



Case Reference: FT/D/2024/0678

Neutral Citation Number: [2025] UKFTT 00223 (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**

**SAADAT HUSSAIN**

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 18 July 2024 ("the Decision") to remove the name of the Appellant 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 his 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 Levisur 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 instructor 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*":-

*"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...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**

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

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

*(a)to refuse an application for the entry of his name in the register, or  
(b)to refuse an application for the retention of his name in the register, or  
(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 had a bundle of papers and we heard from the Appellant and Mr Russell (by telephone) for the Registrar. They are both thanked for their attendance and assistance to the Tribunal. It was unfortunate that at times the video link to the Appellant failed but at all times we were able to hear him clearly and he us and we were satisfied that the Appeal could properly continue.

### **Chronology**

18. The chronology for this matter is as follows:-

(a) the Appellant's name was first added to the Register in about 1997 some 28 years ago.

(b) on 15 May 2024 the Appellant was reported for the offence of using a hand held phone or device while supervising a provisional licence holder (23).

(c) on 16 and 19 June 2024 (22) the Appellant notified the Registrar that he had received notice of an intended prosecution for using his mobile phone when providing instruction to a pupil and had accepted the fixed penalty notice and 6 penalty points.

(d) on 19 June 2024 (24) the Registrar gave the Appellant notice that he was considering the removal of his name from the Register and invited him to make representations.

(e) on 6 July 2024 the Appellant sent representations to the Registrar (25-31).

(f) by letter dated 18 July 2024 (1) the Appellant was notified of the Decision to remove his name from the Register but that this would not take immediate effect by section 128(7) of the Act.

### **The Appeal**

19. This Appeal against the Decision was commenced on the 5 August 2024. The Appeal (2-17) is supported by Grounds of Appeal (11- 17) ("the Grounds"). The Registrar provided a Response dated 22 January 2025 (19-21).

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

20. The Registrar's position was set out in the Decision (1), his letter seeking representations (24) the Response to the Appeal (18-21) and at the Appeal. The issue for the Registrar was that the Appellant had received 6 penalty points for "*using your mobile phone while instructing a pupil..*" The Registrar does not challenge the details in the Grounds but sets out his case as follows:-

*a) The appellants driving licence is currently endorsed with 6 penalty points having accepted a fixed penalty for breach of requirements as to control of the vehicle (CU80) which occurred while he was providing instruction. 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 this offence, 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 professional ADI.*

*b) The Government increased the payment levels for serious road safety offences such as...the requirement to control a vehicle (including mobile phone use)... These offences contribute to a significant number of casualties. For example in 2018... using a mobile phone contributed to 25 deaths, 92 serious injuries and 306 minor accidents...*

*c) As an officer of the Secretary of State charged with compiling and maintaining the register on his behalf, I do not consider that I can 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 recent and relevant motoring offence"*

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

21. The Appellant set out his case in his representations (25-31), the Grounds (2-17), and at the Appeal. He did not dispute the facts presented by the Registrar.
22. The Appellant explained the details of the incident of 15 May 2024 in the Grounds (12) and expanded on them at the Appeal and as he was asked questions by the Tribunal. What we were told was that at that time (but not now) the Appellant used to have his mobile phone in a cradle fixed to the dashboard. During a lesson a pupil carried out a sudden and unexpected stop. This caused the mobile phone to drop out of the cradle and fall to the floor in front of the Appellant's feet by the dual controls. He told us the vehicle was then stationary and said (12):-

*"...due to the safety I picked it up so I could put it back in the mobile, phone cradle"*

He also said:-

*"This was a lapse of judgement...and I did not realise at the time I should not have done that and it was a natural instinct to pick it up as it had fallen in front of my feet where the dual controls are..."*

23. As he picked it up, and before he could get it back into the cradle, the touch screen became active and illuminated and at that moment a Police Officer in a car, who had most likely seen the sudden stop, paused by the Appellant's vehicle and saw him with the mobile phone in his hand. On pulling over he explained the situation to the Officer and offered to show the phone to provide proof that it had not been actively in use. He was offered a fixed penalty notice which he chose not to contest and was given 6 Points.
24. The relevant pupil had not been asked to verify the details of the incident but nor were they put in doubt by anything we saw from the Police and they were not challenged by the Registrar. We accepted this evidence.
25. In the representations and the Grounds and at the Appeal he apologised for his mistake saying for example:-
- "I...have nothing but remorse and regret for these actions...I am ashamed at having let down myself and my profession in this way."*
26. He put forward a number of other matters in support of his Appeal including:-
- (a) his length of time as an ADI without previous incident.
  - (b) that he has been having a bad time mentally, physically and financially with issues in his personal life.

(c) that removal would impact not only him but also his family in which he is the breadwinner and that removal "... *would lead me into severe depression and turn my world upside down.*"

(d) that he is open and transparent for example by letting the Registrar know of the Points.

(e) the absence of a number of specific other non motoring criminal convictions which in part match the list of examples in the Guidance.

(f) the lessons learnt, his attendance at CPD courses and his commitment to further personal development.

(g) the impact on him and his family financially if he were to have his name removed which would extend to him not being able to afford his rent and the family, including his children, having to move into local authority temporary housing and relying on benefits. He says (15) that this would be the breaking point and would "*tip me over the edge*".

(h) other cases where the Tribunal has allowed the appeals of those with 6 points.

(i) the content of character references.

27. He concludes by saying (15):-

*"I want to carry on teaching and 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 to make sure we help keep Britain's roads safe. I have a genuine passion for people always trying to encourage my pupils to never give up and have this approach for me when I am teaching".*

### **Our Review**

28. 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*. 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 all the Registrar says about the dangers of mobile phone use. 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.



29. As regards the incident itself we concluded that the Appellant's action to get the phone out of the way of the dual controls was an understandable reaction in the moment. Bearing in mind the size of such a phone it may not have been the safety issue he thought it was and picking it up at that point as opposed to, for example, kicking it out of the way was a mistake. However we do accept that for us to draw these conclusions while sitting in the Tribunal setting was unfair to the Appellant who had to react in the moment.
30. We noted what the Appellant said about his honesty and transparency and his openness about the lessons learnt, the absence of serious criminal convictions, his commitment to continued professional development and steps taken to ensure the incident does not occur again. These are all important and in our view such a response to the issues was entirely appropriate and we would have expected nothing less. Had it not been stated and/or apparent to us at the Appeal, that might itself have made us conclude that the Appeal should be dismissed.
31. We were sympathetic to the personal issues raised. We accepted what was said. Despite our sympathy we did not give much, if any, weight to such issues because the Registrar's 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.
32. We were also sympathetic to the submissions made by the Appellant about the financial impact on him and his family if he was not able to continue as an ADI. This is something we would expect would be of great concern to almost all in this 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. Again 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.
33. While they were not in the Bundle we were told by the Appellant that he had received a number of positive references about his abilities as an ADI. References can be useful, especially if they address the issues. We were able to say, not least on the basis of his long career, that we were happy to accept that they were supportive and truthful without being taken to them.
34. In common with others, the Appellant referred the Tribunal to other examples of First-tier Tribunal ("FtT") cases where an appellant had 6 points and were successful in their appeals. It is appropriate and useful for appellants and prospective appellants to have access to the many published FtT Transport decisions on FPP because amongst other things it helps their understanding

and helps them to decide about the merits of an appeal and the approach taken by the FtT. The cases provided are of interest but have not assisted us in reaching this Decision because:-

(a) FtT decisions while useful are not binding on other FtT.

(b) each case is decided on the basis of all the circumstances relevant to that case having heard from the Appellant and Registrar and considered the evidence.

(c) the outcomes tend to be case and fact specific.

(d) while not mentioned to us there are numerous FtT cases where the appeals have not been granted.

35. The outcome of this case is also not a binding precedent.

### **Decision**

36. We considered and weighed up all the evidence and submissions made and took 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 nature of the incident itself and his explanation (which we accepted) involving a mistaken but an understandable and momentary reaction to pick up the phone to seek to ensure the dual controls were not compromised.

(b) his very long and otherwise incident free work as an ADI.

(c) the fact that, despite the FPP concerns expressed in July 2024, the Registrar decided to allow his name to continue to be on the Register by section 128(7) of the Act.

37. Accordingly the Appeal is allowed.

**Signed Tribunal Judge Heald**

**Date: 18 February 2025**