



Appeal Number: FT/D/2024/0466
Neutral citation number: [2024] UKFTT 00917 (GRC)

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

Hearing on the GRC CVP: 08 October 2024.

Decision: on 10 October 2024
Decision given on: 28 October 2024

Before: Brian Kennedy KC

IN THE MATTER OF: Part V of the Road Traffic Act 1988.

Between:

KHIZAR AZAM

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

DECISION

1. The appeal is dismissed, and the respondent's decision of 08 May 2024 is confirmed.

REASONS

Background:

2. 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.
3. The Appellant is not now and has never been on the said Register.
4. 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 24 April 2024 to 23 April 2024 (D1).

5. On 18 April 2024 the Appellant applied for a second licence. (D2) By way of an email dated 22 April 2024 (D3) the Appellant was notified that the Respondent was considering the refusal of his application for a second licence. By way of an email received on 03 May 2024 (D4) the Appellant made representations. He stated he suffered a chest infection and pneumonia in December 2023 and on discharge from hospital a Doctor recommended an extended period of rest and medication; these setbacks have impacted his ability to utilise his licence.
6. After considering his representations the Respondent decided to refuse the Appellant's application. He has returned the training record form ADI21AT but has not completed all training objectives. He states his Doctor advised prolonged rest but has not supplied a statement of fitness for work to corroborate or support lost training time. The Respondent gave him notice of the decision in accordance with Section 129(4) of the Act by an email dated 08 May 2024 (D5).
7. **The Respondent's decision:**
 8. The Respondent gave the following reasons for the decision made:
 - 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 yet to take the instructional ability test (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 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. The Respondent also noted that the Appellant has his first attempt at the instructional ability test booked on hold, awaiting a test date.

The Appeal:

9. The Appellant lodged a notice of appeal dated 21 May 2024 which were rejected by the Respondents. The Appellant then ultimately expanded his grounds of appeal and has submitted as follows;

***“1. Lack of Detailed Reasoning in communication -** When the PADI office informed me via email that the Registrar was considering refusing my application, no specific reasons were provided. The email only mentioned that a trainee licence for six months had already been granted for gaining sufficient experience to pass the final part of the ADI qualifying examination. Had the Registrar mentioned any specific reasons for considering the refusal, I would have addressed them immediately, potentially resulting in a more fair decision and avoiding escalation to this refusal.*

***2. Health Issues Impacting Training -** In my representation, I clearly stated the difficulties I faced due to severe chest infection and pneumonia, which greatly hindered my ability to utilize my first trainee badge effectively. Unfortunately, these circumstances were not considered in the decision-making process.*

***3. Lack of Clarity in Refusal Letter -** The refusal letter I received did not clearly state the reason for the refusal. It only mentioned a failure to comply with the conditions of my first licence and that one six-month licence is adequate. This indicates that my personal situation, as detailed in my representation, was not taken into account.*

***4. No communication of Specific Refusal Reasons -** I only learned of the specific reason for the refusal – failure to complete all training objectives – after I requested clarification. This information was not provided earlier, which would have given me an opportunity to address the issue from the beginning.*

***5. Misunderstanding in Training Documentation -** Upon learning the specific reason for refusal, I clarified to PADI that I had completed all the training objectives but did not document the training time for all of them on the ADI 21AT form due to a misunderstanding. I mistakenly thought that since the documented training hours added up to the required 20 hours, mentioning the remaining hours was unnecessary. I then provided the complete details for all the training objectives and requested a review of the decision, but it was not considered, and I was advised to*

appeal instead.

The Registrar further stated the following in the response:

***-Purpose of the Trainee Licence -** I fully understand and agree that the trainee licence is to provide the opportunity to gain experience while aiming for registration as an ADI. I assure you that my request for a second trainee badge is not an alternative to registration but a crucial step to gain further knowledge and experience necessary to pass the final Part 3 exam.*

***- Six-Month Licence Duration -** I acknowledge that the licence is not intended for indefinite teaching but to allow up to six months of experience. My intention is not to misuse the system but to maintain and enhance my preparation for the final exam by continuing to give instruction.*

***- Progress Toward Qualification -** It is incorrect to state that I have had ample opportunity to reach the required standard. Without a test date being provided, it is impossible to take the instructional ability test and achieve the necessary qualification. In my case I had the test booked on hold for months and owing to non-provision of any test date could not take the test.*

***- Alternative Training Options -** While I understand that holding a trainee licence is not required to attempt the final examination, it is vital for preparation. The ability to provide instruction is crucial for translating theoretical knowledge into practical experience. Financial constraints also make it challenging to provide unpaid tuition.*

In conclusion, the refusal of my application appears unfair as I was not given specific reasons for refusal in a timely manner, preventing me from addressing concerns promptly. My special circumstances, such as health issues, warrant fair and compassionate consideration, which was regrettably not given. Additionally, other PDIs have been granted second and even third trainee licences while waiting for test dates, putting me at a significant disadvantage. Therefore, I kindly request a reversal of the decision and the granting of a second trainee licence. Thank you for your understanding and consideration."

The Appeal:

10. The appeal was scheduled for an oral hearing on 08 October 2024. The Tribunal considered all the documents within the Hearing bundle including the Appellants' written and oral representations including such material evidence as he had supplied. The Tribunal heard the submissions made on behalf of the Appellant in support of his appeal and from the Respondent reflecting and supporting the reasoning in the decision under appeal.

The law:

11. 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).

12. 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.
13. Pursuant to regulation 3 of the Regulations, the qualifying examination to become an ADI consists of three parts: a written examination (part 1); a driving ability and fitness test (part 2); and an instructional ability and fitness test (part 3).
14. A candidate is permitted three attempts at each part. The whole examination must be completed within two years of passing part 1, failing which the candidate must retake the whole examination. Once a candidate has passed part 2, they may be granted a trainee licence.
15. 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) as consists of a practical test of ability and fitness to instruct, which is part of the qualifying examination to become an Approved Driving Instructor (ADI)
16. 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.
17. The Tribunal must consider the spirit of the Law involved, the circumstances and proportionality where, as relevant here, such life eventualities, circumstances and other distractions cannot easily circumvent the practice of registration as intended by parliament.
18. The Tribunal gives considerable weight to paragraph 8 iv. above which indicates that the Appellant is not permanently restricted or prejudiced as a result of the decision.
19. It is for the Appellant to show on the balance of probabilities that the Respondent's decision was wrong.

Findings and reasons:

20. In this appeal the Respondent has decided to refuse the Appellants application for a second trainee licence as the Appellant has failed to comply with the conditions of the first licence issued. Regulation 15, chapter 6 of the Motor Cars (driving instruction) regulations 2005, states that supplementary training means training in all matters

specified in part 1 of schedule 2 of the regulations. As can be seen from the ADI 21AT form on page 24 of the bundle, 3 training objectives were not completed. The Appellant has therefore not complied with the supplementary training requirement as set out in the regulations.

21. The Appellant was given the opportunity to provide representations and did so on 3 May 2024 in writing. Whilst he does reference health conditions, he failed to provide sufficient or any material evidence that showed or even quantified the impact on his training and the amount of time lost. The only medical evidence was confirmation of a chest x-ray and an appointment with the respiratory team. There was no fitness statement for work or any other report from his GP that evidenced hospitalisation or explained symptoms and medications that would help to explain the impact on his ability to use the trainee licence and The Respondent can only consider the information provided at the time before then making their decision.
22. The Appellant has retrospectively completed further training which is evidenced in subsequent forms. However, this was done after the period of representations and only after the Respondents decision was made.
23. Further, by virtue of the Appellant applying for a second licence before the first licence expired, that licence has remained in force until the determination of this appeal. Therefore, the Appellant has continued to benefit from his trainee licence for a further 5 months on top of the original 6-month validity.
24. The Respondent believes that the Appellant has had a sufficient opportunity over these 11 months to gain the practical experience necessary to complete the qualification process but has not yet done so. Additionally, the Appellant failed to comply with the relevant conditions.
25. Finally, the Tribunal give significant weight to the fact that there is no permanent restriction or prohibition on the Appellant as described at paragraph 8 iv. above.
26. It is for the Appellant to show on the balance of probabilities that the Respondent's decision was wrong and for the above reasons The Tribunal finds he has not established that the Decision under appeal was wrong in Law and accordingly I must dismiss the appeal.

Brian Kennedy KC

10 October 2024.