



Neutral citation number: **[2024] UKFTT 00555 (GRC)**

Case Reference: D/2024/0132

**General Regulatory Chamber
Transport**

First-tier Tribunal

**Determined on the
on 19th June 2024**

Before

HHJ DAVID DIXON

Between

TRACEY LOUISE SMITH

Appellant

and

**THE REGISTRAR OF APPROVED
DRIVING INSTRUCTORS**

Respondent

Decision: The appeal is dismissed and the Registrar's decision remains, however the decision is not operable until the 7th July 2024.

REASONS

Background to Appeal

1. This appeal concerns a decision of the Registrar of Approved Driving Instructors (“the Registrar”) made 25th January 2024 to refuse to grant the Appellant a third trainee licence.
2. The Appellant is a trainee driving instructor who was granted a trainee licence under s.129 of the Road Traffic Act 1988¹ (‘the Act’) for a six-month period, and then another, but was refused a further licence at the end of the relevant period.
3. The Registrar’s reasons for refusal, in summary, were that the Appellant had not passed the final part of the ADI qualifying examination within the relevant period and as insufficient evidence of loss of training time was supplied that the Appellant had had long enough to progress, and the application to issue a third trainee licence was therefore refused.
4. The Appellant now appeals the Registrar’s decision.

Appeal to the Tribunal

5. The Appellant’s Notice of Appeal, 7th February 2024, indicates she simply not been able to book a test slot. The lack of slots meant that she has found it difficult to get through the process. She asks for a further licence to allow her to attempt her Part 3.
6. The Respondent submitted a Response indicating that the decision letter sets out their position. The Registrar points out that the Applicant had sufficient time to progress.
7. The Registrar indicates that the Appellant has failed her Part 3 on 22nd December 2024, and has a further test booked for 29th April 2024 (no result declared). No new test has been booked. The Appellant has been licensed since February 2023.
8. An email received yesterday from the Appellant indicated that the April test was cancelled by the DVSA and rearranged for 4th July 2024.

Mode of Determination

9. The Appeal was listed for oral determination and the case was heard via the CVP system.
10. The Appellant was unrepresented. The Respondent didn’t attend.
11. The Tribunal considered a bundle of evidence containing 24 pages. A further email was received consisting of two pages from the Appellant.

The Evidence

¹ <http://www.legislation.gov.uk/ukpga/1988/52/part/V/crossheading/licences>

12. The Appellant said that the inability to book the test within the period normally allowed has prevented her from completing the process. She accepted that if she was to blame things would be different, but it was the fault of the DVSA. She accepted that if she had been able to book 3 tests and take them within 6 months the normal period would be entirely understandable, but here that simply wasn't the case.
13. She stressed that all she wanted was to be an ADI, she had invested everything into it, but with little opportunity being given by the DVSA to prove she was capable.
14. She accepted that there were no real issues that affected her ability to train over the past months.
15. She asked for the opportunity to at least complete her next Part 3 exam whilst licensed, as if she was not she would lose her pupils, she would have to have her car reconverted to single control, her insurance would change, and in effect, her ability to train would disappear. She simply wanted the chance to have a further fair attempt at her Part3.

The Law

16. 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 s. 129 of the Act and the Motor Cars (Driving Instruction) Regulations 2005².
17. 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 '.
18. In order to qualify as an Approved Driving Instructor, applicants must pass the Qualifying Examination. This comprises: 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 2 years of passing Part 1, failing which the whole examination has to be retaken.
19. If a candidate has passed part 2, they may be granted a trainee licence. However, holding a trainee licence is not a prerequisite to qualification as an Approved Driving Instructor and many people qualify as an Approved Driving Instructor without having held a trainee licence.
20. The powers of the Tribunal in determining this appeal are set out in s. 131 of the Act. The Tribunal may make such order as it thinks fit.
21. When making its Decision, the Tribunal stands in the shoes of the Registrar of approved Driving Instructors and takes a fresh decision on the evidence available to it, giving appropriate weight to the Registrar's decision³ as the person tasked by Parliament with

² http://www.legislation.gov.uk/uksi/2005/1902/pdfs/uksi_20051902_en.pdf

³ See *R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31. <http://www.bailii.org/ew/cases/EWCA/Civ/2011/31.html>. Approved by the Supreme Court in *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60 at paragraph 45 – see <https://www.supremecourt.uk/cases/docs/uksc-2015-0126-judgment.pdf>.

making such decisions. The burden of proof in satisfying the Tribunal that the Registrar's decision was wrong rests with the Appellant.

Conclusion

22. The Tribunal considered carefully all the evidence and papers before it.
23. In fixing a period of 6 month to allow for trainee instructors to progress Parliament must have had in mind that we are all subject to differing life events that affect our ability to undertake certain tasks. Sometimes those events are so unusual or have such a bearing on an individual that it will be entirely appropriate to find that a longer than normal period of time should be allowed to complete a task. Here the Appellant has indicated that there were no real issues, but booking a test slot and getting tests was extremely difficult.
24. Whilst the Appellant has clearly shown that there were difficulties booking slots, there has been no loss of training opportunity. She has now been licensed for some 16 months already, with the sole issue raised being difficulties in booking tests. I'm afraid I take the view that the Appellant has had long enough to train and the Appeal must fail.
25. Accordingly I dismiss the appeal however the decision does not come into effect until 7th July 2024. I do so solely so that the Appellant can train up and including her next booked test appointment. I stress to the Registrar that all efforts must be made to ensure that the booked test takes place, out of fairness to the Appellant. It would undermine this decision if this test were postponed.
26. The Appellant is still able to attempt her Part 3, and the Tribunal wishes her well if she so chooses.

(Signed)

HHJ David Dixon

DATE: 19th June 2024