



Neutral citation number: [2024] UKFTT 00981 (GRC)

Case Reference: FT/D/2024/0127

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

**Determined on the papers on: 22nd October
2024**

Decision given on: 04 November 2024

Before

**HHJ DAVID DIXON
DAVID RAWSTHORN
STUART JAMES**

Between

YADHANGA MHANGO

Appellant

and

**THE REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Respondent

Decision: The appeal is dismissed.

REASONS

Background to Appeal

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made 29th January 2024 to refuse the Appellant’s application for a licence to give paid instruction.
2. The Registrar’s reasons for the removal, in summary, were that the Appellant had a motoring conviction recorded against him. As a result of that matter the Appellant was not fit and proper to be on the Register.
3. The conviction related to speeding on 13th August 2022, where 5 penalty points were recorded against the Appellant’s licence.
4. The Appellant now appeals the Registrar’s decision.

Appeal to the Tribunal

5. The Appellant’s Notice of Appeal, dated 5th February 2024, indicates that the Registrar’s decision that he is not fit and proper is wrong. The Appellant argues that the definition of fit and proper is not precise enough and one finding against him is not enough to say he is not fit and proper. He argues that having spent thousands of pounds on qualifying the decision is not proportionate. He indicates that the conviction is the first he has accrued in 30 years of driving. The Appellant asserts he was driving an unfamiliar car on a stretch of motorway he was not used to and inadvertently exceeded the limit. He says he has never been in a car collision resulting in a claim on his insurance as further evidence that he is fit.
6. He indicates that he is a lay preacher, DBS checked to transport school children and has a passion to instruct. He indicated that he had been a private hire driver for 19 years.
7. The Respondent submitted a Response indicating that the Appellant has indicated that the offence took place on a motorway, not a public road, when the code for the offence refers to the later. This failure to properly explain things causes real concern. Further the Appellant failed to indicate that he was facing prosecution at the time of his application and that affects his credibility.

Mode of Determination

8. The case was listed for a paper determination, both sides having agreed to the same. The Tribunal, in accordance with its rules, considered the fairness and appropriateness of continuing in such a way and determined that a paper determination was acceptable and proceeded in that way.
9. The Tribunal considered a bundle of evidence containing 38 pages.

The Law

10. 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.
11. 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.
12. 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”.

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

Conclusion

14. The Tribunal considered carefully all the papers before it.
15. The Tribunal noted that the Appellant’s suggestion of driving on a motorway did not fit with an SP30 offence, and agreed with the Registrar that this was concerning. Further a conviction resulting in 5 penalty points for such an offence was suggestive of speeding somehow in

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 Secretary of State for the Home Department* [2016] UKSC 60 at paragraph 45 – see <https://www.supremecourt.uk/cases/docs/uksc-2015-0126-judgment.pdf>.

excess of the permitted limit. (according to the guidelines⁴ such a penalty point level was suggestive of some doing 10-20 mph in excess of the limit, if not 20-30mph if it was a motorway. Driving in such a way doesn't fit with an inadvertent speed infringement.

16. The Tribunal was as concerned, if not more so, by the wrongful failure to notify that the Appellant was facing proceedings at the time of his application. Honesty and integrity are crucial aspects of an ADIs status and the failure to notify was extremely worrying.
17. Against that the other aspects of the Appellant's character had to be considered, and the Tribunal was careful to balance the private hire, the higher rating by the local authority etc against the aforesaid.
18. The Tribunal found this a difficult decision, but for someone at the start of their journey to becoming an ADI, who fails to notify of pending prosecutions, the Tribunal was extremely worried. Further as a result of the level of driving, and of the potential failure to provide proper account of the offence, the Tribunal came to the view that the Registrar was correct.
19. Accordingly the Tribunal dismisses the Appeal, with immediate effect.
20. Having indicated the aforesaid the Tribunal felt it right to note that whilst it has ultimately confirmed the decision of the Registrar, the decision from the Registrar was not as comprehensive as the Tribunal would have expected to see. Whilst the Tribunal gave anxious consideration to the character issues provided by the Appellant, the decision letter from the Registrar did not seem to analyse the same to the degree that the Tribunal might have expected. It would be helpful for the Registrar to spell out in clear and precise terms its reasoning in all decisions reached.

(Signed)

**HHJ David Dixon
David Rawsthorn
Stuart James**

DATE: 22nd October 2024

⁴ <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/speeding-revised-2017/>