



Appeal number: D/2023/585V

Neutra Citation Number: [2024] UKFTT 499 (GRC).

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
TRANSPORT**

Heard remotely by CVP.
On: 4 June 2024

Decision given on: 12 June 2024

Before

TRIBUNAL JUDGE PETER HINCHLIFFE

between

ADRIAN SIMMONS

Appellant

- and -

**THE REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Respondent

The hearing took place on 4 June 2024. Mr Simmons did not attend the hearing. Claire Jackson of the DVSA represented the Respondent.

With the consent of the parties, the form of the hearing was to take place by video. The hearing took place with the Tribunal and Ms Jackson present by video. I took account of the fact that Mr Simmons had stated his position in the documents in the bundle, in his representations to the Registrar and in his notice of appeal. In the circumstances I concluded that it was fair to proceed with the hearing.

The hearing used the Tribunal Service’s CVP Video Hearing System. The parties confirmed in advance of the hearing that they were content to proceed on this basis. I found that a hearing by video conference was suitable for this case and avoided delay whilst being compatible with the proper consideration of the issues.

The documents to which I was referred included a bundle of 17 pages containing the decision that is the subject of the appeal, the notice of appeal, the evidence from the parties, the parties’ correspondence and documentation relating to the appeal. These bundles and the statement of case were available to the parties and the Tribunal in electronic form and the parties had received and had access to such bundles.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

DECISION

The appeal is dismissed.

REASONS

Background to Appeal

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made on 6 December 2023 to refuse to grant Mr Simmons a trainee licence.
2. Mr Simmons is a trainee driving instructor who was granted two trainee licences under s.129 of the Road Traffic Act 1988¹ (‘the Act’) each for a six month period. He requested a further licence extension from the end of the twelve month period from 19 December 2022 to 18 December 2023 covered by these two licences. This was refused by the Registrar.
3. The Registrar’s reasons for refusal were explained in the decision dated 6 December 2023 (the “Decision”) and were, in summary, that the twelve month duration of the two trainee licences that had been issued to Mr Simmons should have been sufficient to permit Mr Simmons to gain the experience required to pass the final

¹ <http://www.legislation.gov.uk/ukpga/1988/52/part/V/crossheading/licences>

part of the Approved Driving Instructors (“ADI”) qualifying examination. The Registrar also pointed out that Mr Simmons could take the ADI Part 3 test again without gaining a further trainee licence and that if the maximum number of three attempts to pass the Part 3 test were exhausted this appeal will automatically fail.

4. Mr Simmons now appeals against the Decision.

Appeal to the Tribunal

5. Mr Simmons’s Notice of Appeal, which was mistakenly dated 6 May 2023 but was submitted within the required timescale, states that the appeal should succeed because Mr Simmons needs more time as a trainee instructor in order to prepare for his ADI Part 3 test. He is committed to becoming a driving instructor. Mr Simmons states that a further period with a trainee licence would assist him in undertaking the training required to pass the ADI Part 3 test. He referred to the delay in obtaining a Part 3 test date.

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 s.129 of the Act and in the Motor Cars (Driving Instruction) Regulations 2005².

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 comprises: 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 2 years of passing Part 1, failing which the whole examination has to be retaken.

9. If a candidate has passed Part 2, they may be granted a trainee licence. However, holding a trainee licence is not a prerequisite to qualification as an Approved Driving Instructor and I am informed that people qualify as an Approved Driving Instructor without having held a trainee licence.

10. 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.

² http://www.legislation.gov.uk/ukxi/2005/1902/pdfs/ukxi_20051902_en.pdf

11. 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 decision³ 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 Mr Simmons.

Evidence

12. The Registrar stated in advance of the hearing that as Mr Simmons had applied for a new licence before the expiry date of his then current licence, the licence remained in force at the present time and allowed Mr Simmons to continue to give driving instruction until the determination of this appeal.

13. The Registrar further stated that Mr Simmons had been given ample opportunity to pass his Part 3 test and that he had not provided any evidence that he had lost training time due to circumstances beyond his control. The Registrar said that it was not Parliament's intention that a trainee licence should be granted for as long as a trainee instructor requires in order to pass the Part 3 test. There is no requirement that someone taking a Part 3 test has to have a trainee licence, so Mr Simmons remains in a position to take the test.

14. At the hearing Ms Jackson, for the Registrar, stated that Mr Simmons had now had a trainee licence for 18 months by virtue of this appeal process. He had booked his third and final Part 3 test for 7 June 2024.

Conclusion

15. I have carefully considered all of the evidence and submissions before me.

16. I note that, as the Registrar has pointed out, Mr Simmons does not need to hold a trainee licence to take further attempts at the ADI Part 3 test and thus further tests will not be jeopardised by the dismissal of this appeal. Furthermore, Mr Simmons's licence has remained in force to the present time and this has allowed Mr Simmons to continue to give driving instruction until the determination of this appeal. This period should have provided a good opportunity to obtain the practical experience envisaged by the Act. This period has enabled Mr Simmons to undertake training and receive payment for 18 months in order to prepare himself for the Part 3 test.

17. In all the circumstances of this appeal I conclude that, against the background of the above findings, Mr Simmons's appeal fails for the reasons set out in the Decision and because by now he has had sufficient opportunity to prepare himself for the Part 3 test since his licence was first issued on 19 December 2022.

18. The appeal is dismissed with immediate effect.

³ See *R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31. <http://www.bailii.org/ew/cases/EWCA/Civ/2011/31.html>. Approved by the Supreme Court in *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60 at paragraph 45 – see <https://www.supremecourt.uk/cases/docs/uksc-2015-0126-judgment.pdf>.

Signed

PETER HINCHLIFFE
Judge of the First-Tier Tribunal

DATE: 4 June 2024

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