



NCN: [2024] UKFTT 383 (GRC)

Case Reference: D/2023/383

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

**Heard on: 22 March 2024
Decision given on: 15 May 2024**

Before

TRIBUNAL JUDGE KENNETH MULLAN

JUDGE SITTING IN CHAMBERS

Between

ABIRAMI BALASUNTHARAM

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Decision: The appeal is dismissed

REASONS

Mode of Hearing

1. The proceedings were held using CVP. The tribunal was satisfied that it was fair and just to conduct the hearing this way.
2. The Appellant participated in the remote oral hearing. The Registrar was represented by Miss Jackson.

Background

3. This appeal is from a trainee driving instructor who was granted a trainee licence under s.129 of the Road Traffic Act 1988 ("the Act") and was then refused a further licence at the end of the six months' period. A licence under s.129(1) is granted "for the purpose of enabling a person to acquire practical experience in giving instruction in driving motor cars with a view to undergoing such part of the examination as consists of a practical test of ability and fitness to instruct".
4. The circumstances in which trainee licences may be granted are set out in s.129 of the Act and in the Motor Cars (Driving Instruction) Regulations 2005 ("the Regulations"). In order to qualify as an approved driving instructor an applicant must pass the qualifying examination, which is in three parts: the written examination; the driving ability and fitness test; and the instructional ability and fitness test (see reg.3(2)). Each part must be passed in the stated order and before the next part is attempted. Three attempts at each part are permitted but the whole examination must be completed within two years of passing the written examination (but subject to reg.3(4)(c) which permits a further attempt at the Part Three test outside the period if the booking was made within it). Failure so to complete requires the whole examination to be retaken. A trainee licence may be granted under s.129 of the Act once the driving ability and fitness test has been passed. The holding of a trainee licence is not a prerequisite to qualification; on the contrary, many applicants qualify without having held such a licence.
5. It is self-evident that the grant of a trainee licence enables applicants to instruct for payment before they are qualified. The Appellant did so and failed to pass the instructional ability and fitness test within the six months' period. The Appellant applied for a further licence prior to the end of this period and by s.129(6) of the Act "where a person applies for a new licence in substitution for a licence held by him and current at the date of application, the previous licence shall not expire until an appeal is finally disposed of". The effect of this is that the Appellant has been able to continue to instruct under her licence, despite the expiry dates. Of course, if prior to disposal of the appeal she passes the instructional ability and fitness test, she then ceases to be a trainee and is no longer eligible for a further trainee licence. If on the other hand she fails this test after three attempts, the appeal is itself also bound to fail since by reg.13(2)(d) of the Regulations a further trainee licence may not be granted if the instructional ability and fitness test has been failed "more than twice".

6. When the Appellant applied for a trainee licence she signed an application form, which included a declaration that she had read the Department's booklet ADI 14. This booklet contained the following advice:

'If you are not using the licence for any reason, you should return it to us. Although you will not receive a refund for lost training time, we will know that you have not had full use of the licence and this will be a factor in deciding whether to issue a subsequent licence.'

7. The Registrar gave the following general reasons for refusal:

(i) The purpose of the provisions governing the issue of licences is to afford applicants the opportunity of giving instruction to members of the public whilst endeavouring to achieve registration. The system of issuing licences is not and must not be allowed to become an alternative to the system of registration;

(ii) The licence granted to applicants is not to enable the instructor to teach for however long it takes to pass the examinations, but to allow up to six months experience of instruction. This provides a very reasonable period in which to reach the qualifying standard in the examination and, in particular, to obtain any necessary practical experience in tuition. Moreover, by virtue of the Appellant having applied for a second licence before the expiry date of the second, that licence has remained in force to the present time and will allow him to continue to give paid instruction until determination of the appeal.'

8. In addition, the Registrar added further reasons which were specific to the individual case. Those discrete reasons are set out in below.

9. A licence was granted to the Appellant under section 129 of the Act for the purposes of enabling her to undergo the examination of her ability to give instruction in the driving of motor cars and was valid from 23 January 2023 to 22 July 2023. On 19 July 2023 the Registrar received an application from the Appellant for a second licence. Following notification to the Appellant by way of email correspondence dated 21 July 2023 that the Registrar was considering the refusal of his application for the second licence, the Appellant made no representations to the Registrar within the required time limits. Accordingly, the Registrar decided to refuse the application and notified the Appellant of that decision by way of email correspondence dated 8 August 2023. The Appellant has appealed against the decision dated 8 August 2023.

Respondent's reasons for decision

10. In the Statement of Case the Registrar has set out the reasons for the refusal of the application. These included the general reasons set out in paragraph 7 and the following reasons specific to this Appellant:

‘Since passing her driving ability test the Appellant has yet to take the instructional ability test and cancelled one such test booked for 12 July 2023. Despite ample time and opportunity, the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor; and

The refusal of a second licence does not bar the Appellant from attempting the instructional ability test of the Register examinations. She does not need to hold a licence for that purpose, nor is it essential for her to give professional tuition under licence in order to obtain further training. The Appellant could attend a training course, or study and practice with an Approved Driving Instructor or give tuition on her own (provided that she does not receive payment of any kind for this). These alternatives are used by some trainees who acquire registration without obtaining any licences at all.

She has failed to comply with the conditions of her first licence as the training objectives on her ADI 21AT training record form **(D5)** were not completed within the first three months of the licence period. Furthermore, she supplies no evidence of lost training time.’

11. I have a copy of the DSA print-out, which shows that the Appellant cancelled an appointment for the Part III test on 12 July 2023.
12. At the remote oral hearing, the Registrar was represented by Miss Jackson. Miss Jackson summarised the reasons for the Registrar’s refusal of the Appellant’s application for a second trainee licence as noted above. Miss Jackson noted that the Appellant had failed the Part III test on 26 September 2023 and 16 January 2024. She had cancelled appointments for Part III test on 12 July 2023, 6 November 2023, 8 November 2023, had failed to attend on 2 October 2023, had not completed a test on 6 October 2023 and had not made any further such appointments. Miss Jackson observed that as of the date of the hearing the Appellant had had the benefit of a trainee licence for 14 months.

Appellant’s submissions

13. In her notice of appeal, the Appellant made submissions in connection with her health consequent on other personal family circumstances. To protect her privacy, I have not set out these submissions in any degree of detail but, of course, have taken them into account. The Appellant attached several items of documentary evidence to the notice of appeal in support of her written submissions.
14. In her oral submissions at the hearing, the Appellant provided further details concerning the Part III test failures, the cancellations of the Part III test appointments, her failure to attend and non-completion of one Part III test. She submitted that it had been very difficult for her to obtain a further Part III test appointment. In connection with the latter, Miss Jackson observed that she had accessed the Appellant’s test history and had noted that the Appellant had not attempted to use the ‘book to hold’

process which would have facilitated an easier route to obtain a Part III test appointment.

Reasons

15. The reference to the Appellant not complying with the conditions of her first licence is connected to the condition set out in regulation 15(3) of the Motor Cars (Driving Instruction) Regulations 2005, as amended ('the 2005 Regulations'). It is as follows:

'(3) If a person elects in writing at the date of his application for a licence to undertake supplementary training the conditions specified in paragraph (2) above shall not apply to the licence which shall instead be subject to the following conditions, namely that the licence holder must –

- (a) undertake during the period expiring on the first relevant date not less than 20 hours supplementary training;
- (b) not later than the day immediately following the first relevant date deliver to a person authorised by the Registrar in that behalf evidence, in the form specified in Part 2 of Schedule 2 to these Regulations, that he has received that supplementary training;
- (c) if he has not passed the instructional ability and fitness test on the first occasion on which he took that test, or (if earlier) by the expiration of a period of 3 months beginning on the date when the licence was granted –
 - (i) undertake during the period expiring on the second relevant date not less than 5 hours further supplementary training; and
 - (ii) not later than the day immediately following the second relevant date deliver to a person authorised by the Registrar in that behalf evidence, in the form specified in Part 2 of Schedule 2 to these Regulations, that he has received that further supplementary training.

16. Regulation 15 (6) of the 2005 Regulations provides:

In this regulation –

“first relevant date” means –

- (a) the last day of the period of 3 months beginning on the date when the licence is granted, or
- (b) the day on which the licence holder first applies to take the instructional ability and fitness test,

whichever first occurs;

“second relevant date” means –

- (c) the last day of the period of 3 months beginning –
 - (i) on the first relevant date if that date is the expiration of the period of 3 months referred to above, or

(ii) in any other case, on the day on which the licence holder first failed the instructional ability and fitness test, or

(d) the first day after the first relevant date on which he applies to take the instructional ability and fitness test;

whichever first occurs;'

17. In her oral submissions Miss Jackson stated that the effect of the Regulation 15 condition is that the Appellant must have completed the requisite 20 hours of training within three months of the date of issue of her trainee licence. Turning to the record of training ADI 21 document, at pages 11 to 12 of the bundle, Miss Jackson observed that it was signed on 17 July 2023. I have observed that the 20 hours of training is stated to have taken place across four consecutive days from 10 July 2023 to 14 July 2023. I make two observations about that. The first is that I regard it as improbable that the Appellant undertook the training within such a relatively short period. Further, and even if I accept that it did take place during the relevant four-day period, it is clear that it had taken place beyond the period of three months from the date of issue of the trainee licence.
18. I have noted that the Appellant has not commented at all on the Registrar's assertion that she failed to comply with the conditions of her first trainee licence. This is a very important factor, and I also note that the Registrar's statement has not been challenged so I conclude that the Appellant accepts it is true.
19. I have considered the Appellant's submissions regarding the difficulties which she has encountered due to her personal circumstances. Nonetheless, her Part III test history is poor, consisting of test failures, cancellations, non-completion, and a failure to attend. The Appellant has also failed to avail of the 'book to hold' process.
20. As at the date of this decision the Appellant had had the benefit of a Trainee Licence for 14 months. In my judgment she has now had more than enough time in which to gain practical experience in giving instruction.
21. As was noted by the Registrar, the refusal of a second licence does not bar the Appellant from attempting the instructional ability test of the Register examinations. She does not need to hold a licence for that purpose, nor is it essential for her to give professional tuition under licence in order to obtain further training. The Appellant could attend a training course, or study and practice with an Approved Driving Instructor or give tuition on her own (provided that she does not receive payment of any kind for this). These alternatives are used by some trainees who acquire registration without obtaining any licences at all.
22. The Registrar has noted that when the Appellant applied for a trainee licence she signed an application form, which included a declaration that she had read the Department's booklet ADI 14. In turn her booklet contained advice that if the Appellant was not using the licence for any reason it should be returned to the DSA. She was informed that this would mean that '...we will know that you have not had full use of the licence and this will be a factor in deciding whether to issue a subsequent licence.' The Appellant chose not to return her licence.

23. I uphold the Registrar's decision and accept and endorse the reasons given for that decision by the Registrar as set out in the Statement of Case. Accordingly, the appeal is dismissed with immediate effect.

Signed

Date: 15 May 2024

Judge of the Upper Tribunal