



Neutral citation number: [2024] UKFTT 1130 (GRC)

Case Reference: FT/D/2024/0315

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(TRANSPORT)**

**Determined on the Papers
On: 20 November 2024**

Decision given on: 18 December 2024

Before

**JUDGE DAMIEN MCMAHON
SPECIALIST MEMBER DR. PHEBE MANN
SPECIALIST MEMBER MISS SARAH BOOTH**

Between

KASHAR RAZI

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

The Appellant appeared in person on his own behalf.

The Respondent was represented by Mr. Darren Russell of the Respondent.

Decision: The appeal is Dismissed. The Decision of the Respondent made on 12 March 2024 is confirmed.

REASONS

Mode of Hearing

1. The hearing was conducted by a three-Member Tribunal, comprising a Tribunal Judge and two specialist Members. Another Tribunal Judge was present, in an observer capacity, but took no part in the determination of this appeal.
2. The proceedings were listed for oral hearing, remotely, by CVP and proceeded in that mode.

Background

3. The Appellant failed the Standards Check test, required by the Respondent to be undertaken by the Appellant, on three consecutive occasions, namely, 11 May 2022, 21 March 2023 and 17 January 2024, pursuant to the provisions of the Motor Cars (Driving Instruction) Regulations 2005. The Respondent made a decision dated 12 March 2024 to remove the Appellant's name, in consequence, from the Approved Driving Instructors Register ('ADI Register'), pursuant to section 128(2)(d) of the Road traffic Act 1988, as amended ('the Act'), taking into account representations dated 5 February 2024 made by the Appellant.
4. The Appellant was given advice by the examiner, on each of the first two occasions when he failed his Standards Check test, in a de-brief, to consider further personal development and was urged in advance of his third attempt on 17 January 2024 to take account of those previous advices.
5. The Appellant's overall performance was found to be below the required standard in all three Standards Check tests. The Respondent would have been perfectly entitled in law to make a decision to remove the Appellant's name from the Register upon him failing even the first Standards Check test. However, the practice of the Respondent is to permit an ADI up to three attempts to pass a Standards Check test.
6. The Appellant made representations dated 5 February 2024 in response to the Respondent advising him of their intention to remove his name from the ADI Register. Those representations were taken into account by the Respondent before they made their decision – the decision under appeal. The Appellant, in those representations, disputed the findings of the examiner, but only in respect of his failing his Standards Check test on the third occasion, and wanted a further, fourth, opportunity to 'prove he was a fit and proper person to continue as an ADI'.
7. The Respondent treated the Appellant's criticism of the examiner's conduct of the third Standards Check test as a complaint. They processed that complaint through their established complaints processes but did not uphold the complaint. The Appellant was advised, however, that if he wished to challenge the result of the Standards Check test, he had a right of appeal to the Magistrate's Court. The Appellant did not bring any such appeal.

Notice of Appeal

8. The Appellant submitted a Notice of Appeal dated 1 April 2024. He referred to his being an ADI for some six years that, he maintained, showed he had a 'decent record'. He again disputed the marking and comments of the examiner in his third Standards Check test and alleged that the examiner was 'napping' during the test. He also alleged that the examiner failed to recognise that he, the Appellant, was an ADI, an assertion the Tribunal declined to accept as having any credibility. The Appellant went on to state that the examiner had advised him to 'appeal' and that he wanted a fourth Standards Check test 'with a more competent examiner'.

9. In his oral evidence, the Appellant confirmed that he had not appealed his failing any of his three attempts to pass a Standards Check test to the Magistrates' Court as, he stated, he had not been sent a link to the Magistrates' Court. The Tribunal found that this portrayed a distinct lack of understanding on the part of the Appellant – even to the extent that he, today, at the hearing of this appeal, sought advice from the Tribunal on his appeal rights to the Magistrates' Court – a request that was, of course, necessarily declined as the Tribunal, being an independent judicial authority has no role in proving advice to a party. The Appellant again heavily criticised the examiner's conduct of the third Standards Check test.

Response of Respondent

10. In their Response, dated 8 August 2024, the Respondent confirmed that, in fact, the current entry of the Appellant's name onto the ADI Register was in July 2024 and would, accordingly, ordinarily have expired on 31 July 2026. The Response reiterated the contents of the written decision dated 12 March 2024. The Response, in addition, submitted that the Respondent felt obliged to remove the Appellant's name from the ADI Register in the interests of road safety and consumer protection as he had failed, despite three attempts, to maintain the driving instructional ability standards required of an ADI.

Conclusions

11. The decision by the Respondent to remove the Appellant's name from the ADI Register pursuant to s.128(2)(d) of the Road Traffic Act 1988 ('the Act') in that he had failed the continued ability and fitness test (known as a 'Standards Check test') on three separate occasions, was, undoubtedly, correct as a factual proposition. The Tribunal agreed with the Respondent's rationale, as set out in the preceding paragraph, in arriving at that conclusion.

12. Section 125(5) of the Act requires that a person whose name is held in the Register must undergo a test of continued ability and fitness to give instruction in the driving of motor cars. Although the Act permits removal of a name after a single failure of a check test, it is usual for an instructor to be allowed three attempts before removal is ordered. By reason of the word "may" in s.128(1) of the Act, removal from the ADI Register is discretionary.

13. Significantly, pursuant to s.133(1) of the Act, an appeal against the conduct of a Standards Check test lies to a Magistrates' Court – not to the Tribunal. The Appellant accepted that he did not appeal the outcome of any of his third attempt at the Standards Check test, the only one of the three tests that he disputed.

14. The Tribunal does not have jurisdiction to decide whether the Respondent's decision to exercise their discretion to remove the Appellant's name from the ADI Register was correct. The principal way that issue is addressed is by requiring that those who give paid instruction have their name on the ADI Register kept by the Respondent. Parliament has put other provisions in place so the public can have confidence in the ADI Register. For example, there is a pre-condition to registration that an applicant has passed all three parts of the qualifying examination, there is a requirement that the applicant is and remains a 'fit and proper person' to have his name on the Register (which goes beyond ability as an instructor) and s.125(5) provides that the entry of a person's name in the ADI Register shall be subject to the condition that, so long as his name is on the ADI Register, he will, if at any time required to do so by the Registrar, submit himself for such test of continued ability and fitness to give instruction in the driving of motor cars as may be prescribed. The importance of this provision is that it ensures, by periodic testing, that driving instructors remain sufficiently competent to charge for instruction. It is therefore an important component in maintaining public confidence in the Register. It is important to note that the imposition of the condition is mandatory and that the terms of the condition are that the Approved Driving Instructor ('ADI') will, at any time required to do so by the Respondent, submit himself for a Standards Check test. Once the Respondent has required an ADI to submit himself for a check test there is nothing in the Act which permits the ADI to seek to impose his own pre-conditions to submitting himself for a standards check test as sought by the Appellant in this appeal.

15. The Tribunal was satisfied that the Respondent was correct to find that the Appellant had been given adequate opportunity to pass the Standards Check test but had failed to do so – on three occasions. The Respondent was correct to remove the name of the Appellant from the Register due to his inability to satisfy the Registrar that his ability to provide driving instruction was to the required standard.

16. The Appellant was provided with guidance and advice, following his first two failed Standards Check examinations, on how he might improve his standards before undergoing a further test. Despite this, the Appellant failed to achieve the required standard on three consecutive occasions.

17. Most of the submissions made in the Appellant's written representations to the Registrar, replicated in his Notice of Appeal, concerned him criticising the conduct of the third Standards Check test by the examiner. However, as was noted in paragraph 12 above, pursuant to s.133(1) of the Act, an appeal against the conduct of a check test lies to a Magistrates' Court and, pursuant to s.133(3), no such appeal may be made to the Tribunal under s.131 of the Act. Accordingly, the Tribunal does not have jurisdiction to consider such submissions.

18. The Tribunal is a judicial authority entirely independent of both the Appellant and the Respondent. When an appeal comes before a Tribunal, the Tribunal considers the matter the subject of the appeal entirely afresh while having regard to the views expressed by the Respondent as the body entrusted by Parliament in respect of these matters.

19. The appeal is dismissed with immediate effect.

Signed: *Damien McMahon,*

Tribunal Judge

Date: 20 November 2024