



Neutral citation number: [2024] UKFTT 991 (GRC)

Case Reference: FT/D/2024/0515

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

**Determined on the Papers
On: 2024**

Decision given on: 06 November 2024

Before

JUDGE DAMIEN MCMAHON

Between

ANU MODGILL

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

The Appellant, in writing, in advance of the hearing, stated that she would not attend.

No representative appeared for the Respondent.

Decision: The appeal is Dismissed. The Decision of the Respondent made on 15 May 2024 is confirmed.

REASONS

Mode of Hearing

1. The hearing was conducted by a Judge alone sitting in Chambers. The Tribunal was satisfied that it was appropriate to conduct the hearing in this way.
2. The proceedings were listed to be heard orally by CVP. However, the Appellant had stated, on more than one occasion, that she would not attend the hearing of her appeal. No representative of the Respondent attended.
3. The appeal was listed for remote oral hearing at 10.00 on 25 October 2024. The Clerk attempted, to no avail, to telephone and email both parties to confirm whether or not they would be in attendance or be represented. The Tribunal waited until 10.10 before deciding to proceed in the parties' absence and determine this appeal on the papers alone. In doing so, the Tribunal was satisfied that this complied with the overriding objective in Rule 2 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Tribunal) Rules 2009, as amended ('the Rules') and with Rule 36, in that the Tribunal was satisfied that both parties had been notified of the hearing and that it was in the interests of justice to proceed with the hearing.

Background

4. The Appellant's name had first been entered in the Register of Approved Driving Instructors ('ADI Register') in December 2008. In the ordinary course of events, this would have expired on 31 December 2024. The Appellant failed the standards check tests on three occasions, namely, 31 May 2022; 21 March 2023 and 7 November 2023.
5. The Respondent noted that on each of the first two occasions of failure, the Appellant was advised to take account of advice given to her following the previous standards tests checks.
6. By way of a letter dated 12 September 2023, the Appellant was informed that she was required to take a further standards check on the 7 November 2023, her third such test, pursuant to the provisions of the Motor Cars (Driving Instruction) Regulations 2005.
7. The test was conducted by a different examiner of the Respondent than had conducted the two previous standards check tests. The Appellant's overall performance was again found to be below the required standard.
8. By way of representations made Appellant on 10 December 2023, in response to the Respondent advising her of their intention to remove her name from the ADI Register, those representations were treated as a complaint about the examiner having a negative; demeaning; unfriendly; cold and callow attitude to her, and to her trainer (a former DVSA examiner of some 20 years' experience), at the standards check of 7 November 2024 from the outset. Her trainer and pupil made written statements in support of those assertions.
9. The Registrar stated that the complaint was passed to the relevant team to address and was satisfied it had been fully investigated.

10. On 15 November 2023 the Appellant was advised that the Respondent was considering the removal of her name from the ADI Register as the Respondent could no longer be satisfied that her ability to give driving instruction was of a satisfactory standard. The Appellant was invited to make representations. Written representations were made by the Appellant, in writing, on 10 December 2023, as stated in paragraph 9 above.

11. The Respondent submitted that they had taken account of those representations by the Appellant but, since the standards check examination had been failed by the Appellant on three consecutive occasions, they decided that the Appellant's name should be removed from the ADI Register.

Notice of Appeal

12. The Appellant submitted a Notice of Appeal dated 15 August 2024 against the said decision of the Respondent. She submitted that the examiner on 7 November 2023 did not follow the Respondent's own assessment procedure in that he did not listen to the Appellant's de-brief of her pupil concerning a particular scenario that had arisen during the lesson, that she had decided to discuss with her on arrival back at the test centre, but that the examiner immediately left the vehicle on arrival back at the test centre. She submitted the said written statements from her trainer and pupil supporting her appeal assertions. The Appellant requested that her appeal be determined on the papers only.

Response of Respondent

13. In their Response dated 15 August 2024 (furnished late), the Respondent submitted that the Appellant had failed, on three occasions, to reach the required standard of continued ability and fitness to give driving instruction, despite having an opportunity to consider her alleged shortcomings following the first two standards checks and that she had adequate opportunity to pass the standards check test on the third occasion but had failed. The Respondent submitted that this raised a question of road safety and consumer protection to the extent that the Appellant failed to satisfy the Respondent of her ability to give driving instruction to a satisfactory standard.

Further Submissions of Appellant.

14. In an email dated 10 October 2024, the Appellant again stated her wish to have her appeal determined on the papers only and that she could not attend an oral hearing. She also submitted that her appeal should be allowed in any event as the Respondent had failed to comply with a Direction of the Chamber Registrar that they furnish a completed Case Management Questionnaire by 16 July 2024. She submitted that leniency had been shown to the Respondent that, she submitted, indicated that a decision on her appeal had already been made in favour of the Respondent. She submitted that she had 'lost all faith in the process'.

Conclusions

15. The decision by the Respondent to remove the Appellant's name from the ADI Register pursuant to s.128(2)(d) of the Road Traffic Act 1988 ('the Act') in that she had failed the continued ability and fitness test (known as a "check test") on three separate occasions, was, undoubtedly, correct as a factual proposition.

16. Section 125(5) of the Act requires that a person whose name is held in the Register must undergo a test of continued ability and fitness to give instruction in the driving of motor cars. Although the Act permits removal of a name after a single failure of a check test, it is usual for an instructor to be allowed three attempts before removal is ordered. By reason of the word “may” in s.128(1) of the Act, removal from the ADI Register is discretionary.

17. Significantly, pursuant to s.133(1) of the Act, an appeal against the conduct of a check test lies to a Magistrates’ Court – not to the Tribunal. The Appellant’s appeal was, in essence, a complaint against the decision of the Respondent’s examiner to fail her, on a third occasion, a standards check examination. While her appeal was treated by the Respondent as a formal complaint against the examiner, a matter over which the Tribunal has no jurisdiction, the Appellant did not appeal the examiner’s decision to fail her to a Magistrates’ Court.

18. The Tribunal does have jurisdiction to decide whether the Respondent’s decision to exercise their discretion to remove the Appellant’s name from the ADI Register was correct. The principle way that issue is addressed is by requiring that those who give paid instruction have their name on the ADI Register kept by the Respondent. In order that the public can have confidence in the ADI Register, Parliament has put other provisions in place. For example there is a pre-condition to registration that an applicant has passed all three parts of the qualifying examination, there is a requirement that the applicant is and remains a ‘fit and proper person to have his name on the Register’, (which goes beyond ability as an instructor) and s.125(5) provides that the entry of a person’s name in the ADI Register shall be subject to the condition that, so long as her name is on the ADI Register, she will, if at any time required to do so by the Registrar, submit herself for such test of continued ability and fitness to give instruction in the driving of motor cars.....as may be prescribed. The importance of this provision is that it ensures, by periodic testing, that driving instructors remain sufficiently competent to charge for instruction. It is therefore an important component in maintaining public confidence in the Register. It is important to note that the imposition of the condition is mandatory and that the terms of the condition are that the Approved Driving Instructor (‘ADI’) will, at any time required to do so by the Respondent, submit herself for a check test. Once an ADI has been required by the Respondent to submit herself for a check test there is nothing in the Act which permits the ADI to seek to impose her own pre-conditions to submitting herself for a standards check test.

19. I am satisfied that the Respondent was correct to find that the Appellant had been given adequate opportunity to pass the test but had failed to do so. The Respondent was correct to remove the name of the Appellant from the Register due to her inability to satisfy the Registrar that her ability to provide driving instruction was to the required standard.

20. The Appellant was provided with guidance and advice, following his first two failed standards check examinations, on how she might improve her standards before undergoing a further test. Despite this, the Appellant failed to achieve the required standard on three consecutive occasions.

21. Most of the submissions made in the Appellant’s written representations to the

Registrar, replicated in her Notice of Appeal, concerned the conduct of the third standards check test. As was noted in paragraph 18 above, pursuant to s.133(1) of the Act an appeal against the conduct of a check test lies to a Magistrates' Court and pursuant to s.133(3) no such appeal may be made to the Tribunal under s.131 of the Act. Accordingly, I do not have jurisdiction to consider such submissions.

22. The Tribunal is a judicial authority, entirely independent of both the Appellant and the Respondent. When an appeal comes before a Tribunal, the Tribunal considers the matter the subject of the appeal entirely afresh while having regard to the views expressed by the Respondent as the body with entrusted by Parliament in respect of these matters. There is no question, of course, that Tribunal, as an independent judicial authority, would pre-judge its decision.

23. The Appellant, by email dated 23 October 2024 requested that the Tribunal's Decision not be published. However, our system of justice is firmly rooted in openness and transparency, with no reason existing to the contrary. The Tribunal's decision will be promulgated and issued to both parties and published in the normal fashion.

24. The appeal is dismissed with immediate effect.

Signed: *Damien McMahon*,

Tribunal Judge

Date: 25 October 2024