



Neutral citation number: [2024] UKFTT 624 (GRC)

Case Reference: FT/D/2024/0162

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

**Decided without a hearing
Decision given on: 23 July 2024**

Before

DISTRICT JUDGE WATKIN

Between

YASER MASOOD

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Decision: The appeal is Allowed

REASONS

1. The Tribunal has determined this matter without a hearing in accordance with rule 32 of the Tribunal Procedure (First-tier Tribunal) (General 2 Regulatory Chamber) Rules 2009. Both parties have consented to the matter being determined without a hearing and the Tribunal is satisfied that it can properly determine the issues without a hearing.
2. The Tribunal has considered the paginated bundle provided together with the relevant law.

The Relevant Law

3. To qualify as an Approved Driving Instructor (“ADI”), applicants must pass the Qualifying Examination. This includes:

- a. the written examination.
- b. the driving ability and fitness test ("Part 2").
- c. and the instructional ability and fitness test ("Part 3 Test").

Three attempts are permitted at each part. The whole examination must be completed within 2 years of passing Part 1, failing which the whole Qualifying Examination has to be retaken.

4. Where a candidate has passed Part 2, they may be granted a trainee licence. This enables them to provide instruction for payment before they qualify. The circumstances in which trainee licences may be granted are set out in s.129 of the Road Traffic Act 1988 (the "Act") and the Motor Cars (Driving Instruction) Regulations 2005 (the "Regulations")

5. S. 129 (1) of the Act provides as follows in relation to trainee licences:

"A licence 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 referred to in section 125(3)(a) as consists of a practical test of ability and fitness to instruct."

6. A trainee licence shall continue until a) 6 months after it was granted or b) the day after the holder fails the Part 3 Test for the third time (Paragraph 14 of Schedule 5 of the Regulations). However, where the holder has applied for a new licence whilst the existing licence remains current, then the existing licence will not expire until either a) the commencement of the new licence or b) the time for appealing to the Tribunal has expired (if no appeal is made) or the time when the appeal is finally disposed of (s.129(6)).

7. S.131 of the Act sets out the circumstances in which a person aggrieved by a decision of the Respondent may apply to the Tribunal. These include:

- a. where a person is aggrieved by a decision of the Respondent to refuse an application for the entry or retention of their name on the register;
- b. the removal of their name from the register;
- c. the refusal of an application for the grant of a licence; or
- d. the revocation of a licence.

8. The Tribunal may order the grant or refusal of the application or for the removal or the retention of the name in the register or the revocation or continuation of the licence (as the case may be) as it thinks fit. (s.131(3)).
9. Pursuant to s.131(4) the Tribunal may also direct that no further application by the appellant for the grant of a licence, or for his name to be entered in the register, shall be made before the expiration of a period (not to exceed four years).
10. Where information is provided to the Tribunal that was not provided to the Respondent prior to the decision being appealed, the Tribunal may remit the matter to the Respondent for reconsideration (s.131(4A)).
11. When making its Decision, the Tribunal stands in the shoes of the ADI Registrar and takes a fresh decision on the evidence available to it, giving appropriate weight to the ADI Registrar's decision as the person tasked by Parliament with making such decisions. The burden of proof in satisfying the Tribunal that the ADI Registrar's decision was wrong rests with the Appellant.

Background

12. The history of this matter is that the Appellant had the benefit of a trainee licence until January 2023 (if the Respondent's Statement was correct) or January 2024. He was due to sit his Part 3 Test on 12 December 2023, but this was cancelled by the DVSA as no examiner was available and the test was rearranged for 5 March 2024. This was the second time that his Part 3 Test had been cancelled by the DVSA, the previous occasion was 14 September 2023
13. In January 2024, the Appellant applied for a third trainee licence to enable him to continue to gain practical experience up to the date of the new test through providing instruction on a paid basis. His application was refused.
14. On 6 February 2024, the Respondent wrote to the Appellant (the "Decision Letter") informing him that his application for a third trainee licence was refused for the following reasons:
 - a. The Appellant has had the benefit of a licence for 12 months which is more than adequate time.
 - b. No evidence was produced to support "lack of pupils or practice time".
 - c. Parliament did not intend for licences to be issued for as long as it takes a candidate to pass the examination and the trainee licence system must not be allowed to become an alternative to registration.

15. The Respondent informed the Appellant within the Decision Letter that he may appeal against the decision within 14 days.
16. The Appellant appealed to the Tribunal by Form GRC1 dated 17 February 2024, giving the following reasons:
 - a. His Part 3 Test was cancelled on 12 December 2023 (the day of the test) due to the examiner not being available. He provided evidence of the test being cancelled on 12 December 2023 and re-booked for 5 March 2024
 - b. He was uncertain of whether his Part 3 Test will now proceed.
 - c. He felt that he was being penalised by the trainee licence being refused.
 - d. His instructor insurance will be invalid, and, as such, he believed that cannot take any learner to the Part 3 Test.
17. It appears from the documentation that it is likely that the Appellant's trainee licence would have continued pursuant to s.129(6). However, as the Respondent's Statement refers to the previous trainee licence having expired in January 2023, that may not have been the case. In any event, the Appellant did not appear to understand that it would have continued.
18. The Respondent provided a Statement dated 7 March 2024 (the "Respondent's Statement") expanding on the reasons for refusing the application. They are summarised as follows:
 - a. The system of issuing a licence must not be allowed to become an alternative to the system of registration.
 - b. The licence is not to enable the instructor to teach for however long it takes to pass the examinations.
 - c. By virtue of him having applied for a third licence prior to the expiry of the second, that licence remains in force.
 - d. The Appellant has had ample time and opportunity to reach the required standard of qualification.
 - e. The refusal of a third licence does not bar the Appellant from attempting the Part 3 test.

Decision

19. Due to the date of the Appeal notice, being prior to the date of the date provided by the Appellant as being available for him to sit the Part 3 Test, it is not clear whether he did proceed with that test or what the outcome was. If he proceeded and was successful, this Appeal is no longer of any consequence to him.
20. The Tribunal, therefore, considers this Application on the basis that either that Part 3 Test did not proceed or, if it did proceed, the Appellant was unsuccessful.
21. The Tribunal notes the Respondent's response (summarised at paragraph 18 above) do appear to relate to the Appellant's application for the following reasons:
 - a. As the Appellant was attempting to sit the Part 3 Test. There is nothing to suggest that he was using the licence as an alternative to registration. He only required a new trainee licence due to the Part 3 Test being cancelled.
 - b. The Appellant has required longer than the period for which trainee licences had already been granted due to two Part 3 Tests being cancelled by the DVSA
 - c. Paragraph 3 of the Statement of the Registrar states that the Appellant's second licence had expired on 23 January 2023. Therefore, s.129(6) would not apply. However, in so far as it did apply, the Appellant had not understood that to be the case.
 - d. Due to the two Part 3 Tests having been cancelled by DVSA, the opportunity for him to demonstrate that he has reached the required standard was removed for the period from September 2023 to March 2024, a significant period.
 - e. Whilst the refusal did not bar him from attempting the Part 3 Test, the Appellant may not have understood that he could continue to obtain practical experience from continuing to provide driving instruction for payment. In circumstances where the application should not have been refused, it cannot be appropriate for him to be penalised for his lack of understanding.
22. The Tribunal considers the reasons put forward by the Appellant in light of the above and concludes that he suffered delay in sitting his Part 3 Test as a result of two test being cancelled by the DVSA.

23. As the next test available to the Appellant was not until 5 March 2024, to enable him to continue to provide driving lessons up to the date of that test and to enable him to maintain his experience of providing lessons without financial loss, it would have been appropriate for him to have been granted a new trainee licence.
24. On balance, therefore, the Tribunal concludes that the Appeal should succeed to enable the Appellant to have the opportunity to continue to offer further paid lessons prior to the date of any new Part 3 Test.
25. The Appeal is allowed and the Application for a third trainee licence is granted.

Signed District Judge Watkin

Date: 12 July 2024

Promulgated on: 23 July 2024