



Neutral citation number: [2025] UKFTT 00559 (GRC)

Case Reference: FT/D/2024/0894

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

**Heard by Cloud Video Platform
Heard on: 6th May 2025
Decision given on: 21 May 2025**

Before

**JUDGE KIAI
TRIBUNAL MEMBER FRY
TRIBUNAL MEMBER BOOTH**

Between

SOM MODGAL

Appellant

and

**REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Respondent

Representation:

For the Appellant: Attended in person

For the Respondent: Mr Russel

Decision: The appeal is Dismissed

REASONS

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors ("the Registrar") made on 01 October 2024 to refuse the Appellant's application to extend his registration as an Approved Driving Instructor (the "Register") on the grounds that the Appellant was not a fit and proper person to become an Approved Driving Instructor ("ADI"). This is because he had a fixed

penalty for breach of requirements as to control of the vehicle, mobile telephones and so on, resulting in 6 penalty points.

2. The Appellant's certificate expired on the last day of September 2024.
3. On 1 September 2024, he applied to extend his registration and declared a motoring offence – that took place on 21 November 2022. He did not declare this within 7 days of the offence.
4. By way of a letter dated 2 September 2024. The Registrar indicated that he was considering refusing the application on the grounds he had ceased to be a fit and proper person to have his name retained in the register. He invited him to make representations.
5. Representations were made on 8 September 2024.
6. The application was refused on 1 October 2024.
7. The Appellant appealed to the Tribunal on 20 October 2024.
8. The proceedings were held by video (CVP). The Appellant joined remotely. The Registrar attended by telephone due to difficulties with technology. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

The Appeal

9. The Appellant's Notice of Appeal dated 20 October 2024 relies on the grounds that he has been on the ADI for 22 years (he went on to receive a grade A on his standards check) – a job which he enjoys greatly. He explains that he has been under strain mentally, physically and financially. He states that he did not know about the legislation and rule changes (which came into force in 2022). He has learnt from this and now has a specific module to educate people on the subject and also has it in a pupil log that he has put together for learners *'to avoid an error like I have made due to lack of understanding about the phone and being used as a Sat Nav when it fell off and I carried it in my hand'*.
10. He explains that he has been studying the National Standards for Driver Rider Training (NSDRT) to develop himself. He does not dispute the facts and has nothing but remorse. He emphasises that his points will expire on 20 November 2025 and be removed from his licence on 20 November 2026.
11. He states that if he is unable to continue his career, that would impact his family as well as himself. He doesn't know what else he would do as he has no other skills and this has been his livelihood since 2003. He states he is struggling with anxiety and low mood. He is on a waiting list for support with this. He believes if his appeal is refused, it will lead him into a severe depression. He has been under immense stress and has been referred to a physician who has referred him to hospital for a full check-up due to his chest pains. He has been advised to contact the local Counselling authority via a self-referral and has done so. He has been given sleeping tablets as he

has not been able to sleep. Further blood tests will be carried out on 20th October to see if he requires further medication.

12. There is brief reference to the Appellant going through a lot at the time of the incident due to his personal life with his wife and 'marital issues' – but no explanation as to what this was referring to.
13. He explains that on the day in question, his phone was mounted and attached to a cradle – it was being used as a sat nav. The pupil did a sudden stop and the phone fell on the floor, in front of his dual controls. He picked up the phone for safety reasons. He intended to put it back in the cradle but there were no safe opportunities to pull up for him to do so. He was then stopped by the police – he explained the circumstances at the time. He did not realise he should have not have acted in the manner that he did – it was a lapse of judgement. He should have known better.
14. He has taken positive steps since the incident: his vehicle now has the car play system which ensures the Sat Nav appears on the built-in screen automatically, so it avoids any issues. He places his phone in the glove box when he is driving and his device has been set to automatically reply to any calls/text messages when he is driving. He is attending Continued Professional Development workshops and local association meetings by the local Association of Driving Instructors. He is remorseful and has educated himself further, raising his standards.
15. He is financially dependent on this career and has no other jobs. He is the main bread winner in the family. He details his family circumstances. He will end up on state benefits if he cannot work. He will not be able to pay his bills.
16. He explains that he volunteers in the community and has DBS checks. He is bilingual, lots of people have English as their second language and this helps them to become independent. He has voluntarily signed up and agreed to the voluntary code of practice on professional standards, business practices as a driving instructor.
17. He explains that he is an honest person and he told the police officer what had happened and explained to the Registrar about the points. He has provided 24 references – we have taken them all into account.
18. The Registrar's Statement of Case dated 30 January 2025 resists the appeal. The Registrar says that the Appellant's driving licence is endorsed with 6 penalty points – but he failed to notify the Registrar within 7 days.
19. He notes at para 5:

“By way of an email sent on 08 September 2024, the appellant made representations. (D3) He said: “I have been a Driving Instructor, with the AA as a franchisee, for over 20 year and it is my sole profession. I was teaching my student to drive and, whilst travelling at no more than 5mph though heavy traffic in Twickenham, the Sat Nav in my car broke down. Whilst my student was driving, I proceeded to use the Sat Nav on my phone to direct my student to the next student.

Having noticed this, I was asked by a Police officer to pull up - the officer was in a car behind me. The Police Officer appreciated that I was not talking to a person nor was I texting anyone, nevertheless I was using the Sat Nav device on my phone. Ultimately, my telephone should have been held in a cradle and not in my hand. I immediately acknowledged and accepted the Officers findings and indeed apologised for this. I subsequently paid the relevant fine immediately without contesting the matter. Needless to say, I have since installed a cradle to hold my mobile phone going forward. Having gone through the Covid period, it was a complete oversight on my part that I failed to report this incident to the DVSA and I am truly apologetic for this. This period of the lockdown was a very turbulent time and, during this, several unfortunate issues ultimately drew my attention away from the matter. I hope this oversight on my behalf can be overlooked considering the circumstances at hand, but I am more than happy to discuss the matter in further detail should this be required. I carefully considered these representations, but came to the view that the appellant's application to extend his registration should be refused. I consider that he cannot fulfil Section 127 (3) (e) that he ceased, apart from fulfilment of any of the preceding conditions, to be a fit and proper person to have his name retained in the register".

20. He went on to conclude: *"In committing these offences, I do not believe that the appellant has displayed the level of responsibility or commitment to improving road safety that I would expect to see from a potential ADI"* (§6(a)). The Registrar maintains that he cannot condone motoring offences of this nature. To do so would be to sanction the behaviour, if those who transgress were allowed entry onto an official Register that allows them to teach others. It would be offence to other ADIs and persons trying to qualify an ADI's who had been scrupulous in observing the law, for her to ignore these motoring convictions.
21. The Appellant did not provide a Reply.
22. The Appellant attended the hearing and gave evidence/ made submissions. These are not set out at length here, however a brief summary is provided:
 - a. He explained that he had not been inconsistent in his evidence. He was referred to his email on 8 September in which he had stated *"whilst travelling, the satnav in my car broke down. Whilst my student was driving, I proceeded to use the Sat Nav on my phone. Having noticed this, I was asked by a Police officer to pull up...Ultimately, my telephone should have been held in a cradle and not in my hand. Needless to say, I have since installed a cradle to hold my mobile phone going forward"*. He explained that:
 - i. The screen on the car had gone blank, so he was using the satnav on his phone which was in a magnetic cradle on the day in question;
 - ii. When he said he had 'since' installed a cradle, he meant that he had installed a new, different type of cradle (which has a grip) after the magnetic one broke - not that there was no cradle on the date of the

incident. He no longer has a cradle at all and he just uses apple play. The phone is kept in the glove compartment.

- iii. His student hit the break hard at a traffic light which dislodged the phone;
 - iv. He wasn't continuing to teach her with the satnav, but it was in his hand because he had picked it up. The satnav was still on.
- b. He was asked about apple play and he stated that *"when you start your engine, you connect your phone, you put it in the glove compartment and a screen comes up on the display unit of the car, its like your phone on the car. You can access calls handsfree"*. He agreed that any messages and calls come up on the screen in front of the student.
 - c. The Appellant stated that he would pick-up voice messages but not text messages, *during lessons* if the phone was on the cradle. He stated that he would not be breaking the law to do so.
 - d. The Appellant had referred to Covid in his statement (*'having gone through the covid period it was a complete oversight ...that I failed to report this to the DVSA'*), we asked him how Covid was relevant to his case. He explained that he had not been permitted to work for around 8 months through Covid, therefore he had not been earning any money at all for that time. As soon as he could work, he was very keen to do so to earn money, he was working 12 hour days to catchup and pay his bills on time. He is self-employed and had no financial help from anyone else. He should have reported the incident within 7 days, but it went over his head because he was so engrossed in his work.
 - e. The rules had changed quite recently (before the incident) and he didn't know that he shouldn't have been holding the phone at the time of the incident- he only became aware of this when he was fined for this offence - he's been on many courses since then;
 - f. We note that he had mentioned "marital issues" in his grounds but he had not expanded. We asked him if we wished to do so. He explained that he was referring to difficulties with his wife that have arisen post-dating the offence (the issues "flowed from" the offence);
 - g. He initially stated that the grounds of appeal were entirely his own words, but on further questioning agreed that he had used a template.
23. In response to the Appellant's evidence, the Registrar submitted that the Appellant had disclosed evidence during the hearing which had not been disclosed before (eg the sort of cradle used, changes he had made following the incident) - none of this had been before the registrar and had not therefore been considered. He concluded with the words *"it is a concern to hear of what appears to be quite a lot of engagement with a mobile device whist in lessons with a pupil. To me a handheld device should be well away*

when delivering lessons with a learner driver. Regardless of whether it is legal to take a phone call or not, it doesn't seem correct to be regularly engaging with a device when giving driver training to a learner driver".

24. The Appellant responded to say that he does not actively engage with mobile phones whilst he drives.

The law

25. 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 – see sections 125(3) and 127(3)(e) of the Road Traffic Act 1988 (the "Act"). The Registrar has the burden of showing that a person does not meet the statutory requirement to be a fit and proper person, and the standard of proof is the balance of probabilities.
26. The powers of the Tribunal in determining this appeal are set out in section 131 of the Act. The Tribunal may make such order as it thinks fit (section 131(3)). The Tribunal stands in the shoes of the Registrar and takes a fresh decision on the evidence available to it, giving appropriate weight to the Registrar's decision as the person tasked by Parliament with making such decisions (in accordance with *R. (Hope and Glory Public House Ltd) v City of Westminster Magistrates Court & Ors* [2011] EWCA Civ 31).
27. In *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 808, the Court of Appeal described the "fit and proper person" condition as follows: *"..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...It seems to me that 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."* (paragraph 30).

The evidence

28. We have considered a bundle of evidence containing 43 numbered pages. We heard evidence and submissions from the Appellant at the hearing. We heard submissions from the Registrar.

The relevant facts

29. The Appellant first entered in the registrar on 1 September 2004. This expired on the last day of September 2024.
30. On 1 September 2024 the Appellant submitted an online application to extend his registration and declared a motoring offence. A check of DVLA's database showed that he had received a fixed penalty notice for breach of requirements as to control of the vehicle, mobile phones and so on, on 21 November 2022. He failed to declare this

within 7 days which is in breach of the declaration he signed in his application to renew his registration, dated 3 September 2024.

31. In light of the conviction, the Registrar refused his application to renew his registration in a decision dated 30 January 2025.
32. The Appellant explained the circumstances of the offence further at the hearing.

Conclusions

33. If an ADI's name is allowed to be put on the Register when they have demonstrated behaviours which are relevant to fitness, this will diminish the standing of the Register and undermine the public's confidence in the Register. This includes behaviour relating to driving.
34. ADIs are held to a higher standard than ordinary motorists. The public has the right to expect that those who are registered as ADIs adhere to the highest standards of motoring, which they themselves should be teaching to their pupils. Teaching people of all ages to drive safely, carefully, and competently is a professional vocation requiring a significant degree of responsibility. Such a demanding task should only be entrusted to those with high personal and professional standards and who themselves have demonstrated a keen regard for road safety and compliance with the law.
35. The Registrar has the duty of ensuring that only those of appropriate standing are on the Register, and that those who are on it understand their responsibilities and can show they not only know the rules but follow them. What the Appellant did may not seem to be a serious offence, but the law treats it very seriously. It is essential that ADIs follow the law that they are supposed to be teaching to often young and impressionable pupils. We are aware that the Registrar consistently views six points on a driving licence as a serious matter which means someone is not a fit and proper person.
36. We do have sympathy for the Appellant's position. He has been registered as an Approved Driving Instructor for 22 years. He has made one serious driving mistake which has affected his ability to pursue a career as an ADI while he has six points on his licence. We accept that up until this point he had a clean record, and he has submitted a substantial number of positive references. We note that he does voluntary work in the community.
37. He has explained that if his appeal is refused, it will have consequences for his mental health, finances and family. We note that he was emotional during his evidence – we accept that he is genuinely remorseful. We accept that he is the main bread winner in his family.
38. We were concerned about the following discrepancies:

- i. We were referred to a witness statement from the student who was driving with the Appellant on the date in question. We note that the statement was not signed. No ID was provided to prove that it was actually from an independent witness. We note that it was in the same font and format as the other 4 witness statements submitted at the same time. Nonetheless we were not invited to find that it was not genuine and do not do so. This statement says that that an emergency stop was necessary due to sudden braking by the vehicle in front. The Appellant however stated that the student “hit the break hard at a traffic light”.
- ii. We found it was odd that in the email dated 8 September, the Appellant stated “*Ultimately, my telephone should have been held in a cradle and not in my hand. Needless to say, I have since installed a cradle to hold my mobile phone going forward*”. If what he meant to say was that he had installed a *new and different type* of cradle, since then, we cannot understand why he would not have said this.
- iii. We also found it odd that that in the same email he stated “*whilst travelling, the satnav in my car broke down. Whilst my student was driving, I proceeded to use the Sat Nav on my phone. Having noticed this, I was asked by a Police officer to pull up*”. There was absolutely no mention of an emergency stop or the phone falling from the cradle and the Appellant picking it up. The email explicitly states that ‘*whilst*’ the student was driving, he used the satnav on his phone, and this was noticed by the police officer who asked him to pull up. However, during the hearing, the Appellant stated that he was *NOT* continuing to teach her with the satnav when he was stopped – it was simply in his hand because he had picked it up. The satnav was still on.

39. We simply note these discrepancies as a point of concern. We have not held them against the Appellant and do not find that he has lied – we were not invited to do so by the Registrar and do not do so.

40. In the Grounds of Appeal. The Appellant stated that “*This was a lapse of judgement from me, I was going through a lot in my personal life with my marital issues*”. We do not accept that the Appellant’s marital issues contributed to the offence taking place. He explicitly stated during the hearing that any marital issues have “flowed from” the offence – they were not in place at the time.

41. We are however very concerned that he states in his appeal grounds that he did not know that it was offence to hold the phone in the manner that he did. He had been an ADI for over 20 years at the time of the offence. He therefore should have been fully aware that his actions were illegal. The offence took place on 21 November 2022. The law had changed on 25 March 2022 – 8 months before the date of the incident. The Appellant should have been fully aware of the change in legislation and should

have been teaching his students about it for those 8 months. That he was not aware is a significant problem and we attach substantial weight to it in our considerations.

42. We are further concerned that in his grounds of appeal he states “*the device [his phone] has been set to automatically reply to any calls or text messages (I’m driving mode)*”. Typically, while driving with a phone set to reply mode (like Driving Focus on iPhone – which the Appellant presumably has as he was using apple play), one will typically not see notifications. The phone will automatically send a reply to incoming calls or messages, and it will either silence notifications or limit them to approved contacts. In evidence, the Appellant did not say that this was the case – in contrast he explicitly stated that messages and calls *do* come up on the screen and are visible to the trainee drivers. This was inconsistent and worrying. We find that notifications/messages/calls on the main satnav screen could be distracting for his students. We accept that this is not illegal. However, instructors should avoid any actions that could divert the learner’s attention from the road or the task at hand.
43. We were also concerned that the Appellant stated during his evidence that he used to take telephone calls *during lessons*, (as long as the phone was in the cradle in the past). He did not state that he had changed his position on this following on from the offence. Again, we accept that this is not illegal. But again, we find that this could be very distracting for learner drivers and instructors should avoid actions which may divert attention from the road. In terms of taking the calls, we remind the Appellant that as a supervising driver, the Appellant is considered to be in control of the vehicle and the learner driver. He must obey the rules of the road as if he were driving the vehicle himself.
44. We find that the circumstances of this case are aggravated by the fact that the Appellant did not declare the conviction within 7 days. Indeed he continued to drive for almost 2 more years. In his grounds of appeal to the Tribunal he stated that “*Having gone through the Covid period, it was a complete oversight on my part that I failed to report this incident to the DVSA and I am truly apologetic for this. This period of the lockdown was a very turbulent time and, during this, several unfortunate issues ultimately drew my attention away from the matter*”. In evidence, the Appellant did not state nor expand on what the ‘*several unfortunate issues*’ were, he simply stated that he was working really hard because he hadn’t been able to do so during Covid which was what led to the oversight. We were concerned about this discrepancy. We do not accept that this is a valid reason for having failed to report the incident for 2 years. We note that he did volunteer the information when he reapplied, however he had already been driving for 2 years by this point. We attach significant weight to this.
45. We attach significant weight to the fact that in 6 months time, the penalty points will ‘expire’ and the Appellant can reapply. He has had the advantage of driving for 2 years after the incident – because he did not notify the respondent within 7 days of the offence. He also had the benefit of driving for 8 months waiting for these proceedings. In just 6 months times, he can re-apply. We find this proportionate in the circumstances.

46. We find on the balance of probabilities that the Appellant does not currently meet the statutory requirement to be a fit and proper person. In all the circumstances, we conclude that the Registrar's decision to refuse the Appellant's application to be entered on the Register as he was not a fit and proper person was correct. We dismiss this appeal.

Signed

Judge Kiai

Date:

20th May 2025