



NCN [2024] UKFTT 00416 (GRC).

Case Reference: D/2023/567

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

Heard: Paper Consideration

**Heard on: 13 May 2024
Decision given on: 23 May 2024**

Before

Tribunal Judge Hazel Oliver

Between

RICHARD HOGG

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Decision: The appeal is dismissed. The Registrar's decision of 27 November 2023 is upheld.

REASONS

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors ("the Registrar") made on 27 November 2023 to refuse to grant the Appellant a third trainee licence.
2. The Appellant is trainee driving instructor who was granted a trainee licence under s.129 of the Road Traffic Act 1988 ('the Act'), for two six-month periods from 3 October 2022 to 2 October 2023. He was refused a further licence. 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 16 December 2023 relies on the grounds that it has been difficult to book a test date in Scotland and a booked date in October 2023 was cancelled by DVSA.

5. The Registrar's Statement of Case dated 7 March 2024 resists the appeal. The Registrar says that the application was refused because the Appellant provides no evidence of lost training time or a lack of pupils and has had the benefit of two trainee licences for twelve months.

6. The Appellant's Reply of 11 March 2024 says that a second test date was cancelled by DVSA on 7 March 2023, and he has a further date booked for 7 June 2024.

The law

7. 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.

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 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.

10. 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.

11. 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

12. I have considered a bundle of evidence containing 21 pages.

13. This includes evidence of the Appellant's full licence history from the Registrar. From this it appears that the Appellant has cancelled one test date on 1 March 2023, and failed the Part 3 test on 29 June 2023. Two booked dates were then cancelled by DVSA, which were due to take place on 27 October 2023 and 7 March 2024.

14. The Appellant has provided evidence showing that he has booked a new date for his second attempt on 7 June 2024.

Conclusions

15. I accept that it has been difficult for the Appellant to book a second attempt at Part 3, and that two dates have been cancelled by DVSA. I am aware that there is a general lack of available dates for Part 3. I appreciate that this must be frustrating for the Appellant.

16. However, I note that the Appellant has already had the benefit of two trainee licences covering a period of 12 months which is adequate to prepare for the Part 3 test. As noted by the Registrar, this is ample time and opportunity to reach the required standard for qualification, even if there are delays in being able to take the actual test. He is able to continue to gain experience and take the test without a trainee licence (and the fact he has appealed means that his second licence has continued until now). It is a common misunderstanding that trainee licences should be renewed until a trainee has had an opportunity to pass Part 3. It is not the purpose of trainee licences to keep renewing them until all attempts at passing Part 3 have been taken.

17. 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 I now dismiss this appeal.

Hazel Oliver

Judge of the First-tier Tribunal

Dated: 22 May 2024