Case Reference: D/2023/296
Neutral Citation Number: [2024] UKFTT 1024 (GRC)

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(TRANSPORT)

Heard by Cloud Video Platform
On: 11 September 2024

Decision given on: 13 Nov. 24

Before

JUDGE DAMIEN MCMAHON

Between

ABDUL MASUD

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:
For the Appellant: Ms. Jyoti Wood of counsel, instructed by Austin & Carnley, Solicitors.
For the Respondent: Ms. Claire Jackson.

Decision: The appeal is Dismissed. The Decision of the Respondent made by the Respondent on 5 June 2023 is confirmed.

REASONS

1. This appeal was listed for hearing on 11 September 2024 for oral hearing by CVP with the agreement of the parties. The Appellant attended and gave oral evidence through an interpreter. The Appellant and the interpreter confirmed that they

understood each other. Oral submissions were made by the Appellant's counsel and by the Respondent's representative.

2. The Appellant appealed against a decision of the Respondent dated 5 June 2023 to remove his name from the Register ('the Register') of Approved Driving Instructors ('ADIs'), pursuant to section 128(6) of the Road Traffic Act 1988 ('the Act') on the basis that he was not a fit and proper person to have his name remain on the Register due to him having committed a motoring offence on 23 March 2023, namely, a breach of legislative requirements ***concerning control of a motor vehicle, mobile telephones and so on***, for which he was offered, and accepted, a fixed penalty of an endorsement of 6 penalty points on his licence and a £200.00 fine.

3. The Appellant submitted an appeal on 3 July 2023, against the Respondent's said decision on the following grounds, in terms:

    - that he admitted the offence but only used his mobile telephone for a short period (estimated by him to be 10 seconds with the phone held to his ear, but use for 49 seconds in total);

    - that he notified the Respondent of the offence on 18/04/2023 – before his licence was endorsed [but this was in breach of his declaration on his application for an extension of his registration as an ADI by failing to notify the Respondent of the offence within 7 days]

    - that at the time of the offence he was instructing a pupil in slow-moving traffic;

    - that he used his mobile phone to call his wife as an emergency had arisen, namely, that essential medication for his mother-in-law was in his vehicle;

    - that, initially, but not later, he called his wife on the vehicle's hands-free facility but was unsure if he had connected;

    - that he had held a driving licence from 2008 with no fines or other sanctions previously imposed throughout that time;

    - that he had failed his Part 3 test on 7 occasions and had taken 9 years to become an ADI;

    - that being an ADI allowed him flexibility to work around his mother-in-law's health;

    - that if his name were removed from the ADI Register, his family would be affected financially;

    - that he very much regretted what had occurred.

4. The Appellant submitted a bundle of certificates evidencing training courses undertaken by him, together with a statement from the pupil he was apparently instructing at the time of the offence purporting to agree with the Appellant that he,

the Appellant, could make the said telephone call, that is, to commit the said motoring offence. The Appellant also submitted a bundle of written testimonials from pupils of his in the past; a character reference from his employer; a statement from a former trainer of the Appellant and a bundle of medical evidence concerning the health of his mother-in-law. While all of this evidence, and every other piece of evidence and submissions, both written and oral from, and on behalf of the parties, was considered by the Tribunal, it did not alter the Tribunal's decision to dismiss this appeal as it was not of sufficient persuasive value to do otherwise.

5. Of great, and crucial, significance to the determination of this appeal, the Appellant also submitted a copy of a letter dated 28/03/2023 from his then solicitors, Amicus Solicitors London, to the police concerning the Conditional Offer of a Fixed Penalty issued to the Appellant by the police in respect of the said offence. The contents of this letter had to have been written on the instructions of the Appellant. In the letter, the alleged commission of the offence was denied as having been an offence in law on the basis that the Appellant was not 'supervising' a pupil at the time; that the Appellant was not, in fact, using his mobile phone and that the police officer was mistaken. The Tribunal did not accept that there was any validity to those representations and represented an erroneous attempt by the Appellant, at that time, just over two months prior to the decision under appeal, and one month prior to the Appellant being invited by the Respondent to make representations concerning the intention of the Respondent to remove the Appellant's name from the ADI Register, to absolve himself from any responsibility for his actions. In any event, however, the Appellant ultimately accepted the fixed penalty, thereby accepting that he had committed the said offence.

6. The Appellant made representations on 04/05/2023 and on 02/06/2023. These were taken into account by the Respondent prior to the decision under appeal being made by it.

7. In his said representations, the Appellant confirmed that he had accepted the said fine and penalty points arising out of his commission of the said offence; that he was stressed by the situation and had a genuine reason for his action (that is, his commission of the said offence). He also stated that he had been trying to get evidence from his mobile phone provider concerning the time and duration of calls but had not yet received that evidence.

8. The Appellant also relied on two previous Decisions of the First-tier Tribunal (D/2018/7 and D/2019/421) to argue, in essence, that removal of his name from the ADI Register was not proportionate in the circumstances. However, neither of these decisions were binding on this Tribunal and, in any event, were capable, in some ways, at least, of being distinguished on the facts.

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'. This requires account to be taken of an applicant's character, behaviour and standards of conduct. This involves consideration of all material matters,

including convictions, and other relevant behaviour, 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. In oral submissions, the Appellant's representative, essentially, repeated the written submissions made by the Appellant. She noted that the Appellant had been an ADI since 2008 and had retained his registration in 2022; that he was working as an ADI since the date of commission of the said offence until now [as was his entitlement as the decision under appeal did not take effect until the determination of this appeal should the decision not be overturned]; that many supporting documents, such as character references, phone records and so on, had not been before the Respondent when the decision under appeal was made.

12. However, 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.

13. The Appellant's representative also submitted that it was accepted that, due to the nature of the offence committed, there were valid concerns, but that removal of the Appellant's name from the ADI Register would be disproportionate. She accepted that each case had to be decided on its own facts but, she submitted, the two previous decisions of the Tribunal relied upon by the Appellant were analogous to the facts in this appeal. She submitted that all of the circumstances had to examined and that the penalty imposed did not result in automatic removal of the Appellant's name from the ADI Register. She submitted that the facts in this case were unique and that the medical records evidenced the fact that the Appellant's mother-in-law was elderly and in poor health. She further submitted that the Appellant had only realised his mother-in-law's essential medication was in his vehicle while he was teaching and that his pupil agreed that the Appellant could make a short, urgent call but that the hands-free connection was of poor quality causing the Appellant to make a poor decision to put the phone to his ear, but that the traffic was slow-moving. It was submitted that the Appellant understood his decision was poor; that he panicked, was deeply remorseful and what occurred would not recur. It was submitted that the Appellant adored his job; that he was a diligent ADI; that he had no other qualifications and would not get another job offering equivalent pay and flexibility. Finally, it was submitted that the Appellant understood the standards expected of an ADI and that the Tribunal should find he remained a fit and proper person to have his name remain on the ADI Register.

14. In response to clarificatory questions from the Tribunal, the Appellant, through his interpreter, stated that his mother-in-law's medication was not always in his vehicle, but was there on 23/03/2023. He had collected the medication from the pharmacy that day but stated that he only realised he had not left the medication home before he commenced driving instruction that day, as he had forgotten to deliver it home. He stated that he decided to phone his wife (while instructing a pupil) as he thought she would be worried. He stated that his wife was angry at what had occurred. The

Appellant accepted he should have waited until the driving lesson being taught by him was completed before he called his wife and that, alternatively, he did not wait until he could park (even before the lesson he was teaching had finished) as there was nowhere to park and, in any event, the traffic was slow-moving.

15. The Appellant stated that he had not been happy with the contents of the said letter from his then solicitors, Amicus, to the police and denied he had given instructions to them to the effect of those contents.

16. However, of concern to the Tribunal, the Appellant went on to introduce a new element to his case, not mentioned in submissions by his counsel either and contradicting the Appellant's written evidence, namely, that his 'pupil' at the time was not, in fact, a pupil but a friend of his to whom he was not giving driving instruction. In further contradictory evidence, the Appellant immediately went on to say that his 'pupil' was not under instruction as he was a 'student' taking lessons from the Appellant for no payment and that he, the 'student' was driving the Appellant's vehicle at his, the 'student's', request as they were both going to the same place, namely, a test centre and the 'student' was under the Appellant's 'supervision', rather than being 'instructed in driving, but was, in fact, taking lessons from the Appellant. The Appellant stated he had made a mistake. The Tribunal decided that the Appellant's evidence was contradictory; lacked credibility and simply did not excuse his behaviour on this occasion. Further, if the new version of events offered by the Appellant in oral evidence, were correct, it would appear that the contents of the letter from Amicus, Solicitors, to the police were, in fact, as could be assumed, based on the Appellant's instructions to them, even though this had been disputed by him in his oral evidence. Further, the new version of events was such that there was no reason why the Appellant could not have withheld making his call until the vehicle was safely parked.

17. The Respondent, in its Response dated 25/09/2023, referred to the fact of the motoring offence committed by the Appellant, ultimately accepted by him, its nature and the penalty imposed; that an ADI was expected to have higher standards of driving and behaviour than those expected of an ordinary motorist; that driving instruction was a responsible and demanding task, something that was not shown by the Appellant's commission of the said offence; that there was a public duty to remove the Appellant's name from the ADI Register in the circumstances as not being a fit and proper person to have his name remain on the Register as the commission of the said offence could not be condoned, otherwise the Appellant's behaviour would, effectively, be sanctioned by the Respondent; that the consequences of the commission of an offence of this nature contributed to a significant number of road traffic casualties and that it was offensive to other ADIs and persons trying to qualify as ADIs, who had been scrupulous in observing the law, to ignore the motoring offence committed by the Appellant.

18. In oral submissions, the Respondent's representative submitted that the Appellant was not a fit and proper person to have his name remain on the ADI Register and should, therefore, have his name removed; that the commission of the offence and penalty imposed was accepted by the Appellant; that the Appellant, accordingly, had failed to demonstrate the level of commitment and responsibility expected of a

professional ADI and that the nature of the particular motoring offence in this case was of particular concern in the Respondent making its decision.

19. As a matter of law, the standing of the Respondent could be substantially diminished, and the public's confidence undermined, if it were known that a person whose name was included in the ADI Register when they had demonstrated behaviours or been convicted in relation to an offence, substantially material to the question of fitness. This can be in respect of behaviour pertaining to motoring matters and other matters of responsibility, trustworthiness and prudence; indeed, it would, indeed, be unfair to others who have been scrupulous in their behaviour, and in observing the law, if such matters were ignored or overlooked.

20. The judgment of the Court of Appeal in *Harris* v. *Registrar of Approved Driving Instructors* [2010] EWCA Civ 808 confirmed that -

> ***"..... 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 approval ..... the 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."***

21. In reaching my decision I have taken into account all of the evidence and submissions that I received, written and oral, and considered all of the circumstances relevant to this appeal.

22. The Tribunal must bear in mind the significant importance which attaches to the integrity of the Register. Being granted a further trainee licence is a public endorsement of a high standard of competence on the part of Approved Driving Instructors. 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 refused a further trainee licence potentially may have significant consequences for the Appellant.

23. In this case the Tribunal took into account that the Appellant had accepted having committed a significant motoring offence. The Tribunal was concerned about the Appellant's lack of care in meeting his responsibilities as a qualified ADI.

24. I particularly considered the question of whether it was proportionate to dismiss this appeal. On the balance of probabilities, I concluded that in view of the gravity of the particular offence, ultimately admitted by the Appellant, there being no overriding reason that he should have used his mobile phone, when he dud, while providing driving instruction, and his contradictory evidence that rather undermined his

expressions of regret and remorse, dictated that removal of the Appellant's name from the ADI Register was entirely proportionate in all the circumstances.

25. 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, I conclude that the Appellant, at the time of the decision, was not a fit and proper person to have his name remain on the ADI Register.

26. Accordingly, the appeal is dismissed.

Signed: ***Damien McMahon,***

Tribunal Judge **Date: 18 October 2024**