



Neutral citation number: [2024] UKFTT 00557 (GRC)

Case Reference: FT/D/2024/0151

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

**Heard on: 26 June 2024
Decision given on: 2 July 2024**

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY

Between

ATTA AHMAD

Appellant

and

REGISTRAR FOR APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms Jackson

Decision: The appeal is allowed.

REASONS

Introduction

1. This is an appeal against a decision of the Registrar of Approved Driving Instructors ('the Registrar') made on 1 February 2024 to refuse to grant the Appellant a second trainee licence.
2. Although the Registrar resisted the appeal up until the conclusion of the hearing, by email dated 26 June 2024 the Registrar indicated that the appeal was no longer opposed.

Legal framework

3. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified.
4. A trainee licence may be granted in the circumstances set out in s. 129 of the Road Traffic Act 1988 ('the Act') and the Motor Cars (Driving Instruction) Regulations 2005.
5. 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.'

6. 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').
7. 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.
8. If a candidate has passed Part 2, they may be granted a trainee licence. The grant of a trainee licence enables applicants to provide instruction for payment before they are qualified. It is possible to qualify as an Approved Driving Instructor without having held a trainee licence.
9. 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.
10. 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 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.

Factual background to the appeal

11. The Appellant failed Part 1 of the Qualifying Examination on 17 August 2022. He passed Part 1 on 30 August 2022. He failed Part 2 on 20 April 2023 and passed Part 2 on 22 June 2023. The Appellant applied for a trainee licence which was granted and was valid from 24 July 2023 to 23 January 2024.

12. On 15 January 2024, the Appellant applied for a second trainee licence. As the Appellant applied before the licence expired, this means that, at the date of the hearing, the appellant had been the beneficiary of a trainee licence for approximately 11 months.
13. By 20 February 2024, the Appellant had not yet booked his first attempt at the Part 3 exam.
14. The reasons for the Registrar's decision, in summary, were that the Appellant had failed to comply with the conditions of his first licence. The Registrar stated that the training objectives on his ADI 21AT training record form were not completed within the first three months of the licence period. The Registrar also stated in his reasons that 6 months was considered to be a more than adequate period of time to gain sufficient experience to pass Part 3.
15. In the hearing the Appellant continued to assert that the he had provided proof that he had complied with the conditions of his licence when he applied for an extension. The Respondent asserted that he had not. As this dispute of fact turned on what documents had been attached to a particular email, I asked the parties to forward to the tribunal the original emails sent and received with the original attachments.
16. The Appellant forwarded the email which showed that he had attached proof that he had complied with the conditions of the licence when he applied for the extension.
17. By email dated 16 June 2024¹, the Registrar's representative confirmed that she had checked the original email and the information provided by the Appellant at the time did show that the Appellant had complied with the condition of his licence and on that basis she indicated that the appeal was no longer opposed.

Appeal to the Tribunal

18. The grounds of appeal are, in summary:
 - 18.1. The Appellant submitted that he had not failed to comply with the conditions of his first licence. He said that he fulfilled the training requirements on 19 October 2024. He asserted that he attempted to send a copy of his ADI 21AT to the Registrar by email on that 19 October 2023 but it failed to send. He said that he only realised this when applying for his second licence, but he had sent the information in with that application.
 - 18.2. The Appellant was unable to work properly between 8 December 2023 and 31 January 2024 because he had a car accident and was without a courtesy car during that period. This resulted in many cancellations of lessons.
 - 18.3. In October and November 2023 the Appellant was looking for a test date in December or January but none were available. He continues to actively look for a date in Tolworth.
 - 18.4. He has an ongoing foot issue and is waiting for an appointment.
19. The Registrar, in his response, states:

- 19.1. 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.
- 19.2. 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. Moreover, by virtue of the Appellant having applied for a second licence before the expiry date of the first, 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.
- 19.3. Since passing his driving ability test the Appellant has yet to take the instructional ability test. Despite ample time and opportunity the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor.
- 19.4. 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.

Evidence

20. I read and took account of a bundle of documents and I heard oral evidence from the Appellant. I heard submissions from both parties.
21. I took account of emails sent to the tribunal by both parties on the day of the hearing.

Discussion and conclusions

22. The primary reason given for the refusal of the second trainee licence was that the Appellant had not complied with the conditions of the first licence. This, as the Registrar now concedes, was incorrect: the Appellant had complied with the conditions and provided evidence of this to the Registrar at the time that he applied for a second trainee licence.
23. It is unfortunate that the Registrar opposed this appeal. First, it was readily apparent from the Registrar's records that the Appellant had provided evidence at the time and second, in any event, as the tribunal is permitted to take account of evidence that was not before the Registrar the fact that the evidence was not provided at the time would not have prevented the tribunal from concluding that the conditions had not been breached.

24. As the appeal is now unopposed and taking account of all the matters set out above, the appeal is allowed.
25. When considering whether and particularly when to submit any application for a third trainee licence, the Appellant should note the following information provided by the respondent:

“As the appellant has been able to continue to give instruction the licence issued would be valid from the 24 January 2024 until the 23 July 2024.”

Signed Sophie Buckley

Date: 26 June 2024

Judge of the First-tier Tribunal

Promulgated on 2 July 2024