



Neutral citation number: [2024] UKFTT 001128 (GRC)

Case Reference: FT/D/2024/99

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

**Heard by Cloud Video Platform
On: 20 November 2024**

Decision given on: 17 December 2024

Before

**JUDGE DAMIEN MCMAHON
SPECIALIST MEMBER DR. PHEBE MANN
SPECIALIST MEMBER SARAH BOOTH**

Between

JAMES STUART WISEMAN

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: The Appellant appeared on his own behalf accompanied by his wife, Mrs. Tina Wiseman.

For the Respondent: Mr. Darren Russell of the Respondent.

Decision: The appeal is Dismissed. The Decision of the Respondent made by the Respondent on 4 January 2024 is confirmed.

REASONS

Background

1. This appeal was listed for hearing on 20 November 2024 for oral hearing by CVP. The Appellant attended and gave oral evidence. He was accompanied by his wife, Mrs. Tina Wiseman. She did not give oral evidence. Oral submissions were made by the Respondent's representative.
2. The Appellant appealed against a decision of the Respondent dated 4 January 2024 to remove his name from the Register ('the Register') of Approved Driving Instructors ('ADIs'), pursuant to section 128(2)(e) of the Road Traffic Act 1988 ('the Act') on the basis that he was not a fit and proper person to have his name remain on the Register due to him having been charged on 2 October 2023 with alleged sexual assault offences (by touching) on two separate females, both of whom were pupils of his, while receiving driving instruction from him at the time of the alleged offences.
3. The Appellant opted for trial in the Crown Court jury. He advised in oral evidence that his trial had been listed as four-day hearing in the Crown Court, commencing on 21 July 2025, but, in the meantime, he had been granted bail, on certain conditions, that allowed him to continue to work as an ADI, a suspension imposed on him by the Respondent having been lifted before the Respondent made their decision, the decision under appeal. When the Respondent made their said decision, the decision under appeal, the matter of the suspension having been imposed and then lifted, became otiose as the Respondent decided to remove the Appellant's name from the Register for the reasons set out in paragraph 2 herein.
4. The Respondent, in the decision under appeal, submitted that it took account of written representations made by the Appellant on 6 December 2023 before making the said decision. Those detailed representations, in summary, were as follows
 - that he had been falsely accused of two counts of sexual assault to which he had entered a plea of 'Not Guilty' and opted for jury trial in the Crown Court;
 - a detailed account of the case he intended to make in respect of the allegations made by each alleged injured party in the Crown Court in his defence;
 - a detailed assertion of the alleged weaknesses in the case made against him by the Crown Prosecution Service ('CPS');
 - a detailed account of his army military career;
 - reference to stated character references from former pupils to whom he had provided driving tuition and from some other driving instructors, referring, in particular, to his work with a charity, and references from his former superiors in the armed forces;

- details of the bail conditions imposed on him, including being required to have a chaperone if providing tuition to a female student;
- an alleged lack of adequate investigation by the prosecuting authorities;
- that to remove his name from the Register would place him in financial hardship that might result in his losing his home as he would no longer have an income.

However, despite these detailed representations being considered by the Respondent, they did not change their said decision.

Notice of Appeal and Appellant's Evidence

5. The Appellant submitted an appeal dated 29 January 2024 (accompanied by a detailed letter of the same date addressed to the Respondent), against the Respondent's said decision, that could be summarised in the following terms:
 - the suspension imposed by the Respondent was lifted immediately on representations being made by him (the Appellant);
 - that he was a fit and proper person to have his name remain on the Register and that there was no evidence to suggest otherwise – other than 'the word of the CPS';
 - that he had opted for trial in the Crown Court; had pleaded 'Not Guilty' and was innocent until proven guilty;
 - that the allegations made against him were motivated by revenge;
 - that the CPS had not seen any of his, the Appellant's, evidence;
 - that he wished his name to remain on the Register under his current bail conditions, pointing out that he had been providing driving tuition on those terms for nine months without any issue arising;
 - that removal of his name from the Register would mean losing his home and being unable to provide for his family that, he submitted, would mean, effectively, he being found guilty of an offence that he denied.
6. The Appellant submitted quite a number of character references, as referred to previously.
7. In a separate letter, also dated 29 January 2024 to the Respondent, the Appellant made the following additional representations, in summary, as to why his name should not be removed from the Register:
 - that he had not been found guilty of any offence;

- that he had abided by his bail conditions since 26 April 2023, designed to safeguard both himself and female pupils;
 - that pupils of his were aware of the allegations against him but were still prepared to provide character references;
 - that his suspension had immediately been lifted by the Respondent;
 - that he acknowledged and accepted the importance of safeguarding, pointing out that his wife was a Care Assistant and his eldest daughter was a high school religion teacher;
 - that his military career required him to be responsible for the welfare of soldiers and their families;
 - that he had been an ADI since 2013;
 - assertions concerning each of the alleged injured parties, one of whom, he stated, had been his daughter's best friend;
 - that he had not been interviewed by the police [albeit, in oral evidence, the Appellant stated that he had not yet undergone a 'full interview' by the police];
 - that he should be allowed to continue to work as an ADI until the conclusion of his trial in the Crown Court.
8. In his oral evidence, the Appellant again maintained his innocence of the criminal offences with which he was charged; that any touching of the alleged injured parties was accidental and that there had been collusion between the alleged injured parties. He confirmed that his trial was listed for a hearing for four days, commencing on 21 July 2025. He confirmed that he was required to have no contact with the alleged injured parties and had not done so. He confirmed that his bail conditions also required the presence of a chaperone if he was providing driving tuition to a female pupil - even if that pupil was a family member. He emphasised that the purpose of his bail conditions was to protect both him and the public. He pointed out that there were 'only two' alleged injured parties. He confirmed that he had been an ADI since 2013 and had passed a Standards Check examination every four years. He accepted that higher standards were expected of an ADI than were expected of an ordinary motorist.
9. The Appellant confirmed the first allegation dated from 2021 but stated that this was only reported along with the second allegation in August 2022 or 2023. He confirmed that the two alleged injured parties (one in particular), were friends of his daughter and that the allegations all arose after a 'falling out' in January 2023. The Appellant stated that he disputed the dates of the alleged offences. He confirmed that the alleged injured parties had been interviewed but that he was dissatisfied with the conduct of his own interview.
10. The Appellant maintained that the statements of the alleged injured parties were incorrect and that they were in collusion, maintaining that this could be shown to

be the case, by reference to voice mails and social media, the contents of which were different than the contents of their written statements.

11. The Respondent's representative, in answer to questions from the Appellant, stated that he was not aware of a previous statement by the Respondent dated 30 July 2024. He stated that the Respondent's response to this appeal was late due to the Respondent having limited staff resources. He confirmed that a suspension had been imposed by a routine email dated 4 December 2023 and in deciding whether to lift a suspension, the Respondent would have reviewed the risk involved in doing so. However, the lifting of a suspension could not be allowed to continue indefinitely pending, for example, as in this case the outcome of the criminal trial due to potential risks involved.
12. At the end of the hearing, the Appellant confirmed that he was satisfied that everything had been covered and was happy that the Tribunal had listened to him. He reiterated that he was a fit and proper person to have his name remain on the Register; that he was 100% law-abiding but agreed that the allegations needed to be investigated. He concluded by stating that he wanted a chance to 'prove his innocence'.

The Response and Respondent's Evidence

13. The Respondent, in their Response dated 12 November 2024, stated:
 - that they had been informed by the police on 2 December 2023 that the Appellant had been charged on 2 October 2023 with sexual assault, by touching, involving two separate females between 1 September 2021 and 1 November 2021 and between 1 August 2022 and 1 February 2023, respectively;
 - that an ADI must meet, and continue to meet the fit and proper person criteria to have their name remain on the Register and adhere to professional standards and business ethics when dealing with pupils;
 - that the Appellant was not a fit and proper person to have his name remain on the Register due to the severity of the offences with which he was charged and that *two* individuals were involved;
 - that the Respondent had taken into account the representations made by the Appellant (as set out in paragraph 4 herein) before making their decision, the decision under appeal;
 - that the bail conditions imposed on the Appellant were, the Respondent submitted, to protect *further* female pupils from [the potential presumably] of [alleged] similar actions by the Appellant and while the Appellant had not yet been convicted of the offences with which he was charged, the charges were in respect of very serious offences that the Respondent could not ignore;
 - that conditions on an ADI to have their name included on the Register extended beyond instructional ability, requiring an ADI, in addition, to be a fit and proper

- person as driving instruction was a responsible and demanding task that should only be entrusted to those with the highest standards;
- that if the Appellant's name were not removed from the Register, the reputation of the Respondent would be tarnished and the public's confidence in the Respondent undermined;
- that it would be offensive to others trying to qualify as ADIs who had been scrupulous in observing professional behaviour to ignore the position in respect of the circumstances in which the Appellant found himself.

14. In oral submissions, the Respondent's representative reiterated the reasons for their said decision and the contents of the Response (as set out in the preceding paragraph). He acknowledged that, following representations made by the Appellant following his being granted bail, with conditions, the Respondent decided to lift the suspension imposed by them on the Appellant working as an ADI but, subsequently, made their decision, the said decision under appeal, that the Appellant's name be removed from the Register. The Respondent's representative confirmed that the said suspension had been imposed before any representations were received from the Appellant and that suspension powers were used if there was considered to be an imminent risk to the public. The Respondent's representative confirmed further that the suspension was lifted, in advance of the decision under appeal being made as it was felt then that the bail conditions provided sufficient protection to the public and if the Appellant, having been charged with the said offences, had been acquitted in the criminal courts, his name would not have been removed from the Register. The Respondent's representative stated that it was difficult to say that the Respondent would have been happy not to make the decision under appeal pending the outcome of the criminal trial but that the position would be reviewed if the trial date was delayed. However, the Respondent's representative went on to maintain that the outcome of the criminal trial was, in fact, irrelevant as the Appellant, if unsuccessful in this appeal, could apply to have his name restored to the Register within 12 months (otherwise he would be required to undertake and pass examinations in Parts 1, 2 and 3 again).

15. The Respondent's representative confirmed that the said decision under appeal was due to the potential risk to the public if that decision were not made. He pointed out that there were two differing accounts of what had occurred – that of the alleged injured parties and that of the Appellant. He submitted that it was open to the Tribunal to await the outcome of the Appellant's trial in the Crown Court before determining this appeal, pointing out that the said decision under appeal was based on available information that showed there was sufficient evidence to pose a risk unless the said decision had been made. The Respondent's representative stated that the Respondent did not know the trial date.

Conclusions

16. The basis of the Respondent's decision was that the Appellant did not fulfil the criteria to be a 'fit and proper person', as required by s.128(2)(e) of the Act, namely,

“that he ceased to be a fit and proper person to have his name included in the register”.

17. Conditions require that an ADI (the Appellant in this case) be a ‘fit and proper person’. This requires an account to be taken of an ADI's character, behaviour and standards of conduct. This involves consideration of all material matters, including convictions, and other relevant behaviour, placing all matters in context, and balancing positive and negative features as appropriate. The Respondent may take the view that a person no longer meets this requirement where there has been a change in circumstances.
18. However, an appeal to this Tribunal against the Respondent's decision proceeds as an appeal by way of re-hearing, that is, the Tribunal makes a fresh decision on the evidence before it. The Tribunal must give such weight as it considers appropriate to the Respondent's reasons for its decision as the Respondent is the regulatory authority tasked by Parliament with making such decisions. The Tribunal does not conduct a procedural review of the Respondent's decision-making process.
19. As a matter of law, the standing of the Respondent could be substantially diminished, and the public's confidence undermined, if it were known that a person whose name was included on the Register when they had demonstrated behaviours or been convicted in relation to an offence (the latter not being the case here), substantially material to the question of fitness. This can be in respect of behaviour pertaining to motoring matters and other matters of responsibility, trustworthiness and prudence; indeed, it would, indeed, be unfair to others who have been scrupulous in their behaviour, and in observing the law, if such matters were ignored or overlooked.
20. The judgment of the Court of Appeal in *Harris v. Registrar of Approved Driving Instructors* [2010] EWCA Civ 808 confirmed that -

“..... 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 Approved Driving Instructor”.

21. The thrust of the Appellant's case was that he was innocent of the criminal charges brought against him unless and until he was proven guilty of any criminal offence. This, of course is a correct proposition in criminal law. In fact, the Appellant does not need to prove anything in a criminal trial: it is for the prosecution, the Crown, to prove all elements of any criminal charges faced by the Appellant beyond a reasonable doubt. However, an entirely different legal test applies in these appeal proceedings: here a burden of proof **does** lie on the Appellant, namely, to prove to the satisfaction of the Tribunal that, on the balance of probabilities, he remained a

fit and proper person to have his name remain on the Register despite having been charged with what can only be described as serious criminal offences of a sexual nature, by touching, involving two separate females, at different times, while providing driving tuition to each of those alleged injured parties. It is outside the jurisdiction of the Tribunal to decide whether or not the Appellant was guilty of any criminal offence faced by him. An important factor, however, is that the CPS, an independent prosecuting authority concerned with matters of criminal law, having regard to the high thresholds that exist to bring a successful criminal prosecution, will have been satisfied, firstly, that there is sufficient evidence to bring the criminal charges faced by the Appellant and, secondly, that it is in the public interest to bring that prosecution on those charges.

22. In particular, therefore, the Appellant's concluding remark in his oral evidence that he 'wanted a chance to prove his innocence' of the criminal charges faced by him was not a matter within the jurisdiction of the Tribunal but, instead, will be a matter for the jury in the Crown Court.
23. Significantly, while the Appellant sought to be allowed to have his name remain on the Register subject to the bail conditions imposed on him, the Appellant, in representations to the Respondent, advised that he wanted the bail conditions eased but was advised against making such application by his legal advisers. Clearly, however, he was unhappy with the bail conditions imposed on him.
24. While the Appellant stated his understanding of the date his trial was to commence, and its anticipated duration, the reality is that there was no way of knowing whether the stated date for commencement and duration of the trial would be maintained and, if convicted of any criminal offence, whether there would be an appeal(s). In any event, the Tribunal had no jurisdiction to decide on the guilt or otherwise of the Appellant in respect of the criminal charges faced by him but this seemed to be exactly what the Appellant sought in bringing this appeal.
25. It is always open to the Appellant to apply, at any time, within 12 months of this Decision of the Tribunal, to have his name restored to the Register, albeit the Respondent, in its decision, submitted that such application was unlikely to be successful while his criminal trial was pending, save where he could show good reason to the contrary and all relevant requirements of the Act were met.
26. As properly accepted by the Appellant in his oral evidence, the very highest standards, not only of driving instructional ability, but of character, behaviour and standards of conduct were expected of an ADI.
27. On the balance of probabilities, the Tribunal decided that if the Appellant's name were not to be removed from the Register at this stage, too great a potential of risk to the public would exist or be perceived to exist.
28. In reaching its Decision, the Tribunal considered all of the evidence and submissions that it received, written and oral, and took into account all of the circumstances relevant to this appeal.

29. The Tribunal must bear in mind the significant importance attached to the integrity of the Register. For the public to have trust in the integrity of the Register, the Respondent must act in a way that encourages belief that those whose names were entered onto it, had high standards. Allowing those who do not meet those standards would undermine the trust placed in it, and it would have serious consequences for those who do maintain the necessary high standards. These are matters of wider, and public interest, which attract significant weight even where, as in this case, having his name removed from the Register may potentially have significant financial or otherwise consequences for the Appellant.
30. While the character references submitted by the Appellant were, *prima facie*, impressive, those, in themselves, having regard to the entirety of the written and oral evidence and submissions of both parties, did not alter the Tribunal's decision to dismiss this appeal as they were not of sufficient persuasive value to alter the Tribunal's Decision on the balance of probabilities.
31. Taking all of these factors into account and, noting that the Tribunal needs to maintain public trust in the Register and to prioritise consumer protection over the interests of the Appellant as an individual ADI, the Tribunal concluded that the Appellant, at the time of the decision under appeal, was not a fit and proper person to have his name remain on the ADI Register.
32. Accordingly, the appeal is dismissed.

Signed: *Damien McMahon*,

Tribunal Judge

Date: 6 December 2024