



Neutral citation number: [2025] UKFTT 00121 (GRC)

Case Reference: FT/D/2023/0536

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

**Heard by Cloud Video Platform
Heard on: 13 January 2025
Decision given on: 11 February 2025**

Before

**TRIBUNAL JUDGE MATON
TRIBUNAL MEMBER MARTIN SMITH
TRIBUNAL MEMBER GARY ROANTREE**

Between

MICHAEL JOHN HUGHES

Appellant

and

THE REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: in person

For the Respondent: Darren Russell, Deputy Registrar

Decision: The appeal is Dismissed.

REASONS

1. This is an appeal by the Appellant against the decision of the Registrar dated 25 September 2023 to remove the Appellant's name from the register of approved driving instructors.

2. The Tribunal received and considered a bundle of documents. The Appellant and the Respondent's representative, Mr Russell, attended a hearing by Cloud Video Platform ("CVP").
3. The Tribunal is satisfied that this was a fair and just way to decide the Appeal.

The Registrar's application to take part in the hearing

4. It is necessary to set out this procedural matter in some detail.
5. At the beginning of the hearing the Appellant told the Panel that the Registrar had been barred from the proceedings in this Appeal. The Panel had not been made aware of this and the relevant directions had not been included in the hearing bundle.
6. Mr Russell applied in the hearing for the bar to be lifted. He also said that the Appellant had been directed by the Tribunal to produce a hearing bundle and had not done so, and that the Registrar had therefore needed to produce one at a later stage in the case.
7. The Appellant indicated that he was content for the Registrar to take part.
8. Case management decisions at a hearing are taken by the lead Judge. I considered the representations made by Mr Russell and the Appellant's views and decided that the bar should be lifted and that the Registrar should accordingly be permitted to take part in the hearing and that the Tribunal should consider the Registrar's evidence and submissions. I did not give full reasons in the hearing, and this Decision sets out those reasons.
9. I have reviewed further documents following the hearing. These did not form part of the reasons for my decision, and solely for the purposes of recording the history of the matter, I note that:
 - a. by directions dated 14 August 2024 the Tribunal barred the Registrar from these proceedings for failure to comply with earlier directions;
 - b. by further directions also dated 14 August 2024 the Tribunal directed the Appellant to send to the Tribunal and the Respondent a bundle of additional evidence by no later than 30 August 2024; no bundle prepared by the Appellant had been seen by the Panel; and
 - c. I have not seen further correspondence on this matter from the Registrar between 14 August 2024 and the date of the hearing, including any application to lift the bar.
10. By rule 5(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules") the Tribunal may give a direction in relation to

the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

11. By rule 2 of the Rules the Tribunal must seek to give effect to the overriding objective, that of enabling the Tribunal to deal with cases fairly and justly, when it exercises any power under the Rules.
12. I was not aware of the Registrar having made an application for the bar to be lifted, on the grounds of fairness or any other grounds, between 14 August 2024 when the bar was imposed, and 13 January 2025 when the hearing took place. Mr Russell indicated that his understanding was that one had been made, but no evidence of this was available at the hearing.
13. I also considered the nature of the issues in the case. The issues and allegations which the Registrar had considered in making his decision, and which are discussed below, were of a serious nature. The result of the Appeal could have consequences for the Appellant's reputation as well as his professional career.
14. The Registrar's arguments as disclosed in the Response were concise and clear.
15. The Appellant had not filed further substantive arguments in the Appeal since his Grounds of Appeal. Had the Appellant done so, the opportunity for the Registrar to respond to those would have been a factor in favour of lifting the bar at the hearing, but that did not arise.
16. The full Appeal history was not available to the Panel. Interrogating the file or discussing the procedural history in detail with the parties would have taken time away from the Tribunal's consideration of the substantive issues, potentially delaying the outcome of the Appeal.
17. Finally, I considered whether it would be appropriate in general for a Respondent who had been barred from proceedings to attend a hearing notwithstanding the bar and make an oral application for permission without the Judge having considered this in advance. Clearly this situation should be avoided wherever possible, in the interests of Judges being able to give detailed consideration to arguments in favour of or against granting relief, and therefore dealing with cases fairly and justly.
18. Having considered these factors, I decided to lift the bar on the Registrar taking part in the proceedings, and Mr Russell took part in the hearing in full.
19. I expressed in the hearing, and the Tribunal reiterates in this Decision, that the Tribunal is disappointed that the relevant information was not included in the hearing bundle, and that this matter needed to be dealt with using time in an oral hearing. This was not necessary and could have been avoided.

Relevant law

20. The Registrar maintains the register of approved driving instructors, pursuant to s125 Road Traffic Act 1988 ("the Act").
21. When a person applies to be registered as an approved driving instructor, the Registrar must enter that person's name in the register if he fulfils certain conditions, including, in s125(3)(e), that the applicant is a fit and proper person to have his name entered in the register of approved driving instructors. The Act does not specify what this standard requires.
22. Section 128 of the Act provides that the Registrar may remove a person's name from the register if one or more of a number of conditions is fulfilled. One of these conditions is that the person has ceased to be a fit and proper person to be registered (s128(2)(e)).
23. In *Harris v The Registrar of Approved Driving Instructors* [2010] EWCA Civ 808, Richards LJ said that, when applying this standard:

"a central question is an applicant's fitness to be a driving instructor – that he has the requisite instructional ability and driving ability and that he does not pose a risk in any respect to his pupils or other users of the road. The "fit and proper person" condition has obvious relevance to that issue, though the more technical aspects are covered by other, more specific conditions relating to tests, driving licence and the like. But 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: those registered are known as "Driving Standards Agency Approved Driving Instructors".
24. The powers of this Tribunal in relation to appeals against decisions of this nature are set out in s131 of the Act. When making a decision on any such appeal, 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.

Background

25. In 2021 the Registrar considered a complaint from a student regarding messages which the Appellant had sent to a student. The Registrar wrote to the Appellant on 10 November 2021 saying that the Registrar:
 - a. had decided not to take any action against the Appellant at the time;
 - b. was nevertheless "extremely concerned" by messages which the Appellant had sent;
 - c. reminded the Appellant of the standards expected of approved driving instructors;

- d. advised the Appellant to seek advice regarding shutting down inappropriate conversations; and
 - e. stated that if the Appellant were to incur a similar complaint in future, then the Registrar may have to consider whether the Appellant remained a fit and proper person to remain on the register.
26. On 8 June 2023 the Registrar was notified of a complaint that the Appellant had held inappropriate conversations with a student. The Registrar investigated and was made aware of three complaints regarding the Appellant's conduct ("the Complaints").
27. In summary, the Complaints alleged that the Appellant:
- a. made inappropriate comments to and asked inappropriate questions of students, including comments and questions regarding students' relationships, and personal and sexual lives;
 - b. made sexual comments about pedestrians;
 - c. touched students by holding their hands; and
 - d. invited a student to smoke during a lesson.
28. The Registrar subsequently carried out an investigation into the Complaints. By letter dated 23 August 2023 the Registrar stated that he was considering whether the Appellant's name should be removed from the register on the ground that the Appellant was not a fit and proper person to remain on the register.
29. The Appellant made representations by email dated 22 September 2023. In this email he stated that he had sent the representations earlier, but due to using the wrong email address the email had not been received. The Registrar submits that he nevertheless took the Appellant's representations into account.
30. By letter dated 25 September 2023 the Registrar confirmed that he had decided to remove the Appellant from the register.
31. The Appellant appealed to the Tribunal.

The Appeal

32. The Appellant submits that:
- a. many of the allegations made by the Complainants are untrue, while others are made without giving relevant context;

- b. there were a number of problems with the way in which the Registrar had taken the decision, including that:
 - i. the time between the Appellant's representations and the decision to remove him indicated that the Registrar had not given proper consideration to his arguments;
 - ii. his response had been sent to the wrong team; and
 - iii. during his interview he had not been asked enough questions;
- c. there may have been some form of collusion between one or more of the Complainants; and
- d. his teaching relationships with the Complainants ended for reasons which were entirely appropriate.

33. The Registrar submits that:

- a. while the Appellant has not been convicted of any offence, he has pursued an inappropriate course of conduct;
- b. the Appellant was warned previously in relation to similar conduct;
- c. teaching people to drive is a responsible and demanding task and should be entrusted to those with high standards;
- d. approval is not limited to instructional ability but extends to a person's character, behaviour and standard of conduct;
- e. the good name of the register would be tarnished and public confidence undermined if it were known that the Appellant's name had remained on the register; and
- f. it would be offensive to other approved driving instructors and persons trying to qualify as approved driving instructors who had been scrupulous in their behaviour to ignore this conduct.

Discussion

34. The Complainants have given witness statements to the Registrar, each one of which is given subject to a warning of the potential criminal penalties for knowingly making false statements.

35. The Driver and Vehicle Standards Agency and the National Associations Strategic Partnership have agreed a Code of Practice for approved driving instructors, a copy

of which was provided to the Tribunal. This includes commitments by driving instructors, among other things:

- a. to avoid inappropriate physical contact with clients (students);
- b. to avoid the use of inappropriate language with clients;
- c. to take care to avoid becoming involved in a client's personal affairs or discussions about a client's personal relationships, unless safeguarding concerns are raised; and
- d. to avoid circumstances and situations which are or could be perceived to be of an inappropriate nature.

36. The Appellant's Grounds of Appeal make a number of criticisms about the Registrar's investigation and decision-making process (see paragraph 33(b) of this Decision). The Tribunal's role is not to assess how the Registrar made his decision, but to make a fresh decision based on the evidence presented to it.

37. The Appellant said that he cannot understand why the Complainants would have made most of the allegations in the Complaints, or why he might say the things which they allege that he has said. He denies having discussed sex with any student.

38. The Appellant believes he may have upset one of the Complainants when she asked for his advice on how to respond to a situation which had arisen in her relationship with her boyfriend, unconnected with driving. He answered her question, but now accepts that he should not have done so.

39. The Appellant said that there may have been some collusion between some of the Complainants. In particular he said that one of the Complainants had told him that she regularly goes to a particular pub on particular evenings, and another had told him that she works in the same pub on those evenings. Beyond these assertions he provided no evidence to support any collusion and acknowledged that he could not do so.

40. The Appellant acknowledged that he sometimes swears in conversation with students, but says that he does not swear at students. He said that his way of speaking to students is part of his personality and helps to build rapport with them. He admits to having described a female pedestrian who he saw running as being "fit as f**k", but says that he intended "fit" in this context to refer to athletic fitness rather than sexual attractiveness.

41. The Appellant acknowledged that he touches students' hands, with their consent, in order to indicate the pressure necessary to apply to pedals while driving. When asked by the Panel the Appellant said that he continues to think that this is appropriate.

42. He acknowledges that he smoked a cigarette with one student during a lesson, but says that this was to calm their nerves after a stressful and potentially dangerous driving situation had occurred.
43. The Appellant has undertaken further training and has joined the Approved Driving Instructors National Joint Council. He has reflected on his conduct since the investigation, has discussed this with other approved driving instructors, and believes he has learned as a result. He gave as an example that he has changed the way in which he asks questions about students' medical conditions with reference to the safety of making emergency stops, to be more sensitive to their privacy.
44. Regarding the previous complaint leading to the letter of 10 November 2021, the evidence shows the Appellant has consistently been open about the incident, shown regret and remorse, and recognises that his behaviour was inappropriate.
45. The Appellant said that the previous incident had caused problems for his relationship with his wife and children; that the Complaints and the Registrar's decision were causing further pressure on his family life; that losing his status as an approved driving instructor would cause him financial hardship; and that other recent family events had caused him great distress at the same time.

Conclusion and decision

46. The Tribunal considered all of the evidence and submissions by the parties.
47. The Appellant is passionate and committed to his work as a driving instructor. The Tribunal acknowledges that the Registrar's investigation and decision have caused him great distress.
48. The Tribunal also recognises that, since the Complaints and the Registrar's investigation, the Appellant has learned lessons regarding the standards of conduct and behaviour which are required from approved driving instructors, and finds that during the process of the Appeal he has continued to do so.
49. The Tribunal also finds that, even to the extent that the Appellant admits matters set out in the Complaints, the evidence shows that he continues to see justification in some forms of behaviour which are inappropriate for an approved driving instructor. He has demonstrated that, although he has learned from his past behaviour, his conduct still falls below what the Registrar legitimately regards as that of a fit and proper person.
50. Accordingly, the Tribunal is not persuaded that the Registrar's decision was wrong, and dismisses the Appeal.
51. It is not necessary for the Tribunal to make specific findings as to whether each of the matters set out in the Complaints is proven, and we do not do so.

Signed:

Tribunal Judge Maton

Date:

3 February 2025