



Neutral citation number: [2024] UKFTT 1127 (GRC)

Case Reference: FT/D/2024/0223

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(TRANSPORT)**

**Determined on the Papers
On: 20 November 2024**

Decision given on: 17 December 2024

Before

**JUDGE DAMIEN MCMAHON
SPECIALIST MEMBER DR. PHEBE MANN
SPECIALIST MEMBER MISS SARAH BOOTH**

Between

SIMON WOOTON

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

The Appellant, in writing, had requested that his appeal be determined on the papers only without a hearing. The Respondent did not request a hearing and, indeed, pursuant to Case Management Directions dated 26 July 2024, issued by the GRC Registrar, the Respondent was barred from further participation in these proceedings for failing to serve a Response to this appeal. The Tribunal was satisfied that it could determine this appeal on the papers without a hearing and that it was in the interests of justice to do so.

Decision: The appeal is Dismissed. The Decision of the Respondent made on 9 February 2024 is confirmed.

REASONS

Mode of Hearing

1. The hearing was conducted by a three-Member Tribunal, comprising a Tribunal Judge and two specialist Members. Another Tribunal Judge was present, in an observer capacity, but took no part in the determination of this appeal.
2. The proceedings were listed for determination on the papers alone, remotely by CVP, without a hearing at the request, in writing, of the Appellant. The Respondent did not request a hearing; indeed, again, pursuant to Case Management Directions dated 26 July 2024, issued by the GRC Registrar, the Respondent was barred from further participation in these proceedings for failing to serve a Response to this appeal, and had made no application to have the bar lifted. The Tribunal, having regard to the overriding objective set out in Rules 2 and the provisions of Rule 32 of the First-tier Tribunal (General Regulatory Chamber) Rules 2009, as amended ('the Rules'), decided that it could determine this appeal on the papers only and that it was in the interests of justice to do so.

Background

3. The Appellant stated in his Notice of Appeal dated 6 March 2024 that he had been an Approved Driving Instructor ('ADI') for some 2.5 years. The Appellant failed the Standards Check test, required by the Respondent to be undertaken by the Appellant, on three occasions, namely, 25 January 2023; 26 July 2023 and 5 December 2023, pursuant to the provisions of the Motor Cars (Driving Instruction) Regulations 2005.
4. While there was no actual evidence before the Tribunal that the Appellant had been given advice by the examiner on each of the first two occasions of failing his Standards Check test, it is inconceivable, certainly on the balance of probabilities, that Appellant would not have been given such advice and that a different examiner may well have conducted the test on each occasion.
5. The Appellant's overall performance was found to be below the required standard in all three Standards Check tests. The Respondent would have been perfectly entitled in law to make a decision to remove the Appellant's name from the Register upon him failing even the first Standards Check test. However, the Tribunal is aware that it is the practice of the Respondent to permit an ADI up to three attempts to pass a Standards Check test.
6. The Appellant made representations in response to the Respondent advising him of their intention to remove his name from the ADI Register. The Respondent considered those representations before they made their decision – the decision under appeal. In his said Notice of Appeal, the Appellant asserted that his training had been inadequate, that he had been let down by pupils and had to make hurried alterations to lesson plans (for some unstated reason) before, apparently, all three Standards Check tests. He also asserted that he was just three marks off passing the third Standards Check test (implying, it seemed, that this was an adequate reason not to have his name removed from the ADI Register – a proposition, if true, that the Tribunal declined to accept). He sought a 'six-month extension' to get 'more robust Continuing Professional Development' and take another, fourth, Standards Check test. He also asserted that he had vast experience in 'training and coaching' in a previous [unstated] career; that he had a lot to give to the

Driving Instructor industry; that he was committed to his students and wanted to give them a skill for life and wanted the chance to prove his worth as an ADI.

Notice of Appeal

7. The Appellant submitted his said Notice of Appeal dated 6 March 2024. He described the decision under appeal as harsh and reiterated his representations as to why his name should not be removed from the ADI Register.

Response of Respondent

8. No Response was furnished by the Respondent. Accordingly, they were barred on 26 July 2024 from further participation in these proceedings.

Conclusions

9. The decision by the Respondent to remove the Appellant's name from the ADI Register pursuant to s.128(2)(d) of the Road Traffic Act 1988 ('the Act') in that he had failed the continued ability and fitness test (known as a 'Standards Check test') on three separate occasions, was, undoubtedly, correct as a factual proposition.

10. Section 125(5) of the Act requires that a person whose name is held in the Register must undergo a test of continued ability and fitness to give instruction in the driving of motor cars. Although the Act permits removal of a name after a single failure of a check test, it is usual for an instructor to be allowed three attempts before removal is ordered. By reason of the word "may" in s.128(1) of the Act, removal from the ADI Register is discretionary.

11. Significantly, pursuant to s.133(1) of the Act, an appeal against the conduct of a Standards Check test lies to a Magistrates' Court – not to the Tribunal. There was no evidence that the Appellant appealed the examiner's decision to fail him in respect of any of his three Standards Check tests to a Magistrates' Court.

12. The Tribunal does not have jurisdiction to decide whether the Respondent's decision to exercise their discretion to remove the Appellant's name from the ADI Register was correct. The principal way that issue is addressed is by requiring that those who give paid instruction have their name on the ADI Register kept by the Respondent. In order that the public can have confidence in the ADI Register, Parliament has put other provisions in place. For example there is a pre-condition to registration that an applicant has passed all three parts of the qualifying examination, there is a requirement that the applicant is and remains a 'fit and proper person' to have his name on the Register' (which goes beyond ability as an instructor) and s.125(5) provides that the entry of a person's name in the ADI Register shall be subject to the condition that, so long as his name is on the ADI Register, he will, if at any time required to do so by the Registrar, submit himself for such test of continued ability and fitness to give instruction in the driving of motor cars as may be prescribed. The importance of this provision is that it ensures, by periodic testing, that driving instructors remain sufficiently competent to charge for instruction. It is therefore an important component in maintaining public confidence in the Register. It is important to note that the imposition of the condition is mandatory and that the terms of the condition are that the Approved Driving Instructor ('ADI') will, at any time required to do so by the

Respondent, submit himself for a Standards Check test. Once the Respondent has required an ADI to submit himself for a check test there is nothing in the Act which permits the ADI to seek to impose his own pre-conditions to submitting himself for a standards check test as sought by the Appellant in this appeal.

13. The Tribunal was satisfied that the Respondent was correct to find that the Appellant had been given adequate opportunity to pass the Standards Check test but had failed to do so – on three occasions. The Respondent was correct to remove the name of the Appellant from the Register due to his inability to satisfy the Registrar that his ability to provide driving instruction was to the required standard.

14. The Appellant would, inevitably, have provided with guidance and advice, following his first two failed standards check examinations, on how he might improve his standards before undergoing a further test. Despite this, the Appellant failed to achieve the required standard on three consecutive occasions.

15. Most of the submissions made in the Appellant's written representations to the Registrar, replicated in his Notice of Appeal, concerned him blaming pupils and other underlying issues for failing to pass any of his three attempts at a Standards Check test. As was noted in paragraph 13 above, pursuant to s.133(1) of the Act, an appeal against the conduct of a check test lies to a Magistrates' Court and, pursuant to s.133(3), no such appeal may be made to the Tribunal under s.131 of the Act. Accordingly, the Tribunal does not have jurisdiction to consider such submissions.

16. The Tribunal is a judicial authority entirely independent of both the Appellant and the Respondent. When an appeal comes before a Tribunal, the Tribunal considers the matter the subject of the appeal entirely afresh while having regard to the views expressed by the Respondent as the body with entrusted by Parliament in respect of these matters.

17. The appeal is dismissed with immediate effect.

Signed: *Damien McMahon*,

Tribunal Judge

Date: 20 November 2024