



Neutral citation number: **[2024] UKFTT 00523 (GRC)**

Case Reference: D/2024/3

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

**Determined at an oral hearing  
on 18<sup>th</sup> June 2024**

**Before**

**HHJ DAVID DIXON  
STUART JAMES  
DAVID RAWSTHORN**

**Between**

**MICHAEL KEMP**

Appellant

**and**

**THE REGISTRAR OF APPROVED  
DRIVING INSTRUCTORS**

Respondent

**Decision:** The appeal is allowed.

## REASONS

### *Background to Appeal*

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made on 12<sup>th</sup> December 2023 to remove his name from the Register.
2. The Registrar’s reasons for removal, in summary, were that the Appellant had accrued penalty points and a fine for driving without insurance on 19<sup>th</sup> September 2023. The Registrar took the view the offending was serious and allowing him to remain on the Register would undermine confidence in it, so determined the Appellant must be removed.
3. The Appellant now appeals the Registrar’s decision.

### *Appeal to the Tribunal*

4. The Appellant’s Notice of Appeal indicates that he had a stressful year when he had to assist family with difficult issues. He wasn’t checking his post at the time and didn’t realise that he had obtained points for speeding (which he accepted and was remorseful about) and a second regarding a lane closure, which did not involve him. He said with all of the other issues he had missed matters but was trying to deal with things now.
5. The Respondent submitted a Response indicating that the Appellant had been convicted of failing to provide the details of a driver and been given 6 points as a result. The Registrar indicates the original letter was incorrectly typed in relation to the offence, but the offence code and penalty were correct. He indicates that the Appellant is no longer fit and proper to be on the Register and so he had to be removed. The fact that the Appellant had not told the Registrar of the conviction was further support for the decision taken.
6. A certificate of conviction showing an offence of failing to notify a driver pursuant to s172 of the Road Traffic Act (MS90) was recorded on 19<sup>th</sup> September 2023.
7. The Registrar indicates that the Appellant contacted him later indicating that the conviction was being reopened by the Magistrates on the basis that he alleged he was not the driver at the relevant time.
8. Neither the Registrar nor the Appellant had clarified what exactly was going on in terms of which actual offence was involved. The suggestion of a speeding offence put forward by the Appellant simply didn’t tally with the Appellant’s antecedent driving history provided.

### *Mode of Determination*

9. The case was listed for oral hearing, and heard via the CVP system.
10. The Appellant was unrepresented. The Respondent was represented by Claire Jackson of the DVSA Appeals team.

11. The Tribunal considered a bundle consisting of 25 pages.

#### Evidence

12. Ms Jackson said the Respondent's position was as per the response.

13. The Appellant said he wasn't getting some post or it went missing. There had been occasions post went to his next door neighbours and basically things had been challenging.

14. He said he had a speeding offence as a result of going 6 mph over the 50 mph limit for the road. He said he lost concentration at the time due to some distressing news. He indicating he replied to the Notification of Prosecution but it seems that wasn't received. It seems he was prosecuted for failing to provide details as a result. (The Appellant was less than clear about all of this, but the Tribunal doing its best comes to the view this is what was being described.)

15. He described a difficult time dealing with family health issues and more. Post was difficult to deal with at the time and there were delays. He explained how the combined effect of all of this was that he had asked the Magistrates to reopen the s172 RTA case and they had agreed to do so.

16. He said there was a further matter where he was teaching a Ms Deer, involving a lane closure, but that matter was not anything that affected the Appellant.

#### The Law

17. 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 1988<sup>1</sup>.

18. 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.

19. In *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 808<sup>2</sup>, 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"*.

20. 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

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

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

evidence before it. The Tribunal must give such weight as is considered appropriate to the Registrar's reasons<sup>3</sup> 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*

21. The Tribunal considered carefully all the evidence and papers before it.
22. Here the Appellant had failed to provide details of who the driver of a car registered to him was on a particular occasion. He indicated that he tried to say he was the driver and he had tried to take the consequences as a result. He indicated he knew that he was still liable for 3 points on his licence for speeding and was in no way, in the Tribunal's view, seeking to minimise matters. The frank approach and lack of understanding of the system led to the Tribunal taking the view that the Appellant was utterly truthful in his account of matters.
23. The Tribunal was obviously conscious of the difficult time the Appellant described, and in light of the credibility of his account, came to the view that in real terms the Tribunal was dealing with an ADI who had exceeded the speed limit on one occasion. For such an action the Registrar would normally have sent a stern warning letter to the Appellant and he would have remained on the Register.
24. Whilst the Tribunal fully understood the Registrar's decision, on the evidence before the panel, the Tribunal took the view that the removal was inappropriate. The Appellant should be allowed to remain on the Register but be warned in the clearest possible terms that any further motoring offences or misconduct would undoubtedly result in removal.
25. This appeal is therefore allowed.

**(Signed)**

**HHJ David Dixon  
Stuart James  
David Rawsthorn**

**DATE: 18<sup>th</sup> June 2024**

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<sup>3</sup> 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>.