



NCN: [2025] UKFTT 00219 (GRC)

Case Reference: FT/D/2024/0634

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

**Heard by Cloud Video Platform  
Heard on: 11 February 2025  
Decision given on: 18 February 2025**

**Before**

**TRIBUNAL JUDGE HEALD  
TRIBUNAL MEMBER RAWSTHORN  
TRIBUNAL MEMBER SMITH**

**Between**

**MUHAMMAD SULTAN ALI**

Appellant

**and**

**THE REGISTRAR FOR APPROVED DRIVING INSTRUCTORS**

Respondent

**Representation:**

For the Appellant: the Appellant appeared in person

For the Respondent: Mr Russell (by telephone)

**Decision:** The Appeal is Allowed

**REASONS**

1. This Appeal is brought by the Appellant pursuant to section 131(1)(c) Road Traffic Act 1988 ("the Act"). It relates to a Decision made by the Respondent ("the Registrar") dated 28 June 2024 ("the Decision") that the Appellant was no longer a fit and proper person ("FPP") and to remove his name from the register of approved driving instructors ("the Register").

2. What follows is a summary of the submissions, evidence and our view of the law. It does not seek to provide every step of our reasoning. The absence of a reference by us to any specific submission or evidence does not mean it has not been considered.
3. In this Decision page numbers indicated by their inclusion in brackets refer to pages of the Bundle.

### **Relevant Law and Guidance**

4. By section 123 (1) of the Act a person may only provide paid driving instruction if that person's name is on the Register or he holds a Licence by section 129(1) of the Act and in accordance with The Motor Cars (Driving Instruction) Regulations 2005.

5. Section 128(1)(a) of the Act provides:-

*"(1)The Registrar may remove the name of a person from the register if he is satisfied that –*

*(a)in a case where his name has not been retained in the register under section 127 of this Act, at any time since the entry of his name was made, and*

*(b)in a case where his name has been so retained under that section, at any time since it was last retained,*

*any of the relevant conditions was fulfilled in his case."*

6. The conditions include at section 128(2) (e) of the Act:-

*"that he ceased, apart from fulfilment of any of the preceding conditions, to be a fit and proper person to have his name included in the register."*

7. Section 128 (6),(6A) and (7) of the Act provides that:-

*(6)The Registrar must, on making a decision to remove a name from the register, give notice in writing of the decision to the person concerned.*

*(6A)A decision to remove a name from the register shall take effect at the end of the period of fourteen days beginning with the day on which notice of the decision is given (or, if any appeal brought against the decision under the following provisions of this Part of this Act is previously withdrawn or dismissed, when the appeal is withdrawn or dismissed).*

*(7)But the Registrar may, when giving notice of his decision to remove the name from the register, direct that the decision shall instead take effect –*

*(a)where no appeal under the following provisions of this Part of this Act is brought against the decision within the time limited for the appeal, on the expiration of that time,*

*(b)where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal,*

*(c) where such an appeal is brought and not withdrawn or struck out for want of prosecution, if and when the appeal is dismissed, and not otherwise.*

8. In *Harris -v- Registrar of Approved Driving Instructors* [2010] EWCA Civ 808 Richards LJ Held at para 30:-

*".....I do not accept that the scope of the "fit and proper person" condition is as narrow as Mr Leviseur contended. Of course, 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".*

9. Section 128(5)(c) of the Act provides that before deciding to remove a name from the Register the Registrar must consider representations made by the person concerned.

10. The Driver & Vehicle Standards Agency ("DVSA") has issued Guidance ("the Guidance") which an approved driving instructor ("ADI") is required to declare they have read when applying to become an ADI. It states under the heading "Motoring Offences"

*"Many of these offences will result in 6 or more penalty points being put on your driving licence.*

*The ADI Registrar has refused applications or removed an ADI from the register when they've had 5 or more penalty points within the last 3 years under the 'totting up' rules."*

11. Additionally a code of practice for ADI ("the Code") has been agreed between the DVSA and the National Associations Strategic Partnership a steering group for approved driving instructor associations. Whilst it is voluntary the Guidance states that *"It is a framework within which all instructors should operate."* This includes that the instructor agrees to:-

*"at all times comply with legislative requirements including..."*

and

*"ensure that when presenting a client for the practical driving test:...the vehicle complies with all aspects of motoring law....."*

### **Role of the Tribunal**

12. Section 131(1) of the Act provides that:-

*"A person who is aggrieved by a decision of the Registrar... (c)to remove his name from the register, may appeal to the First-tier Tribunal."*

13. Section 131 (3) of the Act provides that the Tribunal may make such order:-

*"(a)for the grant or refusal of the application*

*or,*

*(b)for the removal or the retention of the name in the register, or the revocation or continuation of the licence,*

*(as the case may be) as it thinks fit."*

14. Section 131 (4A) of the Act enables the matter to be remitted back to the Registrar for reconsideration

*"If the...Tribunal considers that any evidence adduced on an appeal had not been adduced to the Registrar before he gave the decision to which the appeal relates"*

15. In considering the Appeal the Tribunal must also give appropriate weight to the Registrar's view. The Court of Appeal in *Hope and Glory Public House Ltd, R (on the application of) v City of Westminster Magistrates Court & Ors [2011] EWCA Civ 31 (26 January 2011)* held that the answer to " *How much weight was the district judge entitled to give to the decision of the licensing authority?"* was:-

*"45...the proper conclusion....can only be stated in very general terms. It is right in all cases that the magistrates' court should pay careful attention to the reasons given by the licensing authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which the magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal."*

16. Therefore 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 the relevant legislation with making such decisions. It is not the role of the Tribunal to carry out a procedural review of the Registrar's decision making process but it does need to consider all the circumstances.

### **Evidence and matters considered**

17. At the Appeal we heard from the Appellant by CVP and Mr Russell for the Registrar on the telephone (but not CVP). They are thanked for their attendance and for assisting the Tribunal. We also had a Bundle of papers. It was unclear at the start of the Appeal if the Appellant had access to a copy of the Bundle despite having been sent it. It was established that he had seen the relevant papers. He also said that he had sent material to the Tribunal in the 2 days before the hearing which we did not

have. The clerk indicated it was not in the system and so he was asked during the hearing to let us know what it said, which he did.

### **Chronology**

18. In outline the chronology leading to this Appeal is as follows:-

(a) the Appellant first had his name added to the Register in 2022.

(b) on 7 May 2024 (27) the Registrar received a complaint (with photographic evidence) that the Appellant had been providing driving instructions in a vehicle with no MOT and where the MOT appeared to have expired on 28 November 2023 (28)

(b) on 29 May 2024 (34) the Registrar gave notice to the Appellant that he was considering the removal of the Appellant's name from the Register and invited the Appellant to make representation.

(c) on 6 June 2024 the relevant vehicle obtained a MOT certificate (37)

(d) the Appellant made representations (35-37) on 6 June 2024

(e) on 28 June 2024 the Registrar notified the Appellant of the Decision (38 and 1) namely that his name was to be removed from the Register.

### **The Appeal**

19. On 27 July 2024 the Appellant commenced this Appeal. It is supported by Grounds of Appeal and letters giving character references in support of the Appellant (2-22). The Registrar has provided a Response (23-26) dated 12 December 2024.

### **The Registrar's position**

20. As set out his letter of the 29 May 2024, the Decision, the Response to the Appeal and at the Appeal hearing the Registrar indicated that in his view the Appellant was no longer a FPP because he had been instructing pupils in a vehicle that had no MOT in place and which had been used for driving tests 18 times since the MOT expired.

21. While accepting that the vehicle did get a MOT certificate as soon as the Appellant was told of the issue he said for example that:-

(a) *"...he was using the vehicle for the purpose of instruction and presenting it at test without a valid MOT for an extended period of time."*

(b) *"...I would therefore be failing in my public duty if I allowed a person who had conducted himself in such a manner to have his name retained in the Register."*

(c) *"..I am concerned that the good name of the register would be tarnished and the public's confidence undermined if it was generally known that I had allowed the appellant's name to be retained in the register."*

(d) "it would be offensive to other ADIs and persons trying to qualify as ADIs, who had been scrupulous in observing professional behaviour, for me to ignore this conduct."

22. In the Registrar's view this meant that the Appellant was no longer a FPP. We noted that the Registrar by section 128(7) of the Act indicated that the Decision would not take immediate effect.

### **The Appellant's case**

23. The Appellants position was set out in his representations (35), Grounds of Appeal (2-22) ("the Grounds") and at the Appeal itself. He did not dispute the facts set out by the Registrar (17) apologised for what had occurred and said that "I promise not to do such a thing to make my name come up again".

24. He explained to us that the failure to ensure the vehicle had a MOT was an oversight. He described the failure to have a MOT as a lapse and that it had "*slipped my mind completely*". The Grounds explain that this occurred because it related to a new car and normally he expected to use a road tax reminder as the trigger to make sure the MOT was dealt with at the same time but that those timings did not work with this new car. At the Appeal he also explained about certain personal family and health issue that had meant he was distracted.

25. He raised a number of other matters in support of his Appeal such as:-

(a) he had been teaching and driving for a long time and had never had a car without a MOT before.

(b) the car obtained an MOT as soon as the issue was pointed out to him.

(c) the lessons he had learnt and his commitment to continued professional development and steps taken to ensure it did not occur again.

(d) his offer to sign up to and agree to the Code (although it was not clear that he had done so by the time of the Appeal).

(e) the many positive character references he had provided.

(f) his insight into the issue saying that he recognised that it is important for the instructor to demonstrate a high regard for all aspects of road safety.

(g) that no one at the test centres ever raised an issue with the car being used.

(h) the financial importance of his role as an ADI to himself and his family and the impact it would have on him and them if he was not able to continue instructing.

(g) the absence of a number of specific convictions.

(h) examples of other First tier Tribunal ("FtT") cases.

26. In a conclusion he said (19):-

*"...I respectfully ask that my name is not removed as I want to continue to raise my standards and other drivers in order to help them make sure we help keep Britain's roads safe."*

### **Our Review**

27. We considered all the circumstances presented to us noting in particular and first the Registrar's view as the person who has the statutory role to maintain the Register.
28. The outline facts in this Appeal are not in dispute. No points resulted from it but the Appellant accepts that for nearly 7 months between 28 November 2023 and 6 June 2024 he gave driving instructions in a vehicle that had no MOT and allowed it to be used for tests on 18 occasions. The Appellant accepts that it was his responsibility to ensure this did not happen and apologised for the error.
29. While he was not signed up to the Code the Guidance describes it as a *"framework within which all instructors should operate"* and it states that the ADI agrees to *"ensure that when presenting a client for the practical driving test:...the vehicle complies with all aspects of motoring law....."*
30. ADIs are held to a higher standard than ordinary drivers. The public has the right to expect ADIs to adhere to the highest standards of motoring. Members of the public who take driving lessons without a doubt expect an ADI to be instructing in a vehicle that had a MOT when required by law. The public must have confidence in the Register and we note the decision in *Harris* on this and agree with the Registrar's position on it.
31. The Appellant expressed surprise that no one at the test centre had pointed out the absence of the MOT. We gave no weight to this when considering this Appeal as at all times it was the Appellant's responsibility as he rightly accepts.
32. The Appellant told us about his insights into the issues, the "lessons learnt", his commitment to continued professional development and steps taken to ensure it did not occur again. They were noted but in our view such a response was necessary and had it not been stated and apparent to us that might itself have made us conclude that the Appeal should be dismissed.
33. While we were sympathetic to the personal family health circumstances explained by the Appellant and his role in them we did not give much if any weight to this because in our view the Appellant could and should have discovered the MOT position at the time of purchase and made a simple diary reminder. We also noted that the Appellant had been able to carry on teaching and during this period had also taken steps to change the vehicle number plate.
34. We were also sympathetic to and understanding of the submissions made by the Appellant about the serious financial impact on him and his family if his name was removed from the Register. It is something likely to be of concern to anyone whose name is removed. In our view, while the matters raised are not challenged and we review all the circumstances, we do not consider the likely financial impact to be a

particularly relevant consideration for a decision about whether an ADI is a FPP. The need to maintain the integrity of and public trust in the Register is likely always to be greater than the needs of an individual appellant and we gave this point very little weight.

35. We noted the character references. They are all very positive and we have no reason to doubt them. They say for example that the Appellant is a person of integrity and of good character who has made a positive impact in his community, that he is a good dedicated teacher with a passion for what he does going the extra mile for numerous pupils. Again we noted this and gave some weight to what is said but the Registrar's issue related to the failure to have a MOT in place which we could not see directly addressed by the references. Being a FPP is not just about being a good instructor but being a FPP to have his name on the Register and gain a "seal of approval".
36. The Appellant says "*I am aware of many ADI's who have points or convictions and remain on the register...*". As with other Appellants we were also referred to list of other FtT Decisions where in all the appeal was successful and where this Appellant would say the reasons for concern were stronger. It is clearly appropriate, useful and important for appellants and prospective appellants to have access to the many published FtT Transport decisions on FPP. This helps them decide about the merits of an appeal and the approach taken by the FtT. However it is also important to state that FtT decisions while useful are not binding on other FtT. Each case is decided on all the circumstances relevant to that case having heard from the Appellant and Registrar and any witnesses and reviewed the documents. They tend to be fact specific. Finally it is worth noting that while not cited to us there are numerous FtT cases where the appeals have not been granted. The cases provided to us are of interest but have not assisted us in reaching this Decision. The outcome of this case is also not a binding precedent.
37. We were concerned that the absence of the MOT might have meant that for the relevant period the vehicle's insurance was invalidated. However the point was not raised by the Registrar as a concern when making the Decision or at any stage and it was not raised before us at the Appeal. Had it been an issue we would have dismissed the Appeal.

### **Decision**

38. We have considered and weighed up all the evidence and submissions made and taken note of *Harris*. Despite the importance of the view of the Registrar we have concluded that the Appellant's failure to have a valid MOT in this case does not mean he is not a FPP. This is principally because of a combination of:-
  - (a) the failure to have an MOT while concerning was caused by a genuine and one off oversight.
  - (b) the period of default was lengthy but the vehicle got its MOT as soon as the issue was raised.



(c) there were no Points involved.

(d) despite the Decision caused by the FPP concern the Registrar had allowed the Appellant to continue to have his name on the Register by section 128(7) of the Act since June 2024.

39. It was not raised before us at the Appeal, but we did also note that had the vehicle been stopped by the Police the failure to have a valid MOT (if there were no other issues) might well at most have led to a fine and 3 Points. We accept that it is not appropriate for an ADI to have any points but we did also note that in this scenario the Registrar might not have decided even to have considered the removal of the Appellant's name from the Register.

40. Accordingly the Appeal is allowed.

**Signed Tribunal Judge Heald**

**Dated 18 February 2025**