



NCN: [2025] UKFTT 63 (GRC)

Case Reference: FT/D/2024/0643

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

**Heard by Cloud Video Platform  
Heard on: 14 January 2025  
Decision given on: 23 January 2025**

**Before**

**JUDGE HEALD  
JUDGE THOMAS BARRETT**

**Between**

**MARK ANTHONY DAY**

Appellant

**and**

**REGISTRAR OF APPROVED DRIVING INSTRUCTORS**

Respondent

**Representation:**

The Appellant appeared in person

For the Respondent: no attendance

**Decision:** The Appeal is Allowed and the Appellant's application for a licence is remitted back to the Respondent.

**REASONS**

1. This Appeal was commenced on 29 July 2024 by the Appellant pursuant to section 131(2)(a) Road Traffic Act 1988 ("the Act"). It relates to a Decision made by the Respondent ("the Registrar") dated 17 July 2024 ("the Decision") to refuse a third trainee licence.

2. What follows is a summary of the submissions, evidence and our view of the law. It does not seek to provide every step of our reasoning. The absence of a reference by us to any specific submission or evidence does not mean it has not been considered.

### **Background and relevant law**

3. The Appellant's name is not on the Register of Approved Driving Instructors ("the Register") and he is therefore prohibited from giving paid driving instructions by section 123 (1) of the Act unless he holds a licence issued by the Registrar pursuant to section 129(1) of the Act and in accordance with The Motor Cars (Driving Instruction) Regulations 2005.

4. To qualify as an Approved Driving Instructor an applicant is required to pass a Qualifying Examination. This is in 3 parts namely part 1 being a written examination, the driving ability and fitness test in part 2 and the instructional ability and fitness test in part 3. Three attempts are allowed at each part. The whole examination (parts 1-3 inclusive) must be completed within two years of passing part 1. If this is not done then the whole examination has to be retaken.

5. A Section 129(1) licence may be granted by the Registrar once an applicant has passed part 2. This is granted:-

*"...for the purpose of enabling 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."*

6. By section 129(3) of the Act

*"The Registrar may refuse to grant a licence under this section to an applicant to whom such a licence has previously been issued."*

7. By section 129(8)(c) of the Act:-

*"before deciding whether or not to refuse the application, the Registrar must take into consideration any such representations made within that period."*

and by section 129(4) of the Act if such an application is refused the Registrar must give notice of that in writing to the applicant and provide the grounds of refusal.

8. By section 129(6) of the Act:-

*"Notwithstanding any provision of regulations made by virtue of subsection (5) above prescribing the period for which a licence is to be in force, where a person applies for a new licence in substitution for a licence held by him and current at the date of the application, the previous licence shall not expire –*

*(a) until the commencement of the new licence, or*

*(b) if the Registrar decides to refuse the application, until the time limited for an appeal under the following provisions of this Part of this Act against the decision has expired and, if such an appeal is duly brought, it is finally disposed of."*

### **Role of the Tribunal**

9. Section 131(2) of the Act provides:-

*"A person who is aggrieved by a decision of the Registrar –  
(a) to refuse an application for the grant of a licence under this Part of this Act, or  
(b) to revoke such a licence,  
may appeal to the First-tier Tribunal"*

10. Section 131 (3) of the Act provides that the Tribunal may make such order:-

*(a) for the grant or refusal of the application*

*or,*

*(b) for the removal or the retention of the name in the register, or the revocation or continuation of the licence,*

*(as the case may be) as it thinks fit.*

11. Section 131 (4A) of the Act provides that, in addition, if the Tribunal is provided with evidence that was not before the Registrar at the relevant time it may remit the matter back to the Registrar.

12. The Appellant has the burden of proof in satisfying the Tribunal that the Registrar's decision was wrong. When making its Decision, the Tribunal stands in the shoes of the Registrar and takes a fresh decision on the evidence available to it, giving appropriate weight to the Registrar's decision as the person tasked with making such decisions.

### **Evidence and matters considered**

13. At the Appeal we heard from the Appellant. The Registrar did not attend and was not represented. We also had a bundle of papers provided by the Respondent. In this Decision page numbers indicated by their inclusion in brackets refer to pages of the Bundle. Mr Lee Curtis is the Appellant's trainer. He was in attendance and as appears below gave evidence to the Tribunal.

### **Chronology**

14. In summary:-

(a) the Appellant passed his part 1 test on 6 February 2023 and his part 2 on 5 May 2023.(24)

(b) he was granted two licences by section 129(1) which enabled him lawfully to provide paid driving instruction (without his name being on the Register) from 22 May 2023 to 21 November 2023 and from 6 December 2023 to 5 June 2024.

(c) on 23 May 2024 the Appellant applied for a 3rd licence

(d) the Appellant was notified on 19 June 2024 (16) that the Registrar was considering refusal of the application

(e) on 25 June 2024 the Appellant made representations (17- 22)

(f) on 17 July 2024 (1) the Registrar notified the Appellant that his representations had been considered but the Decision was to refuse the application for a 3rd Licence

15. The Appellant's appeal is against the Decision.

### **Notice**

16. On 19 June 2024 (16) the Registrar gave the Appellant notice that refusal was being considered. He said that this was because

*"...two trainee licences of twelve months duration in total have already been granted to gain sufficient experience to pass the final part of the ADI qualifying examination"*

17. He also said:-

*"The Registrar will also take account whether or not you have complied with the conditions of your previous licence"*

### **Representations**

18. The Registrar's letter (16) said:-

*"Under the provisions of section 129(8) of the Act you may make representation to the Registrar with an explanation of why you feel your application should not be refused" "The Registrar will take any such representations, any correspondence already submitted and independent evidence of missed time into consideration before reaching a decision. Please verify missed time with independent evidence otherwise the Registrar may not take such claims into account"*

19. The Appellant provided his representations in an undated letter sent on 2 July 2024 (17- 22). His representations were detailed, carefully considered and personal to him. There were divided into the following headings:-

(a) *"I feel I should be allowed a third licence due to inadequate training provided to me by 2 previous sponsors. As this will help me gain the experience needed to pass an ADI Part 3."*

(b) *"The current system is not fit for purpose and does not support and help pdis to become adis."*

(c) *"The lack of ADI part 3 tests has affected my progress, and my rationale is set out below."*

(d) *"I have a huge financial outlay and feel again the system DVSA employ does not support this."*

20. Each of these points was supported by further evidence and his rationale. The Appellant concluded by saying (21):-

*"During my training I have learnt about Maslows Hierarchy of needs to support the learners I am training.*

*To reach self-actualization humans require basic psychological and safety needs.*

*For me to pass my part 3 this is the same for me.*

*The systems currently used by DVSA is using old methods that haven't changed with other changes DVSA have made, only allowing 6 months training at a time, the lack of support from dsva, the lack of tests, failing to recognise the huge outlay are all unfair and doesn't provide a secure basis to allow me to develop to be an ADI.*

*Are there any other training industries that limit peoples training time as much as DVSA do? Are there any other training or education providers that limit the number of attempts allowed to take a certain test?*

*I do hope the registrar will read and take our points, not only to issue a third licence, but to use their position to push for the changes we (and many others) feel are required in this industry to bring it up to modern day standards. I must add that DVSA have rightly made changes to the way they expect PDI'S/ADI'S to each learners, but for some reason those very same PDI'S have not been afforded the same."*

### **The Decision**

21. On 17 July 2024 the Registrar issued the Decision. He said (1):-

*"The Registrar has now taken into consideration the representations made by you in your email(s) received on 2 July 2024."*

22. The Reasons given were as follows (1):-

(a) *"...you provided no evidence of lost training time and already had the benefit of two trainee licences."*

(b) *"You have already been granted two trainee licence(s) of 12 months' duration in total for the purpose of gaining sufficient experience to pass the final part of the ADI qualifying examination. This is considered to be a more than adequate period of time."*

(c) *"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"*

### **The Grounds of appeal (8)**

23. In summary the Appellant's grounds of appeal were stated as follows:-

(a) the Registrar's reasons are a "copy and paste response almost identical to one received by my colleague whose circumstances are different to mine" "

(b) "...my personal circumstances were not appropriately considered..."

(c) "there was evidence within the letter I sent...which I feel was not considered regarding lost training time"

(d) he had provided 19 paragraphs in his representations but had "received a standard response that it appears everyone else gets"

24. The outcome he seeks (9) is:-

"...a change to DVSA's processes where they properly consider everyone's third licence application individually. We also feel that significant changes are needed to DVSA's approach to trainee driving instructors to support them in their process to develop as a small business"

### **Registrar's Response (11-13)**

25. In the response the Registrar said

"4...By way of a letter received on 25 June 2024 (D4) the Appellant made representations. He stated he lacked support and there is a lack of part three tests. He also said he would struggle financially without a trainee licence."

"5. After considering these representations I decided to refuse the Appellant's application. 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.

26. The Registrar's reasons were stated to be:-

(a) "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..."

(b) "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;

*(c) since passing his driving ability test the Appellant has failed the instructional ability test twice (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;*

*(d) 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"*

*(e) "It should be noted that the Appellant has not yet [as at 9 August 2024] booked his final attempt at the instructional ability test."*

### **The Appellant's Reply**

27. On 16 September 2024 the Appellant filed a Reply. The submissions made included reference again to a lack of part 3 tests, a challenge as to what "ample time to pass" should mean and to lost training time.

### **Appellant's submissions at the Appeal**

28. In considering this Appeal we kept in mind that the Appellant is a litigant in person ("LIP") and we had regard to the guidance from the Equal Treatment Bench Book concerning the courts duty to a LIP and the difficulties and challenges they may face.

29. Since the Decision of 17 July 2024 the Appellant will have been able to continue on as a paid driving instructor pending the outcome of this Appeal by section 129(6) of the Act. At the Appeal he confirmed that since the refusal he had continued to be trained and to instruct as allowed.

30. The Appellant expressed his frustration that as recently as 3 January 2025 he had been told by the Respondent that his test due on 16 January 2025 had been cancelled. He read out the email to us because it was not in the Bundle. He told us that as at the date of the Appeal no alternate date had yet been offered. In his submission this cancellation was further evidence of the difficulties faced by candidates (and him) and added to his grounds of Appeal. The recent receipt of this email had caused him to ask for an adjournment but after considering this further he said he wished proceed with his appeal.

31. He explained to us that while he had passed part 1 and part 2 he now believes that his training from December 2022 to July 2023 had been damagingly inadequate and it was only once he started to be trained by Mr Curtis in July 2023 that he was able to make proper progress towards part 3.

### **Mr Curtis' evidence**

32. Mr Curtis supported the case put forward by the Appellant. Importantly, in our view, he was able to help us understand the impact on the Appellant of the stated inadequacy of the training between December 2022 and July 2023. Mr Curtis said that in his view the training had not just not helped the Appellant to progress but had set him back.

### **General points**

33. The Appellant says (for example):-

*"I feel that the 6 month trainee licence should be scrapped and a period of 18 months to 2 years should be allowed to allow people like me to develop fully and without pressure."*

34. In our view a consideration of such issues which, in effect, challenge the system by which an applicant seeks to become a driving instructor and the provision of the Act and The Motor Cars (Driving Instruction) Regulations 2005 are outside the role of the Tribunal and the scope of this Appeal.

35. Also in considering this matter we have had regard to the fact that it is the Registrar who is the person tasked by the legislation to regulate the process of trainee licences.

### **Obligation to consider representations**

36. Section 129(8)(c) of the Act provides that:-

*"before deciding whether or not to refuse the application, the Registrar must take into consideration any such representations made within that period. "*

37. Section 129(4) of the Act requires that:-

*"The Registrar must, on making a decision on an application under subsection (2) above, give notice in writing of the decision to the applicant which, in the case of a decision to refuse the application, must state the grounds of the refusal"*

38. The question is whether the Registrar did as required by section 128(8)(c) of the Act and *considered* the Appellant's representations. He may not agree with any of them but to satisfy this obligation the Registrar must take them all into account in the process of reaching a decision. To do this he must read them all, know what they say and engage with what they say.

39. The Registrar both in the Decision and his Response says he did consider the representations. The Appellant says he does not think he did so "appropriately" because in his view the Decision was a standard response "that it appears everyone else gets" and a "cut and paste" and that his 19 paragraphs of representations and personal circumstances were not appropriately considered.

40. The Appellant had a concern about the use of precedents by the Registrar for example because of his evidence that he has seen almost identical wording in other Decision letters. The use of precedents might give a recipient a sense that the Registrar has not



given consideration to representation. However we do not consider such a point alone would give grounds for a successful appeal because we would expect the Registrar to operate a system where there is reliance on precedents as this is an effective and efficient way to manage the work load much of which will involve similar issues and seeks to ensure the Registrar's compliance with the Act and other obligations.

41. In his representations the Appellant had set out in detail the history of what he called "*inadequate training*". While it was not headed "lost training time" and did not overtly express itself to be dealing with that topic in our view the issues he raised would inevitably result in a loss of time. For example:-

*"I had now had around 9 months of substandard training, and was doing things incorrectly without knowing the correct way of doing this. I believe that I only started receiving proper training in July 2023"*

42. We concluded, assisted by Mr Lee's evidence, that there had been a loss of time. We also concluded that the Appellant had sought to explain this in his representations. Bearing in mind the request in the Registrar's letter to ensure any claim for lost time was backed by independent evidence and as we accept the loss of time was somewhat obliquely cited we can understand why the Registrar concluded in the Decision that he saw no evidence of lost time. In our view that conclusion was not accurate and thus this element of the Appellant's representations had not been considered.

43. More generally we noted that:-

(a) in the Decision (1) the Registrar said:-

*"The Registrar has now taken into consideration the representations made by you in your email(s) received on 2 July 2024"*

*and*

*"He came to this conclusion because you provided no evidence of lost training time and already had the benefit of two trainee licences."*

(b) in his response (12) the Registrar said

*"By way of a letter received on 25 June 2024 (D4) the Appellant made representations. He stated he lacked support and there is a lack of part three tests. He also said he would struggle financially without a trainee licence."*

*and*

*"5. After considering these representations I decided..."*

44. In the Decision itself (which by section 129(4) must state the grounds of the refusal) apart from the Registrar saying the representations have been considered, there is

nothing else said there that would have given the Appellant confidence that his representations had been considered before the Decision was made.

45. Even when responding to the Appeal the Registrar adopted a light touch. He said:-

*"By way of a letter received on 25 June 2024 (D4) the Appellant made representations. He stated he lacked support and there is a lack of part three tests. He also said he would struggle financially without a trainee licence. 5. After considering these representations I decided..."*

46. This content does point to there being consideration of some of the issues raised by the Appellant but not all. For example nothing is said about the generalised concerns raised about the system and how that impacted him specifically. The Registrar may not have agreed with what was said and may even have considered it irrelevant but he did not refer to it.

47. When responding later to the Appeal he did not address the assertion that the Appellant's representations had not been considered appropriately save by simply saying some were considered. In our view it would not have been a difficult or time consuming to provide a clear rebuttal of this assertion with some explanation of the process of consideration.

48. In the Response the Registrar referred to just these parts of the representations namely (1) the lack of support (2) a lack of part three tests and (3) the financial issues. He then said that *"5. After considering these representations"* he decided to refuse the licence. This may not have been intended but by referring to *"these"* implies that the others not listed were not considered.

49. The Registrar was not represented at the Appeal. In the absence of any other submissions or evidence (despite it being a known live issue) and because of the absence of reference to any detail in the Decision and only the minimal reference in the Response we conclude on the evidence available that the Appellant has satisfied us that not all his representations were "taken into consideration" as required by the Act.

### **Decision**

50. In summary the Registrar did not consider all the Appellants representations as required by section 129(8)(c) of the Act because we conclude that-

(a) he did not consider what had been said about the loss of time

(b) he considered some but not all the other representations made.

51. Accordingly the Appeal is allowed and the Appellant's application for a licence is remitted back to the Registrar.

**Signed: Tribunal Judge Heald**

**Date: 20 January 2025**