



Neutra Citation Number: **[2024] UKFTT 00465 (GRC)**.

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

Appeal Reference: D/2024/72

Decided without a hearing on 21 May 2024

Before

JUDGE ANTHONY SNELSON

Between

LITON MIAH

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

DECISION

The decision of the Tribunal is that the appeal is dismissed.

REASONS

1. This is the appeal of the Appellant, Mr Liton Miah, against the decision of the Registrar of Approved Driving Instructors ('the Registrar'), conveyed in a letter of 10 January 2024, to refuse his request for a third trainee licence.

2. The matter was listed before me for consideration on the papers. I was satisfied that it was just and proper to decide the appeal without a hearing.

The statutory framework

3. The Road Traffic Act 1988 ('the Act'), s123(1) prohibits the giving of paid driving instruction except where the instructor's name is included in the Register of Approved Driving Instructors¹ ('the Register') or he/she holds a trainee licence.

4. Candidates for membership of the Register must fulfil a number of conditions. These include the requirement to pass an examination divided into three parts ('the examination'): theory; driving ability and fitness; and instructional ability and fitness (the Act, s125(3)(a)). They must apply for a part three test within two years of passing part one; if they do not, they must re-take the entire examination. Candidates who fail part three on three occasions must also re-take the entire examination.² And in this case the current trainee licence comes to an end on the day following the third test.³

5. By the Act, s129(1) it is provided that trainee licences are granted for the purpose of enabling prospective ADIs who have passed parts one and two of the examination to gain practical experience in driving instruction with a view to taking part three. Trainee licences are valid for six months only. The Registrar is expressly empowered to refuse to grant a trainee licence to an applicant to whom such a licence has previously been issued (s129(3)). It is clear from the language of s129 as a whole that trainee licences are not intended to serve as an alternative to registration.

6. The DVSA website (not, of course, a legal source) includes this advice:

You should return your trainee licence to DVSA if you are not using it, for example because of a long period of illness.

You will not get a refund, but DVSA will know that you have not had full use of the licence. This will be a factor in deciding whether to give you another licence in future.

On the subject of applications for further trainee licences it states:

You're more likely to get another licence if you told DVSA you had stopped using the first, for example because of a period of illness.

It's unlikely that you'll get another licence if you:

- **just want more time to pass the approved driving instructor (ADI) part 3 test**
- **did not follow the [rules for using your previous trainee licence](#)⁴**

7. The effect of the Act, s129(6) is that, where a holder of a temporary licence applies during its currency for a fresh licence, the life of the original licence is extended until the commencement of the new licence or, if the application is refused and the holder appeals, until disposal of the appeal.

8. By the Act, s131(2) an appeal lies to the First-tier Tribunal against a decision to refuse an application for the grant of a licence. On the appeal, the Tribunal may make such order for the grant or refusal of the application as it sees fit (s131(3)). In a different but analogous statutory context in *In the matter of the Bonas Group Pension Scheme* [2011] UKUT B 33 (TCC) Warren J, sitting in the Upper Tribunal, held that there was nothing to constrain the

¹ Hereafter the usual abbreviation 'ADI' will be used.

² See the Motor Cars (Driving Instruction) Regulations 2005 ('the Regulations'), reg 3(4)(c) and (d).

³ The Regulations, reg 14(b)

⁴ These include a requirement to undertake a specified number of training hours over the first three months of the licence.

first-instance Tribunal's approach on appeal. Its function is simply to make its own decision on the evidence before it (which may differ from that before the statutory body whose decision is under challenge). Despite this latitude, however, high authority of general application recognises two important points. First, the burden is on an appellant to persuade the Tribunal that the relevant decision should be overturned or otherwise interfered with. Second, the Tribunal should give careful consideration to the reasons for the decision being impugned, given that Parliament has invested the relevant body with exclusive authority (subject to appeal) to make decisions on such matters.⁵

The key facts

9. The background facts can be summarised as follows.
 - 9.1 Mr Miah passed parts one and two of the examination on 10 January and 20 September 2022 respectively.
 - 9.2 On Mr Miah's application, the Registrar granted him two trainee licences covering the period from 9 January 2023 to 8 January 2024.
 - 9.3 On 6 December 2023 Mr Miah applied to the Registrar for a third licence. That application was refused by the letter of 10 January 2024, to which I have already referred.
 - 9.4 Given the timing of the application for the third licence, the life of the second licence was extended by the Act, s129(6) to the date of disposal of this appeal (see above).
 - 9.5 Mr Miah booked part three tests for 8 March 2023, 14 March 2023, 2 October 2023, 4 January 2024 and 8 April 2024. The first two appointments were cancelled by Mr Miah. The third and fourth went ahead as scheduled but, unfortunately, Mr Miah was unsuccessful on both occasions. I have no information concerning the test booked for 8 April 2024.
 - 9.6 Mr Miah's main point in support of his appeal is that, during the relevant period, he was devoting much of his time to supporting his mother in Bangladesh, who was in failing health. I fully accept that what he says about his mother's health is true. With regret, I place on record that the lady died on 5 September 2023.

The appeal

10. In his notice of appeal dated 18 January 2024, Mr Miah explained that he had spent much time in 2022 and 2023 supporting his mother and had travelled to Bangladesh to be with her in February and March 2023. In addition, he had experienced stress as a consequence of his mother's declining health, which had had an impact upon his own well-being and the time was able to devote to driving instruction. Generally, he urged the Tribunal to grant a third licence to enable him to 'continue practice'.

11. The Respondent resisted the appeal, stressing the importance of not allowing trainee licences to serve as an alternative to the registration system and the fact that eligibility to take the part three test is not conditional upon possession of a trainee licence. Generally, it was contended that the decision which Mr Miah seeks to challenge was solidly based and there was no good reason to disturb it.

Discussion and conclusions

⁵ See *eg R v Westminster Magistrates Court ex p Hope & Glory Public House Ltd* [2011] EWCA Civ 31, paras 39-48 (Toulson LJ).

12. I am not persuaded that there is a good reason to allow this appeal. I fully accept Mr Miah's account of the sad family circumstances with which he had to deal in 2022 and 2023. Nonetheless, I see nothing to justify the grant of a third licence. As already explained, the effect of the appeal is that the second licence was automatically extended until the date of the Tribunal's decision. In other words, he has by appealing secured the protection of 'the badge' for a consecutive period of over 16 months to date. I hope that he was able to re-take the test as scheduled on 8 April this year or, if not, on some other date before my decision reaches him. If so, whatever the result of the test, this appeal is academic: if he passed, he ceased to have any need for a trainee licence; if he failed, his licence lapsed the following day and his only option was to return to the part one stage afresh. If for some reason he has still not taken the part three test, he will remain eligible to do so (provided, of course, that he is entitled to rely on an application made no later than 10 January 2024). In that event, he will not need a trainee licence extending beyond the date of publication of our decision in order to complete his preparations.. I agree with the remarks on the nature and purpose of the training licence system contained in the Respondent's response and on its website (see above). Those points argue convincingly against this appeal. Moreover, it seems exceedingly unlikely that the third licence which Mr Miah contends for could not, on any view, have brought him any real benefit, since it would have expired on 8 July 2024, a matter of only a few weeks after publication of this decision.

Outcome

13. For the reasons stated, I dismiss the appeal.

(Signed) Anthony Snelson
Judge of the First-tier Tribunal

Date: 21 May 2024