Case Reference: D/2023/511

NCN: [2024] UKFTT 00740 (GRC)

First-tier Tribunal
General Regulatory Chamber
Transport

Heard by way of remote hearing using Cloud Video Platform

Heard on: 22 February 2024
Decision given on: 19 August 2024

Before

TRIBUNAL JUDGE KENNETH MULLAN
TRIBUNAL MEMBER MARTIN SMITH
TRIBUNAL MEMBER GARY ROANTREE

Between

ALI ADNAN
and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS
Respondent

Representation:
For the Appellant: Mr Docherty
For the Respondent: Miss Jackson

Decision: The appeal is DISMISSED

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 name to be retained 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), ('*Harris*') 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 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. 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 March 2023 and in the normal course of events his certificate would have expired on the last day of March 2027.

10. On 31 August 2023 the Registrar received a notification from the Driver and Vehicle Licensing Agency (DVLA) that the Appellant had been convicted of exceeding the speed limit on a motorway on 16 February 2023. The Registrar’s staff obtained a printout from the DVLA database which confirmed that the Appellant had been convicted of the relevant offence resulting in the endorsement of his licence with 5 penalty points and the imposition of a fine of £80.

11. In light of the relevant offence, the Registrar considered that the Appellant was not a fit and proper person to have his name retained in the Register. By way of email correspondence dated 31 August 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 considered that he had ceased to be a fit and proper person and, accordingly, to have his name retained in the Register. The Registrar invited the Appellant to make representations within 28 days which the Registrar submitted he would take into consideration before arriving at a decision.

12. The Registrar subsequently received email correspondence dated 22 September 2023 from the Appellant. We set out the contents of this email correspondence below.

13. 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 be removed from the Register. The Registrar indicated that as a newly qualified instructor, the Appellant should have been fully aware of the requirement to declare any offence within 7 days and, in addition, the dangers of excessive speed. 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.

14. The Appellant was notified of the Registrar's decision on 29 September 2023.

15. An appeal against the decision of the Registrar was subsequently received in the General Regulatory Chamber (GRC) of the First-tier Tribunal. We set out the Appellant's grounds of appeal below.

The Appellant's initial written representations to the Registrar

16. In his written representations to the Registrar, the Appellant set out the following:

> 'I would ask you take into account the following facts.
>
> I was driving a friends newly bought car on which he put my name as an insured driver on his vehicle named Land Rover Range Rover Sport on 20/08/2022.
>
> All of a sudden, the car exceeded the 50-mph speed and the management lights came on, which was a really shock for me. I tried to control the with the best of my knowledge which took some distance and the came under control afterwards.
>
> My friend got it checked from Range Rover garage and upon checking it diagnosed a technical fault which occurred due to the fault of a component.
>
> I came to know that it developed at that time when I was driving.
>
> That component was replaced by the garage following this incident
> documents attached.
>
> I am not aware of that I had to tell the registrar if less then 6 points come onto licence otherwise for sure I would have brought this to your knowledge.
>
> Before that incident I have never had any points or any other offence.

This is my only job and bread and butter for my family. Which includes my wife, 2 boys aged 14 and 8 years and one daughter aged 12 year old.

I would be grateful and much obliged if you allow me to stay on the register as it is only the means of earning to support my family.

Please do not hesitate to ask me if you require any further information.'

17. The Appellant attached two documents to his written representations.

The appellant's notice of appeal

18. In his notice of the appeal, the following submissions were made on behalf of the Appellant:

'The Appellant … wishes to appeal the decision of the Registrar intimated to him via a letter of
29th September 2023.

The Appellant is aggrieved in that he considers himself to be a fit and proper person so that his name ought to remain on the Register notwithstanding the convict ion at Warwick Court and his failure to intimate the matter to the Registrar. (The Appellant's) name was finally entered into the Register on or around 13th March 2023.

On or around 20th August 2022 (the Appellant) was detected driving vehicle …, a Range Rover, on the M40 Northbound Old Gated Road Warwick at a speed of 101 mph. The vehicle in question belonged to his friend, a Mr K, and (the Appellant) had assisted his friend in purchasing the vehicle earlier that day. (The Appellant) had arranged an insurance cover note for his own driving on the journey back to Glasgow. A copy is produced.

During the journey home to Glasgow and while (the Appellant) was driving, the vehicle began to overspeed and an engine management light on the vehicle dashboard lit. (The Appellant) maintains that he tried to slow the vehicle and was able to bring it back under full control shortly after the engine management light lit. Both (the Appellant) and his friend took the view that a vehicle fault had developed during the course of the journey in question.

On 3rd January 2023 a notice in terms of s 172 of the Road Traffic Act 1988 was issued to (the Appellant) after sundry procedure of a similar nature involving the registered keeper of the vehicle namely Mr K, who had supplied the authorities with (the Appellant's) details. A copy of the notice of 3rd January 2023 is produced.

(The Appellant) complied timeously with the notice. On or around 20th February 2023 (the Appellant) received a letter from Leamington Magistrates Court stating that he had been convicted of the offence and that the court was considering whether to disqualify him from driving. (The Appellant) sought legal advice. On or around 21st March 2023 (the Appellant) received a letter from Leamington Magistrates court indicating that a case management hearing had been fixed to call on 16th March 2023.

On 16th (March) 2023 (the Appellant) attended court with his solicitor, a Mr E, for a case management hearing. As (the Appellant) understood it a discussion took place between his solicitor and the court clerk and the matter called in court later in the day. (The Appellant) was advised, and information was given to him to the effect, that he should make investigations with a repairer garage in respect of the apparent vehicle fault which had been seen to in September 2022.

The case was continued to 8th August 2023

On 8th August 2023 Mr (the Appellant) attended court with Mr E once again. As (the Appellant) understands it a plea involving a submission in respect of potential special reasons or exceptional hardship was presented to the court by his solicitor on his behalf. The court imposed 5 penalty points on (the Appellant's) driving record and his recollection is that he was fined the sum of £80 in respect of the offence involved on that day.

In terms of the more specific det ails of the offence, (the Appellant's) position is that his speed was detected at that time when the vehicle had begun to overspeed. His position is that while it took only a very short time to bring the vehicle under control the speed detected, which he accepts, was reached only momentarily.

Notwithstanding (the Appellant's) own assessment of what took place during the journey in terms of the vehicle management light, a repairer garage M… Range Rover … in Glasgow, was

unable to confirm at the time repairs were effected that any fault to the vehicle management system would have contributed to the over speeding referred to. That said an electrical fault was identified and repairs were effected in 2022 all in terms of the invoice now produced.

(The Appellant) accepts that details of the ongoing proceedings at Warwick Court were not intimated to the Registrar. He also accepts that a further opportunity to intimate details of the matter was overlooked immediately after he successfully completed his last practical driving test which took place just a short while before his badge certificate was issued with effect from 13th March 2023. His position is that all focus in the Warwick Court was on the matter of the number of penalty points to be imposed. His further position as stated to the Registrar in correspondence dated 31" August 2023 is that he had thought that a requirement to intimate to the Registrar only arose in the event of the imposition of 6 points or more.

While (the Appellant) recollection is that the court was informed of his employment status and its nature at the time, his position is that he was not advised at any time to intimate the fact of the conviction to the Registrar. He accepts however that it was his responsibility alone to ensure that the intimation requirements were met given his status at the material time.

His position is that the requirement to intimate either the fact of the speeding conviction or the ongoing progress of the court process were simply overlooked circumstances where he did not fully understand the court process nor the requirement to intimate. He maintains that he has had no driving convictions at all in a period of 10 years to the 22nd August 2022. He maintains that in light of his inexperience with both the court process here, and the Approved Driving Instructor intimation requirements his omissions were not deliberate; they arose from an unfamiliarity with both regimes and against a background of a necessarily prolonged and distressing prosecution process at Warwick Court.

The Appellant's personal circumstances are as follows

(The Appellant) is 44 years of age and now resides in Glasgow with his family. His wife is a student teacher and their children are 15, 12 , and 8. The family have resided in Glasgow since February 2013 after having lived in Manchester for some time just prior. (The Appellant) was born in Pakistan and fled to the UK after his

father and his sister were murdered there for reasons to do with their religion.

When the family came to Glasgow a claim for asylum was made. That claim required to come to the attention of the Court of Session where his application at that time was challenged by the Home Office. From February 2013 until October 2019 Mr Adnan and his family were not allowed to work and required to survive on payments of £30 per person per week. During that period of time however he engaged with the Refugee Council in the UK and also became a member of the Asylum Seeker Alliance. In that work he engaged with other relevant organisations involved in the care of asylum seekers including human rights organisations and others to do with the homeless. He is able to produce a testimonial from the North East Glasgow Framework for Dialogue Group.

Once (the Appellant's) immigration status had been confirmed he set about taking lessons to become an approved driving instructor. The Covid pandemic set him back in his plans at that time and his training
proper which was successfully completed in March 2023 commenced in 2021. (The Appellant) is able to produce a testimonial from his trainer, Mr WA, a copy of which dated 23rd October 2023 is produced. (The Appellant) estimates that the overall cost of training and application to be entered on to the Register is of the order of £2500.

(The Appellant) has been able to work as an Approved Driving Instructor since March 2023 and he has the support of several of his students. He is in a position to produce testimonials from them.

His qualification and associated lawful ability to teach people how to drive is his only source of income.

The grounds of appeal are

1. That the Registrar has erred in concluding that (the Appellant) is not a fit and proper person so as to remain on the Register of Approved Driving Instructor where the entire circumstances of the conviction of 22nd August 2022 have not been taken into account.

2. That the Registrar has erred in concluding that Mr Adnan is not a fit and proper person so as to remain on the Register of Approved Driving Instructors where the entire circumstances of the omission to intimate the conviction of 22nd August 2022 or the progress of that prosecution process have not been taken into account

3. No reasonable Registrar when presented with the information about the conviction, and the failure to notify, would have concluded that the client was not fit and proper and that his name should be removed from the Register in all the circumstances.

19. As intimated, several documents were appended to the notice of appeal.

The student testimonials

20. On the day before the remote oral hearing, Mr Docherty forwarded email correspondence to the office of the GRC. Attached to the email were a number of student testimonials which we have considered.

The remote oral hearing

The case for the Registrar

21. At the remote oral hearing, Miss Jackson appeared on behalf of the Registrar. She outlined the Registrar's case, summarising the background to the Registrar's decision to remove the Appellant's name from the Register of Approved Driving Instructors. That background was set out in more detail in paragraphs 1 to 5 of the Statement of Case. Miss Jackson 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 **5** penalty points having been convicted of **exceeding the speed limit on a Motorway.** 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 and should only be entrusted to those with high standards and a keen regard for road safety. In committing this

offence, 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.

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 an officer of the Secretary of State charged with compiling and maintaining the register on his behalf, I do not consider that I can 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.
d) It would be offensive to other ADIs and persons trying to qualify as ADIs, who had been scrupulous in observing the law, for me to ignore this recent and relevant motoring offence.

The case for the Appellant

22. Mr Docherty's initial submissions concerned the adequacy of the reasons provided by the Registrar for his decision to remove the Appellant's name from the Register on the basis that he no longer satisfied the statutory test to be a fit and proper person.

23. Mr Docherty referred to the Registrar's email correspondence of 31 August 2023 setting out the Registrar's initial statement that he was considering removing the Appellant's name and inviting representations from the Appellant as to why he should not. Mr Docherty also referred to the Registrar's decision notice and to the Statement of Case. He submitted that analysis of that documentation revealed a paucity of reasons for the Registrar's decision. There was no substantive or proper analysis as to why the Appellant was not regarded as a fit and proper person. The relevant documents contained a number of generalised statements and it was evident that the decision was based solely on the fact of the conviction.

24. Mr Docherty referred to the decision in *Harris* and, in particular paragraph 35 where Richards LJ stated that he:

> '... could see no erroneous assumption that the convictions would automatically have led to the withdrawal of registration. On the contrary, there is a detailed, reasoned analysis of why the Registrar was entitled, in the light of the particular convictions and their non-disclosure, to refuse an extension of registration.'

25. Mr Docherty made detailed submissions on the applicability of two Scottish authorities. We set out those authorities below.

26. Mr Docherty asserted that there were ADIs on the Register who had endorsements of 6 points on their licence. He submitted that the Appellant had been treated differently and that there was no clear reason for the difference. He noted the report which the Appellant had received from the garage which had assessed the relevant motor vehicle, and which demonstrated that there was an issue. He noted the Appellant's personal circumstances and his commitment to his professional role. He observed that the Appellant had cooperated with the court process and had admitted that he was the person who had been driving. He had appropriate insurance cover. Mr Docherty noted the plethora of testimonials which had been received.

27. Mr Docherty took the Appellant through his oral evidence. This included the background to his decision to become and ADI and the entry of his name on the Register. The Appellant described his personal family background as set out in the notice of appeal and the fact that he was the sole earner in the family. The Appellant set out in some detail the background to the speeding offence. He also described the reasons why he had not declared the conviction to the Registrar. He asserted that this was an isolated incident and that he had no other driving convictions. He stated that he was committed to the profession and enjoyed driving instruction. He referred to the many testimonials which he had submitted.

Analysis

Cited jurisprudence

28. As was noted above, Mr Docherty cited two Scottish authorities in support of his submissions with respect to the adequacy of the reasoning provided by the Registrar.

29. In *Patrick Black v Midlothian Council* ([2016] SC EDIN 14, 2016 WL 00890518) ('*Black*'), the appellant appealed against the respondent's decision of 19 May 2015 to refuse to grant his application for the renewal of a taxi driver's licence.

30. The background was that the appellant applied for the renewal of his taxi driver's licence on 15 January 2015. The application was referred to the police in accordance with statutory procedure. By letter dated 20 February 2015, the chief constable confirmed that he wished to object to the renewal of the licence as he did not consider that the appellant was a fit and proper person to be the holder of a licence. In his letter, the chief constable referred to three convictions which the appellant had declared, two were of 'some considerable vintage' and which had not previously been an impediment to the appellant's being considered a fit and proper person to hold a licence and did play any part in the respondent's reasoning. The chief constable also referred to a more recent contravention of the Road Traffic Act 1988 section 3 (careless driving), dated 6 February 2015, where the appellant was fined £675 and his licence endorsed. He also referred to a pending case from 16 June 2014 being an alleged contravention of the Road Traffic Act 1988 section 41D(a) (using a mobile phone while driving).

31. The appellant was called to appear before the respondent's committee on 31 March 2015. At that hearing the appellant told the committee that he wished to prepare an appeal against his conviction for careless driving and the hearing was therefore postponed until 19 May 2015.

32. The hearing duly proceeded on 19 May 2015. The appellant represented himself. The chief constable's letter of 20 February was before the committee. The outcome of the hearing was that the committee refused the application on the grounds that the appellant was not a fit and proper person to be the holder of a licence.

33. The respondent was asked to provide a statement of reasons, which it did by letter dated 18 June 2015. Insofar as material, that letter was in the following terms:

'During the hearing:—

a. On behalf of the chief constable, the police inspector reiterated the terms of the report;

b. The [appellant] did not provide any evidence to the committee that he had in fact lodged an appeal against conviction;

c. The [appellant] endeavoured to explain the mitigating circumstances relating to an incident on 4 November 2014, which had resulted in a child being injured and which had led to him being convicted of careless driving on 6 February 2015, in respect of which he was fined £675 and had his ordinary driver's licence endorsed by three penalty points;

d. The [appellant] stated that he had pled guilty after being advised by his lawyer to accept a plea bargain, whereas he considered that he was not guilty of any offence;

e. The [appellant] described the circumstances of the incident – it was in the early morning, with traffic nose to tail, with a low sun. The child had struck the side of the taxi when the sign on the pedestrian crossing was on an amber light i.e. he said that he did not drive through a red light;

f. When asked to comment on the circumstances relating to provision of assistance, the [appellant] stated that the paramedics had left before the police arrived over 30 minutes after the incident; and 15–20 minutes later, the police had contacted the [appellant]; and, in relation to a question as to whether he should have stayed at the scene until the police arrived, he said that as the paramedics were away, he did not consider that that was needed and had left when the ambulance was getting ready to leave: he had radioed and did not receive an answer but had gone to the police station voluntarily;

g. When attention was drawn to the mention in the police report of the traffic light being at red, the [appellant] said that that was not

correct – the child was with others and the green man was not on at 8.20 am and the medics were told the full story when they arrived;

h. In response to questions from the members of the committee, the [appellant] explained that the incident involving driving whilst using a mobile phone on 16 June 2014 had preceded the incident on 4 November 2014;

i. The [appellant] stated that he had been a taxi driver on a full-time basis for a number of years without ever having any problems; and;

j. The appellant was given the opportunity to respond to any concerns expressed by members of the committee as described above.'

34. The decision and reasons for the committee's decision was in the following terms:

'The committee carefully considered all of the information before it, including the report by the chief constable and the statements that the [appellant] had made during the course of the hearing.

On division, the committee decided to refuse the application on the grounds that the [appellant] was not a fit and proper person to be the holder of the licence, as described in the attached letter, dated 22 May 2015.

The material considerations centred on the [appellant's] conviction for careless driving as described above and his responses to questions, the cumulative effect of which persuaded the majority of the members of the committee that they could not place their trust in the [appellant] and therefore did not consider the [appellant] was a fit and proper person to be the holder of the licence.'

35. In a section of his decision headed 'The law', the Sheriff noted the following:

'6. It is not necessary to discuss the provisions of the Civic Government (Scotland) Act 1982 in detail. In brief, schedule 1

makes provision for the general system of licensing which applies. In terms of paragraph 5(3) of the schedule, a licensing authority must refuse to renew a licence if, in their opinion, the applicant is not a fit and proper person to be the holder of a licence. There is a right of appeal but in terms of paragraph 18(7) the sheriff may uphold an appeal only if he considers that the licensing authority, in arriving at their decision – (a) erred in law; (b) based their decision on an incorrect material fact; (c) acted contrary to natural justice; or (d) exercised their discretion in an unreasonable manner. If an appeal is upheld, the sheriff may either remit the case back to the licensing authority for reconsideration, or reverse or modify the decision: it is common ground in the present appeal that should the appeal be upheld, the case should be remitted for reconsideration.

7. The appeal is presented on a mixture of the first and last of the grounds just mentioned, namely, that the respondent either erred in law or exercised their discretion in an unreasonable manner, or both. However, the appeal came to be focused on whether adequate reasons were given by the respondent for its decision. It is not in dispute between the parties that the reasons given must meet the test of adequacy set out in *Wordie Property Co Limited v Secretary of State for Scotland 1984 SLT 345* which, although a planning case, has been held to apply equally to licensing decisions: Mirza v City of Glasgow Licensing Board 1997 SC 450 and to decisions under the Civic Government (Scotland) Act : *Ritchie v Aberdeen City Council 2011 SC 570* . There was also no dispute that, in ascertaining what the reasons for the decision were, the court may not look beyond the reasons given by the decision-maker: Loosefoot Entertainment Limited v City of Glasgow District Licensing Board 1994 SCLR 584 per Sheriff GH Gordon QC at 588; but it is sufficient for a decision-maker to make clear to the parties the basis for their decision rather than to set out something comparable to a stated case (*ibid*).'

36. Following a consideration of the submissions made the parties, the Sheriff set out the following in a section headed 'Discussion':

'12. As was pointed out by Lord Justice Clerk Gill in Ritchie v Aberdeen City Council at paragraph 11, the duty of the decision-

maker in a case of this kind is, in the classic formulation of Lord President Emslie,

> "to give proper and adequate reasons for [the] decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it."

(Wordie Property Vo Limited v Secretary of State for Scotland PP 347, 348; cf Mirza v City of Glasgow Licensing Board , Lord

Justice Clerk Ross, page 457 C-D). Lord Gill went on to say:—

> "A consideration is material, in my opinion, if the decision maker decides that it is one that ought to be taken into account. The court may of course interfere if he perversely disregards a consideration that in the view of the court is manifestly material.
>
> The decision maker, having taken a particular consideration into account, may in the event decide that other considerations outweigh it. Such a consideration, being thus outweighed, is not a determining consideration; but it is material nonetheless because it has formed part of the decision making process. In fulfilling his duty to give proper and adequate reasons, the decision maker need not engage in an elaborate and detailed evaluation of each and every point that has arisen at the hearing, but a statement of reasons must identify what he decided to be the material considerations; must clearly and concisely set out his evaluation of them; and must set out the essence of the reasoning that has led him to his decision.
>
> The general principles governing the matter are well established: but in every case the validity of the decision complained of must turn on the wording of the statement of reasons."

Later in his judgment, he goes on to say, in the context of that case:

> "...the essential decision for the committee was to balance the objection based upon the nature and the seriousness of the conviction against the mitigatory factors...On that view of the matter, I think that the mitigatory factors were material considerations in the sense I have described."
>
> (Ritchie v Aberdeen City Council at pages 573, 574).

13. That encapsulation of the approach the decision-maker must take to setting out a statement of reasons states three things that the reasons must do, namely:

> (1) identify what were the material considerations;
>
> (2) clearly and concisely set out the decision-maker's evaluation of them; and
>
> (3) set out the essence of the decision-maker's reasoning, in other words what it was about his evaluation of the material considerations which led him to the decision which he reached,

which must all be done in a manner which is intelligible to the informed reader and to the court. Lord Gill's statement that a decision-maker need not engage in a detailed discussion and evaluation of each and every point that has arisen at the hearing echoes the decision in *Noble v City of Glasgow District Council 1995 SLT 1315* that a decision on an application need not canvass each piece of evidence on each assertion put to a licensing authority. The court in Noble also held that if an authority stated that it had had regard to the evidence and productions, it was not possible for the court to go behind such a statement unless something else made it clear that the authority had not had regard to such a statement. However, I do not take from Noble that it is enough for a decision-maker simply to state that he has had regard to all the material before it, if his statement of reasons does not otherwise comply with the three requirements set out in Ritchie. To put this another way, a statement of reasons which sets out all the material before the decision-maker and then states simply that the decision-maker has had regard to all of it in reaching a decision is neither necessary nor sufficient: not necessary, because the statement need not list all the material before the decision-maker; and not sufficient, because such an approach does not identify the

material considerations, nor contain an evaluation nor any reasoning. Thus, I do not accept the respondent's argument that the letter in the present case is sufficient simply because it narrates everything that was stated at the hearing and states that the committee carefully considered all of the information before it. More is required. I will now test the letter of 18 June 2015 against the three-stage approach in Ritchie.'

37. Having done so, the Sheriff arrived at the following reasoning:

'19. Since there is no evaluation of the material considerations, it is perhaps unsurprising that there is no explanation of how any evaluation led to the decision that the appellant was not a fit and proper person to hold a licence. To the extent that the committee say that it was the cumulative effect of the careless driving and the answers to questions which led to that conclusion, the reader can infer that each of those factors on its own would not have sufficed , but beyond that it is impossible to discern any coherent explanation of the reasoning. There is no explanation as to why those factors, together, had any bearing upon the committee's view that they could not place trust in the appellant. There is nothing in the description of the answers given – in so far as there is any description – which suggests any untrustworthiness (or, for that matter, as counsel for the appellant pointed out, any indication as to untrustworthiness in what respect). Further, completely absent from the reasoning is any reference to any balancing exercise having been carried out. To the extent that the reasoning is explained, it discloses that the committee did not carry out the exercise before it in the proper manner.

20. The net result of all of this is that neither the informed reader nor the court can learn from the statement of reasons why the committee reached the decision that it did. Reading the letter as a whole, it is not possible to determine why the committee considered trust could not be placed in the appellant and hence that he was not a fit and proper person. The material considerations were not sufficiently identified. There was no evaluation of material considerations, and the reasoning process was not explained. In addition the committee in substance fell into the same trap as the committee in Ritchie , by failing to recognise

that the mitigatory factors relied upon were material and by failing to carry out a balancing exercise of the type they were bound to do.

21. It follows that the decision cannot stand, either because (as expressed) it is unreasonable, or because it is simply wrong in law, because it fails to set out proper and adequate reasons.

22. I will therefore allow the appeal and remit the case to the committee for reconsideration.'

38. In *Steven Ritchie v Aberdeen Council* ([2011] CSIH 22, ('Ritchie') the Second Division of the Inner House of the Court of Session was considering an appeal against an interlocutor of Sheriff McLernan dated 19 October 2009 by which he refused an appeal by the appellant against a decision of the respondent's licensing committee to refuse to renew id taxi driver's licence.

39. The background facts were that the respondent granted the licence in September 2006. In September 2007 it renewed it for the period up to 30 September 2008. On 7 December 2007 the appellant was convicted of a breach of section 5(1)(a) of the Road Traffic Act 1988(the 1988 Act) and inter alia was disqualified from driving for one year. The appellant did not commit this offence in the course of his work as a taxi driver. After the conviction the appellant successfully completed a rehabilitation course. That entitled him to apply for early restoration of his driving licence. In August 2008 his licence was restored.

40. On 7 September 2008 the respondent returned his taxi driver's licence to him. The appellant thereupon applied for renewal of it. The Chief Constable submitted a letter of objection to the application based on the appellant's conviction.

41. On 26 November 2008 the licensing committee had a hearing on the application. The Chief Constable's Taxi Officer read out the letter of objection. The appellant was invited to address the committee. He said that he had successfully undertaken the rehabilitation course and had had his driving licence restored early. In reply to questions from the committee he said that he realised that this was a serious conviction; that he owned his own taxi and that this was his only conviction.

42. The committee's decision was in the following terms:

> 'The Committee was extremely concerned at the nature of the conviction. The applicant was applying to be a taxi driver, a position of trust and responsibility, where the general public would be relying on him to get them to their destination safely, responsibly and legally. As a professional driver the Committee considered he was under a more onerous duty than "domestic" drivers to ensure that his standards of driving and responsibility were maintained. Driving whilst under the influence of alcohol put other road users at risk and was an offence that the Committee viewed very seriously.
>
> The Committee has responsibility to the citizens of Aberdeen to ensure that any person it gives a licence to is a fit and proper person to hold that licence and that the general public can rely on the fact that a licence has been granted as a guarantee that the licence holder is responsible and reliable. The Committee was of the opinion that the applicant could not be relied on to be a responsible taxi driver if he was prepared to drive whilst under the influence of alcohol.
>
> For these reasons the Committee considered that the applicant was not a fit and proper person to be the holder of a taxi driver's licence and refused the application.'

43. An appeal to the Sheriff was refused.

44. The relevant statutory provisions were as follows:

> 'Schedule 1 to the Civic Government (Scotland) Act 1982 provides inter alia that "a licensing authority shall refuse an application to grant or renew a licence if, in their opinion - (a) the applicant ... is ... (ii) not a fit and proper person to be a holder of the licence" (para 5(3)). The Schedule entitles an applicant to appeal to the sheriff against a refusal (para 18(1)). The sheriff may sustain such an appeal only if he considers that the licensing authority in arriving at its decision (a) erred in law;(b) based its decision on any incorrect material fact; (c) acted contrary to natural justice or (d) exercised its discretion in an unreasonable manner (para

18(7)).There is an appeal from a decision of the sheriff to this court on a point of law(para 18(12)).'

45. On further appeal, the conclusions of Lord Mackay of Drummond were as follows:

'[10] This appeal was presented on narrower grounds than those put before the sheriff. Both counsel treated the appeal as involving straightforward questions as to the reasonableness and the adequacy of the committee's stated reasons.

[11] In the now-classic formulation of Lord President Emslie, the duty of the decision-maker in a case of this kind is

> "to give proper and adequate reasons for [the] decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it" (Wordie Property Co Ltd v Secretary of State for Scotland, supra, at pp 347-348; cf Mirza v City of Glasgow Licensing Board, supra, LordJustice Clerk Ross at p1043G-H).

A consideration is material, in my opinion, if the decision-maker decides that it is one that ought to be taken into account. The court may of course interfere if he perversely disregards a consideration that in the view of the court is manifestly material.

[12] The decision-maker, having taken a particular consideration into account, may in the event decide that other considerations outweigh it. Such a consideration, being thus outweighed, is not a determining consideration; but it is material nonetheless because it has formed part of the decision-making process. In fulfilling his duty to give proper and adequate reasons, the decision-maker need not engage in an elaborate and detailed evaluation of each and every point that has arisen at the hearing. But his statement of reasons must identify what he decided to be the material considerations; must clearly and concisely set out his evaluation of them; and must set out the essence of the reasoning that has led him to his decision.

[13] The general principles governing the matter are well established; but in every case the validity of the decision complained of must turn on the wording of the statement of reasons.

[14] The narrative of the hearing that I have given suggests to me that the essential decision for the committee was to balance the objection based on the nature and the seriousness of the conviction against the mitigatory factors, some of which were elicited by the committee's own questions. On that view of the matter, I think that the mitigatory factors were material considerations in the sense that I have described.

[15] In this case there are two interpretations of the committee's reasons, on either of which they are unsound. The first is that the committee regarded itself as having to carry out a balancing exercise such as I have described. If that interpretation is right, the statement of reasons fails, in my opinion, to specify how the committee carried out its evaluation of the competing considerations and in particular why it decided that the mitigatory factors were outweighed by the conviction. The decision therefore fails to set out proper and adequate reasons and cannot stand.

[16] The other interpretation of the decision which, like the sheriff, I prefer, is that the committee considered that the conviction was of such a nature that it was a conclusive reason for refusal, regardless of any mitigatory factors that might exist. On that interpretation, I consider that the committee's approach was misguided. There could be reasons, relating perhaps to the date of the offence or to the circumstances in which it was committed, that might justify the grant or renewal of a licence notwithstanding a conviction of this kind. Simply to decide that any conviction is per se a conclusive ground for refusal in all cases is in my opinion unreasonable. On that interpretation of the decision I consider that it is invalid.'

The powers of the First-tier Tribunal ('the Tribunal') in determining an appeal in this jurisdiction

46. As against, Mr Docherty's cited authorities, which concerning a different regulatory regime, we turn to the powers of the First-tier Tribunal in determining an appeal.

47. The powers of the Tribunal in determining this appeal are set out in section 131 of the 1988 Act. Section 131(1) to (4) provides:

> ‘131. Appeals.
>
> (1) A person who is aggrieved by a decision of the Registrar —
>
> (a) to refuse an application for the entry of his name in the register, or
> (b) to refuse an application for the retention of his name in the register, or
> (c) to remove his name from the register,
>
> may appeal to the First-tier Tribunal.
>
> (2) A person who is aggrieved by a decision of the Registrar —
>
> (a) to refuse an application for the grant of a licence under this Part of this Act, or
> (b) to revoke such a licence,
>
> may appeal to the First-tier Tribunal.
>
> (3) On the appeal the First-tier Tribunal may make such order—
>
> (a) for the grant or refusal of the application or,
> (b) for the removal or the retention of the name in the register, or the revocation or continuation of the licence,
>
> (as the case may be) as it thinks fit.’

48. In summary, the Tribunal may make such order as it thinks fit.

49. When making its decision, the Tribunal stands in the shoes of the Registrar and takes a fresh decision on the evidence available to it, giving appropriate weight to the Registrar’s decision as the person tasked by Parliament with making such decisions. In *R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* ([2011] EWCA Civ 31) the issue was the powers of a Magistrates' Court on an appeal from a decision of a licensing authority to review a licence for the sale and supply of alcohol and for the provision of entertainment and late night refreshment. Toulson LJ said the following at paragraphs 39 to 52:

’39. Since Mr Glen accepted (in our view rightly) that the decision of the licensing authority was a relevant matter for the district judge to take into consideration, whether or not the decision is classified as "policy based", the issues are quite narrow. They are:

1. How much weight was the district judge entitled to give to the decision of the licensing authority?
2. More particularly, was he right to hold that he should only allow the appeal if satisfied that the decision of the licensing authority was wrong?
3. Was the district judge's ruling compliant with article 6?

40. We do not consider that it is possible to give a formulaic answer to the first question because it may depend on a variety of factors - the nature of the issue, the nature and quality of the reasons given by the licensing authority and the nature and quality of the evidence on the appeal.

41. As Mr Matthias rightly submitted, the licensing function of a licensing authority is an administrative function. By contrast, the function of the district judge is a judicial function. The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires. (See the judgment of Lord Hoffmann in *Alconbury* at para 74.)

42. Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or

tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

43. The statutory duty of the licensing authority to give reasons for its decision serves a number of purposes. It informs the public, who can make their views known to their elected representatives if they do not like the licensing sub-committee's approach. It enables a party aggrieved by the decision to know why it has lost and to consider the prospects of a successful appeal. If an appeal is brought, it enables the magistrates' court to know the reasons which led to the decision. The fuller and clearer the reasons, the more force they are likely to carry.

44. The evidence called on the appeal may, or may not, throw a very different light on matters. Someone whose representations were accepted by the licensing authority may be totally discredited as a result of cross-examination. By contrast, in the present case the district judge heard a mass of evidence over four days, as a result of which he reached essentially the same factual conclusions as the licensing authority had reached after five hours.

45. Given all the variables, the proper conclusion to the first question can only be stated in very general terms. It is right in all cases that the magistrates' court should pay careful attention to the reasons given by the licensing authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which the magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal.

46. As to the second question, we agree with the way in which Burton J dealt with the matter in paragraphs 43-45 of his judgment.

47. We do not accept Mr Glen's submission that the statement of Lord Goddard in *Stepney Borough Council v Joffe*, applied by Edmund Davies LJ in *Sagnata Investments Limited v Norwich Corporation* is applicable only in a case where the original decision was based on "policy considerations". We doubt whether such a distinction would be practicable, because it involves the unreal assumption that all decisions can be put in one of two boxes, one marked policy and the other not. Furthermore, *Stepney Borough Council v Joffe* was not itself a case where the original decision was based on "policy considerations". In that case three street traders had their licences revoked by the London County Council after they were convicted of selling goods at prices exceeding the maximum fixed by statutory regulations. On appeal the magistrate decided that they were still fit to hold the licences. The county council unsuccessfully argued before the Divisional Court that the magistrate's jurisdiction was limited to considering whether or not there was any material on which the council could reasonably have arrived at its decisions to revoke the licences. The court held that the magistrate's power was not limited to reviewing the decision on the ground of an error of law, but that he was entitled to review also the merits. It was in that context that Lord Goddard went on to say that the magistrate should, however, pay great attention to the decision of the elected local authority and should only reverse it if he was satisfied that it was wrong.

48. It is normal for an appellant to have the responsibility of persuading the court that it should reverse the order under appeal, and the Magistrates Courts Rules envisage that this is so in the case of statutory appeals to magistrates' courts from decisions of local authorities. We see no indication that Parliament intended to create an exception in the case of appeals under the Licensing Act.

49. We are also impressed by Mr Matthias's point that in a case such as this, where the licensing sub-committee has exercised what amounts to a statutory discretion to attach conditions to the licence, it makes good sense that the licensee should have to persuade the magistrates' court that the sub-committee

should not have exercised its discretion in the way that it did rather than that the magistrates' court should be required to exercise the discretion afresh on the hearing of the appeal.

50. As to article 6, we accept the propositions advanced by Mr Matthias and we agree that the form of appeal provided by s182 and schedule 5 of the Act amply satisfies the requirements of article 6.

51. Although the point is academic in the present case, we doubt the correctness of part of the district judge's ruling where he said:

> "I am not concerned with the way in which the licensing sub-committee approached their decision or the process by which it was made. The correct appeal against such issues lies by way of judicial review."

52. Judicial review may be a proper way of mounting a challenge to a decision of the licensing authority on a point of law, but it does not follow that it is the only way. There is no such express limitation in the Act, and the power given to the magistrates' court under s181(2) to "remit the case to the licensing authority to dispose of it in accordance with the direction of the court" is a natural remedy in the case of an error of law by the authority. We note also that the guidance issued by the government under s182 and laid before Parliament on 28 June 2007 states in para 12.6:

> "The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both."

However, this point was not the subject of any argument before us.'

50. The decision in *Hope and Glory* was considered by the Supreme Court in *Hesham Ali (Iraq) v Secretary of State for the Home Department* ([2016] UKSC 60). At paragraph 45, Lord Reed stated the following:

'45. It may be helpful to say more about this point. Where an appellate court or tribunal has to reach its own decision, after hearing evidence, it does not, in general, simply start afresh and disregard the decision under appeal. That was made clear in Sagnata Investments Ltd v Norwich Corpn [1971] 2 QB 614, concerned with an appeal to quarter sessions against a licensing decision taken by a local authority. In a more recent licensing case, *R (Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] PTSR 868, para 45, Toulson LJ put the matter in this way:

> "It is right in all cases that the magistrates' court should pay careful attention to the reasons given by the licensing authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal."

51. The burden of proof in satisfying the Tribunal that the Registrar's decision was wrong rests with the Appellant.

Our conclusions on our jurisdiction and adequacy of reasons

52. We have set out in some detail above a description of the proper role and function of the First-tier Tribunal, in considering an appeal again a decision of the Registrar. Section 131(3) of the 1988 Act permits the First-tier Tribunal to make such order as it thinks fit. More significantly, the jurisprudence cited above, confirms that when making its decision, the Tribunal stands in the shoes of the Registrar and **takes a fresh decision on the evidence available to it,** giving appropriate weight to the **Registrar's decision** as the person tasked by Parliament with making such decisions.

53. We acknowledge that the reasons which have been set out in the Registrar's Statement of Case are brief and are in a standard or template form. Nonetheless, the basis for the Registrar's decision is clear and the Appellant knew the basis on which the decision had been made.

53. Even if we were to accept Mr Docherty's arguments, the suggested failures, and the assertion that they go to inadequacy of reasoning, they have been rectified by the further appeal to the First-tier Tribunal. The First-tier Tribunal, in line with its proper role and function, has stood in the shoes of the Registrar, but, unlike the Registrar, has had access to additional evidence, has heard from and seen the Appellant and has had the benefit of detailed argument from Mr Docherty. Our fresh decision has been based on all of that. In our view, the right of appeal to an independent First-tier Tribunal, hearing the matter afresh with the advantage of further evidence and legal argument, rectifies any suggested error based on adequacy of reasons.

What is our substantive decision?

54. We begin with the Appellant's own evidence, as set out in his written representations to the Registrar, his notice of appeal and orally before us. Having heard from and seen him, we are of the view that the account of the circumstances giving rise to the conviction are highly implausible. We simply do not accept, on the standard of proof which we are obliged to apply, which is the balance of probabilities, the Appellant's assertion that the excess speed, which founded the conviction, was resultant on a sudden mechanical fault which then rectified itself and remains undetected,

55. The assessment of credibility is a matter for the tribunal. *In R3-01(IB)(T)*, a Tribunal of Social Security Commissioners in Northern Ireland stated, at paragraph 22:

> 'We do not consider that there is any universal obligation on a Tribunal to explain its assessment of credibility. We disagree with CSIB/459/97 in that respect. There may of course be occasions when this is necessary but it is not an absolute rule that this must always be done. If a Tribunal makes clear that it does not believe a claimant's evidence or that it considers him to be exaggerating this will usually be sufficient. The Tribunal is not required to give reasons for its reasons. There may be situations when a further explanation will be required but the only standard is that the reasons should explain the decision. It will, however, normally be a sufficient explanation for rejecting an item of evidence, including evidence of a party to an appeal, to say that the witness is not believed or is exaggerating.'

56. This reasoning was confirmed in *CIS/4022/2007*. After analysing a series of authorities on the issue of the assessment of credibility, including *R3-01(IB)(T)*, the Deputy Commissioner (as he then was) summarised, at paragraph 52, as follows:

> 'In my assessment the fundamental principles to be derived from these cases and to be applied by tribunals where credibility is in issue may be summarised as follows: (1) there is no formal requirement that a claimant's evidence be corroborated – but, although it is not a prerequisite, corroborative evidence may well reinforce the claimant's evidence; (2) equally, there is no obligation on a tribunal simply to accept a claimant's evidence as credible; (3) the decision on credibility is a decision for the tribunal in the exercise of its judgment, weighing and taking into account all relevant considerations (e.g. the person's reliability, the internal consistency of their account, its consistency with other evidence, its inherent plausibility, etc, whilst bearing in mind that the bare-faced liar may appear wholly consistent and the truthful witness's account may have gaps and discrepancies, not least due to forgetfulness or mental health problems); (4) subject to the requirements of natural justice, there is no obligation on a tribunal to put a finding as to credibility to a party for comment before reaching a decision; (5) having arrived at its decision, there is no universal obligation on tribunals to explain assessments of credibility in every instance; (6) there is, however, an obligation on a tribunal to give adequate reasons for its decision, which may, depending on the circumstances, include a brief explanation as to why a particular piece of evidence has not been accepted. As the Northern Ireland Tribunal of Commissioners explained in R3-01 (IB)(T), ultimately "the only rule is that the reasons for the decision must make the decision comprehensible to a reasonable person reading it".

57. The Appellant has obtained a receipt from a garage which carried out an assessment of the vehicle which the Appellant was driving at the time of the conviction and a copy of a 'Diagnosis DTC report'. He submits this evidence in support of his submission that there was a malfunction when he was driving the vehicle. It is clear that there is nothing definitive in the receipt for parts and labour or the DTC report which proves that there was a malfunction or fault

which led to the vehicle reaching a significant excess speed which the Appellant could not control.

58. The Appellant was under a duty to notify the Registrar of the convictions for exceeding the statutory speed limit on a public road with seven days of that conviction. It is clear that the Appellant did not comply with that requirement. It is also accepted on his behalf that he had a further opportunity to notify the Registrar after he had successfully completed his last practical driving test and just before his name was entered in the Register. His stated reason for the failure to declare was that he had been caught up in the court proceedings and he had thought that a requirement to declare an endorsement of a driving licence with penalty points only arose in the event of 6 points or more.

59. The failures to declare the conviction demonstrate, in our view, a somewhat careless attitude towards his own professional duties. We add that the requirement to notify both motoring and non-motoring convictions is evident from all of the documentation issued by the office of the Registrar, including on application forms for initial and renewal of registration. It is the Appellant's responsibility to notify the Registrar. It is equally obvious that a failure by an ADI to declare road traffic offences to the Registrar, contrary to a professional duty, is critical. In this case, the Appellant was a new registrant and, as such, should have been aware of the regulatory requirements.

60. It is self-evident that that the endorsement of a driving licence with penalty points for the offence of exceeding statutory speed limits on a public road, and at the excess speed at which the vehicle was being driven represents a serious breach of the road traffic laws. We have noted the Registrar's submission concerning the contribution which excessive speed has made to deaths and serious injuries on the roads.

61. We have observed in paragraph 5 above that it is expected that anyone who is to be an ADI will have standards of driving and behaviour above that of an ordinary motorist. The demanding task of teaching people of all ages to drive safely, carefully and competently is a professional vocation requiring a significant degree of responsibility which 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.

62. We are also somewhat troubled that the Appellant has submitted that the endorsements of his licence was the only penalty which he had received and that, otherwise, he had a clean criminal record and no adverse encounters with the Registrar. There are many drivers, both in the professional driving industry and without, who go through a lifetime of driving without incurring any road traffic penalties. As the Registrar has observed, 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 the relevant motoring offences.

63. The Appellant is an individual who has committed himself to a professional driving career. Registration as a professional ADI carries with it significant professional responsibilities. The Appellant's offence of exceeding the statutory speed limit on a public road represents a failure by the Appellant to demonstrate the level of responsibility or commitment to maintaining and improving road safety that one would expect to see from a professional ADI.

64. The Appellant has placed great emphasis on his competence as a professional ADI, as represented by the many student testimonials which he has submitted. In our view the Appellant is failing to comprehend the meaning of the term 'fit and proper person' in the context of the relevant legislation. That context was set out above in the case of Harris v. Registrar of Approved Driving Instructors (2010 EWCA Civ 808). We repeat what 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 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. That is why there are stringent disclosure requirements."

65. The emphasis here is our own. Conditions for entry or retention extend beyond technical instructional ability alone and require satisfaction of the 'fit and proper person' test.

66. It has been submitted on behalf of the Appellant that there are other drivers with greater endorsements of their driving licences, who are permitted to retain these. He has not provided anything to substantiate this claim and, in any event, each case is taken on its individual circumstances.

67. We have considered the Appellant's admission that he was the driver of the vehicle and that he cooperated with the court process. We have also noted his account of his personal circumstances.

68. Finally, the Appellant has made submissions on the impact, particularly financial, which removal from the Register will have on him and his family. If that is a consequence of the dismissal of his appeal, then that is unfortunate.

Our substantive decision

69. The appeal is dismissed and the Registrar's decision to remove the Appellant's name from the Register is confirmed.

Kenneth Mullan
Judge of the Upper Tribunal
15 August 2024