



Neutral citation number: [2024] UKFTT 1091 (GRC)

Case Reference: FT/D/2024/0601

First-tier Tribunal
General Regulatory Chamber
Transport

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

Before

JUDGE HAZEL OLIVER
JUDGE JONATHAN SCHERBEL-BALL

Between

ARMIN TIBERIU POLYAK

and

Appellant

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: Tom Blake, Phillips, Green & Murphy Solicitors, Swansea.
For the Respondent: Darren Russell

Decision: The appeal is allowed.

REASONS

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made on 18 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”). The Registrar reached this decision because the Appellant had received a fixed penalty notice dated 2 February 2024 for breach of the requirements as to control of the vehicle, mobile phones and so on resulting in 6 penalty points (the “Offence”).
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 15 July 2024 says the Registrar was wrong to remove the Appellant from the Register because of the Offence. In summary, the Appellant's grounds of appeal are that:

- a. The Offence was the Appellant's first and only offence of this kind. The Appellant previously had a SP30 fixed penalty notice from December 2015 for driving at 32-33mph on a road with a 30mph speed limit. These points have been removed from his licence after the expiry of 4 years. This other offence was committed shortly after the Appellant moved to the United Kingdom and he was adjusting to different speed limits. This predated his registration as an ADI and did not prevent the Registrar from subsequently approving his registration.
- b. The Appellant was under immense stress at the time the Offence was committed due to specific and exceptional family circumstances which were prevailing at precisely the time of the Offence and to which the Offence directly related. This exceptional stress led to his lapse of judgment in committing the Offence.
- c. The Offence was committed by the Appellant momentarily checking his mobile phone during the course of an eight minute drive to see whether he had received a text message from a family member. This does not justify or excuse his conduct but the Appellant relies on this as mitigation. The Appellant is genuinely remorseful.
- d. The Appellant worked extremely hard during the pandemic in difficult circumstances to become an ADI.
- e. The Appellant provides an excellent service to a large student base, and in particular to students who may have moved to the United Kingdom and need to acclimatise to driving in the United Kingdom.
- f. The facts of this case are analogous to the decision of the FTT in *Samira Elguenuni v Registrar of Approved Driving Instructors D/2023/165* where an appeal against removal from the Register was successful on similar facts. The Appellant accepts this decision is not binding on this Tribunal but hopes it is of assistance.

4. The Registrar resists the Appeal. His Statement of Case dated 18 October 2024 says:

- a. The Appellant's licence is currently endorsed with six penalty points having been convicted for the Offence. The conditions for entry onto the Register extend beyond instructional ability alone and require that the appellant is a fit and proper person. As such, account is taken of a person's character, behaviour and standard of conduct. An 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 the Offence the Appellant has not displayed the level of responsibility or commitment to improving road safety that should be expected from an ADI.
- b. The Registrar cannot 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.

- c. 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 this recent and relevant motoring offence.

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, [2011] R.T.R. 1 at [30], 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. If an applicant or registered ADI fails to disclose convictions or makes a false declaration that he has no convictions, it strikes at the heart of the registration process and the reliability of the register. In my view such conduct is plainly relevant – indeed, highly relevant - to the question whether an applicant is a fit and proper person”.

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 evidence

10. We have considered a bundle of evidence containing 44 numbered pages.

11. On 20 May 2024, the Appellant notified the Registrar of the Offence. On 21 May 2024, the Registrar informed the Appellant that he was considering removing his name from the Register and invited him to make representations. The Appellant made representations to the Registrar on 13 June 2024 through his solicitors. The representations included supporting evidence as to the particular prevailing family circumstances which the Appellant was experiencing at the time. The representations broadly followed the same bases as the Appellant’s grounds of appeal to the Tribunal.

12. The Registrar carefully considered the Appellant's representations but notified the Appellant in a letter dated 18 April 2024 that he would be removing his name from the Register.

13. At the remote hearing, we heard from Mr Blake on behalf of the Appellant who repeated and expanded upon the Appellant's grounds of appeal. We also heard from Mr Russell for the Registrar. The Appellant also gave evidence and answered questions from the Tribunal and from Mr Russell.

14. The Appellant's evidence at the remote hearing as to the circumstances in which he committed the Offence did not entirely accord with the way he explained them in his grounds of appeal. He explained that he held his phone, albeit with both hands on the steering wheel, for much of the short journey he made around 14.00 on 2 April 2024. He explained he held the phone so he could feel any vibration alerting him to an incoming call or text message from a family member which he was concerned to receive so that he could then pull in to return the call. The Appellant explained the specific and exceptional family circumstances which were prevailing at the specific time which led him to be particularly concerned for the wellbeing of his family. He was however seeking to get to a driving lesson with a pupil to allow them to undertake a practice test shortly before their real test and did not want to let the pupil down.

15. Notwithstanding certain inconsistencies between the Appellant's oral explanation and his written case, the Tribunal is satisfied that on the balance of probabilities, the Appellant held his phone for a relatively short period of time while driving. He did not seek to use the phone, send any messages or make any telephone calls using it which would have further distracted from his control of the vehicle.

16. In response to a question from the Tribunal, the Appellant explained that should such circumstances ever occur again, he would not embark on the journey at all, but instead would have delayed his forthcoming lesson so that he could remain parked and receive any incoming message or call. He would not place himself in circumstances where he was driving and expecting such an important message.

17. The Registrar maintained his opposition to the appeal at the remote hearing. While the Registrar sympathised with the Appellant's personal circumstances, he was unable to ignore the fact of a serious motoring offence and that the Appellant had failed to follow the very rules which he should be teaching his pupils. With six penalty points, the Registrar did not consider the Appellant to be a fit and proper person to remain on the Register.

18. The Registrar did not dispute that there were particular and exceptional prevailing circumstances at the time of the Offence. Indeed, the Appellant had provided relevant documentary evidence to support his case. The Tribunal was satisfied and accepted the Appellant's case as to the specific circumstances on 2 April 2024 which caused him to hold his phone while driving. We have not set out the full detail of those circumstances to respect the privacy rights of all those concerned. However, we are satisfied that they were genuinely exceptional and serious and were likely to have caused the Appellant to lose his judgment. There were distressing family circumstances which involved the serious illness of one family member and a related concern for the safety of an elderly family member. We are also satisfied that the Appellant was seeking to help others, not himself.

Conclusions

19. There is no doubt that use of a mobile phone while driving is a very serious driving offence which often will justify removal from the Register. Such conduct can and frequently does cause serious accidents. It endangers the lives of other road users, pedestrians and the driver themselves, or risks causing serious injury. It is not conduct which should be permitted,

condoned or excused – which is why it results in six penalty points and will often result in an ADI being justifiably removed from the Register.

20. It is also not in dispute that ADIs are quite rightly held to a higher standard than ordinary motorists. The public has the right to expect that those who are registered as ADIs adhere to the highest standards of motoring, which they themselves should be teaching to their pupils. This applies in particular to the use of mobile phones which have the potential to cause real danger to all road users.

21. We have assessed the facts on the basis that it is imperative that the honesty, integrity and probity of ADIs is maintained, given the substantial level of trust that is placed on ADIs by pupils, parents and other ADIs as well as road users, the public and the DVSA. The Registrar has the duty of ensuring that only those of appropriate standing are on the Register. These are matters of wider public importance which attract significant weight even where removal from the Register may have serious consequences for an individual.

22. We have therefore placed little weight on the Appellant's testimonials or the good work he does in supporting his pupils. This is often the case where the Registrar is considering removing an ADI from the Register.

23. Equally, the Tribunal does not consider that the FTT's decision in *Elguenuni* provides any real assistance. Each case must necessarily turn on its own facts, even where they may appear superficially analogous. Indeed, as set out above, we consider that use of a mobile phone while driving by an ADI will often constitute behaviour which justifies the removal of an ADI from the Register.

24. The Tribunal considers that this is a finely balanced case. However, having carefully considered all the facts and circumstances, the Tribunal concludes that the Appellant is a fit and proper person to remain on the Register. There are four main reasons for our conclusion:

- a. First, it is clear that at the particular time when the Offence took place, the Appellant was experiencing exceptional stress due to his prevailing family circumstances at precisely that time. These family circumstances were particularly difficult and distressing for the Appellant. While these do not justify his actions, they do in the view of the Tribunal provide strong mitigating circumstances which are genuinely exceptional.
- b. Second, we are satisfied that the Appellant did not seek to use his phone actively but was simply wanting to be notified of a potential incoming message so he could then pull in and contact his family member.
- c. Third, we consider that this is a case where in addition to displaying genuine remorse, the Appellant has clearly understood the consequences and risks which arise from the Offence. His evidence, which we accept, as set out at paragraph 16 above, showed genuine learning and understanding. This was not simply a case where the Appellant accepted he should not use his phone while driving. He had understood the circumstances which put him in that position in the first place and would take steps to avoid putting himself in that position again.
- d. Fourth, in light of the genuinely exceptional prevailing circumstances and the Appellant's response to them, we reject the Registrar's case that permitting the Appellant to remain on the Register would either condone or sanction the Offence or would be offensive to other ADIs or potential ADIs. We do not consider that the specific facts and circumstances of this case lead to this conclusion.

25. In all the circumstances, we consider therefore that the Registrar's decision to remove the Appellant from the Registrar because the Appellant was not a fit and proper person was wrong. We allow the appeal.

Signed: Judge Scherbel-Ball

Date: 9 December 2024