



Neutral citation number: [2024] UKFTT 00769 (GRC)

Case Reference: D/2024/313

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

**Determined at an oral hearing
on 20th August 2024
Decision given on: 5 September 2024**

Before

HHJ DAVID DIXON

Between

KEVIN SMITH

Appellant

and

**THE REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Respondent

Decision: The appeal is dismissed with immediate effect.

REASONS

Background to Appeal

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made on 19th March 2024 to refuse to admit his name to the Register.
2. The Registrar’s reasons for refusal, in summary, were that the Appellant had accrued penalty points for speeding on 12th September 2023 and a fixed penalty notice for speeding on 24th November 2023. The Registrar took the view the offending was serious and allowing him to be added to the Register would undermine confidence in it, so determined the application must be refused.
3. The Appellant now appeals the Registrar’s decision.

Appeal to the Tribunal

4. The Appellant’s Notice of Appeal indicates that he was training to be an ADI at the time he accrued the final points. Since then he has undertaken a deal of training and his mindset towards driving has changed dramatically. He asserts his own driving has improved as a result. He asks the Tribunal to determine if the later training overrides the convictions in effect.
5. The Respondent submitted a Response indicating that the Appellant was warned following the first conviction of the need to apply the rules of the road and that a failure to abide by road safety laws would lead to a consideration of whether he was fit and proper. The Registrar also notes that the Appellant didn’t notify the second matter within the required period.

Mode of Determination

6. The case was listed for oral hearing, and heard via the CVP system.
7. The Appellant attended and was unrepresented. The Respondent was represented by Claire Jackson of the DVSA Appeals team.
8. The Tribunal considered a bundle consisting of 36 pages.

Evidence

9. Ms Jackson said the Respondent’s position was as per the response.

10. The Appellant indicated that he was travelling at 35 in a 30 zone for the first matter, and for the second 36 mph in a similar 30 zone. He described the relevant roads having houses on one side, the roads being dry, he being aware of limit, but exceeding the limits. He accepted that he was revising for his Part 1 test at the time of the second matter, but hadn't thought about things in the same way he does now.
11. He described how the way he drives has completely changed as a result of the training he has received. The on-line and in car training had radically altered the way that he now thinks when behind the wheel of his car.
12. He described his previous career causing him difficulties, of his journey to becoming a trainee instructor and the real joy that the career offered him. He illustrated the point by describing how a lesson with a pupil, which led to seeing real improvements for the learner, resulted in him being elated. He said he just wanted to give something back to the community.
13. The Appellant said he was a capable driver, and wanted to be judged on where he was now, not in the past. He suggested if the Tribunal ignored the training it was akin to saying that speed awareness courses were worthless. He asked for the chance to continue teaching.

The Law

14. 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 of Approved Driving Instructors – see s. 125 (3) and s. 127 (3) (e) Road Traffic Act 1988¹.
15. The Registrar 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 Registrar.
16. In *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 808², the Court of Appeal described the “*fit and proper person*” condition thus:

“..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...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”.

17. An appeal to this Tribunal against the Registrar's decision proceeds as an appeal by way of re-hearing i.e. the Tribunal stands in the shoes of the Registrar and take a fresh decision on the evidence before it. The Tribunal must give such weight as is considered appropriate to the Registrar's reasons³ as the Registrar is the person tasked by Parliament with making such

¹ <http://www.legislation.gov.uk/ukpga/1988/52/part/V/crossheading/registration>

² <http://www.bailii.org/ew/cases/EWCA/Civ/2010/808.html>

³ See *R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31. <http://www.bailii.org/ew/cases/EWCA/Civ/2011/31.html>. Approved by the Supreme Court in *Hesham Ali (Iraq) v*

decisions. The Tribunal does not conduct a procedural review of the Registrar's decision-making process.

Conclusion

18. The Tribunal considered carefully all the evidence and papers before it.
19. Here the Appellant has committed two speeding offences within a relatively short period of time. He was warned following the first that he was at risk of being found unfit if further matters came to light, but he failed to heed that warning. On the basis of this short summary the Registrar had little option but to refuse the application.
20. The fact that the Appellant didn't report the second matter, raises further issues about his credibility. The Registrar simply couldn't allow the Appellant's application to be granted as a result.
21. The Appellant says his mindset has changed and he is a better driver than he was at the time he committed the offences. He asserts that his training has dramatically improved things. To an extent this might be a good point, but it is too little too late in the Tribunal's view. The Appellant was going through the process of becoming an ADI yet didn't think that his driving standards mattered. This was to say the least a little naïve.
22. There are material differences between someone doing a speed awareness course and the current situation:
 - a. Firstly, there is only one infraction not two;
 - b. Secondly, doing the course is to educate the individual, nothing wider;
 - c. Thirdly, here there was already a warning, which is at least one of the purposes of a speed awareness course, which was not heeded, when the Appellant was going through the process of trying to become a career driver.
 - d. Finally, although there are other points, an individual being allowed on the Register is almost being vouched for by the Registrar. By being allowed to be on the Register the Registrar is saying I believe that this person is worthy to be there. It would condone the recent driving, which simply can't happen. This is radically different to the purpose of a speed awareness course.
23. The Tribunal comes to the view that the Registrar had no option but to refuse the Application. The Registrar must ensure that the public has faith in the Register and the only way to do so is to ensure that only those suitable to instruct are on it.
24. The Appeal is dismissed with immediate effect. The Registrar's decision was entirely correct.

(Signed)

HHJ David Dixon

DATE: 20th August 2024