



Neutral citation number: [2025] UKFTT 158 (GRC)

Case Reference: FT-D-2024-0706

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

**Heard remotely by CVP
Decision given on: 12 February 2025**

Before

JUDGE BRIDGET SANGER

Between

NJEUMANI GILBERT KABAWO MENKEN

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 7th August 2024, to refuse to grant the Appellant a second trainee licence.
2. The matter was set down for a hearing on 20 January 2025 by CVP. Neither the Appellant nor the Registrar attended or were represented.

3. The Registrar has notified this Tribunal that he will not be represented at most trainee license appeal hearings for the foreseeable future.
4. Three attempts were made by the court clerk to call the Appellant. He did not answer the phone.
5. I have seen a case management direction dated 26th November 2024, which had been sent to the parties, setting out the hearing date and time.
6. The Appellant originally hoped to extend his license in order to take his first attempt at the Part 3 test in August 2024. At the date of this hearing he had already taken that test and, by virtue of filing the appeal (on 17 August 2024), he has had the benefit of a license extension until the date of the Tribunal's decision. He has also had (and failed) a second attempt, further to the appeal having been filed (on 22 October 2024). He has, therefore, effectively achieved his aim. The full chronology is set out below.
7. Rule 36 allows the Tribunal to continue in the absence of a party if it is satisfied that the party has been notified of the hearing, or that reasonable steps have been taken to notify the party, and it is in the interests of justice to do so.
8. I took account of the overriding objective and was satisfied that it was in the interests of justice to proceed. Both parties were aware of the hearing date and time. To postpone the hearing, of which I am satisfied the Appellant was aware, would extend the period of his trainee license by default until further hearing. It would not be in the interests of justice to allow an extension to the Appellant's trainee licence (well beyond what was requested in the appeal and even further beyond what was requested in the original application to the Registrar) in this way.
9. I therefore proceeded to consider the position on the papers before me.

Legal Framework

10. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified.
11. 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.
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').

14. 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.
15. 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.
16. 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.
17. 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.
18. The burden of proof in satisfying the Tribunal that the Registrar's decision was wrong rests with the Appellant.

Factual Background to the Appeal

19. The Appellant had not previously been on the Register.
20. The Appellant passed Part 1 of the Qualifying Examination, on the 10th attempt, on 6th July 2023. He passed Part 2, on the second attempt, on 24th October 2023.
21. The Appellant was in receipt of a trainee licence which was valid from 29th January 2024 to 28th July 2024.
22. On 13th July 2024 the Appellant applied for a second trainee licence. This was before the expiry of his first trainee license.
23. On 16th July 2024 the Registrar informed the Appellant that he was considering refusing the application and invited to make representations.
24. The Appellant made representations on 20th July 2024. He stated that he had not been able to find any available dates but that he did have a test booked on 5th August 2024.
25. The Appellant failed his first attempt at the Part 3 test on 5th August 2024.
26. The application was refused on 7th August 2024.

27. The reasons for the Registrar's decision, in summary, were that the Appellant had not complied with the conditions of his first licence and that he had had sufficient time to prepare for the test.
28. Further to that refusal, the Appellant failed his second attempt at the Part 3 test on 22nd October 2024. According to the test record in the bundle, he also cancelled a test on the same day as the second failed attempt, 22nd October 2024.

Appeal to the Tribunal

29. The appeal was filed on 17 August 2024, between the Appellant's first and second attempt at the Part 3 test.
30. The grounds of appeal are, in summary:
 - a. The Appellant fell ill in February 2024 and was unable to continue with his training for two to three weeks;
 - b. When he was ready to resume training, in early March, his trainer was on holiday and thereafter he failed to offer suitable slots;
 - c. This limited his opportunity to complete his required 20 hours' additional training within the required three month timeframe;
 - d. The Appellant was offered a Part 3 test on 5 August 2025;
 - e. The Appellant sought a new trainer in London and completed his training, starting afresh because of the time lost to illness;
 - f. The Appellant failed his first test and was placed onto the waiting list again.

31. 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. Moreover, by virtue of the Appellant having applied for a second licence before the expiry date of the first, 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. Despite ample time and opportunity the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor; and
- d. the refusal of a second 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. It is noted that, as at 11 November 2024, the Appellant had his final Part 3 test booked and was on hold awaiting a date.

Evidence

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

Discussion and Conclusions

- 33. I may overturn the decision of the Registrar if I am of the opinion that it was wrong. The burden is on the Appellant to show this.
- 34. I accept the evidence of the Appellant with regard to his illness and the delay in complying with his training requirements.
- 35. I note that the Appellant has already had the benefit of trainee licences covering a period of six months from 29th January 2024 initially and, by virtue of this application, up to today's date. This has given him almost a year, which should have been adequate time to prepare.
- 36. I note, also, that the initial application was made with a view to allowing the Appellant to offer instruction while waiting to attempt his second Part 3 test. He has had the benefit of an extension to his license, by virtue of filing this appeal, in order to attempt that test twice, on 5th August and 22 October 2024.
- 37. 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.

38. I have seen no evidence with regard to a third and final attempt at taking Part 3. The Appellant may by now have passed or failed it. In either case he will have no further requirement for a trainee licence at the present time.
39. Should the third attempt remain open to him, the Appellant can continue to study and practice and is able to continue to gain experience and take the test without a trainee licence.
40. Having weighed all matters in the balance, the Appellant has not persuaded me that the Registrar's decision was wrong. In all the circumstances, I agree with the Registrar's decision and the appeal is dismissed.

Signed: Judge Bridget Sanger

Date: 20th January 2025