



NCN: [2024] UKFTT 00975 (GRC)

Appeal Number: FT/D/2024/0439.

**First-Tier Tribunal
(General Regulatory Chamber)**

Heard: On GRC – CVP on 21 October 2024.

Decision given on: 04 November 2024

Tribunal Panel: Judge Brian Kennedy KC, Gary Roantree & Richard Fry.

Between:

COLIN ANTHONY RICHARD MULLIS

Appellant:

And

THE DRIVER & VEHICLE STANDARDS AGENCY

Respondent:

IN THE MATTER of an Appeal by Mr Colin Anthony Richard Mullis against the decision of the Registrar of Approved Driving Instructors to remove his name from the register.

Result: The Appeal is dismissed.

REASONS

Introduction:

- [1] Section 123(1) of the Road Traffic Act 1988 ("the Act") prohibits the giving of instruction in the driving of a motor car for payment unless the instructor's name is in the Register of Approved Driving Instructors, or he is the holder of a current licence issued under Section 129(1) of the Act.

Factual Background:

- [2] The Appellant's name was first entered in the register in March 2016 and in the normal course, his certificate would expire on the last day of March 2028
- [3] On the 25 February 2024 the Appellant emailed (D1) informing the Respondent of a speeding offence dated the 22 October 2023. He explained he had received a notice of intended prosecution with a hearing date of the 7th of March 2024 at Bodmin Magistrates Court. At this time the Appellants registration was due to expire, and he made enquiries as to the appropriate steps to take. The Registrar is unable to consider any case until a hearing has been concluded and any subsequent conviction applied. The Appellant was advised to renew his registration as normal and to keep the Registrar advised of any developments in this case.
- [4] On the 24 March 2024 the Respondent was informed by email (D2) from the Appellant he had been convicted of SP30 motoring offence – exceeding statutory speed limit on a public road and received 6 penalty points and a £230 fine. A DVLA report (D3) confirmed this.
- [5] The facts that give rise to the appeal by way of an e-mail dated 25 March 2024 (D4) when the Respondent gave the Appellant written notice that consideration was being given to removing his name from the register on the grounds that he had ceased to be a fit and proper person to have his name entered in it. The Respondent invited representations within 28 days, which would be taken into consideration before reaching a decision.
- [6] On 31 March 2024 the Appellant made representations (D5) and stated as follows: *"On the 22nd October 2023 I was travelling on my way home from a*

counselling session when I was caught speeding, I received a letter on NIP on 23rd February 2024 with a court date of 7th March which was subsequently moved to the 21st March 2024 whereby I was convicted of speeding and issued an SP30 onto my driving licence with 6 penalty points and a £230 fine.

This is totally out of character for myself, and I have proudly held a clean driving licence for 14 years with no penalty points or parking fines. I really was shocked that this happened and can't apologise enough for letting the DVSA and myself down. I will admit that the last 12 months have been really hard for myself for a number of reasons, firstly in April 2023 I had to undergo major surgery which resulted in myself having to give up my LGV instruction for a long period due to the recovery time from such an extreme amount of weight loss. In 2021 and 2022 I was sexually, mentally and physically abused by my ex-partner until I had a breakdown and received counselling and medical help and support from First Light and also the Police who are still at present dealing with the case (crime Occurrence 50230237517) my ex-partner is a current ADI Helen Ansell from Camborne 842568, the CID department dealing with the case have said it can take up to 24 months before a case can go to court due to the backlog and the amount of evidence they have to go through and accumulate. Currently I am still having counselling for the abuse. Since the sexual assault and domestic abuse was reported to the police on 25th September 2023, Helen has had a friend take to Facebook with fake profiles to post on multiple groups about myself being a sexual predator, a paedophile and a nonce with the intention of trying to shut my business down, again the police are dealing with this as Helen has said she will do everything to destroy me. As a result of the posts which contained pictures of my house, my vehicles and contact details I have been dealing with death threats, damage to vehicles, vehicles driving past my house slowly in the evenings and horns blowing, currently work has dropped to less than 50% of what I have experience for the last 5-6 years. The person who posted online on behalf of Helen is called Ben Harbour and has been in contact with Mr Brian Carter from the DVSA and posted publicly offering a financial reward for people to collaborate stories with the intention of having me removed as a driving instructor. The crime reference for this is (crime Occurrence 50240007035). While none of this is a valid excuse for my speeding, I feel it contributed to my loss of concentration of the day in question as I had just had a counselling session before heading home, I feel the above gives an insight to how troubled the last 12 months have been for me. I take pride in my work, and it is all I have that is keeping me going at present. My mum is disabled and between work I care for

her, help attend medical appointments and do day to day tasks in and around the house. For a long time I have worked with Motability helping students who have struggled to find an instructor due to their mobility and neurodiversity problems, this is an area I specialise in and I feel it would be detrimental for those students who some of which have been waiting for 2 years to have to wait and hope they find another instructor who can help with getting them driving freedom I would be very grateful if I could remain on the register as an approved driving instructor and be able to continue what I love doing, it's a big ask because of the offence and I just hope my mitigating circumstances can be taken into account and some leniency given I await your decision and of course I will be more than happy to discuss further via phone call, zoom or email should you wish."

[7] Having considered the representations made by the Appellant, the Respondent decided that the Appellant's name should be removed from the register as it was considered that the Appellant cannot fulfil Section 128 (2) (e) that he ceased, apart from fulfilment of any of the preceding conditions, to be a fit and proper person to have his name retained in the register. The Appellant was given notice of this decision in a letter dated the 23 April 2024, pursuant to Section 127 (7) of the Act. (D6)

[8] The Reasons for the Respondents Decision are as follow;

a) The Appellants' driving licence is currently endorsed with 6 penalty points having been convicted of exceeding a statutory speed limit on a public road. Whilst the Respondents empathise with the Appellants personal health issues and the circumstances that took place at the time of the offence, it is not accepted that a lapse in concentration would result in this serious speeding offence. The Appellant has failed to provide any details of the location of the offence or the type of road and conditions. He has not confirmed the speed he was driving at the time of the offence as recorded on the notice of intended prosecution or even an approximate speed he thought he was travelling at. An untested report from a DVSA Local Driving Test Manager (D7) reported the Appellant was travelling at 104mph in a 60-mph limit. In the absence of any official record, the Respondent can only assume that the Appellant was travelling significantly above the speed limit which is why he has received 6 penalty points instead of just 3. The

conditions for entry onto the register extend beyond instructional ability alone and require that an Applicant is and remains a fit and proper person. As such, account is taken of a person's character, behaviour and standard of conduct. Anyone who is an Approved Driving Instructor (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 this offence, The Respondent does not believe that the Appellant has displayed the level of responsibility or commitment to improving road safety that would be expected from a professional ADI.

b) The Government increased the payment levels for serious road safety offences such as speeding, the requirement to control a vehicle (including mobile phone use), passing red traffic lights, pedestrian crossings and wearing a seatbelt. These offences contribute to a significant number of casualties. For example, in 2018 excessive speed contributed to 177 deaths, 1,251 serious injuries and 3,224 minor accidents, using a mobile phone contributed to 25 deaths, 92 serious injuries and 306 minor accidents; and careless driving, reckless, or in a hurry contributed to 252 deaths, 3,208 serious injuries and 9,466 minor accidents.

c) As representatives of the Secretary of State charged with compiling and maintaining the register on his behalf, the Respondent does not consider that it can accept or 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 Appeal Hearing:

- [9] The Appellant provided his account of the conviction and stated it has been his first and only conviction. He indicated he had disposed of all his motorcycles as advised by the Court. He agreed his conduct was "*stupid*" and stated he was not aware that he was breaking the law. He had mental health issues at the time, having counselling and he is still undergoing treatment for these difficulties. The Appellant stated that his speed at the time the

speeding offence was recorded was 92 MPH, however he provided no evidence of the actual record, but this was the first offence he has had since he first obtained his licence. The court indicated he would either lose his licence or be given 6 points and a fine. The court on hearing the circumstances awarded 6 points and a fine of £230 but did not ban him from driving.

[10] The Appellant expressed his concern that the Respondent have done nothing to support him throughout any of his personal hardships or these driving offence difficulties. The Appellant also argues that he knows of other registered instructors who have not been removed from the register despite holding 6 points for driving offence convictions. There is no dispute on the above the facts.

[11] The Tribunal have considered carefully the reasons given by the Respondents for their decision and find that they are fair and reasonable in all the circumstances of this case and accordingly the Tribunal are of the view that appeal must be dismissed. We make the following observations;

- a) Whether the speed was 92 or 104 MPH it was in our view grossly excessive, extremely dangerous and well above the legal limit pertaining. In the circumstances the Appellant could have lost his life or been severely injured and/or could other members of the public if he had lost control at either speed as inaccurately recorded before us.
- b) The unfortunate circumstances causing the Appellants serious mental health issues are not directly relevant to the impugned decision. However, he informs the Tribunal that he was not even aware he had committed an offence. This is of itself is a matter of serious concern for a registered driving instructor.
- c) The Appellant suggests his lapse is due at least in part to his mental health issues (for which he requires counselling). There is no evidence before us to assure us these issues have been resolved.
- d) Each case must be decided on its merits. However fortunate the Appellant was to avoid being banned from driving; it is the unanimous decision of this Tribunal that in all the circumstances of this case, the

Respondents were correct in removing the Appellant from his of registration as a driving instructor

- e) We have also noted that as a result of this decision, the Appellant is not barred from applying again in the future to become a Registered Instructor.

[12] Accordingly, we dismiss the appeal.

Brian Kennedy KC

22 October 2024.