



NCN [2024] UKFTT 00418 (GRC).

Case Reference: D/2023/592

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

**Heard: Paper Consideration**

**Heard on: 13 May 2024  
Decision given on: 23 May 2024**

**Before**

**Tribunal Judge Hazel Oliver**

**Between**

**GAVIN KENNETH HOBBS**

Appellant

**and**

**REGISTRAR OF APPROVED DRIVING INSTRUCTORS**

Respondent

**Decision:** The appeal is allowed. The Registrar's decision of 11 December 2023 was based on incorrect facts. The Tribunal does not grant a second trainee licence because this would have already expired by the date of this decision.

## **REASONS**

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors ("the Registrar") made on 11 December 2023 to refuse to grant the Appellant a second trainee licence.
2. The Appellant is trainee driving instructor who was granted a trainee licence under section 129 of the Road Traffic Act 1988 ("the Act"), for one six-month period

from 1 May to 31 October 2023. He was refused a further trainee licence. The Appellant now appeals the Registrar's decision.

3. The parties have agreed to a paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1) (b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

### **The Appeal**

4. The Appellant's Notice of Appeal dated 12 December 2023 relies on the grounds that he provided all the correct documentation and obtained confirmation by telephone that this had been received.

5. The Registrar's Statement of Case dated 30 January 2023 resists the appeal. The Registrar says that the Appellant failed to make representations within the required time and failed to return training record ADI 21AT, which is evidence of mandatory additional training.

6. The Appellant's Reply of 21 February 2024 explains that he did not receive correspondence about representations or the required timeframe, but he did reply within 14 days and sent form ADI 21AT.

### **The law**

7. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified. The circumstances in which trainee licences may be granted are set out in section 129 of the Act and the Motor Cars (Driving Instruction) Regulations 2005.

8. A licence under section 129(1) of the Act 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... as consists of a practical test of ability and fitness to instruct*".

9. In order to qualify as an Approved Driving Instructor, applicants must pass the Qualifying Examination. This is made up of: the written examination (Part 1); the driving ability and fitness test (Part 2); and the instructional ability and fitness test (Part 3). Three attempts are permitted at each part. The whole examination must be completed within two years of passing Part 1, otherwise the whole examination has to be retaken.

10. A candidate may be granted a trainee licence if they have passed Part 2. However, holding a trainee licence is not necessary in order to qualify as an Approved Driving Instructor, and many people qualify without having held a trainee licence.

11. The powers of the Tribunal in determining this appeal are set out in section 131 of the Act. The Tribunal may make such order as it thinks fit (section 131(3)). 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 by Parliament with making such decisions. The burden of proof in satisfying the Tribunal that the Registrar's decision was wrong rests with the Appellant.

### **The evidence**

12. I have considered a bundle of evidence containing 23 pages.

13. This includes evidence of the Appellant's full licence history from the Respondent. From this it appears that the Appellant has failed the Part 3 test once and cancelled two further test dates.

14. The Appellant provided evidence of correspondence with the Registrar, and the Registrar has also provided some correspondence. This shows the following:

- a. On 2 November 2023 the Registrar advised the Appellant that he was considering refusing his application. The Appellant was informed that he had not returned form ADI 21AT, and he should provide this form with his response or explain why he had failed to undergo this mandatory training.
- b. On 3 November 2023 the Appellant sent the completed form ADI 21AT to the Registrar.
- c. There is a record of a 13 minute phone call on 20 November 2023, to the number 0300 200 1122. The Appellant says that this was a conversation with someone at the DVSA during which he was told that all the correct documents had been received and the case was with the Registrar.
- d. On 11 December 2023 the Registrar wrote to the Appellant refusing the application, stating that no representations were received within the specified time. This decision does not refer to the missing form ADI 21AT. The grounds for refusal in the letter are that he had already been granted one licence of six months for the purposes of getting sufficient experience.

### **Conclusions**

15. I have considered all of the written evidence.

16. I note that the Appellant has already had the benefit of one trainee licence covering a period of 6 months, and he is able to continue to gain experience and take the test without a trainee licence.

17. I also note that the Appellant did provide form ADI 21AT as requested by the Registrar, and I accept his submissions that he also received confirmation by telephone that all of the correct documents had been received. This was provided well before the Registrar sent the decision.

18. The Registrar's Statement of Case relies on a failure to provide this form – "*After considering these representations I decided to refuse the Appellant's application. He*

*has failed to comply with the conditions of his first licence as he has not provided evidence of the mandatory additional training, having failed to return training record form ADI 21AT; this was requested with representations, which he failed to respond to*". Based on the evidence, this is an incorrect basis for the decision to refuse the application. The Appellant did provide this evidence of the mandatory training by providing a copy of form ADI 21AT, and so he had not failed to comply with the conditions of his first licence. Although the Registrar goes on to say that the six month licence was for a reasonable period and the Appellant has had ample time to reach the required standard, it appears that his decision was largely based on incorrect information about completion of mandatory training.

19. The Appellant has persuaded me that the Registrar's decision was wrong because it did not take into account the evidence that he provided showing compliance with the conditions of his first licence. I therefore allow the appeal.

20. I have considered whether to use my own powers to grant a second trainee licence for six months. This would have run from 1 November until 30 April 2024. This appeal has been decided after the second licence would have expired. Because the Appellant applied for a second licence before the expiry date of the first, that licence has remained in force and he has been able to continue to give paid instruction until determination of this appeal. The Appellant has in effect already had the benefit of a second six-month trainee licence because of the appeal process. I therefore do not find it necessary to grant the application for a second licence.

**Hazel Oliver**

**Judge of the First-tier Tribunal**

**Dated: 22 May 2024**