



Case Reference: FT/D/2024/0658

Neutral Citation Number: [2025] UKFTT 00222 (GRC)

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

**Heard by Cloud Video Platform
Heard on: 11 February 2025
Decision given on: 21 February 2025**

Before

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

Between

MUHAMMED MAHBUB HUSSAIN UDDIN

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(2)(a) Road Traffic Act 1988 ("the Act"). It relates to a Decision made by the Respondent

("the Registrar") dated 22 July 2024 ("the Decision") not to grant the Appellant a (trainee) Licence because he had accepted a fixed penalty notice in July 2023 resulting in 6 penalty points and would therefore not be a fit and proper person ("FPP").

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. Reference is also made to various annexes to the Grounds of Appeal.

Relevant Law

4. The Appellant's name is not on the Register of Approved Driving Instructors ("the Register") and he is therefore prohibited from giving paid driving instructions by section 123 (1) of the Act unless he holds a Licence issued by the Registrar pursuant to section 129(1) of the Act and in accordance with The Motor Cars (Driving Instruction) Regulations 2005.
5. To qualify as an Approved Driving Instructor ("ADI") an applicant is required to pass a Qualifying Examination. This is in 3 parts namely part 1 being a written examination, the driving ability and fitness test in part 2 and the instructional ability and fitness test in part 3. Three attempts are allowed at each part. The whole examination (parts 1-3 inclusive) must be completed within two years of passing part 1. If this is not done then the whole examination has to be retaken. A Section 129(1) Licence may be granted by the Registrar once an applicant has passed part 2.
6. Section 129(1) of the Act says that:-

"(1) A Licence under this section is granted for the purpose of enabling a person to acquire practical experience in giving instruction in driving motor cars with a view to undergoing such part of the examination referred to in section 125(3)(a) as consists of a practical test of ability and fitness to instruct."

7. To obtain a Licence an applicant applies to the Registrar (section 129(1A)). By section 129(2) of the Act where a person applies for a Licence the Registrar must grant it provided he is satisfied that among other things:-

"(b)...the conditions set out in section 125(3)(b), (c), (d) and (e) are fulfilled in the applicant's case"

8. Section 125(3)(e) of the Act refers to the need for the applicant to satisfy the Registrar that he is "... a fit and proper person to have his name entered in the register. "

9. In *Harris -v- Registrar of Approved Driving Instructors [2010] EWCA Civ 808* Richards LJ referred to this "fit and proper person " approach and held at para 30:-

".....I do not accept that the scope of the "fit and proper person" condition is as narrow as Mr Levisieur 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".

10. Section 129(4) of the Act provides that:-

"The Registrar must, on making a decision on an application under subsection (2) above, give notice in writing of the decision to the applicant which, in the case of a decision to refuse the application, must state the grounds of the refusal"

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

"It's also unlikely that you'll be classed as a 'fit and proper' person if you've been found guilty of:.....driving while using a hand-held mobile phone...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."

12. 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. It is referred to as being voluntary but we note that the Guidance states that "*It is a framework within which all instructors should operate.*" This includes that the instructor agrees for example to:-

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

and

"not using mobile devices like phones when driving or supervising client's driving and only when parked in a safe and legal place"

Role of the Tribunal

13. Section 131(2) of the Act provides that:-

" A person who is aggrieved by a decision of the Registrar—

(a)to refuse an application for the grant of a Licence under this Part of this Act, or

(b)to revoke such a Licence,

may appeal to the First-tier Tribunal."

14. 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."

15. Section 131 (4A) of the Act provides that, in addition, if the Tribunal is provided with evidence that was not before the Registrar at the relevant time it may remit the matter back to the Registrar.

16. 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."

17. 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.

Reasonable adjustments

18. In his Appeal form the Appellant indicated that he required translation services for his parents. He was asked about this at the start of the Appeal but confirmed that this was not necessary.

Evidence and matters considered

19. At the Appeal we heard from the Appellant and Mr Russell and they are both thanked for their attendance and for assisting us. We also had an 86 page bundle.

20. The Appellant was asked to confirm whether the Tribunal had all the papers as the Appeal referred to more annexes than were in the Bundle. On further review it was established that there were missing items. They were provided to us about 20 minutes into the hearing and were available to us for the remainder of the Appeal, during our deliberations and when reaching our Decision.

21. Additionally at the start of the Appeal the Appellant read to us his submissions and subsequently sent a copy of them to us.

Chronology

22. An outline of the relevant chronology follows:-

(a) the Appellant began working for FedEx as a courier driver on 13 August 2008 (69 & 81).

(b) on 2 March 2023 he was accepted by the Registrar as a Potential Driving Instructor (annex 15).

(c) on 6 July 2023 (65) he received the offer of a fixed penalty notice and 6 points from the City of London Police, relating to an incident on 4 July, which he accepted.

(d) he passed part 1 on 29 January 2024 and the period of 2 years from this date will expire in January 2026.

(e) on 13 February 2024 he notified DVSA about the 6 Penalty Points and received a reply on 14 February 2024 (annex 15)

(f) he passed part 2 on 29 April 2024.

(g) on 10 May 2024 (after about 16 years) he was made redundant (81) by FedEx.

(h) on 8 July 2024 the Appellant made an application for a (trainee) Licence (77-78).

(i) on 8 July 2024 (79) the Registrar gave the Appellant notice that he was considering refusing the Appellant's application and invited him to make representation although this step was not a requirement of the Act.

(j) the Appellant made representations by email of 11 July 2024 (68 & 80).

(k) the Decision (namely to refuse the application for a Licence) was made and reported to the Appellant by letter of the 22 July 2024 (1 and 84).

The Appeal

23. This Appeal, dated 3 August 2024, is from the Decision. The Appeal is supported by 17 annexes (2-72 and separately). The Registrar has provided a Response (73- 76) dated 3 December 2024.

The Registrar's position

24. The Registrar's position was set out in his letter of the 8 July 2024 (79), the Decision of the 22 July 2024 (1), the Response to the Appeal (73-76) and at the Appeal hearing.

25. In the Registrar's view the Appellant would not be a FPP because of the 6 penalty points and mobile device use. In his Response to the Appeal he cites these reasons for the Decision including (75):-

(a) "*...The conditions for entry onto the Register extend beyond instructional ability alone and require that the applicant is a fit and proper person. As such, account is taken of a person's character, behaviour and standard of conduct. Anyone who is an Approved Driving Instructor (ADI) is expected to have standards of driving and behaviour above that of the ordinary motorist. Teaching (generally) young people to drive as a profession is a responsible and demanding task and should only be entrusted to those with high standards and a keen regard for road safety. In*

committing these offences, I do not believe that the appellant has displayed the level of responsibility or commitment to improving road safety that I would expect to see from a potential ADI."

(b) the evidence that for example:-

"...in 2014...using a mobile phone contributed to 21 deaths, 84 serious injuries and 387 minor accidents"

(c) that the Registrar cannot *"...condone motoring offences of this nature. To do so would effectively sanction such behaviour, if those who transgress were allowed entry onto an official Register that allows them to teach others."*

(d) *"It would be offensive to other ADIs and persons trying to qualify as ADIs, who had been scrupulous in observing the law, for me to ignore this motoring conviction"*

The Appellant's case

26. The Appellant's position was set out in his representations (80-84), Grounds of Appeal and at the Appeal (including his typed submissions). He did not dispute the facts presented by the Registrar.
27. The Appellant set out the events of 4 July 2023 leading up to the Points in considerable detail in the Grounds of Appeal (13) and at the Appeal. In summary he explained that the Points had arisen when he was working as a courier for FedEx in London. On that day he had 40 parcels to deliver in the postcode areas E1 and EC3 and he explained the issues for a driver working in that part of London dealing with parking, navigation, the congestion charge and congestion itself, road layout changes such as at Bank and the need to work to a deadline (for example when delivering to hospitals) but lawfully. He said that (13) *"Overall, delivering in EC3 required careful planning and flexibility to handle all these challenges effectively."*
28. He told us that in the afternoon he was stationary at a red traffic light and "briefly" tapped his work issued personal digital assistant ("PDA") that was securely mounted to the dashboard being an essential tool for managing a route, deliveries and collections. He was seen by a Police Officer who initially thought it was a mobile phone but issued the penalty notice on the basis that using a PDA is treated in the same way as a mobile phone. He did not dispute the penalty notice and accepted that he should have stopped and turned off the engine before engaging with the PDA.
29. In the representations and Grounds of Appeal and at the Appeal he apologised for his mistake saying for example:-

"...I would like to express my deepest and most heartfelt apologies for my serious error in judgement...I fully understand the gravity of my behaviour...I am profoundly sorry for my lapse in judgement"

and

" I did not dispute the penalty, as I recognized my lapse in judgment and took full responsibility."

and

"I deeply regret my mistake and have learned from this experience. I am fully committed to maintaining the highest standards of professionalism, integrity, and road safety as an ADI."

30. He put forward a number of other matters in support of his Appeal including:-
- (a) his honesty and openness about the points in February 2024.
 - (b) a number of issues about work but also outside work that he was dealing with on that day including about his job security and involving his family.
 - (c) that he has carried out CPD and taken steps to learn and change the way he deals with a mobile device in the car to prevent it happening again and his commitment to setting the *"best example for my students..."*
 - (d) his (and his family's) financial dependence on his ADI career the loss of which would cause further strain in his life and to the lives and health of his family.
 - (e) that (as he told us at the Appeal) *"despite the penalty, I was informed on 14th February 2024 that I could continue with my ADI qualification process."*
 - (f) the financial investment he has made in becoming an ADI which he said was £15,000.
 - (g) the serious significant negative impact losing his ADI career would have to him and his family including to his health (15) and the existence at the time of the incident of *"severe personal and emotional stress"* including the death of a relative, health issues of a close family member and his wife's redundancy.
 - (h) that although the Points will be removed in July 2027 by then the 2 years from passing the part 1 will have expired (13).
 - (i) the support shown to him by his former employer in a letter of recommendation from the manager of operations dated 10 July 2024 (22).

(j) the many other letters of recommendation and character references including from his instructor.

(k) the outcome other First-tier Tribunal transport cases including in particular *Willoughby v The Registrar of Approved Driving Instructors [2024] UKFTT 819 (GRC) (21 August 2024)*.

(k) at the Appeal he told, us that his employer had not issued guidance about engaging with the PDA while working.

(l) that he has signed up to the Code.

Our Review

31. The outline facts in this Appeal are not in dispute. The Appellant while working as a professional driver engaged with the PDA while driving, was seen and accepted 6 Penalty Points. The Appellant accepts that use of the PDA was a serious mistake and has apologised.
32. The Appellant in the Grounds (13) urges the Tribunal to consider the findings of the Windrush Lessons Learned Review. However, while the Tribunal does consider all relevant circumstances and makes such order "... as it thinks fit" the Windrush Review is not directly relevant to the role of the Tribunal. As set out in this Decision our role is defined by the Act and in particular section 131 and in the relevant legal authorities such as *Harris and Hope and Glory*.
33. Our starting point is therefore to consider first and give due regard to the view of and the Decision made by the Registrar. We accept the Registrar's position as set out in this Appeal including as regards the Register, other ADI and on the dangers of the use of a mobile device while driving and the evidence of the serious harm that can cause. This issue is specifically referred to in the Guidance and the Code and we noted the Appellant's addition of statistics in annex 17 to the Appeal which state:-

"In 2022, 22 people were killed and 652 injured in road traffic collisions in Great Britain where the driver was assigned the contributory factor of using a mobile phone"

34. While the Appellant was not signed up to the Code at the time of the incident he had by then been a professional driver for many years and the law relating to mobile devices had been very heavily publicised even if we accept that his employer had in fact not given specific guidance. We noted the material provided by the Appellant in Annex 16 to the Appeal.

35. ADIs are held to a higher standard than ordinary drivers. The public expects the Registrar to work to ensure that ADI are FPP in the wider *Harris* sense and has the right to expect ADIs to adhere to the highest standards of motoring. It is right for the Registrar to be concerned about a person with 6 points potentially being on the Register.
36. The Appellant told us about his honesty and openness about the Points and his insights into the issues, the lessons learnt, his commitment to continued professional development and steps taken to ensure it does not occur again. These are all important and all noted by us. In our view such a response to the issues was entirely appropriate but we would have expected nothing less. Had they not been stated and/or apparent to us at the Appeal, that might itself have made us conclude that the Appeal should be dismissed.
37. We were very sympathetic to the personal issues and personal and family health circumstances explained by the Appellant including the death of a relative. We accepted what was said. We were presented with a considerable amount of very detailed and very personal material (including his and others' medical records). We were asked to take such matters into account both (a) as regards how they may have caused "a temporary lapse in concentration" at the time of the incident but also (b) more generally when considering the Appeal. Despite our sympathy we did not give much, if any, weight to the issues. As regards the incident in our view as a professional driver of many years experience as the Appellant was dealing with "*severe personal and emotional stress*" that "*contributed to my temporary lapse in concentration*" the appropriate course of action for him should have been to take time off work in discussion with his doctor employer. As regards more generally it is not in our view at all likely that it would be relevant for the Registrar to moderate his view on FPP by reference to the health of those close to the Appellant.
38. We were also sympathetic to and understanding of the submissions made by the Appellant about the financial impact on him and his family if he was not able to complete his route to becoming an ADI. This is something we would expect would be of great concern to anyone in his situation. However in our view, while we review all the circumstances and have taken it into account, 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.

39. The Appellant says that he is financial dependant on the career as an ADI (14). The purpose of a Licence by section 129(1) of the Act is to allow a potential driving instructor practical experience teaching students. Whilst they can charge for lessons to cover costs such as insurance and vehicle costs it is not and can not be considered a livelihood because (a) they still have to pass their Part 3 test of instructional ability (b) the trainee licence is of 6 months duration unless extended and (c) the trainee instructor is not working independently but attached to a training establishment. Therefore not being granted a Licence is not in our view in depriving a person of their livelihood as an ADI because they are not one (yet).
40. We considered the reference from his instructor of 11 July 2024 (21). It is supportive of him, his attitude to training and his potential as an ADI and we have no reason to doubt its content. It does not however address the issue of the Points nor the broader issues as set out in *Harris* about being a FPP.
41. We reviewed the personal character references and letters in support of this Appeal many from people who have know the Appellant. We were told for example of the Appellant's resilience and commitment, patience and empathy. It is said that he is a person of integrity and responsibility a "*pillar of his community*" who is "*...fantastic with people*", "*approachable and thoughtful*" "*...a standout individual*", "*reliable and upstanding..*" We accept what they say but note again that they do not address the issue of the Points and the broader issue relevant to the Decision that being a FPP and having ones name on the Register is not just about being a good instructor (or potential instructor) but being a FPP to have his name on the Register and gain a seal of approval.
42. We noted the reference from FedEx (22) who employed him in a professional driving capacity and without incident for about 15 years. We did note that the reference given in July 2024 does not expressly state that the writer was aware of the 6 points incurred while the Appellant was employed by them in July 2023. It does say that the Appellant had a number of qualities including (22) "*...Excellent understanding of driving rules and regulations. During [his] time at FedEx he adhered to all the road safety regulations and completed the relevant training in a timely manner. [He] always complied with the relevant company policies and procedures.*" Without more information we were not able to know how FedEx viewed 6 points. In any event while the reference is useful and we gave it some weight the consideration of FPP for an ADI is broader than an ability to be a good driver even a professional courier.
43. The Appellant is aware that by July 2027 the Points will have lapsed but that by January 2026 it will be 2 years from when he passed his Part 1 with the resulting need to "start again". This is an understandable frustration but not

something we considered was relevant for the Registrar to give weight to in this case when making his FPP decision.

44. The Appellant (in common with others) referred the Tribunal to other examples of First-tier Tribunal cases where an appellant had 6 points (or more) and were successful in their appeals. In this case the Appellant referred in particular to *Willoughby* where (see para 22 of that Decision) an appeal was allowed for an appellant who had accrued 9 points at the time of the Registrar's decision but by the time of the appeal it had reduced to 3. 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 for example to 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. Also it is worth noting that while not mentioned to us there are numerous FtT cases where the appeals have not been granted. The cases provided including *Willoughby* are of interest but have not assisted us in reaching this Decision. The outcome of this case is also not a binding precedent.
45. The Appellant also told us of the investment of £15,000 he had made in becoming an ADI. Again that information of itself (which we accept) did not assist us in this Appeal as we would not expect the Registrar when making a FPP decision to have had regard to such issues.
46. We reviewed the interaction between the Appellant and DVSA when he notified them of the Points. The specific chronology is as follows:-
 - (a) on 2 March 2023 he was accepted as a Potential Driving Instructor
 - (b) the Points arose on 6 July 2023
 - (c) he passed part 1 on 29 January 2024
 - (d) the Appellant first notified the DVSA of the Points on 13 February 2024 saying:-

"Unfortunately, I was unaware of the requirement to notify the DVSA about this, given that I already on the register. This oversight on my part is sincerely regretted. and I want to express my genuine apologies..."
 - (e) DVSA replied on 14 February 2024 saying (our emphasis added):-

"Thank you for your email received on 13 February 2024 about your CU80 offence and 6 penalty points that you have received.

You were accepted by the Registrar as a Potential Driving Instructor on 2 March 2023 and as such, the Registrar will not prevent you from undertaking the qualifying examinations.

However, an applicant with unspent driving convictions must satisfy the Registrar that they are a 'fit and proper' person to be an Approved Driving Instructor. It is possible that the Registrar will refuse an application for a trainee licence or to have your name entered onto the Register when you have passed the instructional ability test (ADI part 3) while the points are still counted towards the totting up process.

The Registrar will consider the circumstances surrounding the offences when making any decision an application."

(e) the Appellant passed part 2 on 29 April 2024

(f) on 8 July 2024 he applied for a Licence and was refused.

47. The Registrar in his reply to the Appellant said both:-

(a) the Registrar will not prevent you from undertaking the qualifying examinations

and

(b) It is possible that the Registrar will refuse an application for a trainee licence

48. Despite the wording at (b) above we concluded that this wording (especially by referring to "qualifying examinations" plural) convinced the Appellant that the Registrar was giving him advanced clearance to progress to having a Licence and taking Part 3 despite the disclosure of the Points. He said to us at the Appeal *"Despite the penalty, I was informed on 14th February 2024 that I could continue with my ADI qualification process "*.

49. In fact we think it most likely that the Registrar was saying he could finish Part 2 but was overtly not giving any assurance about what would happen on an application for a trainee Licence.

50. While we do not conclude that the letter of February 2024 and its possible confusion bound the Registrar when making the Decision in July we do think its contents and the impact on the Appellant is a matter we should weigh as part of our consideration.

51. Finally the Guidance says that *"You must tell the Driver and Vehicle Standards Agency (DVSA) in writing within 7 days if you get any caution or conviction. This*

includes: any motoring offences, including penalty points." This obligation for speedy notification in our view is in part at least to enable the Registrar to make a speedy FPP assessment of that person. We accept that the Appellant did not report the Points from July 2023 to February 2024. However when he did we take the view that the Registrar should have made a decision about the Appellant at that stage. By not determining the status of the Appellant when first notified of the Points and deferring a decision to after the Appellant had taken part 2 and applied for a Licence was unfair.

Decision

52. 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 6 Points in this case do not mean he is not a FPP. This is principally because of a combination of:-

(a) the very long and otherwise incident free employment record as a professional driver supported by a long standing and relevant employer.

(b) the Appellant's detailed explanation of and insight into the incident and the details of the momentary lapse while we fully accept that even a momentary lapse of concentration while engaging with a PDA could be fatal.

(c) the impact on him of believing (with at least some justification) that the Registrar had in February 2024 assured him that the Points would not prevent him continuing to seek to qualify as an ADI.

(d) our view of the Registrar's decision to defer a FPP decision from when first notified of the Points in February 2024 to July 2024 after Part 2 had been passed and a Licence was being sought.

53. The Appeal is therefore allowed.

**Signed Tribunal Judge Heald
2025**

Date: 18 February