



Neutral citation number: [2024] UKFTT 757 (GRC)

Case Reference: D/2022/181

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

**Determined in an Oral Hearing
On: 5 August 2024**

Decision given on: 23 August 2024

Before

**TRIBUNAL JUDGE DAMIEN MCMAHON
TRIBUNAL MEMBER KERRY PEPPERELL
TRIBUNAL MEMBER DAVID RAWSTHORN**

Between

HARRY DEBLING

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation

Ms. Carly Brookfield, Chief Executive, Driving Instructors' Association, appeared on behalf of the Appellant.

Ms. Claire Jackson appeared on behalf of the Respondent.

Decision: The appeal is allowed with a warning as to the Appellant's future behaviour.

REASONS

Background

1. This appeal concerns a decision of the Respondent made 13 September 2022 to remove the Appellant's name from the Register of Approved Driving Instructors ('ADIs'), taking into account representations made by the Appellant, pursuant to s.128(2)(e) of the Road Traffic Act 1988, as amended, ('the Act'), on the basis that the Appellant was not a fit and proper person to remain on the Register, citing five complaints having been made against him and two previous warnings having been issued to him on 8 December 2021 and 15 June 2022 and having been warned that further complaints could lead to his removal from the Register.

2. The Appellant appealed the Respondent's decision on 7 October 2022. This addressed each of the stated five complaints referred to by the Respondent in their decision, the decision under appeal. However, it emerged at the hearing that the Respondent's decision was based only on two of those complaints, namely, one received on 19 July 2022, (that the Appellant had cancelled an intensive driving course one week before it was due and had failed, at the date of the decision under appeal, to make a full refund to the complainant of the fees charged), and that of another, received on 11 July 2022, (that the Appellant had shouted at the complainant making her feel uneasy). The Tribunal found this to be a highly regrettable approach by the Respondent and was at a loss to understand why the decision under appeal referred to that decision being made on the basis of five complaints having been made against the Appellant. The Appellant also referred to the fact that he had been an ADI since 2012; that he experiences autism; that he had obtained a lot of additional qualifications and CPD training. He maintained that the Respondent had given him inadequate notification of the individual complaints and had furnished inadequate evidence to support those complaints. He maintained that he had a lot of happy pupils and a great deal of professional experience and expertise to share with pupils.

3. The Respondent, in their Response dated 1 December 2022 (filed some 9 days after the date for an extension sought by the Respondent and granted by the Tribunal), confirmed that the Appellant had been the subject of previous complaints concerning his conduct and professionalism and was issued with warnings on 8 December 2021 and 15 June 2022. The Respondent also stated that there had also been previous complaints against the Appellant in 2019 but no further action had been taken by the Respondent. The Respondent went on to state in their Response that an ADI had a special responsibility to ensure that their driving and behaviour was beyond reproach at all times; that an ADI was expected to have such standards above that of an ordinary motorist; that driving instruction was a responsible and demanding task that should only be entrusted to those with high standards; that the good name of the Respondent and public confidence would be tarnished and undermined if the Appellant's name was allowed to remain on the Register and that it would be offensive to other ADIs and those trying to qualify as ADIs who had been scrupulous in their professional conduct to ignore inappropriate and unprofessional conduct on the part of the Appellant.

4. In an undated Reply, the Appellant again maintained that he had not been given adequate detail of the complaints; that he did not shout at pupils, but may need to be firm, or be more direct or intervene if there was a risk to his, or his pupil's, safety. He stated that he specialised in teaching pupils who were neuro-diverse or had special needs or who suffered from anxiety, stating, too, that such pupils could be challenging in receiving instruction and feedback and that this could lead to complaints being made against him. He maintained that, in making their decision, the Respondent did not take account of those factors. He drew a distinction between the two complaints actually at issue in that one related to a dispute concerning refund of fees (a full refund having now been made albeit not being able to refund on demand when a course was cancelled called into question the Appellant's professionalism and integrity as an ADI) and the complaint concerning alleged behaviour on his part. The Appellant maintained that he did, and could, act professionally; that he was committed to learning from any mistakes he may unintentionally have committed and to develop his training. He concluded by advising that removal from the Register would be catastrophic as driving instruction was his only source of income.

5. The Respondent's application for an extension of time to serve their Response was granted on 10 November 2022: the Respondent was directed to file its Response by 18 November 2022 (but did not do so until 1 December 2022).

7. This appeal had come before a Tribunal for hearing on 4 April 2024 but was adjourned with Directions, on the application of the Appellant, who had difficulty joining the hearing by CVP.

Mode of Determination

8. The Appeal was determined at an oral hearing using the CVP system.

9. The Appellant attended, and gave oral evidence, and was represented.

10. The Tribunal considered a bundle of evidence containing 51 pages.

Evidence

11. The Appellant's representative submitted that the Appellant had communication issues due to his autism condition – a condition also experienced, it was submitted, by the complainant concerning behaviour on the part of the Appellant. It was submitted that that complainant had wanted to undertake a driving test but that the Appellant was not happy that they were ready to do so. However, she did submit that this complaint was justified but, that that alone, she submitted should not result in the Appellant's name being removed from the Register. She further submitted that the Appellant had reviewed his terms and conditions of business by way, it was submitted, of addressing the other complaint, concerning a non-refund of fees – a complaint, it was submitted, that had now been withdrawn as the Appellant had repaid the complainant his fees in full.

12. The Respondent's representative submitted that whether or not the said complainant had now withdrawn his complaint was not relevant as the Respondent's decision was made on the basis of the position pertaining at the date of that

decision. This was accepted as a correct position by the Tribunal. She also submitted that the Appellant's comment that he was 'crap' at managing money was unprofessional.

13. In his oral evidence, the Appellant, essentially reiterated the contents of his written evidence and the oral submissions of his representative, in respect of the only two complaints at issue. He accepted, in the context of the previous complaints made against him, that he understood the voluntary Code of Conduct for ADIs and the need to behave properly. He reiterated that he was willing to do anything required of him; that he was a good driving instructor and had good reviews and recommendations from pupils.

14. The Tribunal accepted the Appellant's evidence that he experiences autism. Account must be taken by the Tribunal, on appeal, standing in the shoes of the Respondent, of that fact the current edition of the Equal Treatment Benchbook advises that, accordingly, the Appellant was likely have difficulties with social communication and integration and that many autistic people will, **typically**, have a range of difficulties that may include, for example, anxiety affecting ability to use communication strategies, as a result of which body language and non-verbal communication may come across as aggressive; the person's voice may become louder and they may shout or speak too fast.

Law

15. The Conditions for entry and retention on the Register, including the grant of a trainee licence, require the Applicant to be and continue to be a "fit and proper person".

16. The Respondent may take the view that a person no longer meets this requirement where there has been a change in circumstances. The burden of showing that a person does not meet the statutory criteria rests with the Respondent.

17. In *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 8082, the Court of Appeal described the "fit and proper person" condition thus:

"..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".

18. Registration carries with it an official seal of approval, that is, maintenance of public confidence in the registration system. This is important. For that purpose, the Respondent must be in a position to carry out their function of scrutiny effectively, including consideration of the implications of any complaints made against an Appellant concerning his behaviour.

19. An appeal to this Tribunal against the Respondent's decision proceeds as an appeal by way of re-hearing, that is, the Tribunal stands in the shoes of the Respondent and takes a fresh decision on the evidence before it. The Tribunal must give such weight as is considered appropriate to the Respondent's reasons as the Respondent is the person tasked by Parliament with making such decisions. The

Tribunal does not conduct a procedural review of the Respondent's decision-making process.

Conclusion

20. The Tribunal carefully considered all the written and oral evidence and oral submissions before it.

21. The Tribunal concluded that the Appellant's neurodiversity issues may have gone some way to explain the complaints (albeit the decision under appeal concerned just two complaints – one concerning a contractual dispute concerning fees and the other concerning alleged unacceptable behaviour – not five complaints as referred to in the decision under appeal), but which did not absolve him from all responsibility for his actions. Nevertheless, the Tribunal took account of the typical behavioural effects that can be manifested in someone such as the Appellant who experiences autism. The Tribunal was satisfied that the Appellant took his responsibilities seriously (allowing for the typical effects of his clinical condition).

23. The Tribunal did not attach as much weight to the complaint concerning non-refund of fees (although reference is again made to the contents of numbered paragraph 4 of this Decision), as it did to the other complaint concerning behaviour on the part of the Appellant, since the former was, essentially, a civil law, contractual dispute between that complainant and the Appellant that was, on the evidence, on the balance of probabilities, ultimately resolved. However, even in respect of the other complaint, the balance tipped in favour of the Appellant having regard to his clinical condition and its typical effects, and, in isolation, this complaint alone was not sufficient to refuse this appeal.

24. The Tribunal was concerned the decision under appeal was made as far back as 13 September 2022 but noted that there was no evidence of further or ongoing complaints concerning the Appellant.

25. In allowing the appeal, therefore, on the balance of probabilities, the Tribunal was prepared to take an unusual course, despite there having been previous complaints made against the Appellant. The Tribunal's decision could equally have gone the other way. The Respondent's initial position, as reflected in the decision under appeal, was perfectly understandable.

26. However, the Appellant is warned in clear terms that any further complaints against him concerning his behaviour will, almost inevitably, result in his name being removed from the Register of ADIs.

Signed:

Damien McMahon,

Date: 12 August 2024

Tribunal Judge

Promulgated on: 23 August 2024