



Case Reference: D-2023-562

NCN: [2024] UKFTT 00558 (GRC)

First-tier Tribunal
General Regulatory Chamber
Transport

Heard on: 26 June 2024
Decision given on: 28 June 2024

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY

Between

ANTHONY POWELL

Appellant

and

REGISTRAR FOR APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms Jackson

Decision:

1. The appeal is allowed and the Registrar's decision is revoked.

REASONS

Introduction

1. This is an appeal against a decision of the Registrar of Approved Driving Instructors ('the Registrar') made on 15 November 2023 to remove him from the Register of Approved Driving Instructors after he failed to pass three consecutive "continued ability and fitness to give instruction" tests ('check tests') contrary to the requirements of the Road Traffic Act 1988. The Registrar's decision was made following considering of the circumstances and the Appellant's failure to pass check tests on 21 January 2020, 8 March 2023 and 12 September 2023.

Legal framework

2. Section 123(1) of the Road Traffic Act 1998 (the 1998 Act) prohibits the driving instruction for payment unless the instructor's name is on the Register of Approved Driving Instructors or he is the holder of a current licence issued under Section 129(1) of the 1998 Act.
3. Section 125(5) of the 1998 Act imposes a condition for an Approved Driving Instructor to submit themselves for a check test if required to do so by the Registrar.
4. Where an Approved Driving Instructor fails to attend or fails a check test, the Registrar may remove that person from the Register under section 128(2)(c) or (d) of the 1998 Act.
5. An appeal against the conduct of a check test by a person who has failed it can be made to the Magistrates Court.
6. An appeal against the decision of the Registrar to remove a person from the Register can be made to this tribunal.
7. When making its Decision, 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. The burden of satisfying the tribunal that the Registrar's decision was wrong rests with the Appellant.

Factual background to the appeal

8. The Appellant's name was first entered on the register in June 2018. His current period of registration is due to expire at the end of June 2026.
9. The Appellant failed two consecutive check tests on 21 January 2020 and 8 March 2023. Following each test the Appellant was notified for the examiner's findings and advised to consider further personal development.
10. By letter dated 21 June 2023 the Appellant was informed that he was required to take a further check test on 12 September 2023. The Appellant took his third test on 12 September 2023 and failed.

Appeal to the Tribunal

11. The grounds of appeal are, in summary, that the Registrar did not take proper account of his representations, which were as follows:

- 11.1. The Appellant suffers from anxiety in high stress situations when he feels he is under pressure, which did not help him in his third test.
- 11.2. The choice of candidate for this third test was 'probably not the best candidate' but he had to go with who was available on the day.
- 11.3. The Appellant has a number of students with ADHD and learning difficulties who fully trust him and would struggle if he had to tell them he could no longer instruct them. He would also be letting down his other students.
- 11.4. The Appellant would suffer financially from the decision. He is 62 years old and has a mortgage with seven years remaining and a family depending on him.
- 11.5. The Appellant loves his job.
- 11.6. He undertook Ordit training after his second attempt, when he realised how far behind he was with his development. He had neglected his own development during Covid because he was focussing on his students. He would have like to have more time with his Ordit trainer and feels that he would be successful given the opportunity for more time and training.
- 11.7. The amount of time and training between the second and third tests was not enough. There were obstacles due to holidays, being unwell with Covid and clashing timetables. The Appellant felt that he had to go ahead with the check test even though he was not ready.
- 11.8. In his grounds of appeal the Appellant also states that:
 - 11.8.1. He followed the standards criteria on the third attempt but came out with a lower mark than the first and second attempts.
 - 11.8.2. Between his first and second attempts he could not work at all during 6 months of two lock down periods and due to Covid and continuous cancellations from DVLA he could not train or undertake any training.

12. The Registrar, in his response, states that the reasons for his decision were:

- 12.1. The Appellant had failed three consecutive check tests.
- 12.2. Following each of the first two tests, the Appellant was notified of his shortcomings to give him the opportunity to consider these and to improve. He failed to reach the required standard on his third test.
- 12.3. The Registrar considered that the Appellant had been given adequate opportunity to pass the test but had failed to do so. In the interests of road safety and consumer protection the Registrar felt obliged to remove his name, because he had been unable to satisfy the Registrar that his ability to give driving instruction was of a satisfactory standard.

Evidence

13. I read and took account of a bundle of documents and heard from the Appellant and the Registrar.

Discussion and conclusions

14. I have considered carefully all the evidence and submissions before me.

15. I bear in mind the significant importance which attaches to the integrity of the Register. Entry on to and remaining on that is a public endorsement of a high standard of competence on the part of ADIs. For the public to have trust in it, the Register must show

integrity and that those on it have high standards. Part of that is achieved by the need for those on the Register to pass regular tests; doing so adds to the trust placed on the Register. Allowing those who do not meet the standards to remain on the Register undermines the trust placed in it with serious consequences for those who do maintain the necessary high standards. These are matters of wider, and public interest, which attract significant weight even where, as here, removal from the Register has serious consequences for an individual.

16. The Registrar attempts to balance the serious consequences for the individual against the need to maintain the integrity of the Register by allowing, in most cases, a maximum of three attempts to pass a check test.
17. This is not, however, an absolute rule, and it is an exercise of discretion by the Registrar as to whether to remove an individual from the Register.
18. I accept that there is very powerful argument that it was correct to remove the Appellant's name from the Register based on the plain fact that the Appellant has failed the check test on three separate occasions.
19. However, I have placed particular weight on the following:
 - 19.1. First, I accept that the Appellant has clearly taken on board the feedback given to him after the second test and has made genuine and serious efforts to improve after that test. He has not attempted to argue that he was marked unfairly or that he should have passed the tests. He organised training with a well-respected Ordit trainer recommended by the examiner. He has acknowledged that he realised from the trainer's expertise how far behind he was with his own development. I accept that there was simply insufficient time for him to remedy the deficiencies between the two check tests, taking into account a number of other issues including holidays, clashing timetables and a bout of Covid. I accept that he knew that he was not ready for the check test but felt that he had to go ahead with it. On this basis, I find that the Appellant has acknowledged the work that needs to be done, has made real efforts towards achieving that and deserves another chance to complete the improvement work he has begun.
 - 19.2. Second, I take account of the particular importance to the Appellant of his qualification as a driving instructor and the work that he carries out, and of the stress that exams cause him. The Appellant explained to me that he left school without taking any exams due to his disability and that he had never taken any exams until he took the ADI exams. He told me and I accept that it had 'taken a lot' to achieve registration as a driving instructor and I accept that he finds exams extremely stressful.
20. Having weighed all matters in the balance, the Appellant has persuaded me that the Registrar's decision was wrong and that he should be given another opportunity to pass a check test.
21. It is a matter for the Registrar as to whether and when to require the Appellant to take a further check test, but the Appellant will no doubt be aware of the likely consequences of failing a further test.

Signed Sophie Buckley

Date: 26 June 2024

Judge of the First-tier Tribunal