



Neutral citation number: **[2024] UKFTT 00758 (GRC)**

Case Reference: FT/D/2024/0183

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(TRANSPORT)**

**Determined in an Oral Hearing
On: 5 August 2024**

Decision given on: 23 August 2024

Before

**TRIBUNAL JUDGE DAMIEN MCMAHON
TRIBUNAL MEMBER KERRY PEPPERELL
TRIBUNAL MEMBER DAVID RAWSTHORN**

Between

SHAOIB GUL

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation

The Appellant appeared on his own behalf.

Ms. Claire Jackson presented herself to appear for the Respondent. However, the Respondent was barred today, at the hearing, by the Tribunal from further participation in these proceedings for continued non-compliance with Tribunal Directions. She took no further part.

Decision: The appeal is allowed, with a direction that the Appellant be suitably warned.

REASONS

Background

1. This appeal concerns a decision of the Respondent made 16 February 2024 to refuse the application of the Appellant for a trainee driving instructor licence made on 28 January 2024, taking into account representations made by the Appellant on 2 February 2024, pursuant to s.129(4) of the Road Traffic Act 1988, as amended, ('the Act'), on the basis that the Appellant was not a fit and proper person to be granted a trainee instructor driving licence, pursuant to s.125(3) of the Act, as he had been convicted in a court, on his plea of 'Guilty', to driving without due care and attention or without reasonable consideration for other road users on 11 May 2022, and was fined £400.00 and had 5 penalty points endorsed on his driving licence.

2. The Appellant appealed the Respondent's decision on 21 February 2024 on the basis, in summary, that the decision of the Respondent was unreasonable, irrational and disproportionate; that there were other options, such as requiring the Appellant to undergo an 'Emergency Control Assessment', available to the Respondent; that his driving record had, otherwise, been exemplary since 2022; that the incident giving rise to his motoring offence conviction was not foreseeable; that he had learned his lesson; that his conviction was over two years ago and his penalty points period would expire on 11 May 2025.

3. The Appellant submitted a bundle of impressive and objective character references.

4. In his written representations to the Respondent, and in his oral evidence, the Appellant confirmed that, upon being stopped by the police, he was allowed to continue driving subject to him having his vehicle getting a fresh MOT and he then advising the police that the vehicle was roadworthy. The Appellant did so. However, his motoring conviction was not in connection with a 'construction and use' offence.

5. The Respondent, in their Response dated 18 April 2024 (some 21 days late), accepted that the Appellant had declared his conviction on his trainee licence application and that while, if an Appellant got less than 6 penalty points arising out of a conviction for a motoring offence, they could be granted, as a matter of policy, a trainee licence, they could not ignore the nature of the Appellant's recent conviction; that account had to be taken of an Appellant's character, behaviour and standard of conduct (a standard that was above that expected of an ordinary motorist); that driving tuition was a responsible and demanding task; that in committing the said motoring offence, the Appellant had not displayed the level of responsibility and commitment to improving road safety expected from a potential Approved Driving Instructor ('ADI') and that to grant a trainee licence to the Appellant would be unfair to other applicants who had scrupulously observed the law and could undermine public confidence in the registration system.

6. The Respondent was required to file their Response by 28 March 2024. They failed to do so. By way of Directions issued by the Tribunal on 20 May 2024, the

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Respondent was permitted a further period to comply by 27 May 2024, and to send completed Case Management Questionnaire by that date, and to formally request an extension of time to file their Response, explain why there had been no compliance, and explain why there had been no application to extend time. The Respondent was warned that continuing failure to comply might result in their being barred from further participation in these proceedings, pursuant to Rule 8(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended ('the Rules').

7. The Respondent purported to be represented at the hearing by Ms. Claire Jackson. However, after hearing from Ms. Jackson concerning the non-compliance issue, the Tribunal barred the Respondent from further participation in these proceedings due to their non-compliance with Tribunal Directions.

Mode of Determination

8. The Appeal was determined at an oral hearing using the CVP system.

9. The Appellant attended and was unrepresented (as his representative was on holiday in Italy). He agreed to proceed in the absence of his representative and gave oral evidence. He was accompanied by his wife, who also gave some oral evidence. One of his sons was also present (but who did not give oral evidence).

10. The Tribunal considered a bundle of evidence containing 40 pages.

Evidence

11. The Appellant reiterated, orally, the contents of his written evidence. He confirmed that an Automobile Association representative had confirmed the road worthiness of his vehicle and that a slight adjustment had been required to the handbrake when the vehicle underwent the further MOT required by the police, and that the decision of the Respondent was 'harsh'. He confirmed that he was married with four children, some of whom had Special Needs; that he was a safe driver; that he needed to drive and could make a positive difference.

Law

12. The Conditions for entry and retention on the Register, including the grant of a trainee licence, require the Applicant to be and continue to be a "fit and proper person".

13. The Respondent may take the view that a person no longer meets this requirement where there has been a change in circumstances. The burden of showing that a person does not meet the statutory criteria rests with the Respondent.

14. In *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 8082, the

Court of Appeal described the “fit and proper person” condition thus:

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“..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”.

15. Registration carries with it an official seal of approval, that is, maintenance of public confidence in the registration system. This is important. For that purpose, the Respondent must be in a position to carry out their function of scrutiny effectively, including consideration of the implications of *any* convictions of an Appellant.

16. An appeal to this Tribunal against the Respondent’s decision proceeds as an appeal by way of re-hearing, that is, the Tribunal stands in the shoes of the Respondent and takes a fresh decision on the evidence before it. The Tribunal must give such weight as is considered appropriate to the Respondent’s reasons as the Respondent is the person tasked by Parliament with making such decisions. The Tribunal does not conduct a procedural review of the Respondent’s decision-making process.

Conclusion

17. The Tribunal carefully considered all the written and oral evidence before it.

18. The Tribunal was impressed by the genuine regret and remorse for his behaviour expressed by the Appellant.

19. The Tribunal was satisfied that the Appellant took his responsibilities seriously and that he had learned a lesson from the motoring offence committed by him.

20. In allowing the appeal, on the balance of probabilities, the Tribunal was prepared to take an unusual course. The Tribunal’s decision could equally have gone the other way. The Respondent’s initial position was perfectly understandable but upon hearing from the Appellant, and his wife, the Tribunal took the view that the appeal should, on the balance of probabilities, be allowed.

21. The lack of any other offending, the frank admission and conduct of the Appellant afterwards, impressed the Tribunal and allowed this exceptional course to be taken.

22. However, the Appellant is warned in clear terms that any further motoring convictions will, almost inevitably, result in his being refused a trainee licence or, as the case may be, his name not being entered onto the Register of ADIs, or, if entered, it being removed from the Register.

23. It was a misapprehension on the part of the Appellant to seek to rely on the allegedly availability of an ‘exceptional control assessment’ as an alternative to the Respondent’s decision.

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Damien McMahon,

Date: 12 August 2024

Tribunal Judge

Promulgated on: 23 August 2024

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