



Neutral citation number: [2024] UKFTT 00840 (GRC)

Case Reference: FT/D/2024/0339

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

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

Decision given on: 23 September 2024

Before

JUDGE DAMIEN MCMAHON

Between

BO HUNG JACKY FUNG

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation

Appellant: The Appellant appeared on his own behalf.

Respondent: Claire Jackson

Decision:

The appeal is Dismissed. The Decision of the Respondent made on 4 April 2024 is confirmed.

REASONS

1. This appeal was listed for determination remotely, by CVP, today, at 15.00, but did not commence until 15.15 due to the late appearance of the Appellant. The Appellant attended and gave oral evidence. A representative of the Respondent also attended and gave oral evidence and made oral submissions.
2. The Appellant had queried at a Case Management Hearing on 3 September 2024, whether today's hearing of his substantive appeal might be postponed as his second attempt at a Part 3 test was booked for 25 September 2024. As directed, the Applicant sought a direction to that effect by sending a completed Form GRC5 dated the same date. This request was referred to me on 4 September 2024. I directed that the views of the Respondent be sought since, it appeared, despite being directed, the Appellant had not sent a copy of his application to the Respondent. The Respondent replied on 5 September 2024 declining to agree to the application. On 6 September 2024, I issued Case Management Directions refusing this application.
3. The Appellant appealed against a decision of the Respondent dated 4 April 2024, to refuse the Appellant's application for a further, third, trainee driving instructor licence made on 29 February 2024. The decision of the Respondent was made, taking account of representations made by the Appellant on 17 March 2024, namely, that he had faced challenges including a scarcity of test slots, but that he had taken on additional training to prepare for a second attempt at passing his Part 3 test (having failed in his first attempt on 20 November 2023) and an inability to provide [paid] driving tuition would have significant financial implications for his household and pupils [although the purpose of a trainee licence is not to permit income to be generated], on the basis that no practice time had been lost and, it appeared, the Appellant was using his trainee licence as a source of income generation, something that is outside the purpose for which a trainee licence is issued; that the Appellant had been granted two trainee licences for 12 months in total, covering the period 27 March 2023 to 26 March 2024 to enable the Appellant to gain sufficient experience in driving tuition to pass a Part 3 test, a period that was regarded as more than adequate time to do so; 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'); that holding a trainee licence was not required to undertake a Part 3 test and that the Appellant's existing second trainee licence remained in force until the determination of this appeal (as the Appellant's application for a third trainee licence had been made before the expiry of his second trainee licence, thus, in effect, providing the Appellant with the benefit of a further period of holding a valid trainee licence of almost seven months.
4. In their Response dated 25 April 2024, the Respondent reiterated these submissions and, in addition, noted 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.
5. In oral submissions, the Respondent's representative again confirmed the Respondent's written submissions.

6. The Appellant submitted an appeal on 15 April 2024 against the Respondent's said decision on the following grounds:
-that he disputed the validity of his having 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 third and final permitted attempt at passing a Part 3 test scheduled for 29 September 2024;
 - 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.

7. 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). He specifically stated that he wished to get driving tuition experience and to get an income. He accepted the latter was not the purpose of a trainee licence but that he had to pay driving school expenses. The Appellant confirmed that he had held two trainee licences previously but had failed his Part 3 test on two occasions.
8. 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.
9. 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 and that, in practical terms, the Appellant had the benefit of a trainee licence for 18 months.
10. 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: 18 September 2024

Promulgated on: 23 September 2024