



Neutral citation number: [2025]

UKFTT 76 (GRC)

Case Reference: FT/D/2024/0490

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

Decided without a hearing

Decision given on: 4 February 2025

Before

JUDGE SCHERBEL-BALL

Between

JUNIOR HUNTER

and

Appellant

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

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

REASONS

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made on 28 May 2024 to refuse to grant the Appellant a second trainee licence.
2. The Appellant is a trainee driving instructor who was granted a trainee licence under section 129 of the Road Traffic Act 1988 (the “Act”), for a six-month period from 30 October 2023 to 29 April 2024. On a date which is not clear from the papers (because the Registrar inaccurately describes it as 19 October 2024), but which predates 1 May 2024, the Appellant applied for a second licence. This application was refused by the Registrar on 28 May 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 30 May 2024 relies on the following grounds:

- a. The Appellant seeks an extended further trainee licence to enable him to book and take the instructional ability test and to continue gaining experience necessary for his career as a driving instructor.
- b. There has been a lack of available dates for the Appellant to undertake his instructional ability test in Bishop's Stortford where the appellant has been training. He has been checking regularly, but there have been no available tests up to and including September 2024 making it impossible to complete his training within the initial six month period. An extension of time will allow the Appellant to take his test in an area close to him.
- c. The Appellant failed his first test of instructional ability as he had to take it in an unfamiliar area due to the lack of available test slots in his locality. Currently the waiting list for tests in his area exceeds six months which is beyond his control.
- d. To maintain his skills and continue training new drivers, it is crucial for him to have a valid licence; the only way he can afford the vehicle used for training is by continuing to work and get paid.

5. The Registrar's has filed a Statement of Case dated 6 June 2024 in which he resists the appeal. The Registrar says that:

- a. the Appellant had failed to comply with the conditions of his first licence as he had returned the training record form AD121AT but had not completed all his training objectives.
- b. 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.
- c. the licence granted is not to enable for 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 a trainee licence, and by virtue of his appeal in respect of his latest application, his first licence has remain in force until the determination of that appeal, which allows him to continue to give paid instruction until determination of the appeal.
- d. Since passing his driving ability test, the Appellant has failed the instructional ability test once. 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.
- e. The refusal of a second 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 whole examination must be completed 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 24 numbered pages. I have carefully considered all of the evidence in the hearing bundle. That evidence also includes a print out from the Appellant’s records from the Registrar. This shows that the Appellant passed his theory Part 1 test on 20 March 2023, and passed his Part 2 test on 27 June 2023. He failed a Part 3 test on 2 April 2024. A second Part 3 test was booked but was on hold as of 6 June 2024.

12. The evidence shows that the Registrar emailed the Appellant on 1 May 2024 indicating that he had not returned a form ADI21AT with his application for an extension or provided any explanation for failing to undergo this training. The Registrar explained that a failure to undergo this mandatory 20 hours of additional training was a breach of his first licence and that it was *“unlikely that the Registrar will grant a replacement licence if you have not complied with the conditions of your previous one”*.

13. The Appellant responded within a few hours and provided his ADI21AT form to the Registrar. He explained he had spoken to the DVSA and they had told him only to complete the online form, and apologised for the omission. The completed forms were dated 14 December 2023, 28 December 2023, 4 January 2024 and 10 January 2024 by the Appellant’s Driving Instructor. They show the Appellant receiving the mandatory 20 hours of additional training, albeit as set out below, seemingly not covering one training objective.

Discussion and Conclusion

14. The essential reason given by the Registrar in his Response for refusing to grant the Appellant a second licence was the Appellant’s purported failure to complete all of his training

objectives as recorded in the AD1 21AT form. However, this is not clearly stated in the Registrar's decision email of 28 May 2024 which simply refers to a failure to comply with unspecified "conditions of your first trainee licence".

15. The Appellant has provided four AD121AT forms which show a total of 20 hours of instructional training time had been completed within the period of his first licence. However, since this has been done across four separate forms it is rather difficult to see whether all of the training objectives have been completed. It appears to the Tribunal that piecing these together, the Appellant has complied with all of the training objectives within the period of his first licence save for the third objective which is "making normal stops".

16. There is an unfortunate lack of clarity in the Registrar's position in this case throughout. His decision letter did not set out clearly why he claimed that the Appellant had not complied with the terms of his first licence. That is compounded by the fact that the Registrar's response in this appeal has a number of errors which contribute to a position which is difficult to understand and which lacks the requisite clarity. For example:

- a. Paragraph 3 of the Registrar's response states that the Appellant's first licence was valid from 30 October 2024 to 29 April 2024. Clearly this is not possible. The Tribunal works on the presumption that the first date was intended to be a reference to 30 October 2023 as this fits the broader chronology.
 - b. Paragraph 4 of the Registrar's response states that the Appellant applied for a second licence on 19 October 2024. Again this cannot be right. It is likely to be a date in April 2024, but the Tribunal should not be left to guess.
 - c. The third sentence of paragraph 4 of the Registrar's response is incomplete and it is not immediately apparent what point is being made.
 - d. While paragraph 5 of the Registrar's response acknowledges that the Appellant had completed the AD121AT form, the Registrar now adopts a new criticism namely that not "all training objectives" had been completed. He does not specify which objective(s) were not completed. None of the purported reasons for refusing the application in paragraph 6 of the Response relate to this specific issue at all.
 - e. Paragraph 6(ii) of the Registrar's response says that the Appellant has applied for his second licence before the expiry of the first licence, but no date is given in the papers for the Tribunal to verify this.
17. S.129(4) of the Road Traffic Act 1988 requires the Registrar to "*state the grounds of the refusal*" when refusing to extend a trainee licence. The rationale for such a statutory requirement is to allow the applicant to understand the grounds for their unsuccessful application and, if appropriate, consider whether an appeal is justified.
18. I am not satisfied that the Appellant's letter of 28 May 2024 was sufficient in this regard. While I accept that such reasons need not be lengthy, they must give the applicant some sufficiently clear understanding of the basis on which their application has been refused so that they can address this or appeal the decision. It is unsatisfactory for the real reasons to emerge in the Response to an appeal, and even then rather obliquely and with a lack of clarity. It should not be for the Tribunal to divine them from the evidence. Nothing in that reasoning should however be taken from detracting from a trainee driving instructor's obligations to provide clear information in compliance with their trainee licence to the Registrar, including confirming that they have fulfilled their training objectives. The use of multiple forms by the Appellant in this regard has undoubtedly contributed to the lack of clarity. It does appear that he may indeed have failed to establish one objective,

but the fact that this has not been clearly stated by the Registrar means that the Appellant has not been able to address it.

19. The central ground of the Appellant's appeal is the lack of tests within his local area. The Respondent's grounds of appeal do not address this at all, save in the most generic way. The Tribunal's recent experience on appeals suggests that a lack of available tests is increasingly common in many places across the country and there are often long delays. Indeed, at paragraph 7 of the Response, the Registrar acknowledges that the Appellant's second instructional ability test is "*booked on hold, awaiting a test date*". I therefore accept the Appellant's evidence about the delays he has experienced in booking his second test. 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 an extension of a second training 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.
20. In all the circumstances, and in particular given that this was a request for a first extension of his trainee licence (i.e. a second licence in total), I am not satisfied that the Registrar was correct to refuse the Appellant's request for a second licence.
21. Having reached this conclusion, the next step is to consider what order should be made by the Tribunal on the application under s.131(3) of the Act.
22. In this case, given the length of time it has taken for the appeal to be heard, the period during which a second licence would have lasted – from 30 April 2024 to 29 October 2024 has long since passed. The only information available to the Tribunal since the Registrar's Response is a brief statement in the Appellant's Certificate of Compliance dated 21 October 2024 that "*due to the length of time it takes (months) to have a booked Part 3 test I ran out of time on my trainee licence*". This in essence repeats the grounds of appeal, and neither the Appellant or the Registrar has provided any update about the Appellant's ability to take and pass a Part 3 test since then. Since the Registrar accepts that the Appellant had applied for his second licence before his first licence expired, he has had the benefit of his first licence continuing in effect until the determination of this appeal.
23. In those circumstances, I consider that the Appellant has by now had more than sufficient time to gain experience of training to pass his Part 3 test, having had just short of 15 months of an extended trainee licence. On his own account, the Appellant considered a second licence would be sufficient for him to book and take his Part 3 test again in an area close to him. There is no evidence before me which would justify any further extension having regard to the public policy reasons for granting a trainee licence cited by the Registrar in his Response. Moreover the two year statutory time limit for the Appellant to pass his Part 3 test is due to expire on 20 March 2025, two months from today.
24. I therefore decline to grant the Appellant any further extension of his trainee licence. He has had, in effect, the benefit of almost one and further one and a half licence extensions by virtue of this appeal.
25. The appeal is therefore allowed but no further trainee licence is granted.

Signed: Judge Jonathan Scherbel-Ball

Date: 20 January 2025