



Neutral citation number: [2024] UKFTT 00524 (GRC)

Case Reference: D/2024/37

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

**Determined at an oral hearing
on 18th June 2024**

Before

**HHJ DAVID DIXON
STUART JAMES
DAVID RAWSTHORN**

Between

NAWAZ MONNAN

and

**THE REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Appellant

Respondent

Decision: The appeal is dismissed.

REASONS

Background to Appeal

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made on 12th December 2023 to refuse his application to record his name upon the Register.
2. The Registrar’s reasons for refusal, in summary, were that the Appellant had accrued penalty points and a fine for using a mobile phone whilst in charge of a vehicle on 1st August 2023. The Registrar took the view the offending was serious and allowing him to remain on the Register would undermine confidence in it, so determined the Appellant must be refused.
3. The Appellant now appeals the Registrar’s decision.

Appeal to the Tribunal

4. The Appellant’s Notice of Appeal indicates that he was supervising another qualified driver at the time of the incident and was not instructing. As a result he does not believe that he is guilty of the offence. Having said that he did not challenge the conviction in the Magistrates Court. He argues that it isn’t fair that he was allowed to go through the process of qualifying and then be told that he was not fit and proper.
5. The Respondent failed to provide a response, which was disappointing.

Mode of Determination

6. The case was listed for oral hearing, and heard via the CVP system.
7. The Appellant was unrepresented. The Respondent was represented by Claire Jackson of the DVSA Appeals team.
8. The Tribunal considered a bundle consisting of the Appellant’s appeal and the initial decision. A reference from the Appellant’s driving school and his initial email to the DVSA were also included. The latter seemed to suggest that the Appellant was teaching at the time.

Evidence

9. Ms Jackson said the Respondent’s position was that the Appellant was not fit and proper as a result of a fixed penalty offence of using a mobile phone whilst in charge of a vehicle.
10. The Appellant said he was assessing an international licence holder to determine how many lessons he might need to obtain a UK licence. He was clear that the person wasn’t a pupil. He said he was being paid for this assessment.

11. He said he accepted the fixed penalty because he didn't understand things, and made a mistake by not appealing it, blaming in part the cost of trying to get a solicitor.
12. He was challenged over his use of the term "pupil" etc in his email to the DVSA and he said that he had simply got things wrong.
13. He indicated that it had cost him a lot to train to be an ADI, he had invested time and effort as well, and it would all be a waste if he wasn't allowed to keep his licence. He said he was the sole earner in his family and there would be financial issues following a dismissal of his appeal.
14. He said he was a good instructor and had got students through the test process.

The Law

15. 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 of Approved Driving Instructors – see s. 125 (3) and s. 127 (3) (e) Road Traffic Act 1988¹.
16. The Registrar may take the view that a person no longer meets this requirement where there has been a change in circumstances. The burden of showing that a person does not meet the statutory criteria rests with the Registrar.
17. In *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 808², the Court of Appeal described the "*fit and proper person*" condition thus:

"..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. This is why there are stringent disclosure requirements".

18. 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 take a fresh decision on the evidence before it. The Tribunal must give such weight as is considered appropriate to the Registrar's reasons³ 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.

¹ <http://www.legislation.gov.uk/ukpga/1988/52/part/V/crossheading/registration>

² <http://www.bailii.org/ew/cases/EWCA/Civ/2010/808.html>

³ 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>.

Conclusion

19. The Tribunal considered carefully all the evidence and papers before it.
20. Here the Appellant used a mobile phone whilst teaching. The Tribunal felt that on the evidence available to it there was no doubt he was actually teaching and therefore the use of the phone was an offence. Even if that were wrong the conviction recorded against the Appellant's name, which was not challenged, cast such a shadow over his character that the Registrar was put in a very difficult position.
21. The explanation that he was supervising, and not instructing, was not one the Tribunal could accept when compared against the Appellant's initial email. The Tribunal had very real concerns over the Appellant's veracity on this issue. The Tribunal simply didn't accept the account given, and the fact that the Appellant was paid for his services, was telling the driver where to go and what to do, were all hallmarks of instruction not assessing as the Appellant tried to maintain.
22. On the basis of the Appellant's use of a phone whilst teaching, whatever the circumstances, the Tribunal felt that the Registrar had no option but to refuse the Appellant. It would be completely wrong to allow him to be on the Register under such circumstances, as it would in effect condone such behaviour, which the Registrar simply couldn't do.
23. This appeal is therefore dismissed with immediate effect.

(Signed)

**HHJ David Dixon
Stuart James
David Rawsthorn**

DATE: 18th June 2024