



Neutral citation: NCN: [2024] UKFTT 00575 (GRC)

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

Appeal Number: D/2024/005

**Determined on the papers
on 3 July 2024.**

Decision given on 4 July 2024.

Before

JUDGE OF THE FIRST-TIER TRIBUNAL B. KENNEDY KC

Between

ADNAN MALIK

Appellant

and

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

DECISION

1. The appeal is dismissed, and the Respondent's decision of 29 November 2023 is confirmed.

REASONS

Background

2. The Appellant appeals against the decision made by the Registrar of Approved Driving Instructors (the Respondent) on 29 November 2023 to refuse his application for a second trainee licence.
3. The Appellant is a trainee driving instructor having been granted a licence under Section 129 of the Road Traffic Act 1988 ("the Act") 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, which licence was valid from 08 May 2023 to 07 November 2024.

4. On 26 October 2023 the Appellant applied for a second licence Hearing Bundle (“HB”) (D2). By way of an email dated 31 October 2023 (HB D3) the Appellant was notified that the Respondent was considering the refusal of his application for a second licence. By way of an email received on 13 November 2023 (HB D4) the Appellant made representations. He stated these have been testing times with significant waits for test dates.
5. After considering these representations the Respondent decided to refuse the Appellant's application. The Appellant had failed to comply with the conditions of his first licence as the training objectives on his Approved Driving Instructor (“ADI”) in that the 21AT training record (HB D5) form were not completed within the first three months of the licence period; All additional training was completed in a very short period of time at the end of his current licence.
6. The Respondent gave the Appellant notice of their decision in accordance with Section 129(4) of the Act by a letter dated 29 November 2023 (HB D6).
 - (i) The Respondents reasons for refusing the application for a second licence were: 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 had already had two trainee licences which cover a period of 12 months. 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.
 - (iii) Since passing his driving ability test the Appellant has failed the instructional ability test twice and cancelled two more such tests booked for 15 November 2023 and 19 January 2024. Regrettably, DVSA cancelled one such test booked for 16 January 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.
 - (iv) Further 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.
7. The Appellant lodged a Notice of Appeal which was not received until 03 January 2024 (out of time) although there had been notice to the Tribunal of his intention to appeal on 12 December 2023. In his grounds of appeal, the Appellant stated that when he received the letter late, he

immediately emailed the DVSA to request a few more days to collect all the information for the Tribunal. He also stated he wanted an extension to his training licence leading up to his third attempt and he had difficulties in booking a test due to delays and further that training costs were another difficulty for him

8. In determining the appeal, the Tribunal has considered all the documents provided by both parties in the Hearing Bundle.

The law:

9. 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).
10. 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.
11. 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.
12. It is for the Appellant to show on the balance of probabilities that the Respondent's decision was wrong.

Findings and reasons:

13. The Respondent have set out their reasons (see paragraph 6 above) and have provided a formal statement as follows:
 - (a) 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.
 - (b) The Appellant was previously held in the Register from July 2021 to January 2021.
 - (c) A licence under Section 129 of the Act was 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 was valid from 08 May 2023 to 07 November 2023.
 - (d) On 26 October 2023 the Appellant applied for a second licence (HB D2). By way of an email dated 31 October 2023 (HB D3) the Appellant was notified that the Respondent was considering the refusal of his application for a second licence. By way of an email received on 13 November 2023 (HB D4) the Appellant made representations. He stated these have been testing times with significant waits for test dates.
 - (e) After considering these representations the Respondents decided to refuse the Appellant's application. The Appellant had failed to comply with the conditions of his first licence as the training objectives on his ADI 21AT training record (HB D5) form were not completed within the first three months of the licence period. All additional training was

completed in a very short period of time at the end of his current licence.

14. The Respondent gave the Appellant notice of their decision in accordance with Section 129(4) of the Act by a letter dated 29 November 2023 (HB D6).
15. Holding a trainee licence is not a prerequisite to qualifying as an ADI and nor is it a prerequisite to sitting a part of the examination. Aside from giving professional instruction under a trainee licence, there are other ways in which the Appellant could gain the skills needed to pass a part of his exams. For example, he could attend a training course, study and practice with an ADI, or give tuition on his own as long as he does not receive payment for such tuition. These are alternatives which mean that some trainees obtain pass the qualifying examination and obtain registration without ever having held a trainee licence.
16. The Tribunal find that the Appellant has failed to show that this has been inadequate to acquire sufficient experience to pass the test. It is not necessary for the Appellant to have a trainee licence in order to sit the necessary part of the exams and he has not shown that he is unable to obtain the necessary skills and experience by alternative means as set out above. As the Respondent indicated in the impugned decision, *“It was not Parliament’s intention that candidates should be issued licences for as long as it takes them to pass the examination to pass the final part of the ADI qualifying examination and the trainee licence system must not be allowed to become an alternative to registration as a fully qualified Approved Driving Instructor.”*
17. On consideration of the papers in the HB and the available evidence, the Tribunal find on balance that the Respondent was correct to refuse the Appellant’s application and must dismiss this appeal.

holding a trainee licence is not a prerequisite to qualifying as an ADI and nor is it a prerequisite to sitting part 3 of the examination. Aside from giving professional instruction under a trainee licence, there are other ways in which the appellant could gain the skills needed to pass part 3. For example, he could attend a training course; study and practice with an ADI; or give tuition on his own as long as he does not receive payment for such tuition. These are alternatives which mean that some trainees obtain pass the qualifying examination and obtain registration without ever having held a trainee licence.

18. The respondent notes in the statement of case that the appellant was due to sit the part 3 exam on 25 April 2024. The appellant provided evidence to show that the test on that date was cancelled by the DVSA because of a lack of an examiner. As set out above, he is re-booked to sit the test on 30 June 2024.
19. The appellant had the benefit of two trainee licences for a period of twelve months. In addition, because his application for a third licence was made before the expiry of the second, he has had the benefit of an additional period of five months while his appeal has been pending.
20. I find that the appellant has failed to show that this has been inadequate to acquire sufficient experience to pass the test. It is not necessary for the appellant to have a trainee licence in order to sit part 3 and he has not shown that he is unable to obtain the necessary skills and experience by alternative means as set out above.
21. For all of these reasons, I find that the respondent was correct to refuse the appellant's application and I dismiss his appeal.

Judge Brian Kennedy KC

Date: 03 July 2024.