



Neutral citation number [2025] UKFTT 265 (GRC)

Case Reference: D/2024/20

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

**Heard by way of remote hearing using Cloud Video
Platform**

**Heard on: 5 December 2024
Decision given on: 27 February
2025**

Before

**TRIBUNAL JUDGE KENNETH MULLAN
TRIBUNAL MEMBER RICHARD FRY
TRIBUNAL MEMBER GARY ROANTREE**

Between

ANTHONY WALTON

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: The Appellant appeared in person

For the Respondent: Mr Russell

Decision: The appeal is REFUSED

REASONS

Mode of Hearing

1. The proceedings were held using CVP. The parties joined remotely. The tribunal was satisfied that it was fair and just to conduct the hearing this way.

BACKGROUND

2. The appeal is against the decision of the Registrar of Approved Driving Instructors (ADIs) that the Appellant could not satisfy the statutory requirement to be a "fit and proper person", with the result that the name of the Appellant was removed from the Register under s. 128(2)(e) of the Road Traffic Act 1988 ["the Act"] The burden of proving that an Appellant is not a fit and proper person is on the Registrar.
3. Conditions for entry or retention on the Register extend beyond instructional ability alone and require that the applicant be a fit and proper person. As such, account has to be taken of an applicant's character, behaviour and standards of conduct. This involves consideration of all material matters, including convictions, cautions and other relevant behaviour, placing all matters in context, and balancing positive and negative features as appropriate.
4. Given that many pupils are just 17 years of age and the scheme as a whole relies upon the honesty, integrity and probity of ADIs, it is clear that substantial trust will be placed in ADIs by pupils, parents, other ADIs and road users, the public and the Agency. It is the Registrar's function to ensure that the persons whose names appear in the register are worthy of that trust and are fit and proper persons to have their names entered therein.
5. In cases involving motoring offences it is expected that anyone who is to be an ADI will have standards of driving and behaviour above that of an ordinary motorist. Teaching people of all ages to drive safely, carefully and competently is a professional vocation requiring a significant degree of responsibility. Such a demanding task should only be entrusted to those with high personal and professional standards and who themselves have demonstrated a keen regard for road safety and compliance with the law.

6. Additionally, in cases involving non-motoring offences, the standing of the register could be substantially diminished, and the public's confidence undermined, if it were known that a person's name had been permitted onto, or allowed to remain on, the Register when they had demonstrated behaviours, or been convicted or cautioned in relation to offences, substantially material to the question of fitness. 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.
7. In the Registrar's statement of case he points out that registration represents official approval; the title prescribed for use by instructors is 'Driver & Vehicle Standards Agency Approved Driving Instructor', ["ADI"]. Approval is not limited to instructional ability alone, but also extends to a person's character, behaviour and standard of conduct. In view of this, he expressed concern that the good name of the Register would be tarnished and the public's confidence undermined if it was generally known that he had allowed the Appellant's names to be entered on the Register when he had been convicted of offences. He added that it would be offensive to other ADIs and persons trying to qualify as ADIs, who had been scrupulous in observing the law to ignore these offences. The Registrar's approach was approved by the Court of Appeal in Harris v. Registrar of Approved Driving Instructors (2010 EWCA Civ 808), in which Richards LJ said:-

"..... 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. 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 ADI. That is why there are stringent disclosure requirements."
8. Applicants to become driving instructors are notified that the DVSA is entitled to ask for information about spent convictions and as a result they lose the protection provided by s.4(2) of the Rehabilitation of Offenders Act 1974. This arises in consequence of paragraph 3(a)(ii) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended which states that "none of the provisions of s.4(2) of the Act shall apply in relation to ... any question asked ... in order to assess the suitability ... of the person to whom the question relates for any office or employment specified in Part II of the said Schedule 1 ... where the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed". Paragraph 14 of Part II of Schedule 1 states that "offices, employment and work" include "any work which is work in a regulated position" and by Part IV of Schedule 1 "regulated position" is "a position which is a regulated

position for the purposes of Part II of the Criminal Justice and Court Services Act 2000". Paragraph 36(c) of Part II of the latter Act provides that "the regulated positions for the purposes of this Part are ... a position whose normal duties include caring for, training, supervising or being in sole charge of children"; and by paragraph 42 of Part II "child" means a person under the age of 18. Since driving instructors may teach pupils aged 17 (or 16 if disabled) it follows that the DVSA is entitled to take spent convictions into account.

9. The background to this appeal is that the Appellant's name was first entered in the Register in October 2018 and in the normal course of events his certificate would have expired on the last day of October 2026.
10. In the Registrar's statement of case, the Registrar has noted that on 18 October 2023, he was advised by the DVLA that the Appellant had accepted a fixed penalty notice for the offence of exceeding the statutory speed limit on a public road resulting in the endorsement of his driving licence with 3 penalty points. The Registrar observes that he was already aware of his previous fixed penalty notice offence for exceeding statutory speed limit on a public road having been advised by the DVLA Swansea on the 19 May 2023. The Registrar also notes that in a letter dated the 01 June 2023 the Appellant was advised of his obligation to notify me of any offence within 7 days and if it became necessary in the future to consider whether he was a fit and proper person his record as a whole would be taken into account. The Registrar added that the Appellant had failed to notify him of either offence within 7 days which, he submitted, was a clear breach of the declaration he made on his application to extend his period of registration submitted on the 13 October 2022.
11. Considering this background, the Registrar considered that the Appellant was not a fit and proper person to have his name retained in the Register.
12. By way of email correspondence dated 27 October 2023, the Registrar gave the Appellant written notice that he was considering removing the Appellant's name from the Register on the grounds that the Registrar could not be satisfied that the Appellant continued to fulfil the condition of being a 'fit and proper person'. The Registrar invited the Appellant to make representations within 28 days and was informed that the Registrar would take these representations into consideration before reaching a decision.
13. The Registrar subsequently received email correspondence dated 27 October 2023 from the Appellant which set out his representations to the Registrar. We set out the detail of those representations below

14. At paragraph 5 of his statement of case, the Registrar indicates that he had carefully considered the representations made by and on behalf of the Appellant but had come to the conclusion that the Appellant's name should not be entered onto the Register. The Registrar indicated that he had considered the representations which had been made. The Registrar noted the following:

'I carefully considered the representations made but I cannot ignore the fact that his driving licence is currently endorsed with 6 penalty points having accepted two fixed penalty notice offences for exceeding statutory speed limit on a public road, the second offence having occurred some 5 weeks following my warning to him.'

15. The Registrar considered, therefore, that the Appellant could not fulfil the conditions set out in section 128(1)(e) of the Act in 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.
16. The Appellant was notified of the Registrar's decision on 24 November 2023.
17. An appeal against the decision of the Registrar was subsequently received in the office of the General Regulatory Chamber (GRC) of the First-tier Tribunal.

The Registrar's response to the first fixed penalty notice

18. In correspondence dated 1 June 2023, the Registrar, following notification from the DVLA of the Appellant's fixed penalty notice for exceeding the statutory speed limit on a public road on 12 February 2023, set out the following response to the Appellant:

'The Registrar has been informed that you have received a fixed penalty notice for exceeding statutory speed limit on a public road on the 12 February 2023 resulting in your driving licence being endorsed with 3 penalty points. I should remind you of your responsibility to notify the Registrar within 7 days of any conviction or acceptance of a fixed penalty, as you do not appear to have complied with your obligation in this instance.

This will not affect your registration as an Approved Driving Instructor, but I should advise you of the obligation which lies on every motorist, and particularly on a driving instructor, to show due regard for the motoring laws. You will appreciate that the

personal example of an instructor in this respect is just as important as his skill in giving driving instruction.

Although no further action will be taken on this occasion, I must point out that if it becomes necessary in the future to consider whether or not you are a 'fit and proper' person to have your name included in the register your record as a whole will be taken into account.'

Appellant's written representations to the Registrar

19. Following notification, on 27 October 2023, that the Registrar was considering removing the Appellant's name from the Register on the grounds that he could not be satisfied that the Appellant continued to fulfil the condition of being a 'fit and proper person', the Appellant made the following representations:

'I reported the incident the day I got the letter from the Police. I'm not sure why it took them so long to notify me. I had no idea I had been flagged as speeding although I had an idea I may have. I can check to see if I have the original letter they sent me which could be dated, but I can't be sure so I'll try and find it when I get home. The road I was on is a road I drive everyday for the last numeral 12 years. I've never spared along that road and I know it is a 40 mph section. On the day I was caught speeding, I had been involved in a road rage incident and trying to get away from my aggressor. I just didn't realise where I was. It's a genuine mistake. I paid my fine and have accepted the points. I've also asked for anyone with dashcam footage but I've heard nothing full stop the other person was on a motorbike and I'm sure he wasn't flagged for speeding because of having no registration on the front of his bike.'

20. An officer in the Registrar's office contacted the Appellant to indicate that they had been unable to locate the email which he had stated that he had submitted and they requested that the Appellant submitted the original email as evidence that the Registrar was notified of the fixed penalty notice.

21. The Appellant forwarded further email correspondence to the Registrar on 27 October 2023. He attached an email which he submitted had been sent to the Registrar on 14 August 2023. The email correspondence of 14 August 2023 was in the following terms:

'I am writing to inform you that i have been flagged speeding and will be receiving 3 points on my drivers licence.

Although i was driving the vehicle at the time, there were mitigating circumstances causing this and although this is no legal defense, there are vallid reasons.

On the day in question, i was involved in a serious road rage incident involving a motorbike rider. My car was being attacked, he was screaming abuse at me whilst riding at the side of my car. My car was being punched and kicked by this rider and i have no idea why he was so angry. The rider couldn't get past me on a dual carriageway as i was also overtaking slower vehicles in heavy traffic. The rider was getting more and more aggressive as we drove along and then started punching the back panels of my car. I have no dash cams installed as the car is new. I have asked on several forums if anyone saw the incident but have had no reply as yet. The section I was caught speeding was in fact a 40mph stretch of road, its between 2 roundabout and at the end of a 70mph stretch of carriageway but i had lost track of what part of the road i was driving, i was too busy trying to get away from this bike rider. I didn't see any speed cameras, or police officers, i know this is the time of the incident due to me recording it and posting on forums for information.

I have had my licence for 14 years, have driven hundreds of thousands of miles in my previous jobs as a lorry driver and have never been flagged for speeding. Im not a speeding driver. My ADI number is on the top of this email. I know this is no defence for speeding but i felt in danger and lost track of where i was.'

22. The substantive email of 27 October 2023 was in the following terms:

'Further to your email this morning, please find below my original email to the email address provided on Gov.uk. As you can see, i emailed you to inform you that i had been caught speeding and described the incident which led to that offence. The Incident happened at the beginning of July however, i did not receive notification until 14th August, when i then informed you.

I am not a habitual speeder, in fact, have never been caught speeding in all the time i have driven cars or Lorries.

The incident in February was a complete lapse of concentration on my part. I had just finished a stressful day of lessons and had switched off mentally for a minute or two and just followed the car in front of me. It turned out that that car was speeding and i was too.

This second incident was the result of me fleeing a bike rider who was attacking my car. I have the dent in the back of my car from where he punched it. This isn't a habit i have and never have had, this is why i know im a fit and proper person who is very capable of adhering to laws of the road and teaching responsible driving.

The notice of appeal

23. In his notice of appeal, the Appellant set out the following grounds of appeal:

I believe that this decision is unjust and too harsh considering the circumstances regarding my speeding fine.

As i stated in the email sent to the DVSA on the day i received the fine, I was involved in a serious road rage incident which involved my car being attacked by a motorcyclist while travelling along a Dual Carriageway. My car was damaged and if i had of stopped, i may have been attacked myself. I have no idea what agrevated the bike rider, I was driving to a high standard and had full control and knowledge of my surroundings, but he chose to attack me.

Unfortunately, my car was a matter of weeks old at the time and i hadnt had my CCTV fitted so havent got any recordings of the incident, however i did place a post on a local facebook page asking for any footage someone else might have had. This didn't lead to any footage unfortunately.

The road we were driving along changes from a National Speed limit road, into a 40mph zone for a short distance, I was unaware of the part of road i was in due to me watching the bike rider in order to not hit him or let him hit my car more. I drove over the speed limit for a short distance before i realised where i was and slowed down, unfortunately i had been targeted with a speedo gun during this time and i was speeding.

I have driven literally hundreds of thousands of miles in my driving career and until this year, had never been caught speeding. I have never been a driver in a rush or one to speed.

My first incident with speeding was completely my own fault. After a very stressful lesson i had just shut off mentally and had not taken notice of my speed for a split second. I have no excuse and no reason to appeal this fine and points, i held my hands up and took my punishment. This second case is completely diferent. I

was a victim of an attack and fleeing my attacker. I have spoken to a solicitor friend and i understand that this is no lawful reason to appeal a speeding fine, however, to lose my entire business and livelihood is quite frankly a disgrace. I feel im being punished for being a victim. Surely in 2023 there should be systems in place to safeguard victims, why am i now being punished further. If i ahdnt have been attacked in the first place, I would have known exactly wha part of road i was driving and would have been below the 40mph speed limit, as i have been for the last 11 years ive been driving that same road.

In this instance, i would have thought that a final warning or reprimand would have been more in order, not to take my licence, business and livelihood away.

Since this decision, i have been working part time, its affected my mental health. I feel victimised and betrayed by this registra. I cannot believe that this is actually happening to me. Iv been an ADI for 6 years now and my record in exemplilary. Until now, i know the DVSA and registra have never heard my name. Id undersand a little more if people were complaining about me or i was a habitual speeder but im not.

I cannot afford legal representation so i wouldn't have any help during a tribuneral. It would be pointless so im asking for a decision outright. Im hoping that the panel can see things from a victims point of view rather than the Registras.'

The remote oral hearing

24. At the oral hearing, Mr Russell appeared on behalf of the Registrar. He outlined the Registrar's case, summarising the background to the Registrar's decision to disallow the application and refuse to enter the Appellant's name onto the Register of Approved Driving Instructors. That background was set out in more detail in paragraphs 1 to 5 of the Statement of Case. Mr Russell also summarised the reasons for the Registrar's decision to remove the Appellant's name from the Register of Approved Driving Instructors. These were:

- (a) The Appellant's driving licence is currently endorsed with 6 penalty points having accepted a two fixed penalty notice offences for exceeding statutory speed limit on a public road. He failed to declare the first offence to me within 7 days.
- (b) The conditions for entry onto the Register extend beyond instructional ability alone and require that the applicant is

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 that should only be entrusted to those with high standards and a keen regard for road safety. In committing these offences, I do not believe that the Appellant has displayed the level of responsibility or commitment to improving road safety that I would expect to see from a professional ADI.

- (c) As an officer of the Secretary of State charged with compiling and maintaining the Register on his behalf, the Registrar did not consider that he could ignore 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.
- (d) It would be offensive to other ADIs, and persons trying to qualify as ADIs, who had been scrupulous in observing the law, for the Registrar to ignore these recent relevant offences.

25. The Appellant gave oral evidence and made submissions which were parallel to those set out in his written representations to the Registrar and in his notice of appeal.

REASONS

26. As was noted above, the evidential basis for the decision by the Registrar to remove the Appellant's name from the Register was that, at the date of the decision, the Appellant's driving licence was endorsed with six penalty points consequent on the Appellant having accepted two fixed penalty notices for exceeding the statutory speed limit on a public road on two occasions.

27. It is apposite to consider the fixed penalty notices in chronological order.

28. The first offence took place on 12 February 2023. The Appellant's description of the circumstances giving rise to the offence is set out in his written representations to the Registrar and in his notice of appeal. In short, the Appellant has stated that following a day of stressful lessons, he had a 'complete loss of concentration', had 'switched off mentally' and had simply followed the car in front of him which, apparently, was also

being driven at speed. He submitted that he had no excuses and no reason to appeal. He had accepted the punishment.

29. While we give credit to the Appellant for his acceptance that he was fault in this instance, we return to what we set out at paragraph 4 above that

'... it is expected that anyone who is to be an ADI will have standards of driving ... above that of an ordinary motorist. Teaching people of all ages to drive safely, carefully and competently is a professional vocation requiring a significant degree of responsibility. Such a demanding task should only be entrusted to those with high personal and professional standards and who themselves have demonstrated a keen regard for road safety and compliance with the law.'

30. In this regard, we have noted that the Appellant has, in his written representations, stated that he had switched off mentally for 'minute or two' and in his notice of appeal for 'a split second'. We have also observed that the Appellant was following a car which, apparently, was being driven at speed.

31. In our view, complete loss of concentration and switching off mentally leading to an increased speed, for anything up to a minute or two, are not reflective of standards of driving above that of the ordinary motorist. If the Appellant had had a stressful day, then there are actions which he could have taken before continuing to drive.

32. We also cannot ignore that the Appellant failed to notify the Registrar of his acceptance of the first penalty notice. As the Registrar has observed, this was 'in clear breach of the declaration he had made on his application to extend his period of registration submitted on 13 October 2022'. A professional ADI, understanding the regulatory requirements, and declarations made, should have been aware of and adhered to the requirement to make the declaration.

33. We have also observed that in correspondence to the Appellant dated 1 June 2023, the Registrar noted the failure to notify acceptance of the first fixed penalty notice and indicated that:

'Although no further action will be taken on this occasion, I must point out that if it becomes necessary in the future to consider whether or not you are a 'fit and proper' person to have your name included in the register your record as a whole will be taken into account.'

34. We turn to the second fixed penalty notice. This offence took place on 6 July 2023. The Appellant has set out in some detail the circumstances giving rise to exceeding the statutory speed limit on a public road, both in his written representations, his notice of appeal and in his oral evidence to us.
35. We begin with a general assessment of the Appellant's credibility. Having heard from and seen him, we found the manner in which he gave his evidence to be evasive and vague. He lacked direction and switched his account of what he submitted had happened to him, particularly in relation to the layout of the route which he was taking, the duration of the incident and the nature of the attack. His evidence, was, in our view, unresponsive to the substance of the incident and was unreliable. That unresponsiveness led us to have significant doubts as to whether the confrontation did occur in the described manner. We are of the view that while something may have occurred, his account of it is implausible.
36. We are unclear why the Appellant did not slow down to permit other drivers to pass and clear a distance between his car and the motorcycle. If the incident had occurred as the Appellant has described, the other drivers would have been alert to what was going on. His excess speed was detected by a police officer and while we accept that the layout of the route was such that it would have taken the Appellant some time to return to the police officer's location, it seems that such action would be warranted. The Appellant continued with his journey.
37. Following the incident the Appellant did not contact the police to report it. He submitted that he did place a post on Facebook asking for dashcam footage from other drivers. He states that he did not receive any response, and we note that he has not provided any further evidence to corroborate this.
38. Significantly, the Appellant did not seek to appeal against the speeding offence which would seem to have been an appropriate response and, instead, accepted the fixed penalty notice immediately. Further, when asked whether he could provide photographs of the damage which he submitted had been caused to his car, he replied that he could. He was invited to submit those photographs following the conclusion of the hearing but has failed to do so.
39. We have noted the Appellant's submissions concerning his career as a professional ADI, his view that the decision to remove his name from the Register is too severe, and the effect which the decision has had and will have on him. Nonetheless, we have determined that the Registrar's decision was correct, and that decision is upheld.

40. Accordingly, the appeal is REFUSED.

Kenneth Mullan
Judge of the Upper Tribunal
14 February 2025