



Neutral citation number:
[2024] UKFTT 00453 (GRC).

Case Reference: D/2024/19

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

**Determined at a panel paper hearing.
on 30th May 2024**

Before

**HHJ DAVID DIXON
DAVID RAWSTHORN
STUART JAMES**

Between

JONATHAN PETER DOWLES

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 6th December 2023 to remove his name from the Register.
2. The Registrar’s reasons for removal, in summary, were that the Appellant had accrued penalty points for two motoring offences, namely speeding on 22nd August 2020 and 19th August 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 7th July 2022, argues that the removal will have dire financial implications for him. He accepts that he was speeding indicating on the latter occasion he thought the limit was 40 not 30, and the relevant speed limiting signs were covered with overgrown hedgerow. He indicates he loves the “job” and pleads for mercy.
5. The Respondent failed to submit a Response. The Tribunal was somewhat surprised by this and more than a little concerned that basic steps in an important matter like this were “overlooked” by the Registrar. In this case the Tribunal felt able to consider the issues, in others a very different position could apply.

Mode of Determination

6. The case was listed for paper hearing and the Tribunal met via a video enabled hearing system to discuss the case. 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.
7. The Tribunal considered a bundle of evidence consisting of the decision letter and the notice of Appeal.

The Law

8. 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.
9. 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.
10. 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”.

11. 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

12. The Tribunal considered carefully all the papers before it.
13. Here the Appellant exceeded the speed limit in 2020 and was warned by the Registrar about his conduct. In 2023, he failed to heed that warning and was caught speeding again. The Tribunal noted that there was a gap of almost three years between the offending and notionally it was for a period of about 4 days that the Appellant had 6 points on his licence. (The Tribunal accepts the points remain for 4 years, but for all practical purposes 3 years is relevant.)
14. Whilst the Tribunal in no way wishes the Appellant to believe that his conduct was appropriate, the gap in offending, the slight overlap and the Appellant’s general character are

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

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>.

such that the Tribunal takes the view the Registrar's decision was a little harsh in these circumstances.

15. Further to that in these circumstances the financial impact upon the Appellant is a factor the Tribunal felt was appropriate to bear in mind in the overall proportionality of a decision to remove.
16. On balance the Tribunal felt that the appeal should be allowed, but the Appellant should be warned in the clearest possible terms that he was very close to losing his registration. Any further misconduct of any nature would likely result in his immediate removal from the Register.
17. This appeal is therefore allowed.

(Signed)

**HHJ David Dixon
David Rawsthorn
Stuart James**

DATE: 30th May 2024