



Neutral citation number: [2025] UKFTT 00159 (GRC)

Case Reference: FT-D-2024-0696

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

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

Before

JUDGE BRIDGET SANGER

Between

WASIM MUSHTAQ

and

REGISTRAR FOR APPROVED DRIVING INSTRUCTORS

Appellant

Respondent

Decision: The appeal is allowed.

REASONS

Introduction

1. This is an appeal against a decision of the Registrar of Approved Driving Instructors ('the Registrar'), made on 8th August 2024, to refuse to grant the Appellant a third trainee licence.
2. Mr Mushtaq appeared at the hearing. The Registrar did not appear and was not represented.

3. A case management direction was sent to the parties on 6th December 2024, advising them of the hearing date. I am therefore satisfied that the Registrar had notice of the hearing. This tribunal has been notified that the Registrar has made a decision not to attend trainee license appeal hearings for the foreseeable future.
4. 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.
5. I took account of the overriding objective and was satisfied that it was in the interests of justice to proceed.

Legal Framework

6. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified.
7. 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.
8. 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.'
9. 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').
10. 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.
11. 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.
12. 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.
13. 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.

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

Factual Background to the Appeal

15. The Appellant had not previously been on the Register.
16. The Appellant passed Part 1 of the Qualifying Examination on 27th January 2023. He passed Part 2 on 27th April 2023.
17. The Appellant failed his first attempt the part 3 test on 19th September 2023. He then booked, and subsequently cancelled, his Part 3 test three times before his second attempt: these were on 12th December 2023, 15th December 2023, 7th February 2024, 22nd February 2024. He took the part 3 test for a second time on 1st July 2024 and failed. Further tests were booked on 25th July 2024, 29th August 2024 and 20th September 2024, all of which were cancelled by the Appellant. According to the Registrar, as at 5th September 2024 he had a test booked that was on hold.
18. In his evidence, the Appellant told the Tribunal that he has a further attempt booked on 17th February 2025.
19. The Appellant was in receipt of a trainee licence which was valid from 3rd July 2023 to 2nd July 2024.
20. On 19th June 2024 the Appellant applied for a third trainee licence. This was before the expiry of his second trainee license.
21. On 26th June 2024 he was informed, by the Registrar, that he was considering refusing the application and invited to make representations.
22. The Appellant made representations on 1st July 2024, citing a lack of availability of test dates, stating that he had waited nine months for one.
23. The application was refused on 8th August 2024.
24. The reasons for the Registrar's decision, in summary, was that no evidence had been provided of lost practice time and that the Appellant had already been granted two trainee licences and had had an adequate period of time to prepare.

Appeal to the Tribunal

25. The grounds of appeal were, in summary, that the Appellant had had difficulty obtaining a date for his part 3 test.
26. 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 seven more such tests booked for 12 & 15 December 2023, 07 & 22 February, 25 July, 29 August and 20 September 2024. 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 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. it should be noted [*as at 5 September 2024*] that the Appellant had a final attempt at the part 3 test on hold.

Evidence

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

28. I heard evidence from the Appellant, who told me that:

- a. The tests which were cancelled between the first and second attempt were all out of the Appellant's local area. They were booked while "on hold" for a test in his local area and were cancelled because his tutor advised that he would be unlikely to be successful taking the test in an unfamiliar area;

- b. The test on 25th July 2024 was cancelled because his tutor did not have capacity to provide 5 hours teaching, which the Appellant understands to be required between attempts;
- c. On 29th August the test was cancelled so that a close friend, whose part two test was due to expire in two days' time, might take that slot;
- d. The Appellant has been "on hold" awaiting a further test slot ever since (one having been cancelled by the test centre on 10th December) and has now been granted one in his local area on 17th February 2025. That will be his final attempt;
- e. The Appellant has been employed by the same driving school throughout his training and has successfully trained many drivers;
- f. The Appellant has been able to train pupils between his application and the day of the Tribunal hearing;
- g. If the Appellant does not receive a further trainee license he will have to return his hired car to the driving school. He does not have access to another vehicle in which to train drivers or to take his Part 3 test.

Discussion and Conclusions

- 29. 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.
- 30. I accept the evidence of the Appellant with regard to the reasons for his test cancellations.
- 31. I note that the Appellant has already had the benefit of trainee licences covering a period of 12 months from 3rd July 2023 initially and, by virtue of this application, up to today's date. This is almost 18 months, which should have been adequate time to prepare.
- 32. 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.
- 33. However, the Appellant has given evidence as to the difficulty in booking tests in his local area. He has confirmed that a test is booked on 17th February 2025 and it was his evidence that, should he have no trainee license, he will not have access to a vehicle in which to take the test.

34. The test on 17th February is the Appellant's third and final attempt, after which he will either pass and be registered or he will be ineligible for further attempts.
35. The Appellant has provided me with evidence which was not available to the Registrar and which persuades me that the decision of the Registrar was wrong.
36. I allow the appeal accordingly. The trainee license shall be extended for one month from the date of this decision to allow the Appellant to take his test on 17th February in his employer's car.

Signed: Judge Bridget Sanger

Date: 20th January 2025