



Neutral citation number: [2024] UKFTT 1109 (GRC)

Case Reference: FT-D-2024-0611

First-tier Tribunal  
(General Regulatory Chamber)  
Transport

Heard at: Decided without a hearing  
Decision given on: 11 December 2024

Before

JUDGE PERI MORNINGTON

Between

TONI SMITH

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 19 July 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 17 November 2022. She passed Part 2 on 6 February 2023. She failed her first attempt at the Part 3 test on 15 February 2024 and has undertaken a further Part 3 test on 20 September 2024. At the date the bundle was prepared, the result of the test taken on 20 September 2024 was unknown and so it must be assumed that this was a further failed attempt, or the appeal would not be before me today. Further, at the date the bundle was prepared, there were no further Part 3 tests booked by the Appellant.
11. Two trainee licences have been granted to the Appellant and were valid from 10 July 2023 to 9 July 2024.

12. On 14 June 2024 the Appellant applied for a third trainee licence. As the Appellant applied before the licence expired, this means that, at the date of the hearing, the Appellant has been the beneficiary of a trainee licence for 17 months.
13. The reasons for the Registrar's decision, in summary, were 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. There have been delays in securing a date for the Part 3 test due to lack of availability at the Appellant's chosen test centre.
  - b. The Appellant had a Part 3 test booked for 20 September 2024 and wished to retain the trainee licence for practice purposes ahead of this date.
  - c. The two years allowed to become a qualified Advanced Driving Instructor did not expire until November 2024 and accordingly, the refusal to renew the trainee licence for a third time in July 2024 meant that the Appellant would not be afforded the full two-year period to complete the examinations.
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. 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 her driving ability test the Appellant has failed the instructional ability test. 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. She does not need to hold a licence for that purpose, nor is it essential for her 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 her own (provided that she 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.

## **Evidence**

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

## **Discussion and Conclusions**

- 17. I accept that the Appellant had difficulty booking her Part 3 test at the time the appeal was made due to a lack of availability of dates from the DVSA. I take this into account, although I note that the date of her second attempt at the test has now passed and the appeal remains before me. I conclude, therefore, that the Appellant failed her Part 3 test on 20 September 2024.
- 18. At the time the bundle was prepared, the Appellant has not secured a further date for her third attempt at the Part 3 test.
- 19. I note that the Appellant has already had the benefit of trainee licences covering a period of over 12 months. This should have been adequate time to prepare. Further I note that the Appellant has had the benefit of a further period of 5 months up to today.
- 20. 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.
- 21. The Appellant can continue to study and practice and is able to continue to gain experience and take the test without a trainee licence.

22. 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.
23. In any event, the two year period permitted to pass all Qualifying Examinations has now expired.
24. 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: 9 December 2024