



Neutral citation number: **[2024] UKFTT 00762 (GRC)**.

Case Reference: D/2023/476

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

**Heard by Cloud Video Platform
On: 5 August 2024**

Decision given on: 27 August 2024

Before

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

Between

CLIFFORD CRAVEN

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: The Appellant appeared on his own behalf.

For the Respondent: Claire Jackson

Decision:

The appeal is Dismissed. The Decision of the Respondent made by the Respondent on 28 September 2023 is confirmed.

REASONS

1. This appeal was listed for hearing on 5 August 2024 for oral hearing by CVP, a mode of hearing to which the Appellant acceded. The Appellant attended and gave oral evidence and made oral submissions, as did the representative of the Respondent. The Appellant was accompanied by his partner who also gave some oral evidence.
2. This appeal had come before a Tribunal on 21 March 2024 but was adjourned on that date, with Directions, due to administrative issues that did not allow sufficient time to hear the appeal on that date.
3. The Appellant appealed against a decision of the Respondent dated 28 September 2023, to remove the Appellant's name from the Register of Approved Driving Instructors ('ADIs'). The decision of the Respondent was made on the grounds that the Appellant had, for the purposes of this appeal, received a Fixed Penalty Notice ('FPN') on 19 November 2021 for driving without reasonable consideration for other road users (involving a cyclist in a pedestrian access zone), receiving three penalty points on his driving licence (to expire in November 2024) and a FPN on 29 May 2023 for driving with excess speed on a motorway, receiving another three penalty points – making a total of six penalty points - and that he was not, therefore, a fit and proper person for his name to remain on the Register.
4. The Appellant submitted an appeal on 10 October 2023, against the Respondent's said decision on the following grounds:
 - that he never used the words 'wanting a sense of freedom' (as stated by his advocacy organisation in their report submitted by the Appellant in support of his appeal);
 - that there were mitigating circumstances, namely, back pain from a prolapsed disc from October 2022 for which he was admitted to hospital on two occasions shortly after the said excess speeding offence and was unable to work for seven weeks, a fact of which the Appellant considered the Respondent was unaware;
 - that he was not unfit or reckless and the decision under appeal to remove his name from the Register was harsh;
 - that he had passed all required tests to become an ADI;

The Appellant, in his written Notice of Appeal, offered an explanation of the said motoring offences and gave further explanation in his oral evidence. He also submitted medical evidence that, essentially, addressed his back complaint, and character references. (The Appellant's partner made specific reference to that latter evidence in support of the Appellant's appeal).

5. In his oral evidence, the Appellant stated he was not happy with his advocacy organisation and had not taken up their recommendation that he take 12 weeks support from them. Significantly, the Appellant confirmed that he had previously been offered, and had undertaken, a Driving Awareness Course. After some

reluctance, having initially denied in his oral evidence that he suffered from any other medical condition apart from his back condition, the Appellant agreed, as referred to in the report from his advocacy organisation, that he had some low mood and mental health issues that was being treated with medication. The Appellant took full responsibility for what had occurred but pointed out that he would lose his job if his appeal did not succeed. Significantly, however, the Appellant confirmed that he was driving at a speed of more than 20mph in excess of the permitted speed limit on a motorway, that is, a speed of more than 90mph, when he committed his second and more recent motoring offence. This fact, in itself, weighed more heavily with the Tribunal than the Appellant's dispute whether he used the words '...having a sense of freedom'

6. The Respondent, in their Response dated 13 December 2023, stated:
 - that the Appellant's name had been entered on the Register in March 2022 and was to expire, in the ordinary course, on 31 March 2026;
 - that the said two motoring offences had been accepted by the Appellant, resulting in a total of six penalty points being endorsed on the Appellant's driving licence;
 - that account had been taken of the representations made by the Appellant;
 - that the comments made by the Appellant, as reported by his advocacy organisation, of him 'having a sense of freedom' in the context of his excess speed offence was of particular concern;
 - that the conditions for entry onto, and retention on, the Register extended beyond the concept of driving instructional ability, namely, that, in addition, the Appellant had to be a fit and proper person to remain on the Register, requiring account to be taken of the Appellant's character; behaviour and standard of conduct, all of which had to be of a standard above that of an ordinary motorist since driving tuition is a responsible and demanding profession that should only be entrusted to those with high standards and a keen regard for road safety;
 - that the Appellant did not display the level of responsibility and regard for road safety that would be expected of an ADI;
 - that to condone motoring offences of this nature would, effectively, sanction such behaviour if the Appellant's name was allowed to remain on the Register and would be offensive to other ADIs, and persons trying to qualify as an ADIs, who have been scrupulous in observing the law.
7. In her oral submissions, the Respondent's representative could not say what weight was attached by the Respondent to the alleged words '...wanting to feel a sense of freedom' in the context of the excess speeding offence committed by the Appellant but it was likely that weight was attached to them. She was somewhat equivocal in confirming whether the character references submitted by the Appellant (the majority of which were from pupils of the Appellant) had been 'taken on board'. She confirmed that the decision under appeal had been made by the Respondent before

the expiry of 28 days in which the Appellant had an opportunity to make representations on the intended decision (albeit the Appellant did make representations and, of course submitted, with his Notice of Appeal, both medical evidence and character references and the said report of his advocacy organisation).

8. This appeal concerns a decision of the Respondent to remove the Appellant's name from the Register of ADIs on the basis that he was no longer a fit and proper person to remain on the Register by reason of having committed two motoring offences and receiving a total of six penalty points endorsed on his driving licence. The powers of the Tribunal in determining this appeal are set out in s.131 of the Road Traffic Act 1988 ('the Act'). In determining the appeal, the Tribunal may make such order as it thinks fit, standing in the shoes of the Respondent, considering the decision afresh on the evidence available to it, giving appropriate weight to the Respondent's decision as the person empowered by Parliament to make such decisions in the first instance. The burden of proof in satisfying the Tribunal that the Respondent's decision was wrong rests with the Appellant.
9. The basis of the Respondent's decision was that the Appellant did not fulfil the criteria to be a 'fit and proper person', as required by s.125(3) and s.127(3) of the Act.
10. Conditions require that an applicant (the Appellant in this case) be a 'fit and proper person' requires account to be taken of an applicant's character, behaviour and standards of conduct. This involves consideration of all material matters, including convictions, placing all matters in context, and balancing positive and negative features as appropriate. The Respondent may take the view that a person no longer meets this requirement where there has been a change in circumstances.
11. An appeal to this Tribunal against the Respondent's decision proceeds as an appeal by way of re-hearing, that is, the Tribunal makes a fresh decision on the evidence before it. The Tribunal must give such weight as it considers appropriate to the Respondent's reasons for its decision as the Respondent is the regulatory authority tasked by Parliament with making such decisions. The Tribunal does not conduct a procedural review of the Respondent's decision-making process.
12. The standing of the Respondent could be substantially diminished, and the public's confidence undermined, if it were known that a person had been permitted to remain on the Register when they had been convicted in relation to offences, substantially material to the question of fitness. This can be in respect of convictions pertaining to motoring matters and other matters of responsibility, trustworthiness and prudence; indeed, it would be unfair to others who have been scrupulous in their behaviour, and in observing the law, if such matters were ignored or overlooked.
13. The judgment of the Court of Appeal in *Harris v. Registrar of Approved Driving Instructors* [2010] EWCA Civ 808 confirmed that -

to ***“..... the condition is not simply that the applicant is a fit and proper person 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 approvalthe 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 Approved Driving Instructor. That is why there are stringent disclosure requirements.”***

14. In reaching its decision, the Tribunal took into account all of the evidence and submissions it received, written and oral, and considered all of the circumstances relevant to this appeal.
15. There was little or no dispute as to the material facts of this case at the hearing.
16. The Tribunal must bear in mind the significant importance which attaches to the integrity of the Register. Entry to, and retention on, the Register of ADIs is a public endorsement of a high standard of competence on the part of ADIs. For the public to have trust in it, the Respondent must act in a way that encourages belief that those on it have high standards. Allowing those who do not meet those standards would undermine the trust placed in it with serious consequences for those who do maintain the necessary high standards. These are matters of wider, and public interest, which attract significant weight even where, as in this case, being removed from the Register may have significant consequences for the Appellant.
17. In this case the Tribunal took into account that the Appellant had accepted committing two significant motoring offences. These were serious offences for an ADI. The Tribunal was concerned about the Appellant's lack of care in meeting his responsibilities as an ADI; that he committed a significant speeding offence despite knowing that he already had three penalty points and that he did not take up the offer of further training made by his advocacy organisation.
18. Taking all of these factors into account and, noting that the Tribunal needs to maintain public trust in the Register and to prioritise consumer protection over the interests of the Appellant as an individual driving instructor, the Tribunal concluded that the Appellant, at the time of the decision, was not a fit and proper person to have his name retained on the Register of ADIs.
19. Accordingly, the appeal is dismissed.

Signed: ***Damien McMahon,***

Tribunal Judge

Date: 12 August 2024