



NCN: [2024] UKFTT 576 (GRC)

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

Appeal Number: D/2024/006

**Determined on the papers
on 3 July 2024**

Decision given on 4 July 2024

Before

JUDGE OF THE FIRST-TIER TRIBUNAL B. KENNEDY KC

Between

GURJINDER SINGH

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

DECISION

1. The Appeal is dismissed, and the Respondent's decision of 1 December 2023 is confirmed.

REASONS

Background

2. The Appellant appeals against the decision made by the Registrar of Approved Driving Instructors (the Respondent) on 1. December 2023 to refuse his application for a third trainee licence.
3. The Appellant is a trainee driving instructor. Two trainee licences of six months duration under Section 129 of the Road Traffic Act 1988 ("the Act") were granted to the Appellant for the purpose of enabling him to gain practical experience to undergo the Third and final part of the Approved Driving Instructor ("ADI") qualifying examination of his ability to give instruction in the driving of motor cars and were valid from 05

December 2022 to 04 December 2023 Hearing Bundle ("HB"D1). This was considered to be a more than adequate period of time as it was not Parliament's intention that candidates should be issued licences for as long as it takes them to pass the examination and the trainee licence system must not be allowed to become an alternative to registration as a fully qualified Approved Driving instructor.

4. On 14 November 2023 the Appellant had applied for a third licence (HB D2). By way of an email dated 15 November 2023 (HB D3) the Appellant was notified that the Respondent was considering the refusal of his application for a third licence. By way of an email received on 19 November 2023 (HB D4) the Appellant made representations whereby he stated He stated he has suffered two family bereavements and had difficulty getting part three test dates.
5. After considering these representations the Respondent decided to refuse the Appellant's application. He had provided no evidence of lost training time and has had the benefit of two trainee licences for twelve months. He cites lack of part three test availability but has cancelled two tests himself.
6. The Respondent notified the Appellant of their decision in accordance with Section 129(4) of the Act by an email dated 1 December 2023 (HB D5).
7. The Respondents reasons for refusing the application for a third licence were:
 - (i) 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.
 - (ii) 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.
 - (iii) Since passing his driving ability test the Appellant has failed the instructional ability test twice and cancelled two more such tests booked for 30 November and 21 December 2023. Regrettably, DVSA cancelled one such test booked for 31 January 2024 (Annex A). Despite ample time and opportunity, the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor, and
 - (iv) 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.

8. It should be noted that the Appellant had not yet booked his final attempt at the instructional ability test.
9. The Appellant lodged a notice of appeal dated 13 December 2023. In his grounds of appeal, the Appellant has stated various reasons including family bereavements, inability to book tests/exams, a fall and resulting personal injuries to his back.
10. The Appellant further sent the following message to the Tribunal on 10 March 2024.

"Hi, I would like to add, I have failed my 2nd attempt Part 3 examination and I'm on my last attempt. I recently took my 2nd attempt in Leicester due to lack of part 3 examinations available in Peterborough and I've been consistently being unable to locate a test in Peterborough. While looking and waiting for an opportunity months go by.

I understand when there wasn't a shortage of driving tests and senior examiner's weren't conducting mainly normal driving tests there wasn't an issue and you could get tests for part 3's for freely.

Also as per my evidence sent previously of my visit to my local hospital I wasn't available to conduct any part 3 due to health issues which obviously didn't come at the best time for me but it wasn't something I could help. I've been searching for part 3 exams in Peterborough and surrounding areas but nothing available.

Thanks Gurjinder Singh"

11. In determining the appeal, the Tribunal has considered all of the above and the information within Hearing Bundle provided herein.

The law:

12. The Appeal relates to the refusal of a trainee licence which may be issued to a candidate who is preparing to sit the qualifying examination to become an ADI. The circumstances in which a person may be granted a trainee licence are set out in section 129 of the Act, and the Motor Cars (Driving Instruction) Regulations 2005 (the Regulations).
13. The purpose of the trainee licence is to enable a person to acquire practical experience in giving instruction in driving motor cars with a view to undergoing such part of the examination referred to in section 125(3)(a) of the Act as consists of a practical test of ability and fitness to instruct, which is part of the qualifying examination to become an ADI.
14. The Appellant has a right of appeal against the respondent's decision pursuant to section 131 of the Act. On appeal the tribunal may make such order as it thinks fit.
15. It is for the Appellant to show on the balance of probabilities that the Respondent's decision was wrong.

Findings and reasons:

16. The Respondent has set out their reasons (see paragraph 7 above) and has provided a formal statement as follows:
 1. Section 123(1) of the Road Traffic Act 1988 ('the Act') prohibits the giving of instruction paid for by or in respect of a pupil in the driving of a motor car unless the instructor's name is on the Register of Approved Driving Instructors, or he is the holder of a current licence issued under Section 129(1) of the Act.
 2. The Appellant's name was previously held in the Register between May 2012 and September 2023.
 3. Two licences under Section 129 of the Act were granted to the Appellant for the purpose of enabling him to gain practical experience to undergo the examination of his ability to give instruction in the driving of motor cars and were valid from 05 December 2022 to 04 December 2023 (HB D1).
 4. On 14 November 2023 the Appellant applied for a third licence (HB D2). By way of an email dated 15 November 2023 (HB D3) the Appellant was notified that the Respondent was considering the refusal of his application for a third licence. By way of an email received on 19 November 2023 (HB D4) the Appellant made representations. He stated he has suffered two family bereavements and had difficulty getting part three test dates.
17. After considering the Appellants representations the Respondent decided to refuse the Appellant's application and has provided reasons for doing so. The Appellant provides no evidence of lost training time and has had the benefit of two trainee licences for twelve months. He cites lack of part three test availability but has cancelled two tests himself. The Respondent gave the Appellant notice of their decision in accordance with Section 129(4) of the Act by an email dated 01 December 2023 (HB D5).
18. Holding a trainee licence is not a prerequisite to qualifying as an ADI and nor is it a prerequisite to sitting part 3 of the examination. Aside from giving professional instruction under a trainee licence, there are other ways in which the Appellant could gain the skills needed to pass part 3. For example, he could attend a training course; study and practice with an ADI; or give tuition on his own as long as he does not receive payment for such tuition. These are alternatives which mean that some trainees obtain pass the qualifying examination and obtain registration without ever having held a trainee licence.
19. The Appellant has provided reasons mostly related to very unfortunate bereavements, but the Tribunal find that the Appellant has failed to show that in all the circumstances the provision of the benefit of two trainee licences for twelve months has been inadequate to acquire sufficient experience to pass the test. It is not necessary for the

Appellant to have a trainee licence in order to sit part 3 and he has not shown that he is unable to obtain the necessary skills and experience by alternative means as set out above.

20. In this type of appeal, the Respondent has often properly indicated *“It was not Parliament’s intention that candidates should be issued licences for as long as it takes them to pass the examination to pass the final part of the ADI qualifying examination and the trainee licence system must not be allowed to become an alternative to registration as a fully qualified Approved Driving Instructor.”*
21. On consideration of the papers and the available evidence the Tribunal find on balance that the Respondent was justified in refusing the Appellant’s application and therefore must dismiss this appeal.

Judge Brian Kennedy KC

Date: 3 July 2024

