



Neutral citation number: **[2024] UKFTT 00456 (GRC)**.

Case Reference: D/2023/599

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

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

Before

**HHJ DAVID DIXON
DAVID RAWSTHORN
STUART JAMES**

Between

DEWI GWYN ROBERTS

Appellant

and

**THE REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Respondent

Decision: The appeal is dismissed with immediate effect, and the Registrar's decision remains.

REASONS

Background to Appeal

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made 15TH November 2023 to remove him from the Register after he failed to pass four consecutive “continued ability and fitness to give instruction” tests, contrary to the requirements of the Road Traffic Act 1988. The Registrar’s decision was made following consideration of the circumstances and the Appellant failure to pass check tests on 6th September 2019, 8th December 2019, 25th February 2020 and 2 May 2023.
2. The Appellant now appeals the Registrar’s decision by pleading dated 11th December 2023. He indicates he accepts the check test results, but they are not an accurate reflection of his abilities. He asserts that the long gap (*caused by COVID doubtless*) between his check tests has affected him personally. He asks for his registration to continue.
3. He provides a reference where his driving school describe the Appellant as an “excellent asset.”
4. The Registrar provided a Response indicating that the failure to pass 4 check tests was such that the Appellant could no longer be allowed to remain on the Register.

Mode of Determination

5. The case was listed for paper hearing and the Tribunal met via the video enabled hearing system to discuss the case. The Appellant wished for a paper determination and the Tribunal in the circumstances of this particular case, applying the Tribunal Rules, decided such a procedure was fair and appropriate.
6. The Tribunal considered a bundle of evidence containing 31 pages.

The Law

7. Section 125 (5) of the Road Traffic Act 1988 imposes a condition for an Approved Driving Instructor to submit themselves for a test of continued fitness and ability if required to do so by the Registrar.¹
8. Where an Approved Driving Instructor fails to attend a test of continued fitness and ability or fails such a test, the Registrar may remove that person from the register under s. 128(2) (c) or (d) of the 1988 Act.²

¹ <http://www.legislation.gov.uk/ukpga/1988/52/section/125>

² <http://www.legislation.gov.uk/ukpga/1988/52/section/128>

9. An appeal against the conduct of a check test by a person who has failed it lies to the Magistrates' Court and not to this Tribunal.³
10. An appeal to this Tribunal against the Registrar's decision proceeds as an appeal by way of re-hearing i.e., the Tribunal stands in the shoes of the Registrar and takes a fresh decision on the evidence before it. It must give such weight as it considers appropriate to the Registrar's reasons⁴ as the Registrar is the person tasked by Parliament with making such decisions. The Tribunal does not conduct a procedural review of the Registrar's decision-making process.

Conclusion

11. The Tribunal considered carefully all the evidence in this appeal.
12. Here the Appellant accepts that he has failed the check test four times. He argues that his method of teaching is effective. He puts forward a reference indicating he has learnt a lot and others within his school believe him to be a good instructor.
13. The Tribunal stands in the shoes of the Registrar and takes a view on the evidence before it. Here the Registrar indicates that four failures can't be overlooked. The Tribunal works on the basis that the check test results are accurate, and that this is the fairest way for standards to be assessed.
14. Here the Appellant accepts that he has failed the test four times. The Appellant has failed to show he is teaching to the required standard, nor that he has learnt from earlier feedback and therefore is not able to demonstrate his abilities are appropriate.
15. In all the circumstances, the Registrar had no option but to remove the Appellant from the Register and the Tribunal comes to the same view. This Appeal is dismissed with immediate effect.

(Signed)

**HHJ David Dixon
David Rawsthorn
Stuart James**

DATE: 30th May 2024

³ <http://www.legislation.gov.uk/ukpga/1988/52/section/133>

⁴ See *R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31. <http://www.bailii.org/ew/cases/EWCA/Civ/2011/31.html>. Approved by the Supreme Court in *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60 at paragraph 45 – see <https://www.supremecourt.uk/cases/docs/uksc-2015-0126-judgment.pdf>.