



Neutral citation number: [2024] UKFTT 838 (GRC)

Case Reference: FT/D/2024/0252

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

**Heard remotely by CVP  
On: 16 September 2024**

**Decision given on 24 September 2024**

**Before**

**JUDGE DAMIEN MCMAHON**

**Between**

**MALCOLM CLARE**

Appellant

**-and-**

**REGISTRAR OF APPROVED DRIVING INSTRUCTORS**

Respondent

**Representation**

Appellant: The Appellant appeared on his own behalf by telephone.

Respondent: Claire Jackson

**Decision:** The appeal is Dismissed. The Decision of the Respondent made on 4 March 2024 is confirmed.

**REASONS**

1. This appeal was listed for determination remotely, by CVP, today to commence at 14.00. However, the Appellant had technical difficulties joining by CVP but managed to attend remotely by telephone at 14.09. A representative of the Respondent attended by CVP.

2. The Appellant appealed against a decision of the Respondent dated 4 March 2024, to refuse the Appellant's application for a further, and third, trainee driving instructor licence made on 15 December 2023. The decision of the Respondent was made, taking account of representations made by the Appellant on 23 January 2024, namely, that he had faced many delays in getting a Part 3 test appointment in his local area. In a Reply dated 5 July 2024, the Appellant also pointed to the Respondent cancelling booked Part 3 tests (three in total). The decision under appeal was made on the basis that the Appellant had been granted two trainee licences covering a period of 12 months in total from 9 January 2023 to 8 January 2024 in order to gain sufficient expertise in driving tuition to pass a Part 3 test, a period that was claimed to be more than adequate; that it was not the intention of Parliament that trainee licences be issued for as long as it takes an applicant to pass their Part 3 test and that the trainee licence system could not be an alternative to registration as a fully-qualified Approved Driving Instructor ('ADI').
3. In their Response dated 22 April 2024, the Respondent noted, in addition, that the Appellant had received two previous trainee licences covering the 12 month period from May 2021 to May 2022; that no evidence of lost training time or lack of pupils had been adduced and that the Appellant himself had cancelled a Part 3 test appointment on 20 August 2023; that since the Appellant had applied for a third trainee licence before expiry of second trainee licence, his second trainee licence remained valid until determination of this appeal (confirmed as meaning, in effect, the Appellant had the benefit of a trainee licence in excess of 20 months); that the Appellant had failed his Part 3 test on two occasions; that refusal of the Appellant's application for a third trainee licence was not a bar to him undertaking a Part 3 test and that he did not require to hold a trainee licence for that purpose.
4. In oral submissions, the Respondent's representative confirmed, in addition, that examples existed of ADIs qualifying to be ADIs without having held a trainee licence and that any dispute as to the validity of an Appellant having failed a Part 3 test lay to the Magistrates' Court for decision (not to the Tribunal).
5. The Appellant submitted an appeal on 14 March 2024 against the Respondent's said decision on the following grounds:
  - that he disputed the validity of his being failed his Part 3 test;
  - that he wanted a third trainee licence to have an opportunity to make two other attempts, if necessary, at passing his Part 3 test (a position, as ultimately agreed by the Appellant in oral evidence, that was misconceived), and would not require a third trainee licence if he passed his then booked Part 3 test;
  - that he had a difficulty getting a Part 3 test appointment and that the Respondent had cancelled a number of booked appointments;
  - that his confidence and mental health was being affected as a result.

The grounds advanced by the Appellant did not, in fact, address the reasons advanced by the Respondent for the decision under appeal.

6. In his oral evidence, the Appellant accepted that he did not require to hold a trainee licence to undertake a Part 3 test but, again, expressed concern at the level of cancellations of booked Part 3 appointments by the Respondent and maintained he had been advised by trainers to apply for a third trainee licence. The Appellant denied his objective in applying for a third trainee licence was to generate income but that he wanted to provide tuition. (This was somewhat contradictory as the Appellant could provide tuition, without taking payment, in kind, or otherwise, without holding a trainee licence). The Appellant confirmed that he had held two trainee licences previously but had failed his Part 3 test on three occasions (the maximum number of attempts permitted).
7. This appeal concerns a decision of the Respondent to refuse the Appellant's application for a further, third, ADI trainee licence. The powers of the Tribunal in determining this appeal are set out in s.131 of the Road Traffic Act 1988 ('the Act'). In determining the appeal, the Tribunal may make such order as it thinks fit, standing in the shoes of the Respondent, considering the decision afresh on the evidence available to it, giving appropriate weight to the Respondent's reasons for their decision. The burden of proof in satisfying the Tribunal that the Respondent's decision was wrong rests with the Appellant.
8. The basis of the Respondent's decision was that the Appellant had been provided, under two trainee licences, more than adequate time to gain sufficient experience to pass his Part 3 test.
9. An appeal to this Tribunal against the Respondent's decision proceeds as an appeal by way of re-hearing, that is, the Tribunal makes a fresh decision on the evidence before it. The Tribunal must give such weight as it considers appropriate to the Respondent's reasons for its decision as the Respondent is the regulatory authority tasked by Parliament with making such decisions. The Tribunal does not conduct a procedural review of the Respondent's decision-making process.
11. In reaching my decision I have taken into account all of the evidence and submissions that I received, written and oral, and considered all of the circumstances relevant to this appeal.
12. There was little or no dispute as to the material facts of this case.
13. Accordingly, the appeal is dismissed.

Signed: *Damien McMahon*,

**Tribunal Judge**

**Date: 16 September 2024**