



NCN [2024] UKFTT 00760 (GRC).

Case Reference: FT/D/2024/0222

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

**Determined in an Oral Hearing
On: 5 August 2024**

Decision given on: 27 August 2024

Before

**TRIBUNAL JUDGE DAMIEN MCMAHON
TRIBUNAL MEMBER KERRY PEPPERELL
TRIBUNAL MEMBER DAVID RAWSTHORNE**

Between

RAKESH SOOD

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

Mr. Chris Harrington, Solicitor, for the Appellant.

Ms. Claire Jackson resented herself to appear for the Respondent. However, the Respondent had been barred from further participation in these proceedings by a Direction of the Tribunal made on 25 July 2024 for continued non-compliance with Tribunal Directions. She took no further part.

Decision: The appeal is allowed.

REASONS

Background

1. This appeal concerns a decision of the Respondent made on 21 February 2024 to remove the name of the Appellant from the Register of Approved Driving Instructors ('ADIs'), taking into account representations made by the Appellant on 13 February 2024, pursuant to s.129(4) of the Road Traffic Act 1988, as amended, ('the Act'), on the basis that the Appellant was not a fit and proper person to have his name included on the said Register, pursuant to s.125(3) of the Act, due to an alleged complaint made against him (unseen by the Tribunal) by one Paul Sheridan, a Test Centre Manager.

2. The Appellant appealed the Respondent's decision on 6 March 2024 on the basis, in summary, that the decision of the Respondent that he, the Appellant, was not a 'fit and proper person' to have his name remain on the said Register was not evidenced by the Respondent; that he had not acted contrary to any matters contained in the ADI Code of Practice. He gave an account of the facts surrounding the alleged complaint. The Appellant stated that he had a wife and two children and that the decision under appeal was in breach of his Article 8 rights under the European Convention on Human Rights (as enacted into UK domestic law by the Human Rights Act 1998), that is, the right to respect for family and private life.

3. The Appellant had indicated that his first language was not English. However, he did not request an interpreter but was represented by a solicitor at the hearing. (A colleague, Talal Malik, a colleague of the Appellant's representative, was also present as an observer). No issue was raised at the hearing concerning any need for an interpreter. The hearing of the appeal proceeded.

4. The Respondent had been required, in Initial Case Management Directions to serve their Response by 17 April 2024. The Respondent failed to comply. In further Case Management Directions issued on 1 July 2024, the Respondent was allowed a further period, to 9 July 2024, to serve their Response; to formally seek an extension of time to serve their Response; to explain why no Response had been served by 17 April 2024 and why there had been no application for an extension of time. The Respondent was warned that any continued failure to comply might result in the Respondent being barred from further participation in these proceedings, pursuant to Rule 8(3)(a) and 8(7) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended ('the Rules'). The Respondent was also directed to file a completed Case Management Questionnaire by 9 July 2024. The Respondent continued to fail to comply with any of these Tribunal Directions. By way of further Tribunal Directions dated 25 July 2024, the Respondent was barred from further participation in these proceedings for continued non-compliance with Tribunal Directions. The Respondent was afforded an opportunity to apply to lift the bar by 5.00pm on Friday, 2 August 2024. They failed to make any such application.

Mode of Determination

7. The appeal was determined at an oral hearing using the CVP system.

8. The Tribunal considered a bundle of evidence containing 26 pages and heard oral submissions from the Appellant's representative.

Appellant's Submissions

10. The Appellant's representative submitted that there was little evidence before the Tribunal, save the decision under appeal and that any other evidence referred to by the Respondent was inadmissible against the Appellant. In particular, the Appellant's representative submitted that there was no evidence to substantiate the allegation that the Appellant was not a fit and proper person to continue to have his name included on the Register of ADIs and invited the Tribunal to allow the appeal on the balance of probabilities.

Law

11. The Conditions for entry and retention on the Register require the Appellant to be, and continue to be, a "fit and proper person".

12. The Respondent 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 lies on the Respondent.

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".

18. Registration carries with it an official seal of approval, that is, maintenance of public confidence in the registration system. This is important. For that purpose, the Respondent must be in a position to carry out their function of scrutiny effectively, including consideration of the implications of any complaint made against an Appellant.

19. An appeal to this Tribunal against the Respondent's decision proceeds as an appeal by way of re-hearing, that is, the Tribunal stands in the shoes of the Respondent and takes a fresh decision on the evidence before it. The Tribunal must give such weight as is considered appropriate to the Respondent's reasons as the Respondent is the person tasked by Parliament with making such decisions. The Tribunal does not conduct a procedural review of the Respondent's decision-making process.

Costs

20. The Tribunal, after a short recess, orally advised the Appellant that his appeal would be allowed but that the written Decision would be reserved.

21. The Appellant's representative then made an application for costs in favour of the Appellant against the Respondent.

22. The question of costs is governed by Rule 10 of the Rules.

23. Rule 10 provides a Tribunal *may* make an Order in respect of costs, on application, or of its own initiative (the former being the case here), *only* if, *inter alia*, it is a 'wasted costs' issue (that does not apply here) or the Tribunal considers a party has acted unreasonably in bringing the proceedings (that also is not the case here). The application must be made *in writing* to the Tribunal and, in this case, the Respondent, accompanied by a schedule of the costs and expenses claimed, at any time during the proceedings or by no more than 14 days after the Tribunal issues its Decision, that is, its promulgated Decision. Finally, the Tribunal may not make a costs Order without giving the Respondent (in this case) an opportunity to make representations. However, since the Respondent, from 25 July 2024, was barred from further participation in these proceedings, the said verbal application must be regarded as otiose and be refused even if a Rule 10 compliant application were to be made by the Appellant.

Conclusion

20. The Tribunal carefully considered all the written evidence before it and the oral submissions made on behalf of the Appellant.

21. The Tribunal was concerned at the failure of the Respondent, barred by the Tribunal from further participation in these proceedings on 25 July 2024, to provide sufficient evidence or submissions to support their decision. In particular, the Tribunal had no knowledge of the detail of the alleged complaint, pursuant to which the Respondent decided that the Appellant was no longer a fit and proper person to have his name remain on the Register of ADIs.

23. The Tribunal had no alternative in all the circumstances but to allow this appeal on the balance of probabilities.

Signed

Date: **12 August 2024**

Damien McMahon,

Tribunal Judge