



Case Reference: D-2024-116

NCN: [2024] UKFTT 00560 (GRC)

First-tier Tribunal
General Regulatory Chamber
Transport

Decision given on: 28 June 2024

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY

Between

ABUL HUSSAIN

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 24 January 2024 to refuse to grant the Appellant a second 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 failed Part 1 of the Qualifying Examination on 27 October 2022. He passed Part 1 on 1 November 2022. He cancelled two Part 2 tests on 8 December 2022 and 10 January 2023. He passed Part 2 on 12 January 2023. He cancelled two Part 3 Tests on 4 August 2023 and 3 October 2023. He failed his first attempt at Part 3 on 24 October 2024. He was booked to undertake his second attempt at the Part 3 Test on 29 April 2024. At the date the bundle was prepared the outcome of that test was unknown.
11. The Appellant applied for a trainee licence which was granted and was valid from 5 June 2023 to 4 December 2024.
12. On 17 November 2024, the Appellant applied for a second trainee licence. As the Appellant applied before the licence expired, this means that, at the date of the hearing, the appellant had been the beneficiary of a trainee licence for just over 12 months.

13. The reasons for the Registrar's decision, in summary, were that the Appellant had failed to comply with the conditions of his first licence. The Registrar stated that the training objectives on his ADI 21AT training record form were not completed within the first three months of the licence period. The Registrar also stated in his reasons that 6 months was considered to be a more than adequate period of time to gain sufficient experience to pass Part 3.

Appeal to the Tribunal

14. The grounds of appeal are, in summary:

- 14.1. When the Appellant was granted his training licence he was working full time. Within the 6 month period he only had one opportunity to take the test.
- 14.2. When the Appellant failed the test on 24 October 2023 he booked and paid for an 'on hold' test. At the date he submitted the appeal he had not been provided with a date.
- 14.3. Working full time has made it difficult for him to pass the first attempt.
- 14.4. The Appellant would like a second licence in order to continue his training and maintain his confidence until he receives a date for his next test.

15. The Registrar, in his response, states:

- 15.1. 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.
- 15.2. 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.
- 15.3. Since passing his driving ability test the Appellant has failed the instructional ability test and cancelled three more such tests booked for 9 February, 4 August and 3 October 2023. Despite ample time and opportunity the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor.
- 15.4. The refusal of a second 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.

Evidence

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

Discussion and conclusions

17. I accept that the Appellant has had difficulty booking the second attempt at his Part 3 test due to a lack of availability of dates from the DVSA. I take this into account although I note that he was ultimately successful in booking a second attempt for 29 April 2024.
18. The Appellant has cancelled two Part 3 tests. Whilst there are no doubt legitimate reasons for cancelling those tests, this has clearly contributed to the time that it took until he first attempted his Part 3 test.
19. I note that the Appellant has not complied with the conditions of his first trainee licence. The ADI 21AT Instructor Training Declaration in the bundle shows that the Appellant did not complete the training objectives within the first three months of the licence.
20. I note that the Appellant has already had the benefit of a trainee licences covering a period of 6 months. This should have been adequate time to prepare. Further I note that the Appellant has had the benefit of a further period of over 6 months up to today.
21. 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.
22. The Appellant can continue to study and practice and is able to continue to gain experience and take the test without a trainee licence.
23. 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.
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 Sophie Buckley

Date: 26 June 2024

Judge of the First-tier Tribunal