



Neutral citation number: [2024]

UKFTT 1094 (GRC)

Case Reference: FT/D/2024/0432

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

**Heard by: Cloud Video Platform
Heard on: 29 November 2024
Decision given on: 12 December 2024**

Before

**JUDGE HAZEL OLIVER
JUDGE JONATHAN SCHERBEL-BALL**

Between

SHAH MIAH

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: In Person
The Respondent did not attend.

Decision: The appeal is dismissed. The Registrar's decision of 17 April 2024 is upheld.

REASONS

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (the "Registrar") made on 17 April 2024 to remove the Appellant from the Register of Approved Driving Instructors (the "Register") on the basis that he failed to meet a condition of continued registration, namely that he failed to pass a test of continued ability and fitness to give instruction (the "check test") on three consecutive occasions, as required by s.125(5) of the Road Traffic Act 1988 ('the Act').
2. The proceedings were held by video (CVP). The Appellant joined remotely. The Registrar did not attend the remote hearing. 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 dated 9 May 2024 relies on the following grounds:
 - a. The Appellant should be given one more opportunity to do his check test again because his third and last test was not conducted properly. The examiner looked tired and unwell on the day and he believes her judgment was incorrect. He was also not given any physical paperwork after the check test indicating the result.
 - b. The Appellant does not wish to rely on state financial support and would prefer to work as a driving instructor which is a job he loves passionately.
 - c. Accordingly, the Appellant's name should not be removed from the Register.
4. The Registrar's Statement of Case dated 18 November 2024 resists the appeal. In summary, the Registrar contends that:
 - a. The Appellant has failed the check test on three occasions.
 - b. Following each of the first two tests, the Appellant was advised of his shortcomings so as to give him the opportunity to consider these and to improve his standard of instruction. However, he still failed to reach the required standard on the third test.
 - c. While the Appellant believes the third check test was not conducted correctly, his complaint was investigated by DVSA's public liaison team and not upheld. The investigation concluded that the test was conducted in accordance with the guidelines.
 - d. The Appellant had been given adequate opportunity to pass the test but he failed to do so. Therefore in the interests of road safety and consumer protection, the Registrar considers they are obliged to remove his name because the Appellant has been unable to satisfy the Registrar that his ability to give driving instruction was of a satisfactory standard.

The law

5. Section 125(5) of the Act imposes a condition for an Approved Driving Instructor to submit themselves for a test of continued fitness and ability if required to do so by the Registrar.
6. Where an Approved Driving Instructor fails to attend a test of continued fitness and ability or fails such a test, the Registrar may remove that person from the Register under section 128(2) (c) or (d) of the Act. Although the Act only requires one test, it is the Registrar's normal practice to allow three attempts to reach the required standard.
7. An appeal against the conduct of a check test by a person who has failed it must be made to the Magistrates' Court and not to this Tribunal.
8. 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. The burden of proof in satisfying the Tribunal that the Registrar's decision was wrong rests with the Appellant.

The evidence

9. We have considered a bundle of evidence containing 32 pages.

10. This includes evidence of three check test results from the Registrar. The Appellant has failed check tests on (i) 26 September 2022 (when he scored 16 marks out of a possible 51 marks), (ii) 31 January 2023 (when he scored 21 out of a possible 51 marks) and (iii) on 23 October 2023 (when he scored 24 out of a possible 51 marks). The pass mark on each occasion was 31.

11. The Appellant was first entered in the Register in March 2015. His current period of registration will expire on the last day of April 2027.

12. On 30 October 2023, the Registrar notified the Appellant that he was considering striking the Appellant from the Register in light of the failure to pass the check test on three separate occasions. He invited the Appellant to provide representations to inform his decision.

13. The Appellant provided representations to the Registrar by email on 7 November 2023. He contended that the standards checks did not accurately reflect his qualifications, contribution and commitment as an Approved Driving Instructor (“ADI”). He had been an ADI for more than eight years and during that time he has demonstrated a strong work ethic, dedication and passion for teaching. He has had hundreds of students pass their driving test at the first or second attempt with substantial positive feedback on his tuition. The Appellant repeated his criticisms of the examiner at the third check test made in his Grounds of Appeal as summarised at paragraph 3 above and his desire to be able to continue as an ADI.

14. The Registrar considered the Appellant’s representation but in his letter of 17 April 2024, decided that the Appellant should be removed from the Register for failing his check test on three occasions. The letter pointed out that the Tribunal had no power to alter the result of his check test or to order a retest and that if the Appellant was aggrieved with the result that he should appeal to his local Magistrates’ Court.

15. At the remote hearing, the Appellant repeated the essence of his written grounds of appeal. He confirmed he had failed the check test on three occasions. He said he had had “some” additional training before his third check test. The Appellant also repeated his complaints about his third check test but confirmed that he had not appealed to his local Magistrates’ Court. The Appellant asked how he could not be of sufficient standard to be an ADI if his students achieved good results.

Conclusions

16. We have considered carefully all the evidence and submissions in this appeal. The undisputed evidence is that the Appellant has failed three check tests over the course of over a year. In each of those check tests the Appellant fell well short of the pass mark. The feedback offered on the first check test included “*very late control of safety critical incidents*”, “*just before the end of the sl [slip lane] narrowly avoiding hitting the van in the rear due to speed*” and “*allowing...to emerge...dangerously into the path of a car*”. The feedback from the second check test included “*incorrect instructions to emerge causing a safety critical incident*” and “*insufficient feedback for safety incidents allowing [sic] them to reoccur*”. The feedback from the third check test included “*on two occasions pupil was told to speed up to 30mph with pedestrians crossing in our path*”. These check tests results provide clear and compelling evidence that the Appellant does not meet the required continued standards for an ADI.

17. The Appellant’s complaints are about his third check test, but that check test actually scored him more positively than his first two check tests. He has not appealed to the Magistrates’ Court which is the proper jurisdiction if he wishes to challenge his third check test.

This Tribunal cannot overturn the result of the third check test as the Appellant was advised by the DVSA on 17 April 2024. This is also not the appropriate forum to make a complaint against an examiner.

18. In considering afresh whether the decision to remove the Appellant from the Register was correct, we bear in mind the significant importance which attaches to the integrity of the Register. Entry onto and remaining on the Register is a public endorsement of a high standard of competence on the part of the Registrar. For the public to have trust in it the Register must show integrity and those on it have high standards. Part of that is achieved by the need for those on the Register to pass regular tests. Doing so adds to the trust placed in the Register. Allowing those who do not meet the standards to remain on the Register would undermine the trust placed in it, with serious consequences for those who do maintain the necessary high standards. This is a matter of wider public interest which attract significant weight, even if removal from the Register has consequences for an individual, as in this case. Taking all of these factors into account we have concluded that removal from the Register is the appropriate sanction.

19. Having considered all the facts and circumstances, we consider that the Registrar's decision was clearly correct. We therefore dismiss this appeal.

Signed: Judge Jonathan Scherbel-Ball Date: 9 December 2024