



**NCN: [2024] UKFTT 436 (GRC)**

Case Reference: D/2023/412

**General Regulatory Chamber  
Transport**

**First-tier Tribunal**

**Determined on the  
on 29<sup>th</sup> May 2024**

**Before**

**HHJ DAVID DIXON**

**Between**

**PHILIP MCDOWALL**

**and**

**THE REGISTRAR OF APPROVED  
DRIVING INSTRUCTORS**

Appellant

Respondent

**Decision:** The appeal is dismissed and the Registrar's decision remains.

## REASONS

### *Background to Appeal*

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made 4<sup>th</sup> July 2023 to refuse to grant the Appellant a third trainee licence.
2. The Appellant is a trainee driving instructor who was granted a trainee licence under s.129 of the Road Traffic Act 1988<sup>1</sup> (‘the Act’) for a six-month period, and then another, but was refused a further licence at the end of the relevant period.
3. The Registrar’s reasons for refusal, in summary, were that the Appellant had not passed the final part of the ADI qualifying examination within the relevant period and as insufficient evidence of loss of training time was supplied that the Appellant had had long enough to progress, and the application to issue a third trainee licence was therefore refused.
4. The Appellant now appeals the Registrar’s decision.
5. Further to the refusal the Appellant has attempted his Part 3 test for a third time and failed. He is now barred from undertaking further instruction unless and until he restarted the process and was granted an initial licence again.

### *Appeal to the Tribunal*

6. The Appellant’s Notice of Appeal, 7<sup>th</sup> September 2023, indicates that his driving school advised him to simply tell the Registrar that he was awaiting a test and with the backlog he should be granted a new licence.
7. The Respondent submitted a Response indicating that the decision letter sets out their position. The Registrar points out that the Applicant had sufficient time to progress.
8. The Registrar indicates that the Appellant has failed his Part 3 three times now.

### *Mode of Determination*

9. The hearing was to be determined at an oral hearing, but in light of the Appellant’s third failure at the Part 3 test, the hearing lacked any merit. Accordingly the Tribunal considered the appeal on the papers. In accordance with the Tribunal Rules the Tribunal assessed whether it was right and proper to continue on the papers and came to the clear view to do so would be fair to all.
10. The Tribunal considered a bundle of evidence containing 17 pages.

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

## *The Law*

11. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified. The circumstances in which trainee licences may be granted are set out in s. 129 of the Act and the Motor Cars (Driving Instruction) Regulations 2005<sup>2</sup>.
12. A licence under section 129(1) of the Act 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’.*
13. In order to qualify as an Approved Driving Instructor, applicants must pass the Qualifying Examination. This comprises: the written examination (‘Part 1’); the driving ability and fitness test (‘Part 2’); and the instructional ability and fitness test (‘Part 3’). Three attempts are permitted at each part. The whole examination must be completed within 2 years of passing Part 1, failing which the whole examination has to be retaken.
14. If a candidate has passed part 2, they may be granted a trainee licence. However, holding a trainee licence is not a prerequisite to qualification as an Approved Driving Instructor and many people qualify as an Approved Driving Instructor without having held a trainee licence.
15. The powers of the Tribunal in determining this appeal are set out in s. 131 of the Act. The Tribunal may make such order as it thinks fit.
16. When making its Decision, the Tribunal stands in the shoes of the Registrar of approved Driving Instructors and takes a fresh decision on the evidence available to it, giving appropriate weight to the Registrar’s decision<sup>3</sup> as the person tasked by Parliament with making such decisions. The burden of proof in satisfying the Tribunal that the Registrar’s decision was wrong rests with the Appellant.

## *Conclusion*

17. The Tribunal considered carefully all the papers before it.
18. In fixing a period of 6 month to allow for trainee instructors to progress Parliament must have had in mind that we are all subject to differing life events that affect our ability to undertake certain tasks. Sometimes those events are so unusual or have such a bearing on an individual that it will be entirely appropriate to find that a longer than normal period of time should be allowed to complete a task. Here the Appellant provided no real basis for a further licence. The

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<sup>2</sup> [http://www.legislation.gov.uk/uksi/2005/1902/pdfs/uksi\\_20051902\\_en.pdf](http://www.legislation.gov.uk/uksi/2005/1902/pdfs/uksi_20051902_en.pdf)

<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>.

backlog in tests is advanced without any further detail, but by granting a second licence the Registrar has allowed for this. The Appeal would have been dismissed on this basis.

19. The Appellant however has failed three attempts at his Part 3 test, and is now barred from further paid instruction. The Appeal would have been struck out as lacking any merit but for the time scales involved. The Appeal now has no merit at all.
20. Appeal dismissed.

**(Signed)**

**HHJ David Dixon**

**DATE: 29<sup>th</sup> May 2024**