>

Ms Michalak,

The Committee has carefully considered your appeal against the Registrar's decision not to include your name in the Dental Care Professionals' Register.

The Committee has considered all the evidence which has been presented to it from Ms Stewart on behalf of the General Dental Council (GDC) and from Mr Murch, your employer who assisted you throughout the Hearing. The Committee has accepted the advice of the Legal Adviser.

On 6 June 2017 you applied for registration with the General Dental Council (GDC) as a dental technician.

The registrar is satisfied that you are an exempt person under section 53(1)(a) of the Act, as you are a Polish national. The registrar is also satisfied that you have the requisite knowledge and skill for recognition of your qualification for registration as a Dental Technician, in accordance with Matter B in section 36C of the dentists Act 1984 as amended. The only matter under consideration in this appeal is whether you have the necessary knowledge of English as required by section 36C(6)(aa) of the Act.

The GDC confirmed to you on 8 November 2017 that the Registrar was satisfied that you had the requisite skills and knowledge for recognition of your qualification for registration as a Dental Technician, but before the registration process could be completed, it would be necessary for you to provide the GDC with certain documents, including evidence of your English language competence. You were referred to the GDC guidance on this topic as to the types of evidence that the GDC could accept.

You later submitted two structured references from your previous and current employers, and a further assessment of Learning Outcomes Form. The GDC wrote to you again on 16 February 2018 to inform you that the evidence you had provided had not clearly demonstrated that you had the necessary knowledge of English. You were informed that to demonstrate that you had met the English language requirements of the Act, you would need to provide an 'original Academic version of the International English Language Testing System (IELTS) certificate showing a minimum overall score of 7, and no less than 6.5 in any module'.

Your notice of appeal was lodged on 15 March 2018:

*'My full name is Elzbieta Michalak. I have never been on register. According to the letter of 8 November 2018 I read „Evidence of English language competence,,. In this document there are 4 types, ability to prove my knowledge of English. These are the possibilities that according to the document are satisfactory for GDC. I send original references of two independent employers, thinking that I have done*

*everything in the line with GDC's expectations. Next, on 16 February I received a letter regarding the necessity of passing the IELTS exam because my documents are unsatisfactory. I am 45 years old and taking the exam is very stressful for me. I am afraid that due to stress this test will not show my real knowledge of English'.*

Mr Murch your employer reiterated his support for your application to the GDC register.

You have also submitted today a character reference from a dentist who uses your services.

#### *Submissions*

Ms Stewart, for the registrar, submitted that on the face of the papers you do not demonstrate the necessary knowledge of English:

- The material provided is insufficiently robust, independent or readily verifiable.
- There is no evidence of continuous practice in an English-speaking country as you have been working as a process worker whilst unregistered.
- There is no evidence of a recent qualification taught or examined in English.
- There is no evidence of recent practice under another dental title in this country.
- There is no evidence of any English language qualification that can be assessed.

Ms Stewart submitted that you have not provided evidence that clearly demonstrates that you have a good command of the English language. The requirements of the Dentists Act in relation to English language competency, is for it to be recent, objective, independent and robust evidence that is readily verifiable by the GDC. She submitted that the GDC must have regard to this guidance when assessing applications for registration.

Ms Stewart further submitted that the GDC is unable to simply accept references attesting to English language competence without more detail as it requires clear, independent and robust and verifiable evidence to support an application in this respect.

Mr Murch, the laboratory owner where you work, confirmed that there are no issues with your technical capability as a dental technician and you have been performing extremely well for the last two years. He submitted that as you work in a dental laboratory you do not meet patients on a daily basis. He submitted that his letter and that from a dentist confirm that you have a good understanding of the English language. He submitted that you have gone to great lengths to become registered which involved you travelling to your native country Poland to obtain relevant documentation.

You gave sworn evidence to the Committee. You explained to the Committee that you have practised in the United Kingdom (UK) for two years as a ceramist which proves you possess an acceptable level of English language and dental laboratory skills. Further, you said that the references you provided demonstrate that you do have the necessary knowledge of English.

You answered questions from the Committee on how you applied your English language skills as a dental technician. You explained the processes and communication involved in your role which was to a degree limited to discussions with colleagues and on occasion with dentists, but rarely directly with patients. You also gave reasons why you have not taken the IELTS test. You said that you had attempted the test at home as a practice but found difficulty with some of the words which were outside your experience and were not in your view relevant to the role of a dental technician.

*The Guidance*

Section 36CA of the Act provides that:

- (1) The Council must publish guidance about—
  - (a) the evidence, information or documents to be provided by an applicant for the purpose of satisfying the registrar under section 36C(6)(aa) that the applicant has the necessary knowledge of English; and
  - (b) the process by which the registrar is to determine whether the registrar is satisfied as mentioned in paragraph (a).
- (2) The registrar must have regard to the guidance published under subsection (1) in determining whether the registrar is satisfied as mentioned in subsection (1)(a).
- (3) Subsections (4) and (6) apply if, having considered any evidence, information or documents provided by the applicant in support of the applicant's application, the registrar is not satisfied under section 36C(6)(aa) that the applicant has the necessary knowledge of English.
- (4) The registrar may request the applicant to provide further evidence, information or documents within such period as the registrar may specify.
- ...
- (6) The registrar may require the applicant—
  - (a) to undergo an examination or other assessment; and
  - (b) to provide information in respect of that examination or assessment, within such period as the registrar may specify.
- ...

The Committee had regard to section 53(1) of the Act, which defines the necessary knowledge of English as... *“knowledge of English which, in the interests of the person and the person's patients, is necessary for the practice of dentistry in the United Kingdom.”*

The guidance published under s 36CA(1), to which the registrar and this Committee must have regard, is headed *“Evidence of English language competence: Guidance for applicants”* (the “Guidance”) and expands upon and clarifies section 53(1) of the Act.

The Guidance sets out that dental professionals must be sufficiently fluent in written and spoken English to be able to communicate effectively with patients, their relatives, the dental team and other healthcare professionals in the United Kingdom. Communication is defined as speaking, reading, writing and listening. The Guidance provides that a recent overall score of 7 on the academic version of the International English Language Testing System (IELTS), with a score of not less than 6.5 for each of the Reading, Writing, Listening and Speaking components of the test, will be sufficient to demonstrate the necessary knowledge of English. The test should be completed within the last two years, but older test results may be accepted where there is sufficient evidence that the applicant's English language skills would not have deteriorated in the intervening period.

An IELTS result is not the only evidence which can be routinely accepted as demonstrating the necessary knowledge of English. For example, paragraph 40 of the Guidance is headed *“Evidence type 4: Recent experience of practising in a country where the first and native language is English”* and states:

We define recent in this context as no more than two years old. If you choose to provide this evidence, you must provide original references from employers over the preceding two years detailing your practice in English. This provides assurance that your experience of practising the profession in an English-speaking dental environment is recent and your language skills are up to date.

The last paragraph of the Guidance, headed “Other evidence”, states:

There are many ways in which you may be able to satisfy us that you have the necessary knowledge of English for registration. If you provide evidence other than those we have listed they must meet the criteria we have set out i.e. the evidence must be robust, recent and readily verifiable by the GDC.

#### *Decision*

The Committee accepted the advice of the Legal Adviser.

The burden is on you in bringing this appeal to prove to the Committee on the balance of probabilities that you have the necessary knowledge of English. The standard of English required is higher than that expected for general every day communication. The evidence you rely on must also meet the criteria of being recent, objective, independent, robust and readily verifiable. The Committee finds that the documentary evidence you rely on does not meet the requirements of paragraphs 26 to 40 of the Guidance.

The Guidance is not legally binding but any departure from it would require careful justification. It was plain to the Committee from hearing you that you do have some understanding of English. However, the Committee was not satisfied that you adequately demonstrated the necessary knowledge of English for practice as a dental technician.

The GDC guidance states that

*“You must be sufficiently fluent in written and spoken English to communicate effectively with patients, their relatives, the dental team and other healthcare professionals in the United Kingdom.”*

The Committee noted your references. However, it also noted that you largely work as a ceramicist and your level of communication with patients is limited. Your employer Mr Murch confirmed that you currently work as a ceramist in a dental laboratory and you have good technical skills. He said that although you rarely come into contact with public and patients, he believed that your command of English was sufficient to enable you to carry out your technical work and it would be no different in any other laboratory.

The Committee is mindful however that should you be registered with the GDC as a dental technician you may be required to undertake a variety of roles in different dental settings which may require you to have a better command of the English language. The Committee is not satisfied that you have the relevant experience of professional communication in English with patients, relatives and other dental professionals.

The Committee is in no doubt that you are able operate at a high level as a ceramist, and that you have good support at your current place of work. However, it considers that you currently work in a limited area which Mr Murch described as “a bubble” and therefore the opportunity to communicate with patients and other dental professionals is very limited. The Committee considers that you should make efforts to undertake the relevant English tests (IELTS) as well as engage in Continuing Professional Development (CPD). This will enable you to liaise with other dental professionals and help you to communicate with a wider group of people to develop your English language skills.

In all the circumstances, the Committee is satisfied that you have not discharged the burden of proof on you. That is not to say that you lack knowledge of English, but you have failed to prove that your command of English is at the necessary level.

Accordingly, you have not satisfied the Committee that you have demonstrated the necessary knowledge of English, as defined by s 53(1) of the Act and the Committee therefore dismisses your appeal.

That concludes the hearing.