



Neutral citation number: [2024] UKFTT 00771 (GRC)

Case Reference: FT/D/2024/0155

**First-tier Tribunal
General Regulatory Chamber
Transport**

**Determined at a panel paper hearing
on 20th August 2024
Decision given on: 09 September 2024**

Before

HHJ DAVID DIXON

Between

ANDREW RAYSON

Appellant

and

**THE REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Respondent

Decision: The appeal is dismissed with immediate effect, and the Registrar's decision remains.

REASONS

Background to Appeal

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made 24th November 2023 to remove him from the Register after he failed to pass three consecutive “continued ability and fitness to give instruction” tests, contrary to the requirements of the Road Traffic Act 1988. The Registrar’s decision was made following consideration of the circumstances and the Appellant failure to pass check tests on 7th March 2023, 22nd August 2023 and 23rd November 2023.
2. The Appellant now appeals the Registrar’s decision by pleading dated 18th February 2024. He indicates that he has struggled with his mental health recently as a result of a number of family bereavements. He asserts having now taken medical assistance he would pass the standards check.
3. Character references were supplied by the Appellant indicating that he was a good teacher. A letter from his wife sets out the real issues the Appellant has faced recently, and the stress that it has caused him.
4. The Registrar has failed to provide a Response to the pleaded appeal, which is unhelpful to say the least. As a result the Appeal has to be determined on the information provided.

Mode of Determination

5. The case was listed for paper hearing. The Appellant wished for a paper determination and the Tribunal in the circumstances of this particular case, applying the Tribunal Rules, decided such a procedure was fair and appropriate.
6. The Tribunal considered a bundle consisting of the decision letter, the appeal notice, the reference and letter indicated. Case Management decisions were also attached.

The Law

7. Section 125 (5) of the Road Traffic Act 1988 imposes a condition for an Approved Driving Instructor to submit themselves for a test of continued fitness and ability if required to do so by the Registrar.
8. Where an Approved Driving Instructor fails to attend a test of continued fitness and ability or fails such a test, the Registrar may remove that person from the register under s. 128(2) (c) or (d) of the 1988 Act.¹An appeal against the conduct of a check test by a person who has failed it lies to the Magistrates’ Court and not to this Tribunal.²
9. An appeal to this Tribunal against the Registrar’s decision proceeds as an appeal by way of re-hearing i.e., the Tribunal stands in the shoes of the Registrar and takes a

¹ <http://www.legislation.gov.uk/ukpga/1988/52/section/128>

² <http://www.legislation.gov.uk/ukpga/1988/52/section/133>

fresh decision on the evidence before it. It must give such weight as it considers appropriate to the Registrar's reasons³ as the Registrar is the person tasked by Parliament with making such decisions. The Tribunal does not conduct a procedural review of the Registrar's decision-making process.

Conclusion

10. The Tribunal considered carefully all the evidence in this appeal.
11. Here the Appellant accepts that he has failed the check test three times. He seeks to explain the failures on stress and familial difficulties. He indicates that he has sought help and is now in a much better place to pass the check test. He argues he is a good instructor.
12. The Tribunal stands in the shoes of the Registrar and takes a view on the evidence before it. Here the Registrar indicates that there were three failures and that can't be overlooked. The Tribunal works on the basis that the check test results are accurate, and that this is the fairest way for standards to be assessed.
13. The Appellant has failed to show he is teaching to the required standard, nor that he learnt from the earlier feedback and therefore is not able to demonstrate his abilities are appropriate. The Tribunal gives careful attention to the issues as pleaded, but regrettably has to come to the view that having had 3 chances to prove himself over 8 months, and failed, he is no longer suitable to remain on the Register.
14. In all the circumstances, the Registrar had no option but to remove the Appellant from the Register and the Tribunal comes to the same view. This Appeal is dismissed with immediate effect.

(Signed)

HHJ David Dixon

DATE: 20th August 2024

³ See *R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31. <http://www.bailii.org/ew/cases/EWCA/Civ/2011/31.html>. Approved by the Supreme Court in *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60 at paragraph 45 – see <https://www.supremecourt.uk/cases/docs/uksc-2015-0126-judgment.pdf>.