



Neutral citation number: **[2024] UKFTT 533 (GRC)**

Case Reference: D/2024/039

**General Regulatory Chamber
Transport**

First-tier Tribunal

**Determined on the
on 20th June 2024**

Before

HHJ DAVID DIXON

Between

PHILP ALCOCK

and

**THE REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Appellant

Respondent

Decision: The appeal is dismissed, with immediate effect.

REASONS

Background to Appeal

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made 14th December 2023 to refuse to grant the Appellant a second trainee licence.
2. The Appellant is a trainee driving instructor who was granted a trainee licence under s.129 of the Road Traffic Act 1988¹ (‘the Act’) for a six-month period, 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 second trainee licence was therefore refused.
4. The Appellant now appeals the Registrar’s decision.

Appeal to the Tribunal

5. The Appellant’s Notice of Appeal, 27th December 2023, indicates he struggled to find the right kind of pupils to further his training. He tried to do all the training suggested to be a good ADI and this seems to be being used against him he says. He accepts failing his first attempt but points out that there is a shortage of tests available and this has eaten into the time he has been given. He indicates he lost a month of training due to car issues. He indicates the time allowed generally isn’t long enough.
6. The Registrar provided a response indicating that in his view the Appellant had had long enough to train and that no basis was shown to grant a third licence. The Appellant had been licensed since May 2023.

Mode of Determination

7. The Appeal was listed for oral determination and the case was to be heard via the CVP system.
8. The Appellant did not attend. He has previously supplied a sick note indicating that he was not fit for work due to mental health reasons. I considered the note and indicated that it was insufficient to vacate the hearing and that things would continue. The Appellant did not supply any further details. He was telephoned today and indicated he had supplied a sick note and wouldn’t be attending.

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

9. The Tribunal gave anxious consideration to the position here. Firstly, there was an indication the Appellant was unwell, albeit to work not to attend a hearing. He was able to take a call and provide details over the phone. He had provided a full explanation of issues, albeit nothing of note re a lack of training opportunity. In all the circumstances the Tribunal determined that it was right and fair to proceed on the papers. The Tribunal carefully considered the Tribunal Rules in coming to that conclusion but importantly the overriding objective of dealing with cases fairly and expeditiously.
10. The Tribunal considered a bundle of evidence containing 27 pages.

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 2005².
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 decision³ 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

² http://www.legislation.gov.uk/uksi/2005/1902/pdfs/uksi_20051902_en.pdf

³ 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>.

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 has indicated he was without a car for a month and there were some issues finding the right kind of pupils, but little that suggests a sustained loss of training opportunity.
19. In total now the Appellant has been licensed for 13 months. He has had sufficient time to pass his Part 3, even allowing for the issues raised. The appeal must fail, there is no arguable basis for a further licence to be granted.
20. The Appellant is still able to attempt his Part 3 if he wishes to, and the Tribunal him well if he so chooses.
21. Appeal dismissed with immediate effect.

(Signed)

HHJ David Dixon

DATE: 20th June 2024