



Neutral citation number: [2024] UKFTT 001089 (GRC)

Case Reference: FT/D/2024/397

First-tier Tribunal
General Regulatory Chamber
Transport

Heard by: Cloud Video Platform / Heard at:
Heard on: 29 November 2024
Decision given on: 11 December 2024

Before

JUDGE HAZEL OLIVER
JUDGE JONATHAN SCHERBEL-BALL

Between

ALEXANDER JAMES WHITE

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Darren Russell

Decision: The appeal is Dismissed. The Registrar's decision of 2 April 2024 is upheld.

REASONS

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors ("the Registrar") made on 2 April 2024 to remove the Appellant's name from the Register of Approved Driving Instructors (the "Register") on the grounds that the Appellant had ceased to be a fit and proper person to be an Approved Driving Instructor ("ADI"). This was based on a criminal conviction for production of cannabis.

2. The proceedings were held by video (CVP). All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

The Appeal

3. The Appellant's Notice of Appeal dated 29 April 2024 says that this decision was made without thorough consideration. He admits to having pleaded guilty to the offence of growing cannabis. He says that the Registrar's decisions appear to have been made without taking into account his representations or mitigating circumstances.

4. The Registrar's Statement of Case dated 22 October 2024 resists the appeal. The Registrar says:

- a. The Appellant has been convicted of the offence of cultivating a class B controlled substance and is awaiting sentence. The conditions for entry onto the register extend beyond instructional ability and require that the applicant is a fit and proper person, and teaching (generally) young people to drive as a profession is a responsible and demanding task which should only be entrusted to those with high standards.
- b. Registration represents official approval, which extends to a person's character, behaviour and standard of conduct. The good name of the register would be tarnished and the public's confidence undermined if it was generally known the appellant's name was to be retained in the register.
- c. It would be offensive to other ADIs, and persons trying to qualify as ADIs, to ignore this conduct.

The law

5. 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 – see sections 125(3) and 127(3)(e) of the Road Traffic Act 1988 (the "Act").

6. The Registrar can remove a person's name from the Register if they have ceased to be a fit and proper person to have their name on the Register (section 125(2)(e) of the Act). The Registrar may take the view that a person no longer meets this requirement where there has been a change in circumstances. The Registrar has the burden of showing that a person does not meet the statutory requirement to be a fit and proper person, and the standard of proof is the balance of probabilities.

7. The powers of the Tribunal in determining this appeal are set out in section 131 of the Act. The Tribunal may make such order as it thinks fit (section 131(3)). 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 accordance with **R. (Hope and Glory Public House Ltd) v City of Westminster Magistrates Court & Ors** [2011] EWCA Civ 31).

8. In **Harris v Registrar of Approved Driving Instructors** [2010] EWCA Civ 808, the Court of Appeal described the "fit and proper person" condition as follows: "*..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...It seems to me that 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.*" (paragraph 30).

9. 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 allowed to remain on the Register when they had demonstrated behaviours substantially material to the question of fitness. This includes behaviour relating to the commission of criminal offences.

The facts

10. We have considered a bundle of evidence containing 25 numbered pages. The Appellant did not file any additional evidence. We heard evidence and submissions from the Appellant, and submissions from the Registrar.

11. On 10 May 2023 the DVSA received a copy of the Appellant's criminal records check as part of his application to renew his registration. This contained information relating to an arrest on suspicion of cultivating a class B controlled substance, and his release on bail. The check says he was arrested after 64 plants and 9 bags of plant material, all believed to be cannabis, were found in rooms at his address. The Appellant was allowed to renew his registration after submitting representations but was requested to keep the Registrar informed of any developments.

12. In an email dated 4 March 2024 the Appellant told the Registrar that he had been convicted and was awaiting sentencing. On the same day, the Appellant was invited to make representations as the Registrar was considering removing his name from the Register because of the conviction. The Appellant made representations on 28 March 2024. The Registrar sent his decision on 2 April 2024.

13. The Appellant admits that he was growing cannabis, and that on 29 February 2024 he pleaded guilty to the charge of being concerned in production of a controlled drug of Class B – cannabis. The date of the actual offence was 22 October 2022. The Appellant confirmed at the hearing that he had been growing 64 plants, but stated that they were juvenile and had not yet produced any yield. His written representations to the Registrar had said that he had developed a habit of cannabis use during the pandemic in 2020/2021 as he felt it alleviated depression, and he had attempted to grow some himself in 2022 as he was spending too much money on buying it and did not like the scene involved with obtaining it. At the hearing, the Appellant said he would not use cannabis during the daytime before lessons.

14. The Appellant was sentenced on 23 August 2024. He explained at the hearing that his sentence was 130 hours of community service and a monetary penalty. He says that he was deemed to be a low-risk individual and so eligible for a placement in a charity shop. The Appellant also explained that the prosecutor had suggested that there may have been an element of commercial supply in the cultivation, but this was not ultimately resolved or determined at court.

15. The Appellant has remained on the Register and continued to teach pupils pending the outcome of this appeal, although he says that he has recently stopped taking pupils in case his appeal is not successful, as he does not wish to be unable to continue to teach them through to their tests. We accept his evidence that he has never been convicted of another criminal offence, he has no driving convictions, and he has taught for 12 years without any complaints.

Conclusions

16. The Appellant has clearly done something that is relevant to whether he is a fit and proper person to remain on the Register. He has been convicted and sentenced for a criminal offence.

17. The Registrar's position is that he cannot ignore a conviction for such a serious offence, and there are also concerns that the Appellant was using an illegal substance while he was on the Register. The Appellant was not suspended from the Register pending the outcome of this appeal because he was not of immediate high risk to the public. However, the Registrar maintains that the Appellant is not currently a fit and proper person to be on the Register. The Appellant might be able to reapply in the future, but a longer period of time would be needed to show that he was suitable to be on the Register despite this criminal offence.

18. The Appellant argues that the Registrar did not consider his representations and mitigation sufficiently. He says that it took 24 days for there to be an initial decision that he could remain on the Register after he had informed them about his arrest. In contrast, after conviction he sent his written representations to the Registrar on the Thursday before a bank holiday, and received the decision at 12.05pm on the following Tuesday. He feels that this was not sufficient time to consider the decision. We do not agree. The Registrar's decision confirms that he considered the Appellant's representations. It is important that decisions to remove a person from the Register are taken promptly and efficiently. The Registrar's decision was based on the fact of the criminal conviction, which the Appellant had admitted in his representations.

19. The Appellant also argues that this was a one-off mistake. He has continued to teach driving for two years and has been living a law-abiding life. He says that he no longer smokes cannabis. He says that his crime was not connected to driving, and had nothing to do with being violent or abusive.

20. We accept that this may have been a one-off incident. However, the criminal offence involved is a serious one. The Appellant has admitted to growing a large number of cannabis plants. Although his guilty plea appears to have allowed a conviction for production only, production on this scale could well have resulted in a conviction for supply or distribution of controlled drugs and a custodial sentence. We also share the concern of the Registrar that the Appellant had a habit of cannabis use during the time when he was teaching driving. Although the Appellant says he would not use cannabis before lessons, this nevertheless raises the serious possibility that he may still have been under the influence of a controlled drug while teaching pupils.

21. We have assessed the facts on the basis of the importance that the honesty, integrity and probity of ADIs is maintained. A substantial level of trust is placed on ADIs by pupils, parents, other ADIs, road users and the public. The Registrar has the duty of ensuring that only those of appropriate standing are on the Register. This would be undermined if the Appellant was allowed to remain on the Register. The public are entitled to know that the Registrar will ensure that often young and impressionable pupils are being instructed by those that behave properly and safely.

22. We find on the balance of probabilities that the Appellant does not currently meet the statutory requirement to be a fit and proper person. In all the circumstances, we conclude that the Registrar's decision to remove the Appellant's name from the Register as he was not a fit and proper person was correct. We dismiss this appeal.

Signed: Judge Hazel Oliver

Date: 5 December 2024