



Neutral citation number: [2025] UKFTT 126 (GRC)

Case Reference: FT-D-2024-0683

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

**Heard at: Decided without a hearing
Decision given on: 11 February 2025**

Before

JUDGE PERI MORNINGTON

Between

KONG LUK SUEN

Appellant

and

REGISTRAR FOR APPROVED DRIVING INSTRUCTORS

Respondent

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 9 August 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 4 March 2023. He passed Part 2 on 24 May 2023. He failed a first attempt at the Part 3 on 16 February 2024 and cancelled a further Part 3 test scheduled to take place on 30 April 2024. The Drivers and Vehicle Standards Agency cancelled a further Part 3 test scheduled to take place on 29 July 2024 and the Appellant failed a second attempt that the Part 3 test on 14 October 2024.

11. The Appellant applied for a trainee licence which was granted and was valid from 31 July 2023 to 30 July 2024 following an application for a second licence.
12. The Appellant, applied for a third trainee licence on 3 July 2024 which was refused by the Registrar.
13. The reasons for the Registrar's decision, in summary, were that no evidence of lost practice time had been provided by the Appellant and that the Appellant had already had a sufficient amount of time to gain experience to assist in passing Part 3 of the Qualifying Examination and that it was not the intention of Parliament that candidates should be issued with trainee licences for as long as it takes them to pass the examination, and that the trainee licence system must not be used as an alternative to registration as a fully qualified Approved Driving Instructor.

Appeal to the Tribunal

14. The grounds of appeal are, in summary:
 - a. It is not feasible for the Appellant to continue to give instruction without claiming fees (as would be the case if his trainee licence was not extended) due to the cost-of-living crisis and his other financial commitments.
 - b. The Appellant places value on road safety and hopes to spend his career as a driving instructor.
 - c. It has been difficult to secure dates for the Part 3 test.
15. The Registrar in his response states:
 - a. 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.
 - b. 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.

- c. Since passing his driving ability test the Appellant has failed the instructional ability test twice and cancelled one more such test booked for 20 April 2024. Despite ample time and opportunity, the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor.
- d. 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.
- e. The Appellant had booked a third and final attempt at the Part 3 test but had not yet received a date for the test to take place.

Evidence

16. I read and took account of a bundle of documents.

Discussion and Conclusions

17. Whilst I accept that the Appellant may be facing financial difficulties, the Appellant has failed two Part 3 tests and cancelled another. There has been ample time and opportunity for the Appellant to have passed his Part 3 test.

18. I note that the Appellant has already had the benefit of two trainee licence covering a period of 12 months. This should have been adequate time to prepare and obtain the relevant minimum training hours required. Moreover, by virtue of his application for a third licence prior to the expiry of his second licence, the Appellant has retained his trainee licence until the date of this decision and has been permitted to provide paid instruction during this time.

19. 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.

20. The Appellant can continue to study and practice and is able to continue to gain experience and take the test without a trainee licence.

21. 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.

22. 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: Judge Peri Mornington

Date: 3 February 2025