



Neutral citation number: [2024] UKFTT 00819 (GRC)

Case Reference: D/2023/216

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

**Determined at an oral hearing
on 21st August 2024**

Before

**HHJ DAVID DIXON
RICHARD FRY
MARTIN SMITH**

Between

SIMON WILLOUGHBY

Appellant

and

**THE REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Respondent

Decision: The appeal is allowed.

REASONS

Background to Appeal

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made on 21st April 2023 to remove his name from the Register.
2. The Registrar’s reasons for refusal, in summary, were that the Appellant had accrued penalty points for speeding on 19th November 2019, 25th November 2020 and 30th January 2023. The Registrar took the view the offending was serious and allowing him to remain on the Register would undermine confidence in it, so determined the Appellant must be removed.
3. The Appellant now appeals the Registrar’s decision.

Appeal to the Tribunal

4. The Appellant’s Notice of Appeal, dated 14th May 2023, indicates that the 2019 offence is no longer relevant (*we assume as it no longer appears on his licence*), but that matter and the November 2020 matter were before he was an ADI. He sets out the training and the like he received after that, and then explains that the final offence was whilst he was working for an unscrupulous employer, and under considerable pressure to deliver items within a timeframe.
5. The Respondent submitted a Response indicating that the Appellant was warned following the first matters of the need to apply the rules of the road and that a failure to abide by road safety laws would lead to a consideration of whether he was fit and proper.
6. The appeal bundle arrived with the Tribunal a year ago. There was no explanation provided for the delay since then.

Mode of Determination

7. The case was listed for oral hearing, and heard via the CVP system.

8. The Appellant was unrepresented. The Respondent was represented by Claire Jackson of the DVSA Appeals team.
9. The Tribunal considered a bundle consisting of 35 pages.

Evidence

10. Ms Jackson said the Respondent's position was as per the response.
11. The Appellant said all of the fines/points accrued whilst he was working. The first happened when he had a new job and he was following someone to get to a new location; he said he was travelling at 34mph in a 30 zone. The second one was whilst working for a food delivery company and whilst under pressure to deliver, he exceeded the limit. This was whilst he was driving a 7.5 tonne truck, and he believed he was travelling at 33mph in a 30 zone. The final one was whilst training to become a driver instructor. The same pressure to deliver within time scales was being applied in his non instructor job, and indeed employment sanctions were being imposed upon those that didn't meet time limits. The Appellant described how a mobile officer caught him doing 33mph in a 30 zone, as he was travelling down a hill. He hadn't sought to challenge the convictions as he was desperate to keep the jobs, the idea of Court was scary and he simply took responsibility for the offences as he was over the relevant limits.
12. He said as well as those matters he had had a speed awareness course, but that was over 10 years ago.
13. He described how as a result of his training to be an ADI, and in fact being a driving instructor, his driving had improved "three hundred percent," indicating he was a defensive driver and acutely aware of other's bad driving. He indicated the way he was then, is not the way he is now.
14. He indicated that he was still teaching, had a busy self employed business and was successful in terms of pass rates. He said he really enjoyed teaching and asked to continue
15. He said that he was the sole provider for his household as his wife was recently made redundant and had just had a serious operation. (*The Tribunal hopes she has a speedy recovery, as was indicated during the hearing.*) The Appellant said the loss of his registration would have serious financial consequences to him and his family.

The Law

16. Conditions for entry and retention on the Register require the Applicant to be and continue to be a "*fit and proper person*" to have his name on the Register of Approved Driving Instructors – see s. 125 (3) and s. 127 (3) (e) Road Traffic Act 1988¹.

¹ <http://www.legislation.gov.uk/ukpga/1988/52/part/V/crossheading/registration>

17. The Registrar may take the view that a person no longer meets this requirement where there has been a change in circumstances. The burden of showing that a person does not meet the statutory criteria rests with the Registrar.
18. In *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 808², the Court of Appeal described the “*fit and proper person*” condition thus:

“..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 ADI. This is why there are stringent disclosure requirements”.
19. 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 take a fresh decision on the evidence before it. The Tribunal must give such weight as is considered 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

20. The Tribunal considered carefully all the evidence and papers before it.
21. Here the Appellant has accrued 9 points on his licence. When he had 6, he was warned about the prospect if he obtained more, and then went on to commit a further speeding infraction resulting in 3 more points. The Registrar was understandably concerned about this and the Tribunal fully understands why it was felt at the time that a removal was required.
22. By the time of the Appeal being lodged the Appellant had 6 points. He now has 3. Over 16 months have passed since the Appeal was lodged and the Appellant has been allowed to continue with his instructing. There have been no further driving or character issues raised.
23. The Tribunal found this a very difficult decision. On the one hand the Appellant’s conduct was not becoming of an instructor, and had the Tribunal heard the case a year ago, it would probably have deemed the Appellant unfit. However, time had passed, the Appellant gave what the Tribunal felt was honest and thoughtful evidence of his previous conduct but also of his rehabilitation, and now full understanding of the risks

² <http://www.bailii.org/ew/cases/EWCA/Civ/2010/808.html>

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>.

that came from using cars on the roads. Whilst it could be said that the passage of time wasn't of the highest order, it had had an impact upon the Appellant.

24. In a very close run decision the Tribunal just came to the view, having had the benefit of hearing from the Appellant, that it would be wrong to remove the Appellant's registration. The Tribunal just came to the view that he was still fit and proper to remain on the Register, albeit this was largely due to passage of time and rehabilitation during that period. Having said that the Appellant should understand that this was a very close decision. The Tribunal through the Registrar would like a very clear warning given that any further motoring offences would likely lead to removal.
25. The Tribunal listened to the Appellant's account of the impact of this decision, but as the Tribunal made the decision on the basis of the Appellant's character generally it had little bearing.
26. The Appeal is allowed accordingly.

(Signed)

**HHJ David Dixon
Richard Fry
Martin Smith**

DATE: 21st August 24