



Neutral citation number: [2025] UKFTT 00264 (GRC)

Case Reference: FT/D/2024/0767

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

Decided without a hearing

Decision given on: 28 February 2025

Before

JUDGE SCHERBEL-BALL

Between

SHYRIQUE SMITH

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Decision: The appeal is allowed but no further trainee licence extension is granted.

REASONS

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made on 28 August 2024 to refuse to grant the Appellant a third trainee licence.
2. The Appellant is a trainee driving instructor who has previously been granted two trainee licences under section 129 of the Road Traffic Act 1988 (the “Act”). These licences ran for two consecutive six-month periods and were valid between 14 August 2023 and 13 August 2024. The Appellant applied for a third trainee licence on 2 August 2024. This application was refused by the Registrar on 28 August 2024. The Appellant now appeals the Registrar’s decision.
3. The parties have agreed to a paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

The Appeal

4. The Appellant's Notice of Appeal dated 6 September 2024 relies on the following grounds:

- a. The Appellant has had exceptionally challenging family circumstances, including bereavements and serious health issues affecting close family members. These circumstances have had a particular impact on him and have required him to provide care and support to family members which has given rise to unavoidable interruptions in his training schedule. Accordingly, he has only been able to make limited progress with his instructional training to date.
- b. The Appellant is deeply committed to becoming an Approved Driving Instructor but his extenuating family circumstances are beyond his control. These have hindered his ability to complete his instructional training and pass the Part 3 test within the usual timeframe.
- c. The Appellant also relied on the representations he initially made directly to the Registrar on 13 August 2024. In this letter, he asserted that:
 - i. His Part 3 test was on hold.
 - ii. There had been a low number of available pupils provided to him at times which has hindered his ability to develop the skills he needs to pass his Part 3 test.
 - iii. His preparation has also been adversely affected by systemic issues, including the significant backlog and lack of available examiners in his area. This has made it difficult for the Appellant to secure a test within a reasonable timeframe, thereby further disrupting the continuity of his training and hindering his progress.
 - iv. An additional trainee licence would allow him to undertake more practical training, build his confidence and develop the skills required to succeed.
 - v. After failing his first test, he realised he had not been getting satisfactory training from his first instructor and had to change instructors.

5. The Registrar has filed a Statement of Case dated 20 September 2024 in which he resists the appeal. The Registrar says that:

- a. The purpose of the provisions governing the issue of trainee 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 an alternative to the system of registration.
- b. The purpose of a trainee licence is not to enable the instructor to teach for however long it takes to pass the exams but to allow a confined period of experience of instruction. Six months is ordinarily a very reasonable period in which to reach the necessary standard and in particular to obtain any necessary practical experience in tuition. The Appellant has already had two trainee licences, and by virtue of his appeal in respect of his latest application, his second licence has remained in force, which allows 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 has cancelled two more tests booked for 22 November 2023 and 24 July 2024. Despite ample time and opportunity, the Appellant has not been able to

reach the required standard of driving 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. 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 training.

The law

6. 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 section 129 of the Act and the Motor Cars (Driving Instruction) Regulations 2005.

7. 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*".

8. In order to qualify as an Approved Driving Instructor, applicants must pass the Qualifying Examination. This is made up of: 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 Part 3 test must be booked within two years of passing Part 1, otherwise the whole examination has to be retaken.

9. A candidate may be granted a trainee licence if they have passed Part 2. However, holding a trainee licence is not necessary in order to qualify as an Approved Driving Instructor, and many people qualify without having held a trainee licence.

10. The powers of the Tribunal in determining this appeal are set out in section 131 of the Act. The Tribunal may make such order as it thinks fit (section 131(3)). 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.

The evidence

11. I have considered a bundle of evidence containing 20 numbered pages. I have carefully considered all of the evidence in the hearing bundle. That evidence also includes a printout from the Appellant's records from the Registrar. This shows that the Appellant passed his theory Part 1 test on 8 March 2023 and passed his Part 2 test on 9 June 2023. He failed two Part 3 tests on 27 February 2024 and 24 April 2024. He cancelled two Part 3 tests which were due to take place on 22 November 2023 and 24 July 2024. The Registrar has confirmed that as of 20 September 2024, a third Part 3 test was "*booked to hold*", awaiting an available date.

12. The Appellant's Notice of Appeal says he has enclosed various family documents which show the extenuating family circumstances he has been through and his caring responsibilities. However, these have not been included in the bundle before me. That said, I do not consider that the absence of this evidence affects the decision I have to reach because the Registrar does not seek to challenge the truth of this evidence and indeed I accept the Appellant's case that he has had exceptionally challenging family circumstances for several years, including in 2023 and 2024 and that this has impacted his ability to progress his instructional training promptly.

Discussion and Conclusion

13. I have given careful consideration to all of the evidence in this case. As set out at paragraph 12 above, I accept the Appellant's case that he has suffered exceptionally challenging family circumstances for several years, including in 2023 and 2024 and that this has impacted his ability to progress his instructional training promptly. I have considered the specificity and detail of those circumstances even though I do not refer to the detail of that in the course of this judgment having regard to the privacy rights of all those involved.

14. I also accept the Appellant's case that there have been delays in getting to take his test promptly. It is however not clear to me when the third Part 3 test was booked or for how long it had been on hold by September 2024. However, I note that the Appellant did cancel a test on 24 July 2024 and has provided no explanation for this cancellation.

15. While I accept the Registrar's submissions about the purpose for a trainee licence, I do consider that there should be some relationship between a trainee instructor's ability to undertake paid training under a trainee licence and the availability of Part 3 tests. Regrettably, the Tribunal sees a considerable number of cases which feature (i) exceptionally long lead times until Part 3 tests are available and/or (ii) cancellation of such tests by the DVSA themselves even after long waits. If there are substantial delays in test availability, then this should be a factor which should be afforded proper weight by the Registrar when considering an application for a further trainee licence. That is not to say that the grant of a licence should be open ended. A licence is not a substitute for taking and passing the instructional ability test.

16. While I consider the matter to be finely balanced, I have concluded that due to (i) the specific family circumstances prevailing in 2023 and 2024 and (ii) the delay in the Appellant being able to secure a third Part 3 test, the Registrar's decision to refuse to grant a third trainee licence in August 2024 was wrong.

17. However, under s.131(3) of the Act, I am still required to make a decision in respect of any extension of the trainee licence. I decline to grant any further extension of the Appellant's trainee licence beyond the date of this appeal for the following reasons:

- a. First, by virtue of bringing this appeal before the expiry of his second trainee licence, the Appellant has had the benefit of a continuing licence running for six months from the date of the Registrar's decision on 28 August 2024. By bringing this appeal, he has in substance obtained the relief which he sought, namely a further six-month extension of his trainee licence.
- b. Second, there is no evidence before the Tribunal as to what has taken place since September 2024 and why the Appellant has not been able to pass, or fail for the third time, his Part 3 test. In these circumstances, there is no evidential foundation to justify any further extension.
- c. Third, the Appellant passed his Part 1 test on 8 March 2023. He must therefore book his final Part 3 test before 8 March 2025. In this case, any test will have been on hold since September. The Appellant took his previous Part 3 test in April 2024. Even allowing for substantial delays in Part 3 tests, a further 10 months is more than sufficient time to take and pass the Part 3 test, even allowing for the Appellant's family circumstances and the delay in obtaining tests. In those circumstances, I consider that the Appellant has by now had more than sufficient time to gain experience of training to take and pass his Part 3 test.

18. Accordingly, I therefore decline to grant the Appellant any further extension of his trainee licence.
19. The appeal is therefore allowed but no further trainee licence is granted.

Signed: *Judge Scherbel-Ball*

Date: 27 February 2025