



Neutral citation number: [2025] UKFTT 00080 (GRC)

Case Reference: D/2024/0110

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

**Heard by: Cloud Video Platform
Heard on: 12 December 2024
Decision given on: 31 January**

Before

**JUDGE HAZEL OLIVER
TRIBUNAL MEMBER SARAH J BOOTH
TRIBUNAL MEMBER GARY ROANTREE**

Between

BILL MURRAY-RHOADES

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: Ms Janson-Caddel

For the Respondent: Mr Russell

Decision: The appeal is dismissed. The Registrar's decision of 2 January 2024 is upheld.

REASONS

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors ("the Registrar") made on 2 January 2024 to remove the Appellant's name from the Register of Approved Driving Instructors (the "Register") on the grounds that the Appellant had ceased to be a fit and proper person to be an Approved Driving Instructor ("ADI").
2. The proceedings were held by video (CVP). All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

The Appeal

3. The Appellant's Notice of Appeal relies on the following grounds:
 - a. He acknowledges that there were messages between him and a female pupil which could be deemed inappropriate, but he was only responding to her "banter".
 - b. He denies all other accusations, and says that the pupil attempted to hug him at the end of the lesson.
 - c. He cares passionately about his job and prides himself on ensuring he respects every student.

4. The Registrar's Statement of Case dated 3 December 2024 resists the appeal. The Registrar says that the Appellant has pursued a course of conduct that is not appropriate to the professional relationship between instructor and pupil. During an interview he accepts that he put his hand on the complainant's shoulders when attempting to kiss her. He also accepts that he sent several messages, suggesting they are taken out of context and are banter. The Registrar says that he would be failing in his public duty if he allowed a person who had conducted himself in such a manner to have his name retained on the Register.

The law

5. Conditions for entry and retention on the Register require the applicant to be and continue to be a "fit and proper person" to have his name on the Register – see sections 125(3) and 127(3)(e) of the Road Traffic Act 1988 (the "Act").

6. The Registrar can remove a person's name from the Register if they have ceased to be a fit and proper person to have their name on the Register (section 125(2)(e) of the Act). The Registrar may take the view that a person no longer meets this requirement where there has been a change in circumstances. The Registrar has the burden of showing that a person does not meet the statutory requirement to be a fit and proper person, and the standard of proof is the balance of probabilities.

7. The powers of the Tribunal in determining this appeal are set out in section 131 of the Act. The Tribunal may make such order as it thinks fit (section 131(3)). 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 (in accordance with **R. (Hope and Glory Public House Ltd) v City of Westminster Magistrates Court & Ors** [2011] EWCA Civ 31).

8. In **Harris v Registrar of Approved Driving Instructors** [2010] EWCA Civ 808, the Court of Appeal described the "fit and proper person" condition as follows: *"...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...It seems to me that the maintenance of public confidence in the register is important. For that purpose, the Registrar must be in a position to carry out his function of scrutiny effectively, including consideration of the implications of any convictions of an applicant or a registered ADI. This is why there are stringent disclosure requirements. [If an applicant or registered ADI fails to disclose convictions or makes a false declaration that he has no convictions, it strikes at the heart of the registration process and the reliability of the register. In my view such conduct is plainly relevant – indeed, highly relevant - to the question whether an applicant is a fit and proper person]."* (paragraph 30).

The evidence

9. We have considered a bundle of evidence containing 49 numbered pages. This includes a chain of iMessages between the Appellant and a pupil. The Appellant provided an additional evidence bundle of character references, which we have read and taken into account.

10. We asked the Appellant questions during the hearing. We heard submissions from the Registrar and from Ms Janson-Caddel on behalf of the Appellant.

The relevant facts

11. The Appellant has been on the Register since 2004. The Registrar received a complaint from a female pupil on 3 October 2023 regarding the behaviour and conduct of the Appellant which included allegations of inappropriate messaging and conversations, as well as the Appellant hugging and attempting to kiss the complainant. We have seen a copy of this complaint.

12. On 2 November 2023 a DVSA investigator took a statement from the complainant which included allegations of inappropriate behaviour, conversations and messages. We have seen a copy of this statement.

13. On 28 November 2023 a DVSA investigator interviewed the Appellant. We have seen the notes of this interview. The Appellant denied many of the allegations, but he accepted that he put his hands on the complainant's shoulders and said this was to relax her. He was shown a copy of iMessages sent between him and the complainant. He accepted that he should not have sent the messages.

14. On 1 December 2023 the Registrar provided the Appellant with a copy of the complaint and iMessages, and gave him the opportunity to say why his name should not be removed from the Register. The Appellant said that the messages were banter, he did place his hands on the pupil's shoulders to attempt to calm her down during the lesson, but he at no point made any sexual comments or actions. He also said that he believed he was set up as he had witnessed a drug-related incident in September. On 2 January 2024 the Registrar informed the Appellant of the decision that his name should be removed from the Register, and explains he came to this conclusion "*because of the complaint made about you by [name redacted] – details which were included in our letter of 1 December 2023*".

15. The Tribunal has seen a full chain of iMessages between the Appellant and the female pupil who made the complaint. All but one of these messages were sent before the pupil had her first lesson, when the Appellant was making arrangements to meet her for the first time. The messages from the Appellant often end with one or two "x"s. The messages include: "*Sometimes I even put an x without thinking*", "*I'm looking forward to squeezing you*" (in response to a message about squeezing the pupil in next week); "*Yes I have your details. Good thing your not with me now, I'm having quite time in middle of nowhere [smiling face emoji] xx...Even have your picture [tears of joy emoji]*"; "*You need to get your mind out of the gutter, I'm innocent [tears of joy emoji] x*" (in response to a message about what the Appellant had said about the picture); "*I won't moan, just bend you over and slap you [tears of joy emoji] x*" (in response to a message about the Appellant moaning about the time/location of the lesson changing); "*I'm looking forward to a 'ride'*"; "*Not saying anything about wanking [tears of joy emoji] x*" (in response to a comment about being a bus wanker); and "*Love the way the butt wiggles x*" (sent after the lesson).

16. The Appellant was asked questions during the hearing by Mr Russell on behalf of the Registrar, and by the Tribunal panel. The Appellant accepted that looked at from the outside, these messages were not appropriate. He said that they were messages sent at an early stage and were just banter, but he now realises it was a massive error of judgment. Overall, he said that there was a misunderstanding about what was said in these messages. He said that he was just responding to messages from the pupil, and he sent the final message because of the way she walked away from the car, with an exaggerated wiggle. He said that some of the messages were typos, such as the one about squeezing you which should have

said “squeezing you in”. He also said that the message about the picture was because he was looking at the pupil’s driving licence to check her details, and he was referring to having “quiet” time (misspelled as “quite” in the message) meaning he was taking some quiet time out.

17. Having considered the messages and the Appellant’s explanations, we do not accept that this was “banter” which was instigated by the pupil. We agree that the pupil did respond to some of the messages in a light-hearted manner, and included some “x”s and laughing emojis in her replies. However, the use of “x”s and inappropriate comments were started by the Appellant, not the pupil. The Appellant was asked about this at the hearing and was unable to explain the basis for saying that he was just responding to her messages. We do not accept his explanation that some of the messages were typing errors. We also do not accept his explanation about the message referring to quiet time in the middle of nowhere with the pupil’s picture, which in context is clearly not simply a reference to checking her licence details – as shown by her response “*OK cool and your funny you are and omg I hope not x*”.

18. The Appellant also explained that he placed his hands on the pupil’s shoulders after they had stopped in a car park. He said this was to try and calm her down, as she came across as bubbly and jovial, but was actually nervous during the lesson. He also says that the pupil attempted to hug him at the end of the lesson, while he was still sitting in the car with his seatbelt on.

19. The Appellant denies all the other allegations made by the pupil, including that he attempted to kiss her. Ms Janson-Caddel submitted that the pupil was a liar, as shown by the fact she said she had reported the allegations to the police, but the police had no record of this. We do not make any finding on this point because it is not necessary for us to decide whether all of the allegations in the pupil’s complaint were true. The Registrar confirmed at the hearing that the decision to remove the Appellant from the Register was based on the conduct that the Appellant had admitted to – the iMessages and placing hands on the pupil’s shoulders. For the same reason, and because the Appellant no longer relied on this point at the hearing, it is not necessary for us to make any findings on the Appellant’s earlier comments that he had been set up.

Conclusions

20. The standing of the Register could be substantially diminished, and the public’s confidence undermined, if it were known that a person’s name had been allowed to remain on the Register when they had demonstrated behaviours substantially material to the question of fitness. This includes behaviour relating to inappropriate personal conduct.

21. We have assessed the facts on the basis of the importance that the honesty, integrity and probity of ADIs is maintained. A substantial level of trust is placed on ADIs by pupils, parents, other ADIs, road users and the public. The Registrar has the duty of ensuring that only those of appropriate standing are on the Register. The public are entitled to know that the Registrar will ensure that often young and impressionable pupils are being instructed by those that behave properly.

22. The Approved Driving Instructor Code of Practice provides a helpful reference point for the standard of behaviour expected of an ADI. Under the heading “Personal Conduct”, it is said that an instructor agrees to: “*at all times behave in a professional manner towards clients in line with the standards in the national standard for driver and rider training*”, “*avoid inappropriate physical contact with clients*”, “*avoid the use of inappropriate language to clients*”, and “*avoid circumstances and situations which could be perceived to be of an*

inappropriate nature". The Appellant confirmed at the hearing that he was aware of the Code of Practice and had agreed to follow it.

23. The iMessages sent by the Appellant to the pupil were clearly inappropriate and in breach of the personal conduct expectations in the Code of Practice. We have not accepted the Appellant's explanation for some of these messages. A number of the messages sent before the lesson were inappropriate in tone and content, and the message sent after the lesson was unsolicited and overtly sexual. The Appellant does now recognise and understand that this was not acceptable. However, we are concerned by the Appellant's attempts to characterise these messages as harmless "banter". His argument that he was simply responding to the pupil's messages shows a lack of understanding of how individuals may respond in a light-hearted manner to inappropriate comments but still feel offended, harassed or intimidated. The submission on his behalf that, as an ex-serviceman, he would be familiar with high levels of banter, may explain this conduct but does not excuse it.

24. The Appellant also placed his hands on the pupil's shoulders, which he says was to help calm her down. The Code of Practice expressly refers to avoiding inappropriate physical contact. At best this is unwise, particularly where an older male instructor is with a younger female pupil. In isolation this might not be grounds for removal from the Register, but it was particularly inappropriate in this case because of the series of messages that had been sent before the lesson began.

25. We are aware that removal from the Register is a serious step which also removes the Appellant's livelihood. He is an experienced and committed driving instructor who has taught for many years without any other formal complaints. We have seen the set of character references which show that many pupils have had a good experience and rate the Appellant highly as a driving instructor, including one about a particularly vulnerable young female pupil.

26. The Registrar's position is that the physical contact and iMessages were a course of conduct that is not appropriate to the professional relationship between instructor and pupil. We agree.

27. The Appellant says that this was out of character and a one-off incident. Even if that is the case, it was still a serious breach of the expectations of personal conduct. An ADI is in a position of trust. ADIs teach alone in cars with individual pupils, with no other person present, and often those pupils are aged only 17. This is why they are expected to behave professionally at all times, and are held to high standards of personal conduct. The Registrar has a responsibility to prevent any possibility of harassment or abuse by instructors who are in a position of power over their pupils. We have taken into account the Appellant's years of experience and character references. It is always very regrettable when a committed driving instructor is removed from the Register, but this conduct was so serious that it cannot be overlooked.

28. We find on the balance of probabilities that the Appellant does not currently meet the statutory requirement to be a fit and proper person. In all the circumstances, we conclude that the Registrar's decision to remove the Appellant's name from the Register as he was not a fit and proper person was correct. We dismiss this appeal.

29. The Appellant has remained on the Register pending the outcome of this appeal. We confirm that our dismissal of the appeal means that he is removed from the Register and is not able to work as an ADI.

Signed: Judge Hazel Oliver

Date: 20 December 2024