



Case Reference: FT/D/2024/0482
Neutral citation number: [2024] UKFTT 00920 (GRC)

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

**Heard: by Cloud Video Platform
Heard on: 11 October 2024
Decision given on: 28 October 2024**

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY

Between

JAYAKODY CHAMINDA THUMESH PERERA

Appellant

and

REGISTRAR FOR APPROVED DRIVING INSTRUCTORS

Respondent

Representation

For the Appellant: In person

For the Respondent: Mr. Russell

Decision: The appeal is dismissed

REASONS

Introduction

1. This is an appeal against a decision of the Registrar of Approved Driving Instructors ('the Registrar') made on 15 May 2024 to refuse to grant the Appellant a third trainee licence.

Legal framework

2. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified.
3. A trainee licence may be granted in the circumstances set out in s. 129 of the Road Traffic Act 1988 ('the Act') and the Motor Cars (Driving Instruction) Regulations 2005.
4. 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.'

5. 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').
6. 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.
7. If a candidate has passed Part 2, they may be granted a trainee licence. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified. It is possible to qualify as an Approved Driving Instructor without having held a trainee licence.
8. 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.

9. When making its Decision, the Tribunal stands in the shoes of the Registrar and takes a fresh decision on the evidence available to it, giving appropriate weight to the Registrar's decision 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.

Factual background to the appeal

10. The Appellant passed Part 1 of the Qualifying Examination on his third attempt on 6 January 2023 and passed Part 2 on 31 March 2023. The Appellant applied for two trainee licences which were granted and were valid from 17 April 2023 to 16 October 2023 and from 1 November 2023 to 30 April 2024.
11. On 20 April 2024, the Appellant applied for a third trainee licence. As the Appellant applied before the licence expired, this means that, at the date of the hearing, the appellant had been the beneficiary of a trainee licence for 1 year, 5 months and 2 weeks.
12. The Appellant took, and failed, the Part 3 exam on 20 October 2023 and 19 March 2024. On 22 June 2024 the appellant paid to book a further attempt and was placed on hold on that date. On 1 September 2024 the DVSA provided a date to him for the third attempt at the Part 2 exam, which is booked for 3 December 2024.
13. The reasons for the Registrar's decision, in summary, were that no evidence had been provided of lost training time and that 12 months is considered to be a more than adequate period of time to gain sufficient experience to pass Part 3.

Appeal to the Tribunal

14. The grounds of appeal are, in summary:
 - 14.1. The Appellant has been unable to book another test date within the period.
 - 14.2. The Appellant needs to work as much as possible to gain more knowledge of teaching and gain more experience.
 - 14.3. The Appellant needs to continue working to earn a living and provide for his family.
15. The Registrar, in his response, states:

- 15.1. 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.
- 15.2. 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. The Appellant has already had two trainee licences which cover a period of 12 months. Moreover, by virtue of the Appellant having applied for a third 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.
- 15.3. Since passing his driving ability test the Appellant has failed the instructional ability test twice. Despite ample time and opportunity the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor.
- 15.4. The refusal of a third licence does not bar the Appellant from attempting the instructional ability test of the Register examinations. He does not need to hold a licence for that purpose, nor is it essential for him 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 his own (provided that he 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.

Evidence and submissions

16. I read and took account of a bundle of documents and I heard from the Appellant and the Respondent's representative.

17. The Appellant explained that he had originally qualified as a driving instructor in 2009 and then was away for about 9 years from 2014. He explained that the system had changed significantly and the reason he had failed the first two attempts was because he was trying to adapt to the new

methods. He stated that he felt like he needed a bit more time and help to pass the Part 3 exam.

Discussion and conclusions

18. I have considered carefully all the papers before me.
19. I note that the Appellant has already had the benefit of two trainee licences covering a period of 12 months. This should have been more than adequate time to prepare, as the Appellant has already had the benefit of an additional 6 months through the second trainee licence. Further I note that the Appellant has had the benefit of a further period of over 5 months up to today.
20. The overall period in which the Appellant has been able to give driving instruction should have provided a reasonable opportunity to obtain the practical experience envisaged by the Act.
21. The Appellant can continue to study and practice and is able to continue to gain experience and take the test without a trainee licence.
22. The trainee license is not a substitute for taking and passing the test. It is not the purpose of trainee licences to keep renewing them until all attempts at passing Part 3 have been taken.
23. Having weighed all matters in the balance, the Appellant has not persuaded me that the Registrar's decision was wrong in any way. In all the circumstances, I agree with the Registrar's decision and the appeal is dismissed.

Signed Sophie Buckley

Date: 11 October 2024

Judge of the First-tier Tribunal