



Appeal Number: FT/D/2024/0454
Neutral citation number: [2024] UKFTT 00918 (GRC)

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

Hearing on the GRC CVP: 08 October 2024.

Decision: on 10 October 2024
Decision issued on: 28 October 2024

Before: Brian Kennedy KC

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

Between:

LOVEPREET SING

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

DECISION

1. The appeal is dismissed, and the respondent's decision of 10 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 13 April 2024 the Appellant applied for a third licence (D2). By way of an email dated 15 April 2024 (D3) the Appellant was notified that I was considering the refusal of his application for a third licence. By way of an email received on 15 April 2024 (D4) the Appellant made representations. He stated he has difficulty obtaining a test and has utilised the book to hold service.
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 provides no evidence of lost training time or a lack of pupils and has had the benefit of two trainee licences for twelve months. The Respondent served notice of their decision in accordance with Section 129(4) of the Act by an email dated 10 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 failed the instructional ability test once and cancelled one more such test booked for 27 November 2023. Regrettably, DVSA cancelled one such test booked for 28 November 2023 (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. The Respondent also noted that the Appellant had his second attempt at the instructional ability test booked for 12 July 2024.

The Appeal:

9. The Appellant lodged a notice of appeal dated 18 May 2024 which were rejected by the Respondents. The Appellant in his grounds of appeal has submitted in summary as follows;
 1. Non availability of test dates in the local test center.
 2. His ability to seek Learners provided by school franchise owners to practice with has been compromised as a result.
 3. His training car was written off as a result of an accident (caused by his pupil) resulting in no vehicle (lack of insurance) and resulting significant financial burden.

The Appeal:

10. The appeal was scheduled for an oral hearing on 08 October 2024. The Appellant failed to appear and despite many attempts to reach him at contact details he had provided to the Tribunal, he could not be contacted. The Tribunal considered all the documents within the Hearing bundle including the Appellants' written and representations including such material evidence as he had supplied 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 case the Respondent has decided to refuse the Appellants application for a third trainee licence.
21. The Appellant has already been issued with two trainee licences from 24 April 2023 until the 23 April 2024 which has given the Appellant a period of 12 months to gain practical experience in providing driving lessons whilst undergoing training.
22. By virtue of the Appellant applying for a third licence before the expiry of the second, that licence has remained in force until the determination of this appeal. He has therefore now benefited from over 17 months on the trainee licence scheme which the Respondent argues to be more than sufficient period of time to gain the necessary experience to pass the part 3 test.
23. The Appellant has failed the part 3 test twice and cancelled 2 more test bookings. In addition, and regrettably 3 further test bookings have been cancelled for various reasons relating to demand and the Appellants third attempt is currently on hold awaiting a test date.

24. The Appellant was given the opportunity to provide representations and did so in writing on the 15 April 2024. He explained the lack of test availability had caused delays and the financial burden of not having a trainee licence. However, he provided no evidence of lost training time or to show he was unable to use his trainee licence.
25. Whilst the Respondent accepts that they are experiencing higher than normal waiting times for the ADI part 3 test, the trainee licence is not directly linked to the part 3 test and the Appellant is not required to hold a trainee licence to be able to take the test. Additionally, whilst the Respondent empathises with the potential financial challenges of not having a trainee licence, the trainee licence scheme is not there to earn a living. It is a short-term option to assist with gaining practical experience to help qualify.
26. The Respondent as a public authority can only consider the representations made in that relevant time-frame previous to making their decision.
27. Within the grounds of appeal, at point 2 the Appellant expresses difficulties with the franchise driving school. The Respondent has no power or control in these matters, but the Appellant can change schools if necessary or even return their licence if they are not being provided with pupils.
28. In relation to Point 3 of his grounds of appeal, the Appellant refers to a car accident but again, this was not provided within the material timeframe for representations prior to the impugned decision nor in any event, is it supported with evidence.
29. The Appellant has failed to provide any material evidence showing he has lost some of this time to unforeseen circumstances or any mitigation that would suggest a third licence should be granted.
30. 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.
31. 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.