Neutral citation number: [2024] UKFTT 1093 (GRC)

Case Reference: FT/D/2024/0444

First-tier Tribunal
General Regulatory Chamber
Transport

Heard by: Cloud Video Platform
Heard on: 29 November 2024
Decision given on: 11 December 2024

Before

JUDGE HAZEL OLIVER
JUDGE JONATHAN SCHERBEL-BALL

Between

SHEDAAB ZAHOOR

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: In Person
For the Respondent: Darren Russell

Decision: The appeal is refused.

REASONS

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors ("the Registrar") made on 16 April 2024 to remove the Appellant's name from the Register of Approved Driving Instructors (the "Register") on the grounds that the Appellant had ceased to be a fit and proper person to be an Approved Driving Instructor ("ADI"). The Registrar reached this decision because the Appellant had received (i) a fixed penalty notice dated 25 July 2022 for exceeding the statutory speed limit on a public road (SP30) resulting in 3 penalty points ("the First Offence") and (ii) a conviction dated 20 February 2024 for exceeding the statutory speed limit on a public road (SP30) on 29 April 2023 resulting in 3 penalty points and a £153 fine (the "Second Offence").

2. The proceedings were held by video (CVP). All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

The Appeal

3. The Appellant's Notice of Appeal (incorrectly dated 9 December 1989) says the Registrar was wrong to remove the Appellant from the Register because of the two offences. In summary, the Appellant says that:

a. The Appellant is a fit and proper person within the meaning of s.128(2)(e) of the Road Traffic Act 1988 Act (the "Act") to have his name included in the Register.

b. At the time of both offences, the Appellant was suffering from the deeply distressing breakdown of his marriage. He accepts this is not an excuse but it explains his wholly uncharacteristic behaviour. He ended up leaving his home on Christmas Eve 2022, staying in a hotel for 3-4 weeks before moving in with his parents.

c. Being an ADI is the source of considerable fulfilment and achievement for the Appellant. He says this is of some significance in assessing his suitability to continue as a driving instructor.

d. As a result of his own lack of knowledge, the Appellant naively assumed that the DVLA would share details of the offences with the DVSA. He was also unaware that having more than 5 points on his licence would lead to the enforcement action that has been taken. He believed that this would only occur if he had more than 6 points.

e. The Appellant only learnt of the Second Offence many months after it had taken place because he had not been properly notified of it. As a result, he successfully appealed the penalty relating to the delay in addressing the Second Offence. However the Appellant was unable to verify who had been driving the car at the time of the Second Offence due to the passage of time. He was living with his family at the time, and several other family members had been allowed to drive his vehicle (lawfully). He has since prohibited anybody else from driving his vehicle to avoid any repeat.

f. Neither of the offences took place during a driving lesson or with learner signage on the car.

g. The Appellant has moved beyond the stresses which he was under at the time, and can give every assurance that these aberrations of behaviour will not happen again.

h. The Appellant has multiple vehicles which he uses to teach. He has substantial financial commitments in respect of these vehicles, and if he is unable to continue to teach, it will put him in a very difficult financial position.

i. The Appellant has built a popular driving instructor business. Allowing the appeal would allow him to continue his dedicated service to the community.

j. The Appellant is deeply sorry for this situation. He requests the Tribunal consider the underlying causes of the offences with the compassion and understanding that it deserves.

4. The Registrar resists the Appeal. His Statement of Case dated 19 November 2024 says:

a. The Appellant's licence is currently endorsed with six penalty points having been convicted for the First and Second Offences. The conditions for entry onto the

register extend beyond instructional ability alone and require that the applicant is a fit and proper person. As such, account is taken of a person's character, behaviour and standard of conduct. An ADI is expected to have standards of driving and behaviour above that of the ordinary motorist. Teaching (generally) young people to drive as a profession is a responsible and demanding task and should only be entrusted to those with high standards and a keen regard for road safety. In committing the First and Second Offences, the Appellant has not displayed the level of responsibility or commitment to improving road safety that should be expected from an ADI.

b. The Government increased the payment levels for serious road safety offences such as speeding. These offences contribute to a significant number of casualties. For example in 2018, excessive speed contributed to 177 deaths, 1251 serious injuries and 3,224 minor accidents.

c. The Registrar cannot condone motoring offences of this nature. To do so would effectively sanction such behaviour, if those who transgress were allowed to remain on an official register that allows them to teach others.

The law

5. Conditions for entry and retention on the Register require the Applicant to be and continue to be a "fit and proper person" to have his name on the Register – see sections 125(3) and 127(3)(e) of the Act.

6. The Registrar can remove a person's name from the Register if they have ceased to be a fit and proper person to have their name on the Register (section 125(2)(e) of the Act). The Registrar may take the view that a person no longer meets this requirement where there has been a change in circumstances. The Registrar has the burden of showing that a person does not meet the statutory requirement to be a fit and proper person, and the standard of proof is the balance of probabilities.

7. The powers of the Tribunal in determining this appeal are set out in section 131 of the Act. The Tribunal may make such order as it thinks fit (section 131(3)). The Tribunal stands in the shoes of the Registrar and takes a fresh decision on the evidence available to it, giving appropriate weight to the Registrar's decision as the person tasked by Parliament with making such decisions (in accordance with ***R. (Hope and Glory Public House Ltd) v City of Westminster Magistrates Court & Ors*** [2011] EWCA Civ 31).

8. In ***Harris v Registrar of Approved Driving Instructors*** [2010] EWCA Civ 808, [2011] R.T.R. 1 at [30], the Court of Appeal described the "fit and proper person" condition as follows: "..*the condition is not simply that the applicant is a fit and proper person to be a driving instructor, it is that he is a fit and proper person to have his name entered in the register. Registration carries with it an official seal of approval…It seems to me that the maintenance of public confidence in the register is important. For that purpose, the Registrar must be in a position to carry out his function of scrutiny effectively, including consideration of the implications of any convictions of an applicant or a registered ADI. This is why there are stringent disclosure requirements. If an applicant or registered ADI fails to disclose convictions or makes a false declaration that he has no convictions, it strikes at the heart of the registration process and the reliability of the register. In my view such conduct is plainly relevant – indeed, highly relevant - to the question whether an applicant is a fit and proper person*".

9. The standing of the Register could be substantially diminished, and the public's confidence undermined, if it were known that a person's name had been allowed to remain on the Register

when they had demonstrated behaviours substantially material to the question of fitness. This includes behaviour relating to the commission of criminal or motoring offences.

The evidence

10. We have considered a bundle of evidence containing 29 numbered pages.

11. On 18 March 2024, the DVSA notified the Appellant that it had received a report from the DVLA in respect of the First and Second Offences. It noted that the Appellant had failed to notify the Registrar of the offences within seven days which was a "clear breach" of the declaration on his application for an extension of registration as an ADI. The DVSA invited the Appellant to make representations as to why he should not be removed from the Register as a result of the offences.

12. The Appellant provided representations to the DVSA on 3 April 2024. His representations substantively reflected his grounds of appeal to the Tribunal. The Registrar considered these representations but notified the Appellant on 16 April 2024 that the Registrar considered that the Appellant should be removed on the grounds that under s.128(2)(e) of the Act the Registrar considered that the Appellant had ceased to be a fit and proper person.

13. At the remote hearing, we heard from the Appellant and from the Registrar. At the outset, the Appellant raised his concerns that the Registrar had been late in filing his Response to the Appeal. While that is correct and not helpful for conducting the appeal in accordance with the overriding objective, the Tribunal did not consider that such delay impacts on the substance of the decision which it needs to consider on the issues under appeal.

14. While understandably nervous at the remote hearing, the Appellant was able to clearly and articulately set out his substantive grounds of appeal. In particular, the Appellant explained the enormous impact that the enforcement action had had upon him and how not being able to continue as an ADI would have significant impact upon him personally, and also his family, for whom he cares. For example, he explained that he would not be able to afford to keep a vehicle to drive his parents around. The Appellant emphasised his real remorse and that his experience of the enforcement action had been a real learning curve and a daunting experience for him. He was extremely committed to being the best driving instructor that he could be and his students had a high pass rate. He emphasised that the prospect of not being able to continue as an ADI was itself a very real punishment. He asked that the penalty imposed be proportionate to the offences that had been committed.

15. In response to questions from the Tribunal, the Appellant stated that he believed the First Offence was committed for speed of approximately 40mph in a 30mph zone. He believed this would likely have taken place following an argument with his spouse. The Second Offence he believed was likely committed on the A50, exceeding an average speed limit of 50mph. He emphasised that he did not know who was driving his vehicle at the time of the Second Offence because of the delay in being notified.

16. At the remote hearing, the Registrar confirmed that the Appellant had applied for an extension of his registration as an ADI in September 2022. This was several months after the First Offence. The Registrar stated that the registration extension application form (a) expressly requires applicants to specify any relevant motoring offences, and (b) reminds applicants of their continuing duty to notify the Registrar promptly should any such offences be committed in the future. The Registrar confirmed that the Appellant had not mentioned the First Offence to the DVSA when applying to extend his registration as an ADI in September 2022.

17. The Appellant denied that the extension application form which he completed in September 2022 contained any requirement to notify the DVSA of any motoring offences. He also insisted

that he had read in certain paperwork that he did not need to notify the DVSA of motoring offences save where he had incurred more than five penalty points. The Appellant was unable to identify the source of that paperwork and/or his belief when asked to do so by the Tribunal.

18. The Tribunal accepts the evidence of the Registrar on this issue. We find that when the Appellant applied to extend his registration in September 2022, he would have been asked to declare any motoring offences as part of that application. We find that he failed to declare the First Offence at this time (or indeed subsequently). We also find that the application form would have made clear that the Appellant was under a continuing duty to disclose further penalty points if they were acquired. We find that the Appellant also failed to disclose the Second Offence to the DVSA in accordance with the terms of his registration as an ADI.

Conclusions

19. There is no doubt that speeding is a serious driving offence. Such conduct can and frequently does cause serious accidents. It endangers the lives of other road users, pedestrians and the driver themselves, or risks causing them serious injury. The statistics cited by the DVSA at paragraph 4.b above demonstrate this.

20. It is also not in dispute that ADIs are quite rightly held to a higher standard than ordinary motorists. The public has the right to expect that those who are registered as ADIs adhere to the highest standards of motoring, which they themselves should be teaching to their pupils.

21. We have assessed the facts on the basis that it is imperative that the honesty, integrity and probity of ADIs is maintained, given the substantial level of trust that is placed on ADIs by pupils, parents and other ADIs as well as road users, the public and the DVSA. The Registrar has the duty of ensuring that only those of appropriate standing are on the Register. These are matters of wider public importance which attract significant weight even where removal from the Register may have serious consequences for an individual.

22. Having carefully considered all the facts and circumstances, the Tribunal considers that the Registrar's decision was correct and that, at present, the Appellant is not a fit and proper person to remain on the Register. There are four main reasons for our conclusion:

a. First, while we acknowledge and accept that the Appellant was experiencing difficult personal circumstances at the time of both of the Offences, we do not consider that those personal circumstances provided any justification, far less reasonable excuse, for repeated speeding 9 months apart. Both offences involved, on the Appellant's own admission, speeds which were significantly in excess of the relevant speed limits. This was not a case where the speed limit was only exceeded by a marginal amount.

b. Second, the Appellant was unable to satisfy the Tribunal that he was not driving his vehicle when the Second Offence was committed. Indeed he accepted that the passage of time was such that he was unable to say who was driving his vehicle, although he did not believe it was likely to be him. In the circumstances however, we consider that we must proceed on the basis that, on the balance of probabilities, the Appellant was driving his vehicle at the time of the Second Offence. This was therefore a repeat offence of speeding by an ADI who is rightly held to higher standards.

c. Third, the Tribunal was particularly concerned about the Appellant's repeated failure to notify the DVSA of either of the offences. Indeed, there was not only a failure to notify the DVSA in respect of the First Offence, but moreover a failure to declare it when required to do so in September 2022 when he applied to extend his

registration. The Tribunal considered this to be a serious failing on the part of the Appellant which demonstrated a regrettable lack of probity which goes to the heart of the registration requirements. The Tribunal was not satisfied by the Appellant's explanations for these failures, or that he adequately grasped the importance of this key aspect of the registration scheme either then or by the time of the hearing.

d. Fourth, while we accept (a) the Appellant's genuine remorse, (b) his evidence that the enforcement process has had a huge impact upon him personally and (c) that losing his livelihood as an ADI will have a very substantial impact on him and his family, we do not consider this can be a determinative factor. Indeed, regrettably it will often be the case that being removed from the Register will have very significant consequence for an ADI and their dependants. We have however given it careful consideration as a relevant factor, amongst all the other points raised by the Appellant.

23. Taking all the facts and circumstances into account, we accept the Registrar's case and reject the appeal. We do however emphasise that these findings should not be seen as in any way limiting the Appellant's ability to apply to rejoin the Register at an appropriate point in the future. Such an application will need to be considered by the Registrar afresh having allowed an appropriate period of rehabilitation.

Signed: Judge Scherbel-Ball **Date:** 9 December 2024