

ENGLAND AND WALES / JUDGMENT

Nicholas Skaliotis v Registrar of Approved Driving Instructors

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Case Reference: FT/D/2024/0258 Heard on: 22 April 2026. Decision given on: 30 April 2026. NCN: [2026] UKFTT 00642 (GRC) First-tier Tribunal (General Regulatory Chamber) Transport Before Judge Simon Bird KC Tribunal Member Richard Fry Tribunal Martin Smith Between: NICHOLAS SKALIOTIS Appellant and Registrar of Approved Driving Instructors Respondent DECISION (Corrected under Rule 40 5 May 2026) Representation For the Appellant: In person For the Respondent: Mr Darren Russell Decision : The appeal is dismissed. The Registrar's decision is upheld.

REASONS

Introduction

1. This is an appeal against a decision of the Registrar of Approved Driving Instructors ('the Registrar') made on 7 March 2024 to remove the Appellant's name from the Register of Approved Driving Instructors (the "Register"). The decision was taken on the grounds that the Appellant had failed to pass the test of continued ability and fitness to give instruction to continue as an Approved Driving Instructor ("ADI").
2. Whilst the appeal was previously determined by the Tribunal by decision dated 12 January 2026, that decision was set aside on 26 January 2026 as two e-mails relating to the cancellation of a standards' check scheduled for 3 January 2024 had not been before the Tribunal when it made its decision, the Registrar's position being that he could not trace any e-mail. Judge Saward set aside the decision on the ground that it had not been ascertained whether the new information would have altered the decision of the Respondent. She also directed the Registrar to confirm whether he relied upon his original decision and, if so, how and why the additional information affected his decision. The previous decision having been set aside, the Tribunal will proceed to consider the appeal afresh in the light of all of the information now before it.
3. The proceedings were held by video (CVP) with the Appellant attending at his request by telephone. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

Legal Framework

4. Entry of a person's name in the Register is subject to the conditions set out in section 125(5) of the Road Traffic Act 1988 ("the Act"). Under section 128 of the Act the Registrar may remove the name of a person from the Register if satisfied that they do not fulfil the relevant conditions. One of those conditions, at section 128(2)(d), is that they have failed to pass a test of continued ability and fitness to give instruction (often referred to as a "standards check"). Under section 125(5)(a)(i), a person whose name is in the Register must submit to a test of continued ability and fitness to give instruction in the driving of motor cars, if required at any time to do so by the Registrar.
5. 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). Appeal to the Tribunal
6. The Appellant's grounds of appeal are, in summary:
 - a. The Registrar has decided to remove the Appellant's name from the register due to the DVSA's inflexibility in relation to appointment times for those who have child care responsibilities;
 - b. The Appellant is a lone parent with two young children and the day allotted by DVSA for his standards test day, 3 January 2023 was during Christmas school holidays. The Appellant did not have childcare cover and could not afford to employ someone for the day;
 - c. The DVSA had been provided with the dates of his child's school terms but this was clearly ignored by those in charge of booking;
 - d. The Appellant wishes to attend and pass the standards test, but at a mutually agreed time and date which must be after 11am and during school term time;
 - e. The Registrar's continued reliance on the decision of 7 March 2024 is procedurally unfair and based on an error of fact. The contention that the e-mails of 2 and 3 January 2024 would not have changed his decision, is flawed;
 - f. It is wrong to characterise the "cancellations" as a pattern of avoidance. These were not technical "cancellations" but necessary rearrangements due to genuine life events including emergency childcare failures, school holidays, jury service and illness. It was a critical error to record his inability to attend the 3 January 2024 test as a "Fail to Attend". It should have been recorded as a notified absence due to a childcare emergency which is a legitimate reason for a postponement;

- g. The Registrar admits its usual practice is to allow three attempts at a standards check, he had failed two and 3 January 2024 was to be his third and final attempt; and
 - h. By failing to process his notification and recording the event as a Fail to Attend, the Respondent effectively cancelled the third attempt without cause which was inherently unfair
7. The Registrar in his original response stated that the appellant had failed a test of continued ability and fitness to give instruction and failed to make himself available for a test on 3 January 2024 with no explanation. The Registrar considered that the Appellant had been given adequate opportunity to pass the test but he had failed to do so. In the interests of road safety and consumer protection, he felt obliged to remove the Appellant's name from the register because he had been unable to satisfy him that his ability to give driving instruction was of a satisfactory standard. However, the Registrar's original decision of 7 March 2024 and his response to the appeal did not take account of two e-mails sent by the Appellant to him on 2 January 2024 in which the Appellant explained that his test date had been moved to a date which fell within the school holidays and whilst he had arranged for childcare cover, the carer had called at the 12 th hour to cancel on the grounds of illness and he had no one else to look after the children. The Appellant attached his older child's school calendar to the e-mail. This e-mail was acknowledged by the Registrar on 3 January 2024. In response to Judge Saward's Directions of 26 January 2026 the Registrar:
- a. Confirmed that he still relied on his decision of 7 March 2024; and
 - b. Stated that sight of the two e-mails would not have affected his decision to remove the Appellant's name from the register as in making that decision he looked at the Appellant's test history as a whole. He had failed the test on two consecutive occasions (29 March 2022 and 29 March 2023) and had cancelled 13 tests that were booked for him since qualifying as an ADI on 25 October 2018; seven before failing the first test on 29 November 2022, a further two before failing his second test on 29 March 2023 and a further four since then;
 - c. Under section 125(5)(a)(i) a person whose name is in the Register must submit to a test of continued ability and fitness to give instruction in the driving of motor cars, if required at any time to do so by the Registrar. Whilst the law only requires one attempt at the test, it is the usual practice of the Registrar to allow three attempts. The Registrar also takes a fair and reasonable approach to rebooking tests of an ADI is unable to make the booked date, which he has done on multiple occasions for the Appellant. Having cancelled the standards check on so many occasions in the past, the Registrar considers that he has given the Appellant reasonable opportunity to undertake the test and demonstrate that he meets the required standards to remain on the Register of Approved Driving Instructors. Evidence
8. We read and took account of a bundle of documents containing 45 pages and the Appellant and Respondent made oral submissions during the hearing.

Submissions

9. The Registrar decided to remove the Appellant's name from the register as he had failed to pass the Standards Check for the reasons set out in his Statement of Case. Section 125(5)(a)(i) requires a person whose name is on the Register to submit to a test of continued ability and fitness to give instruction in the driving of motor cars, if required at any time to do so by the Registrar. This requires only one test opportunity although it is the Registrar's normal practice to allow up to three tests to enable the ADI to undertake further professional development in order to pass. The Appellant had failed two tests on 29 November 2022 and 29 March 2023. He was invited to take the test for the third time on five further dates but each of the booked tests were cancelled, often at short notice. The record of tests shows many cancellations. The Registrar accepts that the Appellant gave notice on 2 January 2024 cancelling the test of 3 January 2024, but considers that he has had sufficient opportunities to take and pass the test. He has not passed the test since his inclusion on the Register as an ADI and the Registrar is not satisfied that he meets the required standard.
 10. The Respondent stated in his submissions that the Registrar was inaccurate in claiming that he had failed to attend the 3 January 2024 test when in fact he had notified him on 2 January 2024 that he would not be able to attend. He appreciated that he had to pass the test but other life events got in the way (jury service, ill health, childcare). He had arranged childcare with the godparents of one of his children for the 3 January 2024 but they told him at 17.24pm on 2 January 2024 that they were ill with flu and would not be able to look after his children then aged 5 and 2. Given the time of year it was not possible to arrange alternative cover at such short notice. The Respondent stated he was serious about taking the test. He does not practise as an ADI but needs it for his employment which involves providing track days from the Young Driver market. The ADI registration is required because the activities are marketed as being provided by a professionally qualified ADI. He stated that he is serious about taking the test, he passed the Part 3 test to become a registered ADI has the ability to pass but life, illness and childcare got in the way. His test failures were situational and it was not said that he was in any way dangerous. He had relied on his mother in the past to provide childcare, but she was then a lot healthier and other than use of a nursery, he did not rely on professional childcare with cost being a factor. He accepted that he was told that the test of 3 January 2024 would not be able to be re-booked and was his last opportunity but he could not attend at the expense of the safety of his two children. He would take the precaution of double-booking childcare if he were given another opportunity to take the test. His childcare situation has improved considerably now the children are a little older and he has more people around him to provide support.
- Conclusions

11. There is no material dispute of fact in this case. The Appellant accepts that his test history as supplied by the Tribunal is factually accurate. This shows that following the successful completion of his Part 3 test in October 2018, there were seven cancelled tests before 29 November 2022, the date of his first failed test i.e. all the tests arranged in 2022 were

cancelled. There were then two cancellations before his next failed test on 23 March 2023. Thereafter, all of the four further arranged tests in 2023 were cancelled by the Appellant. The Appellant provided reasons for these four cancellations (29 June 2023 – abroad with work, 24 July 2023 – childcare issues, 5 October 2023 – jury service, 11 December 2023 (flu)) and the Tribunal accepts that what the Appellant referred to as “life” may sometime prevent test opportunities being taken up. The DVSA’s cancellation of one of the Appellant’s scheduled tests shows that not all appointments can be adhered to.

12. However, the Appellant’s test record needs to be viewed as a whole. Over the period October 2018 to early 2024 he was provided with 14 opportunities to take the test which he cancelled. Further, he was aware from the Registrar’s e-mail of 12 December 2023, that the 3 January 2024 test was his last chance to pass it and the appointment would not be re-arranged. He had no reasonable expectation, given this context, that if he cancelled that final test, he would still be able to re-arrange to take a third test. Whilst it is the Registrar’s practice to allow three attempts at the test, there is no requirement in law that a person be given those three opportunities whatever the circumstances. The requirement is for the Appellant to submit himself for the test at any time required. In the Appellant’s case the Registrar has applied this requirement very reasonably by allowing him 14 opportunities to satisfy the test requirement.
13. With this background, the Appellant can reasonably have been expected to ensure that the childcare provisions he put in place following notification of the appointment on 12 December 2024 were robust and would not be cancelled or, if they were, back-up arrangements were in place. The Appellant argued that if he were given a further opportunity to take the test, he would ensure that he “double booked” his childcare arrangements to make sure he could attend. However, that is a step he should have taken prior to 3 January 2024 knowing, as he did, that that was his last opportunity to take the test. In this context, the Tribunal notes that he was able to work abroad for two weeks in between 24 June and 7 July 2023 and therefore able to put in place childcare arrangements, even for an extended period when necessary. For a test of such importance to the Appellant’s employment, the Tribunal finds it surprising that the Appellant could not make the necessary arrangements to allow him to attend just one of the 14 opportunities offered to him to pass the test.
14. Whilst the Appellant states that he is determined to take the test and the risk of cancellation on grounds of childcare is now much reduced as his children are older, his test history gives the Tribunal little confidence that he would submit to a standards check without further cancellations. The Tribunal is satisfied that the Appellant has been given more than reasonable opportunity to undertake the test.
15. The Tribunal finds that the Appellant has not met the condition of retention on the Register under section 128(2)(d) of the Act by failing to pass a test of continued ability and fitness to give instruction, as required by the Registrar under section 125(5)(a)(i) of the Act.

16. In all the circumstances, the Tribunal agrees with the Registrar's decision to remove the Appellant's name from the register and accordingly this appeal is dismissed. Signed:
Tribunal Judge Simon Bird Date: 28 April 2026
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